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Returned To:  
MARSHALL WILLIAMS  
& GORHAM, LLP

RECORDED AND VERIFIED  
MARY SUE OTIS  
REGISTER OF DEEDS  
NEW HANOVER COUNTY, NC

STATE OF NORTH CAROLINA

DECLARATION OF COVENANTS

COUNTY OF NEW HANOVER

CONDITIONS AND RESTRICTIONS  
FOR PHASE I OF CAMBRIDGE  
HEIGHTS JOHNSON FARMS

600031

This Declaration is made this 14th day of December, 1999, by **TOWN & COUNTRY DEVELOPERS AT WILMINGTON, INC.**, a North Carolina corporation, hereinafter referred to as "Declarant";

**WITNESSETH**

**WHEREAS**, the Declarant is the owner of certain real property located in Masonboro Township, New Hanover County, North Carolina (hereinafter referred to as "the Properties"), which is more particularly described as follows:

**BEING** all of **PHASE I OF CAMBRIDGE HEIGHTS JOHNSON FARMS** as per map thereof recorded in Map Book 38, at Page 104, and revised by a map recorded in Map Book 39, at Page 176, New Hanover County Registry, to which maps reference is hereby made for a more particular description.

**NOW, THEREFORE**, the Declarant hereby declares that all of the Properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof.

**ARTICLE I.  
DEFINITIONS**

**SECTION 1.** **Association** shall mean and refer to **CAMBRIDGE HEIGHTS JOHNSON FARMS ASSOCIATION, INC.**, a North Carolina non-profit corporation, its successors and assigns, the owners association organized for the mutual benefit and protection of the Properties. All property owners of lots in **PHASE I OF CAMBRIDGE HEIGHTS JOHNSON FARMS** and any

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adjoining areas hereafter developed and subjected to this Declaration, if any, shall be members of the Association, which membership shall be appurtenant to and may not be separated from the ownership of such single-family lot.

**SECTION 2.** **Owner** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**SECTION 3.** **Properties** shall mean and refer to all of **PHASE I OF CAMBRIDGE HEIGHTS JOHNSON FARMS** as described above, and such additions thereto as may hereafter be subjected to this Declaration as hereinafter provided.

**SECTION 4.** **Additional Properties** shall mean and refer to any lands adjoining the Properties which are now owned or may be hereafter acquired or developed by the Declarant and annexed to and made a part of the Properties by the Declarant and subjected to this Declaration without the assent or vote of the Owners of lots as hereinafter provided. The annexation of such Additional Properties shall become effective by the recording by the Declarant of an Amended or Supplemental Declaration for each new phase annexed. Property now owned or later acquired by the Declarant may be developed by the Declarant without being annexed to the Properties.

**SECTION 5. Common Area** shall mean and refer to all real property owned, whether in fee simple or by easements, by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot shall be all of the area designated as "Common Area" on the plat of **PHASE I OF CAMBRIDGE HEIGHTS JOHNSON FARMS**. The streets have been dedicated to public use and ownership and, upon acceptance by the appropriate unit of government, shall be owned by such unit of government. Until the acceptance of dedication, the streets shall be owned by the Association as Common Area and shall be subject to the right of the Declarant, its successors and assigns, to use for purposes of additional phases or for access to contiguous property now owned or later acquired by Declarant. The stormwater drainage system and management system, as hereinafter described, shall be a part of the Common Area.

**SECTION 6.** **Lot** shall mean and refer to any of the numbered Lots in **PHASE I OF CAMBRIDGE HEIGHTS JOHNSON FARMS**.

**SECTION 7.** **Declarant** shall be used interchangeably with "Developer" (which designations may be used herein in the third person neuter for convenience only, but such terms shall include singular, plural, masculine and

neuter as required by the context) to mean and refer to **TOWN & COUNTRY DEVELOPERS AT WILMINGTON, INC.**, its successors and assigns, if such successors or assigns should acquire undeveloped Property from the Declarant for the purpose of development.

**SECTION 8.** **Declaration** shall mean this instrument as it may be from time to time be amended or supplemented.

**SECTION 9.** **Membership** shall mean and refer to the rights, benefits, duties and obligations which shall inure to the benefit of, and burden, each member of the Association.

**SECTION 10.** **Member** shall mean and refer to every person or entity who has a membership in the Association.

**ARTICLE II.**  
**PROPERTY RIGHTS**

**SECTION 1.** **Owners' Easements of Enjoyment.** Every Owner shall have a right and easement in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to suspend the voting rights and privileges of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations or any violation of this Declaration;

B. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective until approved by vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated as indicated in an instrument executed by the Association and recorded in the New Hanover County Registry. The Declarant has dedicated the streets to an appropriate unit of government, and such dedication may not be withdrawn by the Association without the approval of the Declarant. Subject to the rights of any governmental entity in the streets, including the rights-of-way thereof, (collectively the "Streets") within the Properties, the Association shall have the right to impose, from time to time, rules and regulations for the use and enjoyment of the Streets which rules and regulations may restrict the use and enjoyment of the streets; provided,

however, in no event shall any such rules and regulations restrict ingress and egress to and from any Lot. Such rules and regulations may, by way of example but not in limitation, restrict the rights of Owners to park in the streets and to locate signs, mailboxes and other structures within the streets.

C. The right of the Association to impose regulations and rules for the use and enjoyment further restrict the use of the Lots, Common Area and improvements thereon, which regulations and rules may further restrict the use of the Common Areas and the Lots.

**ARTICLE III.  
EASEMENTS**

**SECTION 1.** Perpetual, alienable easements are reserved as necessary in the Properties and the Common Areas thereof for the installation and maintenance of underground utilities and drainage facilities and for stormwater management as described with more particularity in Article IX herein.

**SECTION 2.** Declarant hereby reserves unto itself, its successors and assigns, perpetual, alienable easements over all Streets, utility easements, stormwater management systems (as hereinafter defined) and Common Areas as necessary to (i) provide access, ingress and egress to the remaining undeveloped property owned by Declarant, (ii) provide utility services and stormwater management facilities and systems to the remaining undeveloped property owned by Declarant and (iii) provide access, ingress and egress and provide utility services and stormwater management facilities and systems to any other property now owned or hereafter acquired by Declarant which Declarant may, from time to time, annex to the development constituting the Properties.

**SECTION 3.** An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the Streets, Lots and Common Areas in the performance of their duties.

**SECTION 4.** In case of an emergency originating on or threatening any Lot or the Common Areas, regardless whether any Lot Owner is present at the time of such emergency, the Board of Directors, or any other person authorized by it, shall have the right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners, and such right of entry shall be immediate.

**SECTION 5.** The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releaseable easement and right on, over and

under the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Properties recorded or to be recorded in the office of the Register of Deeds of New Hanover County; provided further, that the Declarant may cut drainways for surface water whenever action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. It further reserves the right to locate wells, pumping stations and tanks within residential areas on any walkway, or on any residential Lot now or subsequently designated for such use or to locate same upon any Lot with the permission of the Owner of such Lot. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered any obligation of the Declarant to provide or maintain any such utility or service.

**SECTION 6.** The Declarant reserves unto itself, its successors and assigns, the right to subject the real property in this Subdivision to a contract with Carolina Power & Light Company for installation of street lighting, which contract requires or will require a continuing monthly payment to Carolina Power & Light Company by the Association or Individual Owners.

**SECTION 7.** All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

#### **ARTICLE IV. MEMBERSHIP AND VOTING RIGHTS**

**SECTION 1.** Every Owner of a Lot in the Properties shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**SECTION 2.** Each member shall be entitled to one vote in the affairs of the Association for each Lot owned. When more than one person holds an

interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Notwithstanding anything to the contrary contained herein, the Declarant shall have one (1) vote in the affairs of the Association for (i) each Lot (including, without limitation, proposed Lots in Additional Properties) and (ii) each Lot which may be developed by Declarant in Additional Properties. As of the date of the initial recording of this Declaration the number of proposed Lots in Properties and Additional Properties is ninety-four (94); provided, however, nothing herein shall be deemed to or construed as limiting the actual number of Lots Declarant may develop in the Properties and Additional Properties.

**ARTICLE V.**  
**MANAGEMENT AND CONTROL**

Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with the Declaration and the By-Laws; **PROVIDED, HOWEVER**, that all of the powers and duties of the Board of Directors may be exercised by the Declarant until such time as seventy-five percent (75%) of the Lots in Phase I and seventy-five percent (75%) of the Lots in the undeveloped property in adjoining phases now owned or hereafter acquired by Declarant have been sold and conveyed by the Declarant to purchasers or until December 31, 2010, whichever occurs first "the ("Declarant Control Period"). Management and control of the Board of Directors may be transferred to the Lot Owners at any time but in all events, and if not done earlier, shall occur automatically no later than 120 days after the happening of the earlier of the above events. This provision shall control over any conflicting provision in the Articles of Incorporation and/or Bylaws of the Association.

**ARTICLE VI.**  
**COVENANTS FOR ASSESSMENTS**

**SECTION 1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- A. Annual assessments or charges;
- B. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided;
- C. Insurance assessments;

- D. Assessments for taxes or other governmental charges against common properties or Common Areas, to the extent that such areas are accurately charged or taxed; and,
- E. Fines and interest as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by them.

**SECTION 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvements and maintenance of the Common Areas. The funds arising from said assessments or charges may be used for any or all of the following purposes: Maintenance, repair, replacement and improvement of the Common Areas including, without limitation, streets, roads, drives and rights of way; maintaining, repairing, replacing and improving the stormwater facilities and systems; enforcing these restrictions; payment of taxes and other charges or fees applicable to the Common Areas; payment of management, accounting and legal fees and expenses; and, in addition, doing any other things necessary or desirable in the opinion of the Association in performing and fulfilling its duties and obligations and to protect and enhance the health, welfare and safety of Owners and residents of the Properties.

**SECTION 3. Annual Assessments.** Annual assessments shall be in an amount to be fixed from year to year by the Board of Directors which may establish different rates from year to year as it may deem necessary for the purpose set forth in Section 2 above. The amount of the annual assessment against each Lot for any given year shall be fixed at least thirty (30) days in advance of the annual assessment period; provided, however, that the first annual assessment shall be set prior to the conveyance of the first Lot to an Owner, and written notice to the Owners to be subjected thereto shall be delivered to the Owners at or prior to the closing of their Lots. Written notice of each annual assessment thereafter shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors, and the Board of Directors shall have the authority to require the assessments to be paid in pro-rata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association

setting forth whether the assessments on a specified Lot had been paid. Each Owner acknowledges that the annual assessment is an annual amount which may, in the discretion of the Association, be collected from and paid by an Owner in pro-rata monthly installments. Should any Owner fail to pay any pro-rata monthly installment when due then the Association, at its option, may declare the entire unpaid balance of the annual assessment immediately due and payable.

A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership, except as herein provided.

B. From and after January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum annual assessment may be increased above ten percent (10%) by vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for that purpose.

C. The Board of Directors may fix the annual assessment to an amount not in excess of the maximum; provided, that the Board of Directors may increase the amount of the annual assessment to a maximum of \$900.00 per Lot notwithstanding the provisions of subparagraphs A and B above, and thereafter the limitations set forth in said subparagraph shall apply to any annual increase.

**SECTION 4. Special Assessments for Capital Improvements.**

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

**SECTION 5. Insurance.** The Board of Directors on behalf of the Association, as a common expense, shall determine whether the property of the Association should be insured against loss or damage by fire or other hazards, and shall determine whether to obtain insurance against other risks, including, but not limited to, directors' liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the Association, Officers, Directors, Properties and Common Areas.



Insurance covering Common Areas shall be payable in case of loss to the Association for all members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each member to insure his personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by members or their mortgagees.

**SECTION 6. Insurance Assessments.** All insurance policy premiums on the Common Areas for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense, and the Association shall levy against the Owners equally as an additional annual assessment (herein called "Insurance Assessment"), which shall be in addition to the amounts provided for under Section 3 above, an amount sufficient to pay the annual cost of all such insurance premiums.

**SECTION 7. Working Capital Assessment.** At the time title to a Lot is conveyed to an Owner, each Owner shall contribute to the Association as a working capital reserve an amount at least equal to a two months' estimated Common Area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies and the Common Areas and facilities, furnishings and equipment, etc. Amounts paid into the working capital funds are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

**SECTION 8. Notice and Quorum For Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. The required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**SECTION 9. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**SECTION 10. Commencement of Assessments.** Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from the Declarant. The Declarant shall not be required to pay maintenance assessments on unsold Lots retained by the Declarant; provided, however, that the Declarant shall pay to the Association annually, in lieu of assessments, the pro-rata share of insurance assessments attributable to the Lots owned by the Declarant, as the same become due.

**SECTION 11. Effect of Nonpayment of Assessments and Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in accordance with North Carolina foreclosure law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot. Any assessment for which the Association has provided for its payment in pro-rata monthly installments shall be deemed to be a lump sum assessment and should any Owner fail to pay, for any reason, any pro-rata monthly installment of any such assessment, the Association, in its discretion, may declare the entire unpaid balance of such assessment immediately due and payable and all interest accruing thereon shall accrue on the entire unpaid balance of such assessment.

**SECTION 12. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**SECTION 13. Fines, Etc.** 1. Notwithstanding anything to the contrary contained elsewhere in the Declaration or "Control Documents" (as hereinafter defined) in addition to and not in lieu of any other rights or remedies the Association and/or other Owners may have, if an Owner (the "Defaulting Owner") or his immediate family, guests, invitees, tenants or lessees (hereinafter collectively called the "Occupants") shall fail or refuse to strictly comply with and abide by (the "Default") the terms, conditions, provisions, covenants and restrictions of the Declaration, the Bylaws of the Association, the Articles of Incorporation of the Association, and/or the rules and regulations adopted by the Association from time to time (hereinafter collectively called the "Control Documents" in this Section 13) then, in such event, the Association may, at its sole option and discretion, do the following:

- (a) Impose a fine upon the Defaulting Owner for each occurrence of a Default of the Control Documents by the Occupants of up to One Hundred Fifty Dollars (\$150.00) per occurrence; and/or
- (b) During any period in which an Owner is a Defaulting Owner by reason of an event of Default under the Control Documents, including without limitation the failure of such Owner to timely pay assessments levied or assessed against such Owner by the Association, the Association may suspend, if not prohibited by law, the voting rights of the Defaulting Owner in the Association and/or suspend such Defaulting Owner's right to the use, benefit and enjoyment of the Common Areas (such suspension of the right of the Defaulting Owner to the use, benefit and enjoyment of the Common Areas shall be for a period not to exceed sixty (60) calendar days per occurrence of an event of Default), subject, however, to the provisions set out hereinafter in this Section 13.

2. Subject to the provisions set out hereinafter regarding emergencies, the Association, or its duly authorized agent or manager, shall not impose a fine upon or suspend a Defaulting Owner's right to the use, benefit and enjoyment of the Common Areas unless and until the following procedures are followed:

(a) Demand: The Association, or its manager, shall send written demand to the Defaulting Owner at his last address as shown on the records of the Association demanding that the Occupants cease and desist from the violation causing a Default. The written demand shall specify:

- (1) the nature of the alleged Default;
- (2) that the Association intends to impose a fine for the Default against the Defaulting Owner and/or suspend the Defaulting Owner's right to vote and/or the Occupants right to the use, benefit and enjoyment of the Common Areas;
- (3) that the Defaulting Owner may, within twenty (20) days of the date of such written demand from the Association, request in writing to the Association, request in writing to the Association a hearing regarding the Default and the action proposed to be taken by the Association;
- (4) that the Defaulting Owner may produce at the hearing such statements, evidence and/or witnesses as the Defaulting Owner may deem appropriate;

- (5) that all rights of the Defaulting Owner to have the actions proposed to be taken by the Association be reconsidered are waived and relinquished if the Defaulting Owner does not request a hearing within twenty (20) days of the date of the written demand from the Association to the Defaulting Owner; and
- (6) the mailing address to which the Defaulting Owner shall send his request for a hearing.

(b) Hearing: If a hearing is timely requested by the Defaulting Owner, it shall be held before the Board of Directors of the Association, or a "Hearings Committee" established by the Board of Directors of the Association, at the next scheduled regular or special meeting of said Board of Directors or "Hearings Committee" or at such other date and time as determined by the said Board of Directors or Hearings Committee, whichever is applicable, and at such hearing the Defaulting Owner shall be given a reasonable opportunity to be heard. The Board of Directors or Hearings Committee shall keep minutes of such meeting containing a written statement of the results of the hearing.

(c) Notice: Notwithstanding anything to the contrary contained elsewhere in this Declaration or the Bylaws, the notice described hereinabove to the Defaulting Owner shall be deemed given to and received by the Defaulting Owner on the fourth (4<sup>th</sup>) business day following the date the same is deposited in the United States mail, first class mail postage prepaid, and addressed to the Defaulting Owner at his last known address as shown in the records of the Association. Any notice by the Defaulting Owner requesting a hearing shall be deemed received when actually received by the Association, or its manager or agent, at the mailing address provided to the Defaulting Owner by the Association in the notice of default.

(d) Effective Date of Fine, Etc. Any fine imposed on a Defaulting Owner under the provisions hereinabove set forth shall become an assessment and lien on such Defaulting Owner's Lot effective the date the Board of Directors imposes the same upon such Defaulting Owner or the date of hearing if a Defaulting Owner requests a hearing as hereinabove provided, whichever is later, unless such fine is waived by the Board of Directors of the Association. Any suspension of an Occupant's right to the use, benefit and enjoyment shall be effective on the same date as determined for the effective date of a fine as set forth hereinabove or such other date as the Board of Directors may determine as set forth in a written notice to the Defaulting Owner.

(e) Continuing Violation: If any Default, other than non-payment of an assessment, under the Control Documents shall be a Default which is

continuing in nature, as determined by the Board of Directors, then any fine levied, imposed or assessed against a Defaulting Owner may be levied, imposed and assessed against a Defaulting Owner for each calendar day that such Default continues unabated.

(f) Non-Fine Past Due Assessments: Notwithstanding anything to the contrary set forth in any part of this Section 13, no fine shall be levied, imposed or assessed under this Section 13 against an Owner for his failure to timely pay assessments levied or assessed against him by the Association. Late payment fees and/or interest on past due Assessments are permitted to be assessed, levied or imposed against an Owner for his failure to pay his assessments.

(g) Classification: Any fine(s) imposed upon a Defaulting Owner under the provisions of this Section 13 shall be deemed to be, and shall be, assessments for the purposes of this Declaration.

3. Conflict: If there shall be any conflict between any of the terms and provisions of this Section 13 with the terms and conditions of any other part of this Declaration, the terms and conditions of this Section 13 shall control.

## **ARTICLE VII. ARCHITECTURAL CONTROL**

**SECTION 1. Developer's Rights.** All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee so long as the Declarant shall own any Lot in the Properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

**SECTION 2. Building and Site Improvements.** No dwelling, fence wall or other structure shall be commenced, erected, or maintained upon any Lot in the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, heights, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, or its designee, or, after the sale of all Lots by the Declarant, by the Board of Director of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board. In the event the Declarant, or its designee, or, if applicable, the Board, or its designated committee, fails to approve or disapprove such design and location within thirty

(30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal of approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant or architectural control committee shall seem sufficient. One copy of all plans and related data shall be furnished to the Declarant or architectural control committee, as the case may be, for its records. Neither the Declarant nor the architectural control committee shall be responsible for any structural or other defect in plans or specifications submitted to it or any structure erected according to such plans and specifications.

**SECTION 3. Approval of Plans:**

**A.** No house plans will be approved unless the proposed house shall have a minimum of 1,000 square feet of enclosed dwelling area for a one-story dwelling and 1200 square feet of enclosed dwelling area for a two-story dwelling. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks open porches and like areas; and provided, further, that shed type porches, even though attached to the house, are especially excluded from the definition of the aforesaid term "enclosed dwelling area".

**B.** Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related consideration, no specific setback lines are established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the Declarant or the architectural control committee, as the case may be; provided, however, that any dwelling shall be constructed in accordance with the building setback lines established by the governmental entity having jurisdiction over the Properties.

**C.** The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities.

**D.** No structures shall be erected, altered, placed or permitted to remain on any Lot, except one single-family dwelling not to exceed two (2) stories in height, unless the Declarant or the architectural control committee, as the case may be, approves in writing a structure of more than two (2) stories, one or more small accessory buildings (which may include a detached private garage, servants' quarters or guest facilities), provided the use of such dwelling or accessory building does not in the opinion of the Declarant or architectural control committee overcrowd the site, and provided further, that such buildings are not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building. All buildings must comply with applicable government requirements.

**E.** Mobile homes and modular homes shall not be permitted.

**F.** All service utilities, fuel tanks, clothes lines wood piles and trash and garbage accumulations are to be enclosed within a fence, wall or plant screen of a type and size approved by the Declarant or the architectural control committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mailboxes shall be uniform in design. Designs for mailboxes shall be furnished by the Declarant.

**G.** Off-street parking for not less than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot, which parking areas and the driveways shall be constructed of concrete, brick, asphalt or turfstone. Overnight or over the weekend parking of vehicles, trailers, boats, campers, motor homes or other mobile units of any kind in or on the streets, roads and/or road rights-of-way of the Properties is not permitted.

**SECTION 4. Maintenance by Association.** The Association, at its expense, shall be responsible for maintaining, repairing and replacing all utility and drainage lines and pipes which are located on the Properties, except those located within individual Lots. The Association shall have the right to go onto the Lots at reasonable times for the purpose of maintaining, repairing and replacing all utility and drainage lines and pipes which might be located on such Lots; and each Owner hereby grants permission to the Association to enter his Lot for such purposes.

In the event that the need for maintenance, repair or replacement (other than said being caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles and smoke, as the foregoing are defined and explained in North Carolina standard fire and extended coverage insurance policies) is caused through the willful or negligent act of the

Owner, his family, guests or invitees, the costs of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which the Lot is subject.

**ARTICLE VIII.**  
**USE RESTRICTIONS.**

**SECTION 1. Land Use and Building Type.** No Lot in the Properties shall be used except for residential purposes. All Lots (herein referred to as "single-family lots") in the Properties shall be restricted for construction of single-family dwellings only. Any building erected, altered, placed or permitted to remain on any Lot shall be subject to the provisions of Article VII of this Declaration relating to architectural control. Different land use restrictions and architectural control guidelines may be established for adjoining properties to be developed by the Declarant. Mobile homes and modular homes shall not be permitted.

**SECTION 2. Nuisances.** No noxious or offensive activity shall not be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of such other nature as may diminish or destroy the enjoyment of other property in the neighborhood by the Owners thereof. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly or unkempt condition of building or grounds on such Lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

**SECTION 3. Lot Maintenance.** In the event that any Lot Owner shall fail or refuse to keep such premises free from weeds, underbrush or refuse piles, or unsightly growth or objects, then, after thirty (30) days notice from the Association, the Association or its designee shall enter upon such lands and remove the same at the expense of the Owner, and such entrance shall not be deemed a trespass, and in the event of such removal, a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such lot, including collection costs; and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens.

**SECTION 4. Temporary Structures.** No structure of a temporary character, trailer, mobile or modular home, basement, tent, shack,



garage, barn, or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently.

**SECTION 5. Recreational Vehicles.** No boat, motor boat, camper, trailer, motor or mobile homes for (or modular homes on wheels) or similar type vehicles shall be permitted to remain on any Lot at any time, unless by consent of the Association or its designee.

**SECTION 6. 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 they are not kept or maintained for commercial purposes and provided they are not allowed to run free and are at all times properly leashed.

**SECTION 7. Outside Antennas.** No outside radio or television antennas shall be erected on any Lot or dwelling until within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

**SECTION 8. Window Coverings.** All drapes, curtains or other similar materials hung at windows, or in any manner as to be visible from the outside of any building erected upon any Lot, shall be of a white or neutral background material and color.

**SECTION 9. Exterior Lights.** All light bulbs or other lights installed in any fixture located on the exterior of any building or in any exterior light fixture of any kind shall be clear, white or non-frost lights or bulbs.

**SECTION 10. Junk Vehicles and Tractor-Trailers.** No inoperable vehicle or vehicle without current registration and insurance, and no tractor-trailers, will be permitted on the Properties. The Association shall have the right to have all such vehicles towed away at the Owner's expense without further notice. This paragraph shall be deemed to be notice.

**SECTION 11. Signs.** No "For Sale" signs or any other signs shall be permitted on any Lot or in the Common Areas without permission of the Board of Directors, except that a sign conforming to the New Hanover County Sign Ordinance may be displayed by the Declarant on any Lot used by the Declarant as a sales/rental office for the project so long as the Declarant owns any Lot in the Properties.

**SECTION 12. Water and Sewer Services.** All Lot Owners shall be required to use water services supplied by Cape Fear Utilities, Inc. and sewer services supplied by New Hanover County for all household uses. A separate

water system for watering lawns, gardens and other outdoor uses shall not be permitted without the consent of the Declarant and Cape Fear Utilities, Inc., their successors and assigns, which consent shall not be unreasonably withheld.

**SECTION 13. Water and Sewer Taps.** The Declarant reserves the right to be reimbursed for water and sewer tap fees prepaid by the Declarant, which fees will be paid directly to the Declarant.

**SECTION 14. Stormwater Runoff Rules.**

**A.** No more than 2,800 square feet of any lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials. This covenant is intended to insure continued compliance with stormwater runoff rules adopted by the State of North Carolina and therefore benefits may be enforced by the State of North Carolina.

**B.** No structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials, shall be placed within thirty (30) feet of the mean high water line of surface waters. This covenant is intended to insure continued compliance with stormwater runoff rules adopted by the State of North Carolina and therefore benefits may be enforced by the State of North Carolina.

**SECTION 15. Utilities Services.** The Declarant reserves the right to subject the real property in Properties to a contract with Carolina Power & Light Company for the installation of street lighting, which requires a continuing monthly payment to Carolina Power & Light Company by each residential customer.

**SECTION 16. Rentals.** No Owner shall rent or lease his/her/its/their Lot for transient or hotel purposes which, for the purposes of this Declaration, shall be defined as either a rental for any period less than sixty (60) days or any rental if the lessee or tenant thereof is provided customary hotel services. All leases of a Lot shall be deemed to include provisions that (i) the tenant of a Lot will recognize and attorn to the Association as landlord solely for the purpose of having the power to enforce a violation of this Declaration, the rules and regulations of the Association and the Articles of Incorporation and bylaws of the Association (collectively the "Development Documents") and (ii) the tenant of a Lot shall abide by and be bound by the Declaration Documents.

**ARTICLE IX.  
STORMWATER MANAGEMENT SYSTEM**

**SECTION 1.** The stormwater management system, which shall include but not limited to all swales, berms, pipes, infiltration and collection

devices, stormwater detention pond and inlet and outlet structures, shall be owned and operated by the Association and shall be Common Area.

**SECTION 2.** Operation and maintenance of the stormwater management system shall include the following:

- A.** Establishing and maintaining vegetation by seeding, fertilizing and mulching to achieve vigorous growth.
- B.** Mowing all grassed areas, including vegetative filters, swales, basin banks, etc., monthly or as needed according to growing season.
- C.** Inspecting all catch basins, ditches, swales, pipes or other stormwater diversion and conveyance structures monthly for accumulation of debris or sediment, and removing obstructions as necessary.
- D.** Inspecting vegetated swales, wet detention pond side slopes and inlet and outlet areas of diversion structures for sloughing, erosion or washout of cover vegetation monthly and following precipitation events, and immediately repairing and revegetating damaged areas.
- E.** Inspecting stone rip rap or other energy dissipation devices monthly and following precipitation events, and repositioning dislodged stones or adding new stones as necessary, and repairing structures as necessary.
- F.** Inspecting outlet structures monthly and following precipitation events, and skimming floating debris from area between trashguard and riser, and visually inspecting outlet weir assembly, and removing accumulated deposits of scale, algae and floating debris by scouring with stiff bristled brush.
- G.** Notifying the North Carolina Division of Environmental Management if detention pond water levels do not return to permanent pool elevation within five days following a precipitation event.
- H.** Measuring the detention pond bottom annually at sufficient points to monitor sediment accumulation, and removing sediment whenever there is an average accumulation of one (1) foot or more.

**ARTICLE X.**  
**ANNEXATION OF ADDITIONAL PROPERTIES**

**SECTION 1.** Except as provided in Section 2 below, annexation of Additional Properties shall require the assent of two-thirds (2/3) of the members at a meeting duly called for this purpose, written notice of which shall be sent to

all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

**SECTION 2.** If the Declarant, its successors or assigns, shall develop all or any lands adjoining the Properties, said additional tract or any portion thereof may be annexed to said Properties without the assent of the members; provided, however, the annexation of the Additional Properties as additional phases of **CAMBRIDGE HEIGHTS JOHNSON FARMS** permits only single-family dwellings. Annexation provided for in this Section shall become effective upon the filing by the Declarant of a Supplemental or Amended Declaration in the office of the Register of Deeds of New Hanover County. Any such supplement or amendment to this Declaration may contain such additions and modifications of the covenants, conditions and restrictions contained herein as may be determined to be necessary by Declarant.

**SECTION 3.** The Declarant shall have the right to develop any lands adjoining the Properties, or adjoining any properties annexed, in any manner permitted by the applicable unit of government and to use any public or private roads serving this development as a means of access to such adjoining lands.

**ARTICLE XI.**  
**GENERAL PROVISIONS**

**SECTION 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

**SECTION 3. Lots Subject to Declaration.** All present and future Owners, tenants and occupants of Lots and their guests or invitees shall be subject to, and shall comply with, the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or other occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, their respective legal

representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot as though such provisions were made a part of each and every deed of conveyance or lease.

**SECTION 4. Amendment of Declaration.** (a) Except as provided elsewhere, the covenants and restrictions of this Declaration may be amended only by an instrument duly recorded in the office of the Register of Deeds of New Hanover County executed by the duly authorized officers of the Association upon the vote of not less than sixty-seven percent (67%) of the Lot Owners or by written agreement signed by Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements as herein provided, or affect any lien for the payment thereof established herein, and further provided that this Declaration may not be amended within the Declarant Control Period without the consent of the Declarant. (b) Notwithstanding anything to the contrary contained in this Declaration or in the Articles of Incorporation or Bylaws of the Association, the Declarant, subject to applicable law, shall have the absolute unilateral right, power and authority to modify, revise, amend, or change any of the terms or provisions of this Declaration, all as from time to time, amended or supplemented, which may be exercised only if the Veterans Administration (VA), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), or the Government National Mortgage Association (Ginnie Mae), or any successor agencies or entities thereto or any agencies or entities providing similar programs, shall require such action as a condition precedent to the approval by such agency or entity of the Properties or any part thereof or any Lots thereon, for approved mortgage financing purposes under applicable VA, FHA, Freddie Mac, Fannie Mae, Ginnie Mae, or similar programs.

**SECTION 5. Miscellaneous.**

**Miscellaneous Terms**

(a) Headings. The captions and headings set forth in this Declaration are for convenience only and shall not be considered as part of this Declaration or as in any way limiting or amplifying the terms and provisions hereof.

(b) Governing Law. This Declaration shall in all respects be interpreted, construed, and governed by and in accordance with the laws of the State of North Carolina without regard to its principles of conflicts of laws.

(c) Waiver. Any waiver of any provision hereof shall not be effective unless made expressly and in a writing executed in the name of the party sought to be charged. The failure of any party to insist, in any one or more instances, on performance of any of the terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant or condition, but the obligations of the parties with respect thereto shall continue in full force and effect.

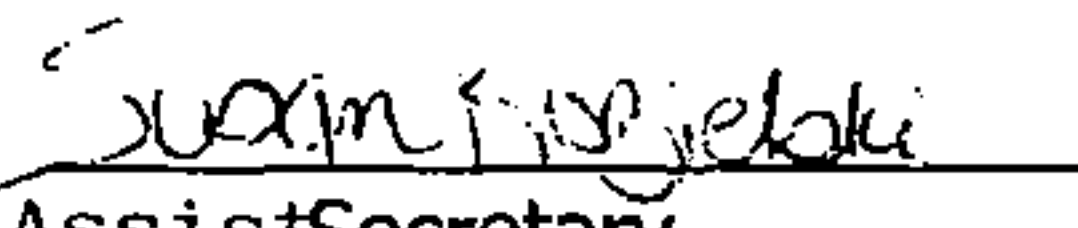
(d) Remedies. The remedies provided to the respective parties bound by this Declaration are not exclusive or exhaustive, but cumulative and in addition to any other remedies any party hereto may have, at law or in equity.

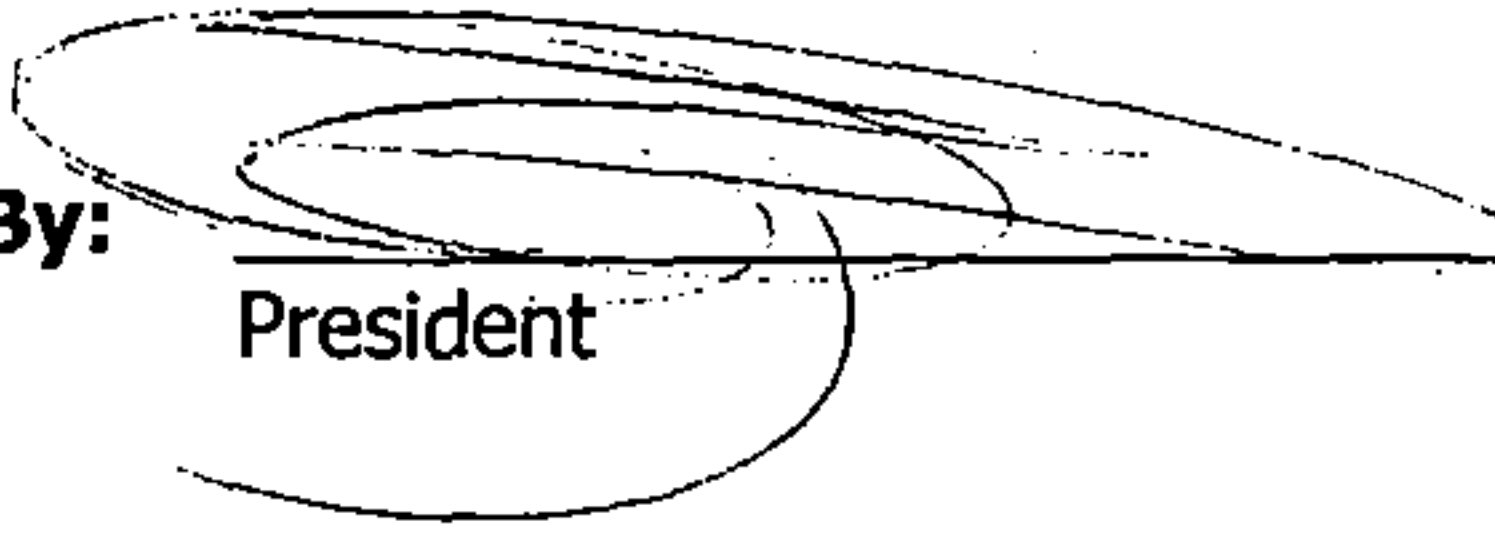
(e) Binding Effect. This Declaration shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, executors, successors and permitted assigns.

(f) Gender. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of the masculine, feminine, or neuter gender shall include all genders as required by the context hereof.

**IN WITNESS WHEREOF, TOWN & COUNTRY DEVELOPERS, INC.,**  
the Declarant herein, has executed this declaration under hands and seals, the day and year first above written.

**TOWN & COUNTRY DEVELOPERS AT  
WILMINGTON, INC.**

ATTEST  
  
AssistSecretary

By:  (SEAL)  
President

[Corporate Seal]



STATE OF New Jersey  
COUNTY OF Bergen

I, Teresa LaBarba, a Notary Public in and for the State and County above do hereby certify that Susan Kozielski personally came before me this day and acknowledged that he/she is the <sup>Asst.</sup> Secretary of **TOWN & COUNTRY DEVELOPERS AT WILMINGTON, INC.**, a North Carolina Corporation, and by authority duly given and as an act of the Corporation the foregoing Declaration was signed in its name by <sup>James</sup> Bovino President, sealed with its corporate seal, and attested by himself/herself as its <sup>Asst.</sup> secretary.

Witness my hand and official stamp or seal this 14th day of December, 1999.

Teresa LaBarba  
Notary Public



My Commission Expires: \_\_\_\_\_  
Town&Country/Disk1/dec.coven.sarah8/11-51299

**TERESA LABARBA**  
A Notary Public of New Jersey  
My Commission Expires July 26, 2004  
July 26, 2004

STATE OF NORTH CAROLINA  
New Hanover County  
The Foregoing/ Annexed Certificate(s) of

Teresa LaBarba

Notary (Notaries) Public is/ are certified to be correct.

This the 2 day of Feb, 2000  
Mary Sue Oots, Register of Deeds

by [Signature]  
Deputy/Assistant