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FOR REGISTRATION REGISTER OF DEEDS
JENNIFER H. MACNEISH
NEW HANOVER COUNTY, NC
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INSTRUMENT # 2010019220

**AMENDMENT TO DECLARATION
OF RESTRICTIVE AND PROTECTIVE COVENANTS FOR
LAKE BREWSTER SUBDIVISION**

THIS AMENDMENT TO DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS FOR LAKE BREWSTER SUBDIVISION ("Amendment") is made this 14th day of JULY, 2010 by LAKE BREWSTER HOMEOWNERS ASSOCIATION, a North Carolina nonprofit corporation (the "Association").

WITNESSETH:

WHEREAS, Willa Properties, Inc., a North Carolina corporation, and Ashley Turner Building Co., Inc., a North Carolina corporation, caused to be recorded the Declaration of Restrictive and Protective Covenants for Lake Brewster Subdivision in Book 4906, at Page 899 in the office of the Register of Deeds of New Hanover County, North Carolina (as amended, the "Declaration"); and

WHEREAS, the Association, pursuant to N.C. Gen. Stat. § 47F-2-117(a), may amend the Declaration with the affirmative vote or written agreement signed by Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated; and

WHEREAS, the Association has obtained the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association; and

Prepared by **WARD AND SMITH, P.A.**, University Corporate Center, 127 Racine Drive, Post Office Box 7068, Wilmington, NC 28406-7068

Please return to **WARD AND SMITH, P.A.**, University Corporate Center, 127 Racine Drive, Post Office Box 7068, Wilmington, NC 28406-7068
Attention: Justin M. Lewis

WHEREAS, the terms in this Amendment shall have the same meaning as set forth in the Declaration unless otherwise defined herein.

NOW, THEREFORE, the Association does hereby amend the Declaration as follows:

1. Article I, Section 1.11 is deleted in its entirety and the following is inserted in lieu thereof:

1.11 "Member" means a person having membership in the Association consistent with Article IV of this Declaration.

2. Article I is further amended by adding the following section after Section 1.15:

1.16 "Planned Community Act" means Chapter 47F of the General Statutes of North Carolina designated as the North Carolina Planned Community Act.

3. Article III, Section 3.1 is amended by deleting the last part of the section following the sentence "No other action or consent shall be necessary."

4. Article V is amended by deleting the following words from Section (b)(ii): "[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)]."

5. Article VII, Section 7.6 is amended by deleting the words, "sixty percent (60%)" from the third sentence and inserting the following in lieu thereof: "twenty-five (25%)".

6. Article VII, Section 7.6 is further amended by deleting the last sentence of the Section.

7. Article VII, Section 7.9 is amended by deleting the following words from the third sentence: "the assessment shall incur a late charge of \$25.00 and" and inserting the following in lieu thereof: "the Association shall impose a late charge not to exceed the greater of Twenty and No/100 Dollars (\$20.00) per month or ten percent (10%) of any Assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association including the right to vote, during any period that Assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer. The amount owed for Assessments shall".

8. Article VIII, Section 8.1 is amended by deleting the last sentence from the end of Section 8.1(c).

9. Article VIII, Section 8.2 is amended by adding the following to the end of the Section:

- g) All trash containers shall be kept behind the front of the Residence on each Lot at all times with the exception that the trash container may be placed on the curb no more than twenty-four (24) hours before scheduled pick up, and the containers shall be returned behind the front of the Residence within twenty-four (24) hours after scheduled pick up.
- h) All mailboxes within the Property shall be of a design and location as designated by the ARC and shall be approved in advance, and in writing by the ARC, such approval to be in the ARC's sole discretion.
- i) No yard sales shall be permitted except on Fridays, Saturdays, and Sundays. The Association may adopt reasonable rules and regulations regarding yard sales, including but not limited to, restrictions on time and advertising.
- j) No trailers of any kind, campers, mobile homes, habitable motor vehicles, or recreational vehicles shall be parked on Lots without written approval from the Association, which approval shall be given in the Association's sole discretion and shall be for a limited period of time, as determined by the Association, in its sole discretion. All boats and trailers permitted to be placed on the Lots by the Association must be stored completely within the paved driveway on the Lot and must be covered at all times.

10. Article VIII is further amended by adding the following sections at the end of the Article:

8.6 The Board of Directors shall establish an architectural review committee ("ARC") which shall consist of at least three (3) but not more than five (5) persons who shall be appointed and shall serve at the discretion of the Board of Directors.

8.7 Architectural Review. Before any structure or Improvement whatsoever (including, but not limited to buildings or structures situated upon a Lot intended for use and occupancy as a residence for a single family ("Residence"), fences, mailboxes, paper boxes, patios, walls, storage buildings, swimming pools, outbuildings, garages, carports, or gazebos) may be erected upon any Lot, the planned specifications for such structure or Improvement; the proposed location, orientation, and relation to streets or other Lots; and the construction materials, the covering material, styles and slope of the roof, and exterior color schemes shall have been approved in writing by the ARC. Any garage, carport, gazebo, or other outbuilding erected upon a Lot shall have the same siding material and siding color and shall have the same roof material and roof color as the Residence located upon the Lot. After initial construction of a structure, any exterior changes or additions to the structure, and any exterior remodeling, reconstruction, alteration, or building addition on a Lot shall also require the prior written approval of the ARC. The ARC may adopt design guidelines, establishing standards for Improvements on Lots ("Design Guidelines").

- a) **Before construction of any structure commences, there shall be submitted to the ARC two (2) complete sets of the final plans, specifications, and details for the proposed structure, the erection or alteration of which is desired. Such plans, specifications, and details shall include plans showing the location of the Lot and all structure proposed to be constructed or altered, together with the proposed construction materials, color schemes for the exterior walls, and roofs and proposed landscape planting.**
- b) **The ARC shall approve or disapprove plans, specifications, and details within thirty (30) days from the receipt thereof. One (1) set of the said plans, specifications, and details with the approval or disapproval of the ARC endorsed thereon shall be returned to the person who submitted them, and the other copy thereof shall be retained by the ARC for its permanent files. Any disapproval shall state specific reasons for disapproval. If the plans, specifications, and details are not disapproved within thirty (30) days after their receipt by the ARC, they shall be deemed approved.**
- c) **The ARC shall have the right to disapprove any plans, specifications, or details submitted to it in the event they are not in accordance with the provisions of this Declaration or the Design Guidelines; if the design, height, construction materials, exterior finish, or color scheme of the proposed structure is not in harmony with the general surroundings of such Lot or the adjacent structures; if the plans, specifications, and details submitted are incomplete; or if the committee deems the plans, specifications, or details of any part thereof to be contrary to the interest, welfare, or rights of the Owner of any Lot. All decisions of the ARC shall be final.**
- d) **Once the plans, specifications, and details have been approved by the ARC, construction shall adhere to those plans, specifications, and details in all material respects. If a material deviation is proposed, it shall be approved in writing by the ARC before construction proceeds.**
- e) **Neither the ARC nor any member thereof shall be responsible or liable for any defects in any plans, specifications, or details submitted, revised, or approved; for any structural or other defects, any work done according to such plans, specifications, or details; for refusing to approve plans for any reason whatsoever; for the failure of any plans submitted to comply with this Declaration; for the failure of any approved or unapproved construction to conform to the provisions of the plans, specifications, or details or this Declaration; for the built-upon area exceeding the requirements of the Declaration; for failure to enforce this Declaration; or for the failure to discover or, if discovered, for the failure to enjoin or otherwise prevent construction which has either not been approved by the ARC or which is not being performed in accordance with the plans, specifications, and details which have been approved by the ARC. Approval by the ARC shall not relieve a Lot Owner from obtaining any required governmental approval of any proposed action or from conforming to the provisions of this Declaration. The ARC shall have the**

right, but not the obligation, to enforce this Declaration against the Owner of a Lot in the event of a violation of the Declaration by such Owner or in the event an Owner performs any activity on a Lot which requires ARC approval without having obtained ARC approval.

11. Article IX, Section 9.3 is amended by deleting the word "Developer" in the second line and inserting the following in lieu thereof: "Association".

12. Article IX, Section 9.3 is further amended by adding the following sentence to the end of the Section: "In any action to enforce the provisions of the Declaration, Bylaws, or Rules and Regulations, if the Association prevails, it shall be entitled to recover all costs, including without limitation attorneys' fees and court costs reasonably incurred in such action."

13. Article IX is amended by adding the following section:

9.6 Amendment. This Declaration may be amended only by the affirmative vote, written consent, or any combination thereof, of the Owners representing sixty-seven percent (67%) of the total votes in the Association. Amendments to this Declaration shall become effective upon recordation in the Register of Deeds unless a later effective date is specified therein. In no event shall a change in conditions or circumstances operate to amend any provisions of this Declaration.

14. Article IX is amended by adding the following section:

9.7 Hearing Procedures. Except as may be otherwise specifically authorized by this Declaration and permitted by this Declaration, the Board of Directors shall not (i) impose a fine or penalty, (ii) undertake permitted remedial action, or (iii) suspend the voting or infringe upon rights of a Member or other occupant of a Lot for violations of the Declaration, Bylaws, or Rules and Regulations, or for Assessments or other amounts due and owing to the Association remaining unpaid for a period of thirty (30) days or longer unless and until the Board of Directors complies with the notice and hearing provisions provided in N.C. Gen. Stat. § 47F-3-107.1.

15. The Declaration is amended by adding the following articles after

Article IX:

**ARTICLE X
DISCLAIMER OF LIABILITY; SAFETY**

Notwithstanding anything contained in this Declaration, the Bylaws, the Rules and Regulations, or in the Planned Community Act, neither the Association, the Board of Directors, nor the management company of the Association, if applicable, shall be liable or responsible for, or in any way a guarantor or insurer of, the health, safety, or welfare of any

Owner or occupant of any Lot or any tenant, guest, or invitee of any Owner or occupant or for any property of any such persons. Each Owner and occupant of a Lot, and each tenant, guest, and invitee of an Owner or occupant shall assume all risk associated with the use and enjoyment of the Property.

ARTICLE XI MAINTENANCE OBLIGATIONS

- 11.1 Association's Responsibility. The Association shall provide maintenance, repair, and replacement for the Common Area which shall include, but not be limited to, landscaping, signage and all other Improvements upon the Common Area.
- 11.2 Owner's Responsibility. Each Owner shall provide for the maintenance and repair of his or her Lot, and any Improvements thereon, including without limitation, buildings, parking areas and landscaping in a manner consistent with the Declaration. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility under the Declaration, the Association may enter upon said Owner's Lot and perform such work or maintenance and assess all costs incurred by the Association against the Lot and the Owner. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry except when entry is required due to an emergency situation. Any entry by the Association onto an Owner's Lot pursuant to this Section 11.2 shall not be deemed a trespass.

ARTICLE XII INSURANCE

The Association shall obtain and continue in effect casualty insurance covering risk of physical loss for insurable Improvements on the Common Area, commercial and general liability insurance on the Common Area insuring the Association and its members for damage or injury caused by the negligence of the Association or any of its members, employees, agents, or contractors while acting on its behalf, and directors and officers liability insurance of equivalent Association liability insurance.

16. The following amendments are made to correct typographical and grammatical errors throughout the Declaration:
- (a) The words "lot", "assessment", "improvements", "subdivision" and "owner" shall be capitalized throughout the Declaration.
 - (b) Throughout the Declaration, all numbers shall be stated in words and parenthetically in numerals.

(c) The first paragraph on the first page is amended by inserting the words "FOR LAKE BREWSTER SUBDIVISION" after the word "COVENANTS" in the first line of the paragraph.

(d) The third line of the last paragraph on Page 1 is amended by adding the letter "s" to the word "person".

(e) Article I, Section 1.1 is amended by adding the letter "s" to the word "Article".

(f) Article I, Section 1.4 is amended by deleting the word "Associations" and inserting the following in lieu thereof: "Association's".

(g) Article I, Section 1.7 is amended by inserting the words "For Lake Brewster Subdivision" after the word "Covenants".

(h) Article I, Section 1.8 is amended by deleting the word "laws" in the third line and inserting the following in lieu thereof: "lawns".

(i) Article I, Section 1.10 is amended by adding the letter "s" to the word "Improvement" in the last line.

(j) Article I, Section 1.12 is amended by adding the letter "e" to the word "on" in the first line.

(k) Article II is amended by deleting the word "Associations" in the second line and inserting the following in lieu thereof: "Association's".

(l) Article II is further amended by making the words "Covenants" and "Restrictions" in the second sentence and last sentence lowercase and by capitalizing the word "declaration" in the second sentence.

(m) Article II is further amended by deleting the word "effect" in the last sentence and inserting the following in lieu thereof: "affect" .

(n) Article III, Section 3.1 is amended by making the word "Purpose" in the ninth line lowercase and by deleting the word "area" in the fifteenth line and inserting the following in lieu thereof: "are".

(o) Article III, Section 3.2 is amended by deleting the letter "d" at the end of the word "appropriated" in the sixth line.

(p) Article V, Section (a) is amended by making the word "Except" in the first line lowercase and by inserting the word "for" between the words "vote" and "each" in the third line.

(q) Article VI, Section 6.1 is amended by deleting the words "dedication of transfer" in the last sentence of subsection (c) and inserting in lieu thereof: "dedication or transfer".

(r) Article VI, Section 6.1 is further amended by inserting the word "to" between the words "subject" and "that" in the last sentence of subsection (c).

(s) Article VI, Section 6.1 is further amended by deleting the word "and" in the third line of subsection (e) and inserting the following in lieu thereof "any".

(t) Article VI, Section 6.2 is amended by deleting the letter "d" at the end of the word "delegated" in the second line.

(u) Article VII, Section 7.1 is amended by deleting the word "its" in the third line and inserting the following in lieu thereof: "is".

(v) Article VII, Section 7.1 is further amended by adding an "s" to the word "agree" in the third line.

(w) Article VII, Section 7.3 is amended by inserting a comma between the words "together" and "the" in the sixth line.

(x) Article VII, Section 7.3(b)(i) is amended by deleting the following: "Two hundred forty dollars and no/100 (\$240.00) per Lot in Use." and inserting the following in lieu thereof: "Two Hundred Forty and No/100 Dollars (\$240.00) per Lot in Use."

(y) Article VII, Section 7.5 is amended by capitalizing the words "annual assessments" in the first line.

(z) Article VII, Section 7.6 is amended by deleting the word "mil" in the fifth line and inserting the following in lieu thereof: "mail".

(aa) Article VII, Section 7.7 is amended by capitalizing the words "special assessments" in the first line.

(bb) Article VII, Section 7.8 is amended by deleting the word "have" in the ninth line and inserting the following in lieu thereof: "has".

(cc) Article VII, Section 7.9 is amended by deleting the word "attorney" in the ninth line and inserting the following in lieu thereof: "attorneys".

(dd) Article VIII, Section 8.2 is amended by deleting the word "that" from the third line.

(ee) Article VIII, Section 8.4(b) is amended by deleting the words "of this subdivision" from the first line.

(ff) Article VIII, Section 8.4(b) is amended by deleting the word "subdivision" from the last sentence and capitalizing the word "property".

(gg) Article VIII, Section 8.5(f) is amended by deleting the words "build-upon" in the first line and inserting the following in lieu thereof: "built-upon".

(hh) Article IX, Section 9.1 is amended by deleting the word "yeas" from the third line and inserting the following in lieu thereof: "years".

(ii) Article IX, Section 9.1 is further amended by adding the letter "s" to the word "covenant" in the fourth line and by deleting the word "mortgages" in the sixth line and inserting the following in lieu thereof: "mortgagees".

(jj) Article IX, Section 9.2 is amended by deleting the words "Restrictive and Protective Covenants" in the first line and inserting the following in lieu thereof: "Declaration".

(kk) Article IX, Section 9.2 is further amended by deleting the words "changed said covenants" in the second line and inserting the following in lieu thereof: "Amended Declaration".

(ll) Article IX, Section 9.4 is amended by deleting the words "these restrictive covenants" and inserting the following in lieu thereof: "this Declaration".

17. Except as expressly provided in the paragraphs above, the terms and provisions of the Declaration shall continue in full force and effect according to the terms of the same as modified hereby.

[SIGNATURE ON FOLLOWING PAGE]

IN TESTIMONY WHEREOF, the Association, acting pursuant to the authority above recited and in accordance with the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association, has caused this Amendment to be executed under seal and in such form as to be legally binding and effective the day and year upon recording this Amendment in the office of the Register of Deeds of New Hanover County, North Carolina.

LAKE BREWSTER HOMEOWNERS ASSOCIATION(SEAL)

By: *Wayne Scott*
Name: Wayne Scott
Title: President

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

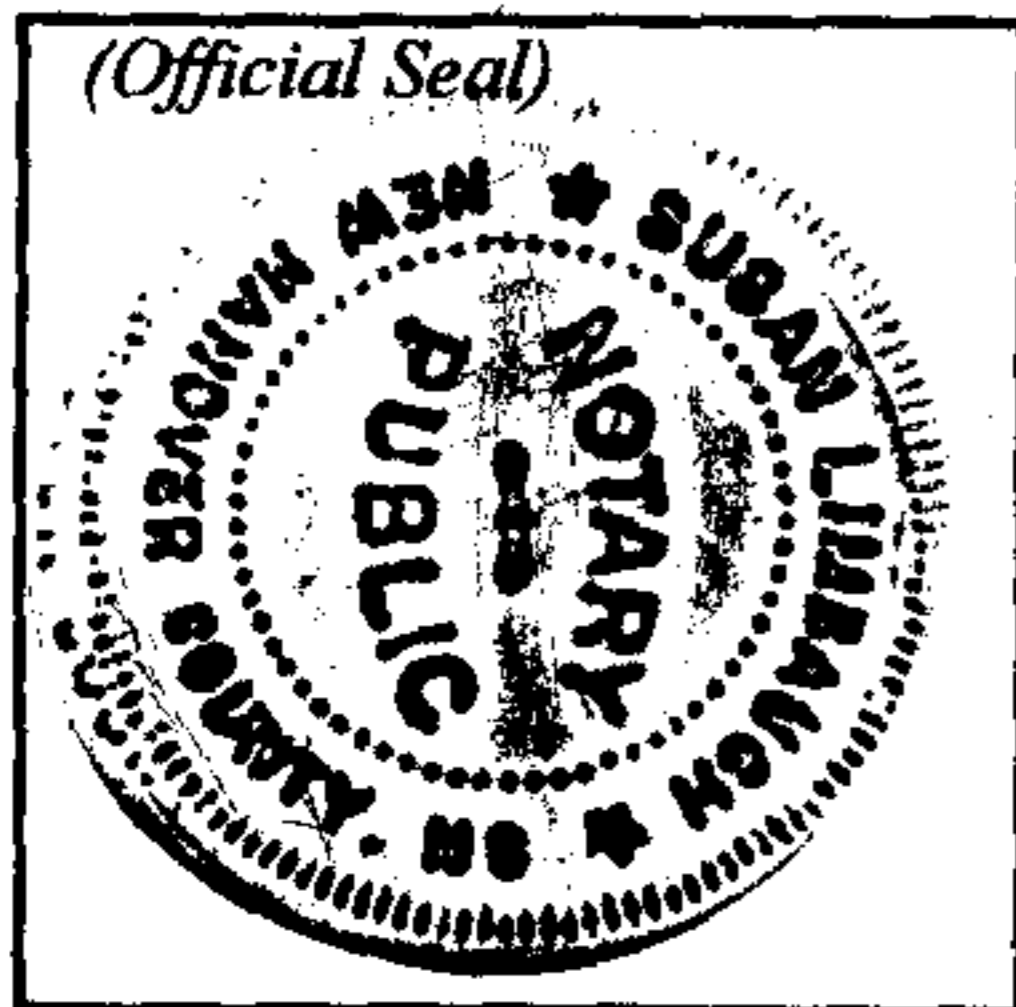
I certify that the following person personally appeared before me this day, acknowledging to me that he/she signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: Wayne Scott, President.

Date: July 14, 2010

Susan Limbaugh
Signature of Notary Public

Susan Limbaugh
Notary's printed or typed name

My commission expires: 10-23-13



Notary seal or stamp must appear within this box.

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ND: 4820-3127-9876, v. 1



JENNIFER H. MACNEISH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

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Recorder: JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

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