

146/2

DECLARATION FOR CHESNEY PLACE

000659

TABLE OF CONTENTS

ADMITTED TO RECORD
28 DAY OF July 1998
AT 11:01 A.M.
MARY SUE GOTS
REGISTER OF DEEDS
NEW HANOVER COUNTY

<u>ARTICLE NUMBER</u>	<u>SECTION NUMBER</u>	<u>PAGE</u>
1	GENERAL PROVISIONS	2
	1.1. <u>Definitions</u>	2
	1.2. <u>Construction of Association Documents</u>	6
	1.3. <u>Chesney Place Owners Association, Inc</u>	6
2	COMMON ELEMENTS	8
	2.1. <u>Conveyance and Title</u>	8
	2.2. <u>No Dedication</u>	8
	2.3. <u>Regulation of Common Elements</u>	8
	2.4. <u>Leasing of Common Elements</u>	9
3	EASEMENTS	9
	3.1. <u>Development Easements</u>	9
	3.2. <u>Association Power to Make Dedications and Grant Easements</u>	12
	3.3. <u>Easement for Upkeep</u>	12
	3.4. <u>Limitations on Exercise of Rights and Easements</u>	13
	3.5. <u>Emergency Access</u>	13
	3.6. <u>Easement for Use of Common Elements</u>	14
	3.7. <u>Priority and Enforcement of Easements</u>	15
4	DEVELOPMENT OF THE PROPERTY	15
	4.1. <u>Expansion by the Declarant</u>	15
	4.2. <u>Expansion by the Association</u>	16
	4.3. <u>Procedure for Expansion</u>	17
5	SPECIAL DECLARANT RIGHTS; TRANSFER	17
	5.1. <u>Special Declarant Rights</u>	17
	5.2. <u>Transfer of Special Declarant Rights</u>	18
6	COMMON EXPENSES AND ASSESSMENTS	18
	6.1. <u>Determination of Common Expenses and Assessments</u>	18
	6.2. <u>Assessments and Common Expenses</u>	19
	6.3. <u>Exemptions</u>	24
	6.4. <u>Liability for Common Expenses</u>	24
	6.5. <u>Collection of Assessments</u>	25
	6.6. <u>Statement of Common Expenses</u>	25

RETURNED TO
Edward Smith
392-5100

7	OPERATION OF THE PROPERTY	26
	7.1. <u>Upkeep of Common Elements and Lots</u>	26
	7.2. <u>Owner Upkeep</u>	27
	7.3. <u>Manner of Repair and Replacement</u>	28
	7.4. <u>Additions, Alterations or Improvements</u> <u>by the Executive Board</u>	28
	7.5. <u>Additions, Alterations or Improvements</u> <u>by the Owners</u>	29
	7.6. <u>Disclaimer of Liability</u>	32
	7.7. <u>Services to Owners</u>	33
8	RESTRICTIONS ON USE OF LOTS AND COMMON ELEMENTS; <u>RULES AND REGULATIONS</u>	33
	8.1. <u>Permitted Uses</u>	33
	8.2. <u>Restrictions</u>	34
	8.3. <u>Rules and Regulations</u>	38
	8.4. <u>Leasing Restrictions</u>	39
	8.5. <u>Exclusion for the Declarant and Designees</u> <u>of the Declarant</u>	39
9	COVENANTS COMMITTEE	39
	9.1. <u>Covenants Committee</u>	39
	9.2. <u>Subcommittees of the Covenants Committee</u>	42
	9.3. <u>Compensation of the Covenants Committee</u>	42
10	INSURANCE	43
	10.1. <u>Authority to Purchase</u>	43
	10.2. <u>Physical Damage Insurance</u>	44
	10.3. <u>Liability Insurance</u>	46
	10.4. <u>Other Insurance</u>	47
11	RECONSTRUCTION AND REPAIR	48
	11.1. <u>When Reconstruction or Repair of Common</u> <u>Elements Required</u>	48
	11.2. <u>Procedure for Reconstruction and Repair of</u> <u>Common Elements</u>	49
	11.3. <u>Disbursement of Construction Funds for</u> <u>Common Elements</u>	49
	11.4. <u>When Reconstruction and Repair of Common</u> <u>Elements Not Required</u>	51
12	COMPLIANCE AND DEFAULT	51
	12.1. <u>Relief</u>	51
	12.2. <u>Lien for Assessments</u>	55
	12.3. <u>Subordination and Mortgage Protection</u>	57
13	MORTGAGES	57
	13.1. <u>Notice to Executive Board</u>	57
	13.2. <u>Notices to Mortgagees</u>	57
	13.3. <u>Other Rights of Mortgagees</u>	58

14	CONDEMNATION	59
	14.1. <u>Definition</u>	59
	14.2. <u>Taking of Common Elements</u>	59
15	AMENDMENT, EXTRAORDINARY ACTIONS	60
	15.1. <u>Amendment by the Declarant</u>	60
	15.2. <u>Amendment by the Association</u>	60
	15.3. <u>HUD/VA Approval</u>	60
	15.4. <u>Prerequisites</u>	60
	15.5. <u>Extraordinary Actions of the Association</u>	61
	15.6. <u>Application of Future Statutory Law</u> <u>Governing Property Owners Associations</u>	62
16	TERMINATION	63
	16.1. <u>Termination by the Association</u>	63
	16.2. <u>Prerequisites</u>	63

DECLARATION FOR CHESNEY PLACE

This Declaration made and entered into as of the 14th day of July, 1998, by and between HARRIS RESIDENTIAL CONSTRUCTION, LLC, a North Carolina limited liability company (hereinafter "Declarant"); SOUTHLAND ASSOCIATES, INC., Trustee; CENTRAL CAROLINA BANK AND TRUST COMPANY; and ALL PROSPECTIVE PURCHASERS AND OWNERS of any of the property hereinafter described including, but not limited to, that shown on Exhibit A;

W I T N E S S E T H:

WHEREAS, Declarant owns in fee simple the real estate designated as Submitted Property and described on Exhibit A to this Declaration and has elected to subject the Submitted Property to certain covenants, restrictions, reservations, easements, servitudes, liens and charges, all of which are more particularly set forth hereinafter;

WHEREAS, Declarant anticipates that it may acquire fee simple title to certain real estate in the vicinity or the Submitted Property and may elect hereafter to subject all or any portion of such real estate subsequently acquired by Declarant to the provisions of this Declaration and the amendments thereto, such said property to be designated as the Additional Property;

WHEREAS, Declarant deems it desirable and in the best interests of all the prospective purchasers and owners of the real estate subject to this Declaration to protect the value and desirability of such real estate by providing for the development of such real estate in accordance with a common plan and the maintenance of certain shared facilities; and,

WHEREAS, to provide a means for meeting the purposes and intents set forth herein, Declarant has caused to be created Chesney Place Owners Association, Inc., a nonprofit corporation incorporated under Chapter 55A of the General Statutes of North Carolina (North Carolina Nonprofit Corporation Act).

NOW, THEREFORE, Declarant does hereby covenant and declare, on behalf of itself and its successors and assigns, that

the real estate designated as Submitted Property in Exhibit A hereto shall, from the date this Declaration is recorded in the office of the Register of Deeds of New Hanover County, North Carolina, be held, conveyed, acquired and encumbered subject to the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all prospective purchasers and parties who may acquire any right, title, estate or interest in or to any of such real estate or who may acquire any right of occupancy or entrance upon any portion thereof, all subject to the right of the Declarant or the Association to amend this Declaration according to its terms and to add all or any portion of the Additional Property to be subject to this Declaration.

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. Definitions. Terms used throughout this Declaration shall have the meanings specified for such terms below unless the context otherwise requires:

(1) "Additional Property" means such real property as may be subsequently acquired by Declarant within a radius of one mile of the Submitted Property and which Additional Property Declarant may submit to this Declaration and to the jurisdiction of the Association, or any real estate that the Association may submit to the Declaration and assume jurisdiction over pursuant to Section 4.2.

(2) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of Chesney Place Owners Association, Inc., as may be amended from time to time.

(3) "Association" means Chesney Place Owners Association, Inc.

(4) "Association Documents" means collectively the Articles of Incorporation, this Declaration, the Bylaws and the Rules and Regulations adopted by the Association, all as may be

amended, restated and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

(5) "Bylaws" means the bylaws of the Chesney Place Owners Association, Inc.

(6) "Common Elements" means any real estate within the Property owned or leased by the Association other than a Lot and, any and all personal property and fixtures owned, leased, maintained or operated by the Association for the benefit of the Property or the Owners.

(7) "Common Expenses" means expenditures made by or financial obligations or liabilities of the Association, together with any allocations to reserves.

(8) "Common Expense Liability" means the liability for common expenses allocated to each Lot pursuant to Section 6.2.

(9) "Covenants Committee" means the committee that may be established by the Executive Board pursuant to Article 9 to assure that the Property shall be owned, maintained, operated, enjoyed and used in a manner consistent with the purposes and intent of this Declaration.

(10) "Declarant" means Harris Residential Construction, LLC, its successors or assigns.

(11) "Declaration" means this Declaration for Chesney Place and all amendments, restatements and revisions hereto including all amendments to the Declaration amending the provisions herein submitting Additional Property to the terms of this Declaration and the jurisdiction of the Association.

(12) "Design Guidelines" means the standards developed by the Covenants Committee pursuant to Article 9 and any standards established by the Declarant prior to the submission of real estate to this Declaration by an amendment hereto adding Additional Property.

(13) "Development Period" means the period ending on the earliest of:

(a) The later of five (5) years from the date of the recordation of this Declaration or two (2) years from the date of recordation of the most recent amendment to the Declaration made by the Declarant adding Additional Property; provided, however, that once the Development Period has expired, the recordation of a subsequent amendment to the Declaration shall not reinstate the Development Period; and provided, further, that if the Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond the Declarant's control, then the aforesaid period shall be extended for the length of the delay or two (2) years, whichever is less, upon written notice to the Association of such extension;

(b) Or the date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date.

(14) "Development Plan" means the plan for development of the Property and Additional Property approved by New Hanover County, as amended from time to time, and such additional development as may be approved for any Additional Property. The total number of Lots which may be created pursuant to the Development Plan is 42.

(15) "Executive Board" or "Board" means the executive and administrative entity established by the Articles and the Bylaws to act on behalf of the Association and function as the governing body of the Association.

(16) "Lot" means a separately numbered portion of the Property (but not including the real estate designated as Common Elements) on plats of the Property recorded in the office of the Register of Deeds of New Hanover County, North Carolina, and

includes any improvements now or hereafter appurtenant to that real estate.

Lots may be identified numerically, alphabetically or by a combination of the two. For example, a Lot may be designated as the number "1", the letter "A" or the dual designation "1A", "1B", et seq. For purposes of the Association Documents, a Lot comes into existence on the date which a map or plat depicting said Lot is recorded in the office of the Register of Deeds of New Hanover County, North Carolina.

(17) "Majority Vote" means a simple majority (more than fifty percent (50%)) of the votes actually cast in person or by proxy at a duly held meeting of the members of the Association at which a quorum is present or at a duly held meeting of the Executive Board at which a quorum is present.

(18) "Mortgagee" means an institutional lender (commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies and any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such lenders) holding a first mortgage or first deed of trust ("Mortgage") encumbering a Lot.

(19) "Owner" means one or more Persons who own a Lot in fee simple but does not mean any Person having an interest in a Lot solely by virtue of a contract of purchase or as security for an obligation.

(20) "Person" means one or more natural persons, corporations, partnerships, limited liability companies, trusts or other entities capable of holding title to real estate.

(21) "Property" means, at any given time, the real estate then subject to this Declaration and includes all improvements and appurtenances thereto now or hereafter existing.

(22) "Rules and Regulations" means the rules and regulations governing the use, occupancy, operation and physical appearance of the Property adopted from time to time by the Board.

(23) "Section" means a portion of the Property designated as provided in Section 4.3 hereof.

(24) "Submitted Property" means the real estate designated as such in Exhibit A hereto and all real estate which is from time to time submitted to the Declaration.

(25) "Upkeep" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

Section 1.2. Construction of Association Documents.

(1) Caption. The captions are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of the Article, Section, Subsection or any other portion of this Declaration.

(2) Severability. Each provision of the Association Documents is severable from every other provision and the validity of any one or more provisions shall not change the meaning of or otherwise affect any other provision.

(3) Interpretation. If there is any conflict between the Association Documents, the Declaration shall control. Particular provisions shall control over general provisions. The provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted pursuant to any of the Association Documents.

Section 1.3. Chesney Place Owners Association, Inc.

(1) The Association. The Association is a nonprofit corporation organized and existing pursuant to Chapter 55A of the General Statutes of North Carolina charged with the duties and vested with the powers prescribed by law and set forth in the Association Documents.

(2) Membership. Members of the Association shall at all times be, and shall be limited to, the Persons who constitute Owners of the Lots. If more than one Person owns a Lot, then all of the Persons who own such Lot shall constitute collectively one Owner and be one member of the Association. Each Person is entitled to attend all meetings of the Association.

Membership in the Association is mandatory. Upon acquiring title to a Lot, each new Owner shall immediately give written notice to the Secretary of the Association stating the name and address of such new Owner and the Lot acquired by such new Owner. If the new Owner fails to give the Secretary such notice within thirty (30) days of acquiring title to such Lot, then the costs of locating each new Owner and reasonable record keeping costs incurred by the Association may be assessed against such Owner.

(3) Classes of Members and Voting Rights. During the Development Period, the Association shall have two (2) classes of membership as follows:

(a) Class A - Class A Members shall be the Owners of Lots with the exception of the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

(b) Class B - The Class B Member shall be the Declarant. The Class B Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership and, in addition, shall be entitled to appoint a majority of the members of the Executive Board of the Association during the Development Period as specified in the Bylaws. The Class B Member shall have a veto power over all actions of the Executive Board or any committee as may have been appointed by the Executive Board or established by the Bylaws. The Class B Membership shall terminate and become converted to Class A membership upon the earlier of (i) the conveyance of seventy-five percent (75%) of the Lots

(including those Lots which may be created pursuant to the Development Plan) to Owners other than a declarant; (ii) two (2) years after all declarants have ceased to offer Lots for sale in the ordinary course of business; (iii) two (2) years following the last exercise of the rights of a declarant to add Additional Property or (iv) when, in its discretion, the Declarant so determines.

(c) Board Authority to Act. Unless otherwise specifically provided in the Association Documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Executive Board on behalf of the Association.

ARTICLE 2

COMMON ELEMENTS

Section 2.1. Conveyance and Title. Declarant shall convey the Common Elements in the Property to the Association in fee simple released from any encumbrance securing the repayment of monetary obligations incurred by the Declarant, but subject to all easements and other encumbrances appearing of the public records including those created by this Declaration. The conveyance of the Common Elements as contemplated herein shall occur prior to or simultaneously with the conveyance of the first Lot to an Owner.

The Association shall accept title to real estate or personal property offered to the Association by the Declarant.

Section 2.2. No Dedication. Nothing contained herein shall be construed as a dedication to public use or as an assumption of responsibility for upkeep of any Common Elements by any public or municipal agency, authority or utility, nor shall it be constructed to prevent the Board of the Association from permitting public access to or use of any Common Elements.

Section 2.3. Regulation of Common Elements. The Association shall have the right to regulate the use of the Common Elements pursuant to Section 8.3 hereof and to charge fees for the use thereof. In the event the Association imposes fees for the use

of the Common Elements, such fees to be charged to Persons entitled to use the Common Elements shall be uniform and shall not discriminate against any one or more Persons or groups of Persons entitled to use the Common Elements. The Association may also mortgage, dedicate, convey or grant easements across the Common Elements subject to the restrictions in Section 15.5 hereof.

Section 2.4. Leasing of Common Elements. The Association shall have the right to lease the Common Elements and improvements located thereon subject to rules, regulations and fees adopted by the Association from time to time.

ARTICLE 3

EASEMENTS

Section 3.1. Development Easements.

(1) Easements Reserved to the Declarant.

(a) Easement to Facilitate Development. The Declarant hereby reserves to itself and its designees a nonexclusive blanket easement over and through the Property and Common Elements for all purposes reasonably related to the development and completion of improvements on the Property and Common Elements, including without limitation: (i) temporary slope and construction easements; (ii) drainage, corrosion control, and storm and sanitary sewer easements (including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter the Declarant shall restore the affected area as near as practicable to its original condition); (iii) easements for the storage (in a sightly manner) of reasonable supplies of building materials and equipment necessary to complete the improvements; and (iv) easements for the construction, installation and Upkeep of improvements (e.g., landscaping, street lights, signage, etc.) on the Property and Common Elements or reasonably necessary to serve the Property and Common Elements.

(b) Easement to Facilitate Sales. The Declarant hereby reserves to itself and its designees the right to: (i) use any Lots owned by the Declarant, any other Lot with the written consent of the Owner thereof, or any portion of the Common Elements as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; (ii) place and maintain in any location on the Common Elements and on any Lot street and directional signs, temporary promotional signs, plantings, street lights, entrance features, "theme area" signs, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features; provided, however, that all signs shall comply with applicable governmental regulations and the Declarant shall obtain the consent of the Owner of any Lot upon which the improvements are to be located; and (iii) relocate, within the areas permitted by this paragraph, or remove all or any of the above from time to time at the Declarant's sole discretion. These rights and easements shall continue throughout the Development Period.

(c) Easement for Utilities and Related Services. The Declarant hereby reserves to itself and its assignees, during the Development Period, the right to grant and reserve easements, rights of way and licenses, over, through, upon and under the Property and the Common Elements for ingress, egress, installation and Upkeep of equipment for providing to any portion of the Property or Common Elements any utilities including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private, or for any other purpose necessary or desirable for the orderly development of the Property. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where initially installed with the permission of the Declarant, where contemplated

on any site plan approved by the Declarant or where approved by resolution of the Executive Board.

(d) Easements for Future Access and Utilities. The Declarant hereby reserves for itself, its heirs, successors and assigns, non-exclusive easements for (i) ingress, egress and regress for pedestrian and vehicular access to and from the Additional Property, and (ii) the installation, maintenance and provision of utilities including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private, or for any other purposes necessary or desirable for the orderly development of the Additional Property, across, under, over and upon a portion of the Common Elements, more particularly described on Exhibit C to this Declaration.

(e) Dedications and Easements Required by Governmental Authority. The Declarant hereby reserves to itself and its designees, during the Development Period, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Elements or the Property.

(2) Further Assurances. Any and all conveyances made by the Declarant to the Association with respect to any of the Common Elements or the Property shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. Upon written request of the Declarant, the Association and each Owner shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

(3) Assignment of Development Rights. The Declarant may assign its rights under Section 3.1, or share such rights with, one or more other Persons, exclusively, simultaneously or consecutively with respect to the Common Elements, or Lots and Additional Property owned by the Declarant or such Persons. The Declarant

shall notify the Association of any such assignment or designation by the Declarant.

Section 3.2. Association Power to Make Dedications and Grant Easements. The Declarant, on behalf of itself and its successors and assigns, hereby also grants to the Association the equal rights and powers as reserved to the Declarant by Paragraphs 3.1(1) (a), (b) and (c) hereof. These rights and easements may be exercised by the Association, subject to Section 15.5 hereof; provided, however, that the limitations on duration applicable to the Declarant shall not apply to the Association. If the Declarant or any Owner requests the Association to exercise its powers under this section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

Section 3.3. Easement for Upkeep.

(1) Association Access. The Declarant, on behalf of itself and its successors and assigns, hereby grants the right of access over and through any Lot to the Association and any other Person authorized by the Executive Board in the exercise and discharge of their respective duties and responsibilities including, but not by way of limitation, those duties and responsibilities to make inspections, correct any condition originating in a Lot or in the Common Elements threatening another Lot or the Common Elements, correct drainage, perform installations or Upkeep of utilities, landscaping or other improvements located on the Property for which the Association is responsible for Upkeep, or correct any condition which violates the Association Documents. The agents, contractors, officers and directors of the Association may enter any area of any Lot (including any building) in order to utilize or provide for the Upkeep of the areas subject to easements granted in this Article to the Association.

(2) Declarant Access. Until the expiration of any applicable warranty period, the Declarant hereby reserves to itself and its designees a right of access over and through the Common

Elements and any Lot to perform warranty-related work within the Common Elements or the Lots. The Declarant may assign its rights under this subsection to, or share such rights with, one or more other Persons, exclusively, simultaneously or consecutively.

Section 3.4. Limitations on Exercise of Rights and Easements.

(1) These easements are subject to all other easements and encumbrances of record in the office of the Register of Deeds of New Hanover County, including those created by this Declaration.

(2) The Declarant or the Association, as appropriate, when exercising the rights and easements granted by this Article, shall: (i) give reasonable prior notice to all affected Owners, unless an emergency exists which precludes such notice; (ii) minimize any economic or aesthetic injury to the affected Lots or the Common Elements; and (iii) not unreasonably interfere with the affected Owners' use, enjoyment and benefit from such Owners' Lots or the Common Elements.

(3) If an easement is relocated, the cost of such relocation shall be paid by the Person requesting the relocation.

(4) Any damage resulting from the exercise of the aforesaid rights and easements shall be promptly repaired and the site restored to the extent practicable by the Declarant or the Association, as appropriate, or at the option of the Declarant or the Association, the party responsible for such damage. In either case, the cost of such repair and restoration shall be paid for by the party responsible for the damage.

Section 3.5. Emergency Access. The Declarant, on behalf of itself and its successors and assigns, hereby grants an easement (1) to all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies and (2) to the Association over and through all Lots, if emergency measures are required in any Lot to reduce a hazard thereto or to any other

portion of the Property. The Association is hereby authorized but not obligated to take any such measures.

Section 3.6. Easement for Use of Common Elements.

(1) Use and Enjoyment. The Declarant hereby reserves to itself and, on behalf of itself and its successors and assigns, grants to each Owner and each Person lawfully occupying a Lot a non-exclusive right and easement of use and enjoyment in common with others of the Common Elements. Such right and easement of use and enjoyment shall be appurtenant to each Lot, whether or not mentioned in the deed thereto. Any purported conveyance or other transfer of such rights and easements without the Lot to which such rights and easements are appurtenant shall be void.

(2) Vehicle and Pedestrian Access. The Declarant hereby reserves during the Development Period and for so long as the Declarant is an Owner and also, on behalf of itself and its heirs, successors and assigns, grants to each other Owner and each Person lawfully occupying a Lot a non-exclusive easement over all the Common Elements for the purpose of vehicular and/or pedestrian access, ingress and egress, as appropriate, to any portion of the Property to which such Person has the right to go, subject to any Rules and Regulations promulgated by the Association pursuant to Section 8.3 hereof. Any purported conveyance or other transfer of such rights and easements without the Lot to which such right and easement are appurtenant shall be void.

(3) Limitations. The rights and easements of enjoyment created hereby shall be subject (in addition to any easements granted or reserved in this Declaration or pursuant to the other Association Documents) to all rights and powers of the Declarant and the Association when exercised in accordance with the other applicable provisions of the Association Documents, including without limitation the Association's right to regulate the use of the Common Elements and to establish reasonable charges therefor,

to grant easements across the Common Elements, to dedicate portions of the Common Elements and to mortgage the Common Elements.

(4) Delegation. Subject to the Rules and Regulations or such other restrictions as adopted by the Association, any Person having the right to use and enjoy the Common Elements may delegate such rights to such Person's guests, tenants, agents and invitees and to such other Persons as may be permitted by the Association.

Section 3.7. Priority and Enforcement of Easements.

(1) No Person who owns Property subject to this Declaration may subordinate the easements herein created to any subsequent encumbrance.

(2) The easements and rights granted by this Declaration shall not be enforceable by Persons to whom such easements and rights may be delegated by Owners, including without limitation the guests, tenants, agents or invitees of any Owner. This section does not affect, however, the rights of Mortgagees in possession or court-appointed officers in possession and control of a Lot acting in the name, place and stead of Owners or any Person's right to enforce any easements or rights granted in any lease or agreement between such Person and an Owner.

ARTICLE 4

DEVELOPMENT OF THE PROPERTY

Section 4.1. Expansion by the Declarant.

(1) The Declarant intends to develop the Property substantially in accordance with the Development Plan. The Declarant reserves the right to modify the Development Plan subject only to approval by the Planning Board of New Hanover County or its duly constituted successor; provided, that the Declarant may not modify the Development Plan to increase the number of Lots.

(2) The Declarant hereby reserves an option during the Development Period to expand the Property from time to time without the consent of any Owner or Mortgagee by submitting all or any portion of the Additional Property to the provisions of this

Declaration and the jurisdiction of the Association whether or not such real estate is owned by the Declarant. The option to expand prior to the end of the Development Period may be terminated upon the recordation by the Declarant of an instrument relinquishing such option. When submitting any portion of the Additional Property, the Declarant reserves the right unilaterally to record additional amendments to the Declaration subjecting any Lot on such portion to such additional covenants and restrictions as may be necessary to reflect the different characteristics of such Lot or portion as are not inconsistent with the overall scheme of the Declaration; provided, however, that the Declarant shall not have such right after the conveyance of such Lot to an Owner other than the Declarant. The Declarant shall add Additional Property in accordance with the procedures set forth in Section 4.3 hereof. There are no limitations on the option to expand except as set forth in this Article.

200K PAGE
2407

(3) The Declarant may unilaterally amend the description of the Property set forth in Exhibit A hereto and record plats of the Additional Property to expand the land area referred to as Additional Property whether or not such real estate is owned by the Declarant.

Section 4.2. Expansion by the Association. With the written consent of the fee simple owner (if not the Association) and any mortgagee or holder of a deed of trust on such real estate, a sixty-seven percent (67%) vote of the members and the written consent of the Declarant during any period of time that the Declarant has the right to add Additional Property under Section 4.1 hereof, the Association may submit any real estate located immediately adjacent to the Property or across a public road from the Property to the provisions of this Declaration and the jurisdiction of the Association, in accordance with the procedures set forth in Section 4.3 hereof.

Section 4.3. Procedure for Expansion. The Declarant or the Association, as appropriate, may record in the office of the Register of Deeds of New Hanover County one or more amendments to the Declaration submitting the real estate described therein to this Declaration and to the jurisdiction of the Association. Each amendment shall include a legally sufficient description of the real estate added and each recorded plat shall designate such real estate with the term "Section" followed by a unique identifier so as to differentiate between each Section of the Property. Any such amendment may contain such additions to the provisions in this Association as may be necessary to reflect the different character of the Additional Property added thereby and as are not inconsistent with the overall scheme of this Declaration; provided, however, that such additions shall not apply to any real estate previously submitted to this Declaration. When recording an amendment adding Additional Property, appropriate plats shall be recorded showing the Additional Property being submitted to the Declaration and the jurisdiction of the Association, describing any real estate being conveyed to the Association as Common Elements, Limited Common Elements or Common Elements that may be assigned as Limited Common Elements and showing any new Lots.

ARTICLE 5

SPECIAL DECLARANT RIGHTS; TRANSFER

Section 5.1. Special Declarant Rights. Special declarant rights are those rights reserved for the benefit of the Declarant as provided for in the Association Documents, and shall include without limitation the following rights: (1) to complete improvements on the Property; (2) to maintain improvements on the Property; (3) to maintain models, management offices, construction offices, sales offices, customer service offices and signs advertising the Property; (4) to use easements over and through the Property for the purpose of making improvements within the Property; (5) to exercise the rights, votes and veto power of the

Class B member of the Association; (6) to add Additional Property; (7) to remove and replace any director appointed by the Class B member until the meeting at which the Class A members are entitled to elect a majority of the directors; and (8) to exercise any other rights given to the Declarant by the Association Documents.

Section 5.2. Transfer of Special Declarant Rights.

The Declarant may transfer special declarant rights created or reserved under the Association Documents to any Person acquiring Lots or Additional Property previously owned by the Declarant by an instrument evidencing the transfer recorded in the office of the Register of Deeds of New Hanover County.

ARTICLE 6

COMMON EXPENSES AND ASSESSMENTS

Section 6.1. Determination of Common Expenses and Assessments.

(1) Preparation and Approval of Budget.

(a) At least sixty (60) days before the beginning of each fiscal year, the Executive Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary for the ensuing fiscal year to pay the cost of management of the Association and management and Upkeep of the Common Elements and, to the extent provided in the Association Documents, Upkeep of the Lots, and the cost of other expenses that may be declared to be Common Expenses by the Association Documents or by resolution of the Executive Board.

(b) Such budget shall also include such reasonable amounts as the Executive Board considers necessary to provide working capital (available cash for day-to-day expenses which is otherwise uncommitted), a general operating reserve (including an amount to cover operating losses due to insurance deductibles) and reserves for contingencies (potential costs or liabilities which have not been incurred but which should be planned for) and replacements. At least thirty (30) days before the beginning of

each fiscal year, the Executive Board shall make available a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Owner and provide a copy of such budget to each member. Such budget shall constitute the basis for determining the assessment against each Lot.

(c) Effect of Failure to Prepare or Adopt Budget.

For the first fiscal year of the Association following the first conveyance of any Lot to an Owner other than the Declarant, and for all fiscal years thereafter, the Executive Board shall establish the annual assessment against each Lot for Common Expenses. The failure or delay of the Executive Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay the allocable share of the Common Expenses as herein provided whenever the same shall be determined. In the absence of any annual budget or adjusted budget, each Owner shall continue to pay assessments at the rate established for the previous fiscal year until notified of the new payment which is due on the first day of the next payment period which beings more than ten (10) days after such new annual or adjusted budget is adopted and the Owner receives such notice.

Section 6.2. Assessments and Common Expenses.

(1) Rate of Assessment and Payment. Subject to the provisions of Section 6.3 hereof, the total amount of the estimated funds required for the management and Upkeep of the Property set forth in the budget as an annual assessment or levied as an additional assessment shall be assessed against each Lot annually in amounts as determined by the Executive Board, which said amounts shall be equal for all Lots.

(a) Notwithstanding the foregoing, no Lot shall be liable for assessments until a map or plat showing said Lot has been duly recorded in the office of the Register of Deeds of New

Hanover County, North Carolina, all in accordance with Section 4.3 hereof.

(b) Any additional assessment for each Lot shall be calculated on the same basis as the annual assessment; provided, however, that expenses designated as Limited Common Expenses shall be assessed against the Lots benefitted on the same basis or based on usage, as may be determined by the Executive Board.

(c) Any and all such assessments and other charges shall be a lien against each Owner's Lot as provided in Section 12.2 hereof. On or before the first day of each fiscal year, and the first day of each succeeding payment period in such fiscal year, each Owner shall pay to the Association at such place as the Executive Board may direct that instalment of the annual assessment which is due during such period. The Executive Board shall establish one or more payment periods and the due dates for each such payment in each fiscal year; provided, however, that payments shall be due not less than quarterly or more frequently than monthly. All sums collected by the Executive Board with respect to assessments against the Lots or from any other source may be commingled into a single fund.

(2) Initial Budget and Initial Assessment. Upon taking office, the first Executive Board shall determine the budget, as defined in this section, for the period commencing thirty (30) days after taking office and ending on the last day of the fiscal year in which such directors take office. The first installment shall be payable as determined by the Executive Board.

(3) Lots Added During the Fiscal Year. Notwithstanding any other provision of this Article, whenever any Additional Property is added, the assessment against each Lot being added shall be prorated based upon the number of days remaining in the payment period and shall be calculated in the same manner and due in the same number of installments as the assessment for the

remainder of the fiscal year against Lots already a part of the Property.

(4) Additional Assessments. The Executive Board may levy additional assessments on the Lots in the following manner: the Executive Board shall give written notice of any proposed additional assessment to the Owners specifying the amount and the reasons therefor, which said notice shall provide for a special meeting of the members of the Association to be held not less than fifteen (15) days following said notice, the sole purpose of said meeting to be to vote upon said proposed additional assessment. At the special meeting held for that sole purpose, said assessment must be approved by two-thirds (2/3) of the votes actually cast in person or by proxy of each Class of members.

Following the approval of said additional assessments on the Lots as herein specified, the Executive Board shall give notice to the Owners and, unless otherwise specified in the notice, said additional assessments shall be payable in full with the next periodic installment of regular assessments which is due not more than ten (10) days after the date of such notice or in not more than twelve (12) equal periodic installments, as the Board may determine. Such additional assessments shall be a lien as set forth in Section 12.2 hereof.

(5) Special Assessments. The Executive Board shall have the power to assess an Owner's Lot individually (i) for the amount of and costs incurred by the Association pursuant to Subsection 7.2 hereof in performing Upkeep that the Owner failed to perform as required by that section, (ii) for the costs of improvements determined by the Board to be substantially for the benefit of that Owner pursuant to Section 7.4 hereof, (iii) for the amount of any charges imposed on that Owner pursuant to Subsection 12.1(8) hereof, and (iv) for any costs incurred by the Association because of any violation or negligence for which that Owner is responsible under Subsection 12.1(1) hereof. Each such assessment shall be due

ten (10) days after notice thereof is given to the Owner unless the notice specifies a later date.

(6) Optional Expenses. Upon request, the Association may provide certain services to Owners (including the Declarant) on a contractual basis pursuant to Section 7.7; provided, however, that the charge for such services shall be assessed against such Owner's Lot in accordance with the terms of the contract.

(7) Reserves. The Executive Board shall build up and maintain reasonable reserves for working capital, contingencies and replacements. Such funds shall be a Common Expense of the Association and may be deposited with any financial institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Executive Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Reserves for items serving only certain Lots shall be accounted for and funded solely by the Owners served as a Limited Common Expense. As to each separate reserve account:

(a) Extraordinary expenditures not originally included in the annual budget, which may become necessary during the year, shall be charged first against the appropriate reserves. Except for expenses for normal Upkeep shown in the annual operating budget, all expenses for repair and replacement of physical assets maintained by the Association shall be charged first against the appropriate reserves. Unless otherwise determined by the Executive Board, the amount held as reserves shall not substantially exceed the amount reasonably required to assure the Association's ability to replace components as they reach the end of their useful lives.

(b) If regular annual maintenance extends the useful life of components so that reserves are excessive, the reserves shall be adjusted by reallocation to other budget items or by distribution to each Owner (including the Declarant) in

proportion to the percentage (if any) of assessments paid by such Owner.

(c) If the reserves are inadequate to meet actual expenditures for any reason (including non-payment of any Owner's assessment) then the Executive Board shall, in accordance with Subsection 6.2(4) hereof, levy an additional assessment against the Lots; provided, however, that during the period the Declarant owns Lots exempt from full assessment pursuant to Section 6.3 hereof, the Declarant shall pay any expenses that the Association is unable to meet from budgeted income or reserves, but the Declarant is not obligated to pay any expenses that the Association is unable to meet because of nonpayment of any Owner's assessment.

(d) In order to establish a working capital fund, upon the conveyance of a Lot to each Owner, each Owner shall contribute at closing an amount equal to two-twelfths (2/12) of the estimated assessment levied for the current year against each Lot, said sum to be paid to the Association. Said sum is not an advance payment of regular assessments but shall be utilized to establish the working capital fund.

(8) Surplus and Deficit.

(a) Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Executive Board, be placed in reserve accounts, be placed in a special account to be expended solely for the general welfare of the Owners, be credited to the next periodic "installments due from Owner under the current fiscal year's budget, until exhausted, or be distributed to each Owner (including the Declarant) in proportion to the percentage (if any) of assessments paid by such Owner."

(b) Unless the budget for the succeeding fiscal year is adjusted to amortize the deficit during such fiscal year, any net shortage in expenses (including reserves) shall be assessed promptly against the Owners as an additional assessment in

accordance with Subsection 6.2(4) hereof; provided, however, that if unoccupied Lots owned by the Declarant are exempt from assessments in accordance with Section 6.3 hereof, then during the period the Declarant owns Lots exempt from assessment the Declarant shall make up any net shortage (expenses and reserves) in the Association's budgeted income over the Association's expenses, but the Declarant is not obligated to pay any expenses that the Association is unable to meet because of non-payment of any Owner's assessment.

Section 6.3. Exemptions. Unoccupied Lots owned by the Declarant shall be exempt from any assessment levied by the Executive Board. The Common Elements owned by the Declarant or the Association shall be exempt from assessments and the lien created hereby.

Section 6.4. Liability for Common Expenses.

(1) Declarant and Owner Liability. Except for Lots exempt from assessments as set forth in Section 6.3, the Declarant for each Lot owned by the Declarant, hereby covenants and agrees, and each Owner of a Lot by acceptance of a deed therefor, whether or not so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association all Common Expenses and other charges assessed by the Executive Board pursuant to the provisions of this Declaration. Each Owner shall be personally liable for all assessments against such Owner's Lot. No Owner may be exempted from liability for the assessment for Common Expenses by reason of waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot. No owner shall be liable for the payment of any part of the Common Expenses assessed against the Lot subsequent to the date of recordation of a conveyance by such Owner in fee of such Lot. Prior to or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Lot shall be jointly and severally liable with the selling Owner

for all unpaid assessments against the latter for the proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Owner amounts paid by the purchaser therefor, provided, however, that any such purchaser may rely on a Statement of Common Expenses obtained pursuant to Section 6.6 herein.

(2) Mortgagee Liability. Each Mortgagee who comes into possession of a Lot by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against such Lot which accrue prior to the time such Mortgagee or purchaser comes into possession thereof. The lien created by Section 12.2 hereof shall cease to exist with respect to assessments and charges levied prior to the time title is transferred by foreclosure or by deed of assignment in lieu thereof; provided, however, that if the proceeds of a foreclosure exceed the total amount due to the Mortgagee, the excess shall first be paid to the Association and applied to the satisfaction of the lien.

Section 6.5. Collection of Assessments. Any assessment, or installation thereof, not paid within fifteen (15) days after the due date shall be delinquent and shall accrue a late charge in the amount of one-half of one percent of such assessment, or such greater percentage as may be established from time to time by the Executive Board. The Executive Board, or the managing agent at the request of the Board, shall take prompt action to collect any assessments for Common Expenses due from any Owner or member which remain unpaid for more than thirty (30) days after the due date for payment thereof.

Section 6.6. Statement of Common Expenses. The Executive Board or managing agent shall provide any member, Owner, contract purchaser or Mortgagee, within ten (10) days after a written request therefor, with a written statement of all unpaid

assessments for Common Expenses due with respect to a specific Lot (or a statement that the amount of unpaid assessments is zero). No contract purchaser, Mortgagee or purchaser from a Mortgagee requesting such a statement shall be liable for, nor shall the Lot conveyed to such Person relying on such statement be subject to a lien for, any unpaid assessments due prior to the date of such statement in excess of the amount set forth on such statement; provided, however, that this section shall not be interrupted to release any Person from personal liability for such assessments levied while such Person owned the Lot. The Executive Board may impose a reasonable charge for the preparation of such statement.

ARTICLE 7

OPERATION OF THE PROPERTY

Section 7.1. Upkeep of Common Elements and Lots. The Association shall be responsible for the management and Upkeep of (a) all of the Common Elements, (b) the plantings, grass and other landscaping and the underground irrigation system originally installed by the Declarant or replaced by the Association located outside of the perimeter of the privacy fences on each lot, and (c) the privacy fences originally installed by the Declarant or replaced by the Association upon each Lot. The cost of the management and Upkeep by the Association shall be assessed against all Lots as a Common Expense, except for improvements specially assessed in accordance with Sections 7.2 and 7.4 hereof. Notwithstanding the general provisions for maintenance of Common Elements set forth in this section, specific maintenance responsibilities and allocation of maintenance costs shall be determined by any provisions therefor indicated on either an amendment to the Declaration or the plat recorded with the amendment to the Declaration subjecting such Common Elements to the Declaration. If the Executive Board determines that certain Upkeep was necessitated by the negligence, misuse or neglect of any Owner or for which an Owner is responsible pursuant to Section 12.1

hereof, the cost of such Upkeep shall be assessed against such Owner's Lot pursuant to Subsection 12.1(1) hereof. Further the Board may determine that all or a part of the Upkeep of any portion of the Common Element designated as Limited Common Elements shall be performed by the Persons having the exclusive right to use the same. The Executive Board shall establish the standard for Upkeep of the Common Elements, the Lots and improvements in its sole discretion. The Executive Board shall provide for the Upkeep of the rights-of-way along dedicated streets and roadways and dedicated public easements to the extent not provided by the City of Wilmington, the North Carolina Department of Transportation or other governmental agency. Further, the Executive Board shall maintain as Common Elements landscaping and plantings contained within the thirty (30) foot periphery setback and any other buffer areas as may have been established or required by any governmental agency exercising jurisdiction over the Property.

Section 7.2. Owner Upkeep. Each Owner shall be responsible for the Upkeep of the improvements on his Lot and upon any Limited Common Elements for which the Board has directed specific Owners to provide Upkeep. Each Owner shall perform this responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners. If any Owner shall fail to provide Upkeep for which he is responsible consistent with such Rules and Regulations as the Executive Board may promulgate, then the Board may, pursuant to resolution, give notice to that Owner of the condition complained of, specifying generally the action to be taken to rectify that condition. If the Owner fails to rectify that condition within thirty (30) days after the date the notice is given, or such shorter period as may be specified in the notice if the circumstances warrant a shorter period, the Executive Board shall have the right, pursuant to Section 3.3 and Subsection 12.1(5) hereof and any resolutions adopted by the Executive Board,

to rectify that condition by taking such action (or by causing such action to be taken) as was specified in the notice. The costs incurred in rectifying that condition shall be assessed against such Owner's Lot in accordance with Section 12.1 hereof. If such Owner fails to reimburse the Association within thirty (30) days after receipt of a statement for such expenses from the Board, then the indebtedness shall constitute a lien as provided for in Section 12.1 hereof. The Owner may contract with a third party, including the Association to the extent provided for in Section 7.7 hereof, to perform the Owner's responsibility for Upkeep under this section.

Section 7.3. Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be made with contemporary materials. The method of approving payment vouchers for all repairs and replacements made by the Association shall be determined by the Executive Board.

Section 7.4. Additions, Alterations or Improvements by the Executive Board.

(1) Action of the Board. Whenever in the judgment of the Executive Board the Common Elements shall require capital additions, alterations or improvements (other than for Upkeep) costing in excess of fifteen percent (15%) in the aggregate of the total annual assessment for Common Expenses for that fiscal year, the making of such additions, alterations or improvements requires a Majority Vote of the members, and the Executive Board shall assess all Owners benefitted for the cost thereof as a Common Expense. Any capital additions, alterations or improvements (other than for Upkeep) costing in the aggregate fifteen percent (15%) or less of the total annual assessment for Common Expenses for that fiscal year may be made by the Executive Board without approval of the members and the cost thereof shall constitute a Common Expense. Notwithstanding the foregoing, if the Executive Board determines

that such capital additions, alterations or improvements are exclusively or substantially exclusively for the benefit of specific Owners, such Owners shall be assessed therefor in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportion as may be determined by the Executive Board.

(2) Permits. Each Owner shall cooperate with the Association in obtaining any governmental approvals or permits as may be necessary for the Association to alter, improve, reconstruct or repair all or any portion of the Common Elements which may be located on such Owner's Lot, either as approved above or as required for Upkeep. If requested by the Executive Board, each Owner shall name or appoint the Association as agent for such owner to apply for and secure such approvals or permits with respect to such Common Elements in the Association's name.

(3) Liens. Within thirty (30) days after the filing thereof, each Owner shall, either by payment of bond or otherwise, cause any mechanic's, materialmen's or other lien affecting any portion of the Common Elements located within such Owner's Lot and arising by reason of any work or materials ordered by the Owner or any action taken by the Owner to be discharged of record.

Section 7.5. Additions, Alterations or Improvements by the Owners.

(1) Approval.

(a) No member or Owner shall make any addition, alteration or improvement in or to any Lot (other than for normal Upkeep or natural landscaping) which is visible from the exterior of the Lot without the prior written consent of the Covenants Committee. No member or Owner shall paint, affix a sign not permitted by the Rules and Regulations to or alter the exterior of any improvement located upon such member's or Owner's Lot, including the doors and windows, if such exterior is visible from another Lot or the Common Elements, without the prior written

