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Return to: Ashley Turner Building Co., Inc., PO Box 996, Hampstead, NC 28443
Brief Description: Restrictive Covenants for Lake Brewster Subdivision (PB 48, pg 237-239)

DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS FOR LAKE BREWSTER SUBDIVISION

NORTH CAROLINA
NEW HANOVER COUNTY

THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS made and published this 1ST day of September, 2005, by Ashley Turner Building Co., Inc. of Hampstead, New Hanover County, North Carolina and Willa Properties, Inc. of Smithfield, Johnston County, North Carolina.

WITNESSETH:

THAT WHEREAS, Willa Properties, Inc. of Smithfield, Johnston County, North Carolina, is the Owner of all that land designated and known as "Lake Brewster Subdivision" as shown on that certain plat recorded in Plat Book 48, pages 237-239, in the office of the Register of Deeds of New Hanover County, North Carolina and Ashley Turner Building Co., Inc. of Clayton, Johnston County, North Carolina, hereinafter "Developer" is contracted to purchase all lots within said subdivision.

WHEREAS, the Developer wishes to assure proper development, reasonable use and maintenance of value in the Subdivision by beneficial property restrictions enforceable by the lot owners;

WHEREAS, the Developer has incorporated or will incorporate under the laws of the State of North Carolina, as a non-profit corporation, LAKE BREWSTER HOMEOWNERS ASSOCIATION, INC., for the purposes of exercising the functions aforesaid and more fully described hereinbelow.

NOW, THEREFORE, for and in consideration of the premises and the benefits to be derived by Developer and each and every subsequent owner of any of the lots in the Subdivision, Developer covenants and agrees with all person, firms and corporations now or hereafter owning or acquiring any of the numbered lots 1 through 137 in the Subdivision, hereinafter called "Lots", that all of said Lots and all of the lands within the boundaries of the Subdivision are made subject to the following restrictive and protective covenants running with the land by whomever owned:

**ARTICLE I
DEFINITIONS**

- 1.1 "Articles" means the Association's Article of Incorporation.
- 1.2 "Association" means LAKE BREWSTER HOMEOWNERS ASSOCIATION, INC., A North Carolina non-profit corporation.
- 1.3 "Board of Directors" means the Board of Directors for the Association.
- 1.4 "Bylaws" means the Associations bylaws.
- 1.5 "Common Area" means all real property which is owned or leased by, or located in an easement granted to or reserved by, the Association and which has been designated by the Owner, the record owner of newly annexed land, or the Association as "Common Area", "Open Space", or some other similarly descriptive term, on a recorded plat, in a Declaration of Annexation, or in a deed or other written instrument for the common use and enjoyment of the Members of the Association. Common Area shall also mean and include the following: (a) all personal property owned or leased by the Association and designated for the common use and enjoyment of the Members of the Association; and (b) the following Subdivision Improvements which are not otherwise dedicated to and accepted by the governmental entity or serving only a single Lot: (i) signage, and (ii) water and sewer lines. All Common Area shall be subject to the terms and conditions of this Declaration.
- 1.6 "Declarant" means Ashley Turner Building Co., Inc., a North Carolina Corporation, and its successors and assigns to whom the rights of Declarant hereunder may be transferred in whole or in part, and subject to such conditions as Declarant may impose, if such successors or assigns acquire more than one undeveloped lot. The development of a Lot shall mean and refer to the construction of Improvements thereon.
- 1.7 "Declaration" means this Declaration of Restrictive and Protective Covenants applicable to the Property, and any amendments thereto which are recorded in the Office of the Register of Deeds, New Hanover County, North Carolina.
- 1.8 "Improvements" means any structure of any type or kind and all exterior modifications thereof, including, without limitation, buildings, outbuildings, parking areas, loading areas, screening walls, retaining walls, fences, hedges, mass plantings, laws, sidewalks, poles, signs, and utility lines and facilities.
- 1.9 "Lot" means any numbered or lettered parcel of land (excluding Common Area) shown on any plat, described by a metes and bounds description, recorded in the Office of the Register of Deeds, New Hanover County, North Carolina, which is made subject to this Declaration, as it may be amended.
- 1.10 "Lot in Use" means any Lot which has been conveyed by the builder of the initial Improvements thereto to a subsequent purchaser. Except, in the event the Lot is a vacant lot, the Lot does not become a Lot in Use until such time as a certificate of occupancy for Improvements on the Lot is initially granted or twelve (12) months from the date of conveyance, whichever is earlier. In no event shall it mean a Lot owned by the Declarant on which no Improvement have been constructed.
- 1.11 "Member" means every Person who holds membership in the Association.

- 1.12 "Owner" means the record owner, whether one or more Persons, of a fee simple title to any lot, except those having an interest merely as security for the performance of any obligation.
- 1.13 "Person" means an individual, a trust, an estate, a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, an unincorporated association, or other entity.
- 1.14 "Property" is as defined above, but shall also include any annexations thereto of the real property described in Article III.
- 1.15 "Subdivision" means LAKE BREWSTER SUBDIVISION, as shown on the recorded subdivision plats of the Property.

ARTICLE II MERGERS

Upon a merger or consolidation of the Association with another organization, as provided for in its Bylaws, the Associations' properties, rights and obligations may be transferred to another surviving or consolidated homeowners association or, alternatively, the properties, rights and obligations of another homeowners association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated homeowners association may administer the Covenants and Restrictions established by this declaration, together with the covenants and restrictions established for any other properties as one scheme. No such merger or consolidation shall, however, effect any revocations, changes or additions to the Covenants and Restrictions, as the same may be amended, established by this Declaration within the Property, except as hereinafter provided.

ARTICLE III ANNEXATION OF ADDITIONAL PROPERTIES

- 3.1 Annexation by Members. Except as provided in Section 3.2, and subject to the approval, as may be required, of any governmental authority having jurisdiction over the Property, additional properties may be added and annexed to the Property only if two-thirds (2/3) of each class of all the votes entitled to be cast in such class by Members are cast in favor of annexation. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by Members comprising no less than two-thirds (2/3) of each class of Members entitled to cast votes in favor of annexation describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. For the Purpose of such meeting, the presence of Members or authorizing proxies entitled to cast sixty percent (60%) of the votes of each class of Members shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth in Section 7.6 hereof, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. If a quorum is present and a majority of the votes area cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may

assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which said Member is entitled to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

- 3.2 Annexation by Declarant. If within ten (10) years from the date the Association is incorporated Declarant develops additional land located adjacent to or across a public or private street from the Property, and any property adjacent thereto or across a public or private street therefrom which is annexed thereto in accordance with the provisions hereof, Declarant may annex such land to the Property without the consent of Members. The annexation will be accomplished by recording with the appropriated Register of Deeds a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary.
- 3.3 Conveyance of Common Area. Subsequent to recordation of the Declaration of Annexation, but prior to conveyance of the first Lot within the newly annexed property, whichever shall first occur, Declarant or any other record owner of newly annexed land shall deliver to the Association, in accordance with Section 6.3, one or more deeds conveying any property that will be designated as Common Area within the annexed property as such designated property is platted.

ARTICLE IV MEMBERSHIP

Ownership of a Lot shall be the sole qualification for membership in the Association. The Association's Board may make reasonable rules relating to the proof of ownership of a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

ARTICLE V VOTING RIGHTS

The Association may have the following two (2) classes of voting membership:

- (a) Class A Members shall be all Owners, Except Declarant. Declarant shall, however, be a Class A Member upon the termination of Class B membership. Class A Members shall be entitled to one vote each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members, and the vote for such Lot shall be exercised as the majority of such Persons among themselves determine; but in no event may more than one (1) vote be cast with respect to any lot.
- (b) The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs first:
- (i) Declarant's written consent to termination; or
 - (ii) When the total votes outstanding in Class A equal the total votes outstanding in Class B [provided, however, that Declarant shall retain its architectural review

- and approval rights until the Class B membership is terminated in accordance with either Section 5.1(b)(i) or (iii); or
- (iii) Ten (10) years following the date of incorporation of the Association.

Notwithstanding anything contained in sub-paragraph (i) and (ii) above to the contrary, the Class B membership shall be reinstated if, after the events described in sub-paragraphs (i) and (ii) above, and before the time stated in sub-paragraph (iii) above, Declarant annexes additional lands to the Property without the assent of the Class A Members, as provided for in Section 3.2 of the Declaration.

ARTICLE VI PROPERTY RIGHTS IN COMMON AREA

- 6.1 Owner's Easements of Use and Enjoyment. Every Member shall have a right and easement of use and enjoyment in and to the Common Area (the "Owner's Easement"), together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas, if any, of the Common Area. The Owner's Easement shall be appurtenant to and pass with the title to every Lot, subject to the following provisions.
- a) Subject to the legal requirements of any governmental authority having jurisdiction over the Property, the right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Common Area.
 - b) The right of the Association, in accordance with its Articles and Bylaws, to impose rules and regulations for the use and enjoyment of the common Area and the Improvements related thereto, which rules and regulations may further restrict the use thereof. The Association's Board of Directors shall have the right to suspend the voting rights and right to use the recreational or other Common Area facilities by an Owner, with notice and a hearing, for any period during which any assessment against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and any such suspension shall apply to any Person delegated the right to use and enjoy the Common Area and Improvements by the suspended Owner.
 - c) The right of the Association to dedicate, sell or transfer all or any 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, sale or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of Members and an instrument properly executed by the Association has been recorded in the New Hanover County Registry. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of Members have approved the dedication, sale or transfer and that certificate shall be conclusive as to any grantee or its assigns; provided, however, that conveyances for general utility purposes as specified herein may be made without consent of the Members. Any dedication or transfer shall be made subject that portion of the Owners' Easement providing for access, ingress and regress to public and private streets and walkways.
 - d) The Association shall have the right to exchange Common Area for other properties, subject to the approval, as may be required, of any governmental authority having jurisdiction over the Property.
 - e) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area, and the

Improvements related thereto and, in aid thereof, to mortgage and properties, and the rights of such mortgagees in said properties shall be subordinate to the rights of the Association and the Members hereunder.

- f) The right of the Association to grant and/or establish upon, over, under and across the Common Area further easements (including, without limitation, those provided herein) as may be necessary for the convenient use and enjoyment of the Property.

- 6.2 Delegation of Use. Except as may be specifically limited hereinbelow, any Owner of a Lot may delegated, in accordance with the Bylaws, its right of use and enjoyment to the Common Area and Improvements related thereto to the members of its family, its guests, its tenants, or contract purchases who reside on such Owner's Lot.
- 6.3 Title to the Common Area. Prior to the conveyance of the first Lot within the Property, Declarant shall dedicate and convey to the Association (by deed without warranty at Declarant's option) fee simple title to all real property portions of the Common Area to the Association, free and clear of all encumbrances and liens, other than the lien of: (i) current taxes and assessments not in default; (ii) utility, drainage, and greenway easements, and other easements and encumbrances not constituting a lien to secure the payment of money; and (iii) the terms and conditions of this Declaration, including any amendments thereto and any applicable supplemental Declaration of Annexation.

ARTICLE VII COVENANT FOR MAINTENANCE ASSESSMENTS

- 7.1 Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, its deemed to covenant and agree to pay to the Association: (a) annual assessments or charges (the "Annual Assessments") and (b) special assessments for extraordinary maintenance and capital improvements (the "Special Assessments"), all as hereinafter provided (collectively, the "Assessments"; and each an "Assessment"). The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") by the Board of Directors and may be collected on a monthly, quarterly, semiannual or yearly basis, as determined by the Board of Directors. The Assessments shall be charged to each Owner of a Lot in Use. The Assessments, together with interest, late fees, and costs of collection (including reasonable attorneys' fees), shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for the delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association shall also have the authority, through the Board of Directors, to establish, fix and levy a Special Assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration.

Each Owner covenants for itself, its heirs, successors and assigns, to pay each Assessment levied by the Association on each Lot conveyed to such Owner within ten (10) days of receipt of an invoice for the same; and if such charge shall not be paid within thirty (30) days from the date that the invoice is deposited, postage prepaid, in the United States mail, in an envelope addressed to such Owner at its address as it appears on the books of the Association or to such other address as the Owner shall have designated in writing, the amount of such charge shall become a lien upon such Lot and shall continue to be such a lien until fully paid.

- 7.2 Purpose of Assessments. The Assessments shall be used exclusively for the purposes of promoting the beautification of the Property, the recreation, health, safety and welfare of the Owners, and the improvement, maintenance and repair of the Common Area and Improvements related thereto. Expenses to be funded with the Assessment (the "Common Expenses") shall include, without limitation, taxes and assessments levied against the Common Area, all insurance premiums required hereunder (including, without limitation, casualty, liability and fidelity bond premiums), Association operational costs, management fees, if any, the enforcement of this Declaration and the rules of the Association, the employment of counsel, accountants and other professionals for the Association when necessary, the cost of landscaping, maintaining and repairing the Common Area, the bidding at foreclosure sales as set forth in Section 7.9, and the cost of such other needs as may arise. The Association may maintain a reserve fund for periodic maintenance, repair and replacement of the Common Area and the Improvements thereto.
- 7.3 Annual Assessments.
- a) On or before December 1st of each year, the Board of Directors shall adopt the Budget (as defined below) for the upcoming Annual Assessment Period. The annual budget for the Association shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period – the "Anticipated Annual Assessment") and anticipated costs for the Association for the upcoming Annual Assessment Period (together the "Budget"). The Anticipated Annual Assessments for the approved Budget shall be the basis for calculating the Annual Assessment to be charged each Owner for the upcoming Annual Assessment Period.
 - b) Notwithstanding the above to the contrary:
 - (i) Through and including January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment per Lot shall not exceed Two hundred forty dollars and no/100 (\$240.00) per Lot in Use.
 - (ii) An annual increase shall not be more than ten percent (10%), except by approval of at least two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting called for this purpose. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or Bylaws.
 - (iii) Subject to the provisions of this Article VII, the Board of Directors may fix the Annual Assessment at any amount not in excess of the maximum Annual Assessment allowed for the applicable calendar year.
- 7.4 Working Capital. In addition to the regular Assessments to be charged and paid hereunder, each Lot Owner shall, at the time of the initial sale of each Lot by Declarant to that Lot Owner, pay to the Association a sum equal to two (2) months Assessment on that Lot as additional working capital of the Association. These amounts need not be segregated, but may be commingled with regular Assessment funds. This working capital Assessment shall be paid by the Lot Owner notwithstanding the fact that Declarant may have made prior regular Assessment payments to the Association on the Lot being sold in accordance with the provisions hereof.
- 7.5 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 that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, restoration, repair or replacement of a capital

Improvement upon the Common Area, or any other unexpected expense for which the Association is responsible, provided that, any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

- 7.6 Notice and Quorum for Any Action Authorized Under Sections 7.3 and 7.5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.3 and 7.5 shall be delivered to all Members entitled to vote not less than ten (10) days nor more than sixty (60) days in advance of the meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Association, with postage thereon prepaid. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and 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.
- 7.7 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. Notwithstanding anything to the contrary contained hereinabove, the assessment for Lots for which dwelling construction has been initiated and a certificate of occupancy for Improvements located thereon has not yet been issued shall be one-third (1/3) of the regular assessment for developed Lots.
- 7.8 Date of Commencement of Annual Assessment/Due Date. The Annual Assessments shall commence as to a Lot on the first day of the month following the date it becomes a Lot in Use. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto at least fifteen (15) days in advance of each Annual Assessment Period. The due date of the Annual Assessment shall be January 15 or as otherwise established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessment on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any Assessment as to third parties acting in reliance on the statement.
- 7.9 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments, which are not paid when due, shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof becomes delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall incur a late charge of \$25.00 and bear interest from the date of delinquency at the rate of twelve percent (12%) per annum or the highest rate allowed by law, whichever is less, and the Association may bring an action at law against the responsible Owner and/or foreclose the lien against the applicable property. Interest, costs, and reasonable attorney fees of any such action shall be added to the amount of the delinquent assessment. Each Owner, by acceptance of a deed to a Lot, expressly vests in the Association, its agents, or assigns, the right and power to bring all actions against the Owner personally liable for the collection of a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property. Each Owner also expressly grants to the Association a power of sale in

connection with foreclosure of a lien for Assessments. The lien provided for in this Article VII shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed property. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Area or by abandonment of said Owner's property.

7.10 Subordination of the Lien of Assessment to Mortgages and Ad Valorem Taxes. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage (or deed of trust) and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage or tax foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve the Owner of any such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

7.11 Exempt Property. All properties dedicated to and accepted by, a local public authority, the Common Area and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or Improvements devoted to dwelling use shall be exempt from such assessments.

ARTICLE VIII ARCHITECTURAL CONTROL AND USE RESTRICTIONS

8.1 Residential Use.

- a) All lots shall be used for residential purposes only; no home business or occupation shall be permitted.
- b) No building, structure or living quarters shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not exceeding two (2) stories in height and one or more small accessory buildings such as a detached private garage (but not garage apartment), provided that no accessory building shall be constructed or placed prior to construction of the dwelling and that no building shall be used for any activity normally conducted as a business. Only one residence or dwelling shall be permitted on any one lot.
- c) No mobile home or similar mobile dwelling, trailer, tent, shack, garage, barn, outbuilding or structure of a temporary character shall be used on any lot at any time as a residence or for living quarters, either temporarily or permanently. No mobile home, movable dwelling, trailer, habitable motor vehicles, camper or like vehicle shall be parked, stored or permitted to remain on any lot at any time for any purpose, except that after a residence is erected on any lot, a trailer, camper or similar vehicle may be parked on a portion of the Lot away from the street behind the front building line and more that ten (10) feet from any Lot line.

8.2 Building and Site Improvements.

- a) No dwelling shall be erected or permitted on any Lot unless it has the minimum required square footage of enclosed dwelling area of no less than 1,200 square feet. The term "enclosed dwelling area" as used herein means that the total enclosed area within a dwelling, but not including garages, terraces, decks, open porches, steps and like areas.
- b) No building shall be located on any lot nearer to the front lot line, the side lot lines or the back lot line than any minimum setback lines shown on the recorded plat of the subdivision. If the plat does not show minimum set-back lines, or in case of any doubt, no building shall be located on any lot nearer than 20 feet to the front lot line, nearer than 20 feet to any side street line, nearer than 10 feet to any other side lot line, or

nearer than 20 feet to the back lot line. For the purpose of this paragraph (i) eaves, (ii) steps, (iii) chimneys, (iv) flues, and (v) open porches on the front of the dwelling only shall not be considered as part of the building. For the purpose of this paragraph (i) open porches on the side or rear of the dwelling, (ii) closed porches, (iii) carports and (iv) garages shall be considered as part of the building. This paragraph shall not be construed to permit any portion of a building on one lot to encroach on another lot.

- c) No fence or wall shall be erected or permitted on any lot nearer the front lot line than the minimum building setback line. No fence or wall over six (6) feet in height above the ground shall be erected or permitted on any lot.
- d) Sewage disposal shall be by New Hanover County sewage disposal system. Lot owners will be allowed to use septic tanks only if County sewer is not available. When County sewer becomes available, septic tanks will be abandoned and lots will be connected to the County sewer system. Any connection costs or assessments shall be paid by the lot owner.
- e) No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within the dwelling house, within an accessory building, within a screened area, or buried underground.
- f) No sign of any kind shall be erected or displayed on any lot or dwelling thereon, except (1) a temporary "For Sale" sign, or (2) a property or owner identification sign not exceeding a combined total of two (2) square feet.

8.3 Nuisances.

- a) It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, or unkempt conditions of buildings or grounds on his lot which would tend to decrease substantially the beauty of the neighborhood as a whole or the specific area. The Association has the right to make any necessary repairs for unsightly, unrepaired damages to a home and the expense will become a lien against the property.
- b) No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance, danger, discomfort, or nuisance to owners in the neighborhood.
- c) No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept if they are not kept, bred or maintained for any commercial purpose.
- d) No automobile or motor vehicle may be dismantled or repaired on any lot; no mechanically defective or inoperable automobile, motor vehicle, mechanical device, machinery or junk car shall be placed or allowed to remain on any lot at any time.

8.4 Easements.

- a) Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded subdivision plan and over the rear of the outer lots. These easements are for installation and maintenance of utilities and drainage facilities intended to provide services to the residences in the subdivision. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or obstruct or retard the flow of water through drainage lines or channels in the easements. The easement areas of each lot shall be maintained continuously by the lot owner, except for improvements for which a public authority or utility company has responsibility.
- b) The Developer of this subdivision reserves the right to subject such real property to a contract with Progress Energy or any other utility company for the installation of underground utility service facilities. This contract may require an initial payment and/or a continuing monthly payment to such utility company by the purchaser of any lot or lots

or his tenant. The continuing monthly payment may be terminated at any time upon payment of a one-time charge subject to the then applicable regulations approved by the state regulatory authority. The subdivision property may also be subjected to a contract with Progress Energy or any other utility company for the installation of street lighting which requires a continuing monthly payment.

- c) All roadways have been constructed in compliance with the North Carolina Department of Transportation guidelines and specifications. The roadways have been conveyed to the NCDOT and accordingly, will be maintained by the State. All driveway culverts, if any, adjoining state roads must be approved by the North Carolina Department of Transportation prior to installation.

8.5 Coastal Stormwater Management Regulations.

- a) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number **SW8041111**, as issued by the Division of Water Quality under 15A NCAC 2H.1000.
- b) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.
- c) These covenants are to run with the land and be binding on all persons and parties claiming under them.
- d) The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.
- e) Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.
- f) The maximum allowable build-upon area per lot is 4,050 square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to structures, asphalt, concrete, gravel, brick, stone, slate, coquina, and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.
- g) All runoff from the built upon areas on the lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales to collect lot runoff and directing them into the stormwater system or into the street. Lots that will naturally drain into the system are not required to provide these additional measures.

SECTION IX TERMS AND ENFORCEMENT

- 9.1 All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding upon all parties and persons claiming under them, including but not limited to the successors and assigns of the Developer, for a period of ten (10) years from the date hereof, after which time all said covenant shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of lots (not including mortgages or trustees under deeds of trust) substantially affected by such changes in covenants, agreeing to change said covenants in whole or in part, has been recorded in the New Hanover Registry.
- 9.2 If, at a future date, there is a change to the Restrictive and Protective Covenants, the changed said covenants shall include the current Coastal Stormwater Management Regulations in accordance with Title 15 NCAC 2H.1000.

- 9.3 In the event of any actual or threatened violations or breach of any of these restrictive covenants by any lot owner or other person, then the Developer or the owner of any lot in the subdivision, or any of them jointly or severally, shall have the right to proceed at law or equity to compel compliance with the terms hereof or to prevent the violation or breach or to obtain other suitable remedies.
- 9.4 The invalidation by any court, agency or legislation of any provision of these restrictive covenants shall in no way affect any of the other covenants which shall remain in full force and effect.
- 9.5 For public record and as recorded on the Subdivision Plat, portions of this site have been previously mined for sand under NCDENR Permit No. 65-17 and have been utilized as a temporary Land Clearing Debris Treatment & Processing Facility under NCDENR Notification No. T&P65-004. Phase I and Phase II environmental audits have been performed to ensure no environmental hazards exists.

IN WITNESS WHEREOF, the aforementioned have caused this declaration to be executed in its names on the day and year first above written.

WILLA PROPERTIES, INC.

By: [Signature]
Wilson Earl Blackmon, President

ATTEST:

Sherril B. Hill
SHERRIL B HILL, SEC'Y

ASHLEY TURNER BUILDING CO., INC.

By: [Signature]
Deborah Johnson, Vice President

ATTEST:

Angela Standley
Secretary

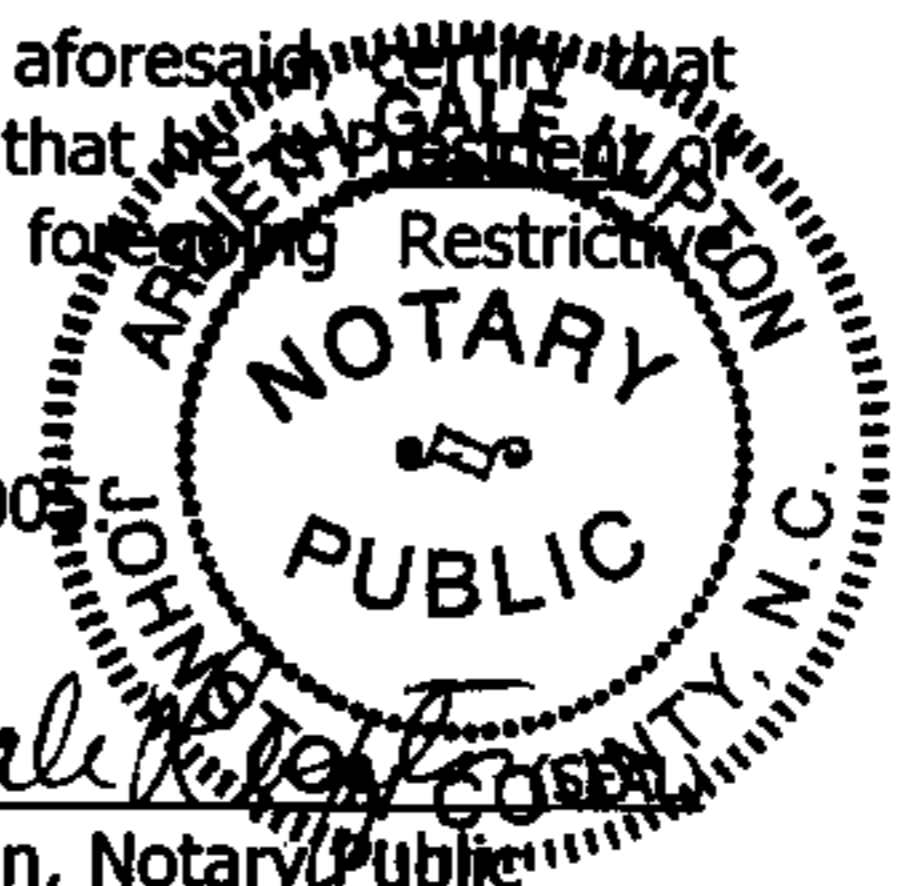
NORTH CAROLINA
JOHNSTON COUNTY

I, Ardieth Gale Lupton, a Notary Public of the County and State aforesaid, certify that Wilson Earl Blackmon, personally appeared before me this day and stated that he is President of Willa Properties, Inc. and acknowledged the due execution of the foregoing Restrictive Covenants.

Witness my hand and official seal, this the 1st day of September, 2005

My Commission Expires: 6/21/2008

[Signature]
Ardieth Gale Lupton, Notary Public



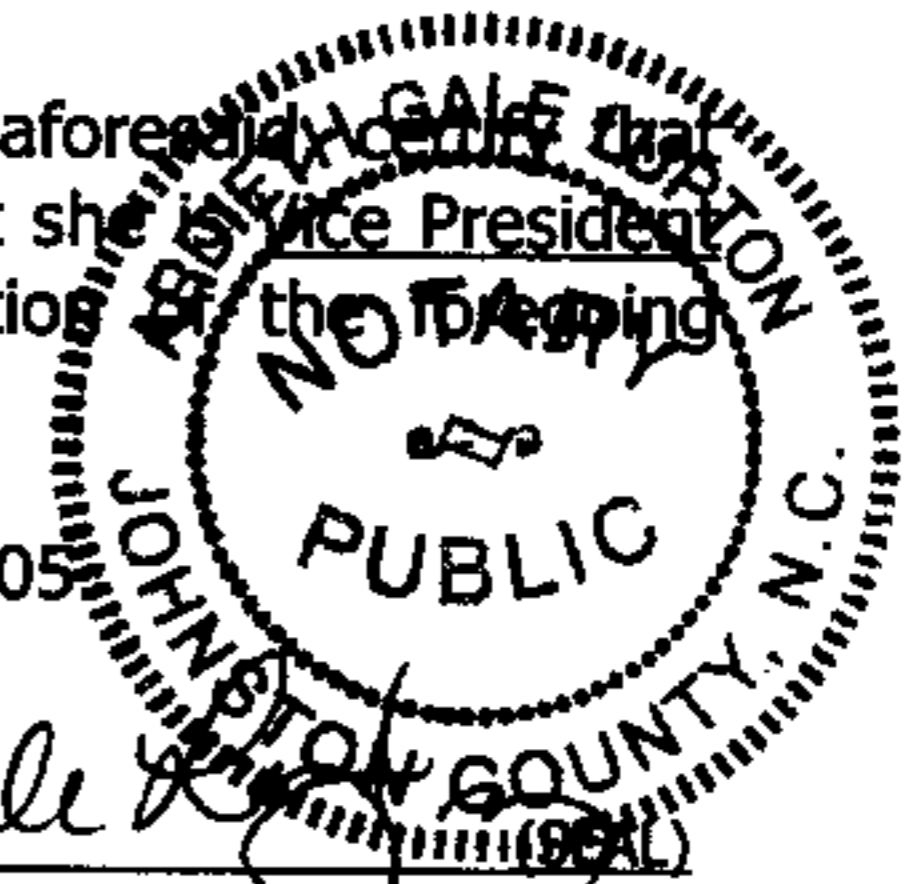
NORTH CAROLINA
JOHNSTON COUNTY

I, Ardieth Gale Lupton, a Notary Public of the County and State aforesaid, certify that Deborah Johnson, personally appeared before me this day and stated that she is Vice President of Ashley Turner Building Co., Inc. and acknowledged the due execution of the foregoing Restrictive Covenants.

Witness my hand and official seal, this the 1st day of September, 2005

My Commission Expires: 6/21/2008

[Signature]
Ardieth Gale Lupton, Notary Public



STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

The foregoing certificate(s) of ARDIETH GALE LUPTON, Notary Public is certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the office of the Register of Deeds in New Hanover Co., NC in Book _____, Page _____.

This _____ day of _____, 2005 at _____ am/pm.

Register of Deeds

BY _____, Deputy



REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 09/20/2005 08:34:46 AM
Book: RE 4906 Page: 899-913
Document No.: 2005053895
DECL 15 PGS \$53.00
Recorder: NANCY A SCOTT

State of North Carolina, County of New Hanover

The foregoing certificate of ARDIETH GALE LUPTON Notary is certified to be correct. This 20TH of September 2005

REBECCA P. SMITH, REGISTER OF DEEDS

By: *Nancy A Scott*
Deputy/Assistant Register of Deeds

YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

2005053895

2005053895