

Bevin Wall

Melanie Arthur 22P
CARTERET COUNTY
PL Date 07/08/2003 Time 14:36:00
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NORTH CAROLINA, CARTERET COUNTY
The foregoing certificate(s) of Notary Public(s) is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.



THIS INSTRUMENT PREPARED BY: JAMES W. THOMPSON, Attorney At Law, 1207-A Arendell Street, Morehead City, North Carolina 28557

Melanie Arthur, Register of Deeds
By Melanie Arthur
Asst./Deputy Register of Deeds

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
"LOBINGER POINTE",
a residential Subdivision**

THIS DECLARATION is made on this 8 day of July, 2003, by Michael A. Dearth of West Virginia and James B. McDonald of Carteret County, North Carolina, hereinafter referred to as the "Declarant".

WITNESSETH:

THAT WHEREAS, the Declarant is the owner of certain real property in Morehead Township, Carteret County, North Carolina, which is generally described as Lobinger Pointe, as the same is more particularly shown on a map recorded in Map Book 30, Page 310, in the office of the Register of Deeds, Carteret County, North Carolina, which map description is hereby incorporated hereby by reference - the twenty-five lots shown upon said map being hereafter referred to as "Lots"; and,

WHEREAS, Declarant desires to create a single-family, residential community within said property and to provide an overall plan of development therefor which will endeavor to assure orderly development, preservation of property values, maintenance of common areas, good streets, a street lighting plan, and the general safety and health of property owners, and to that end Declarant intends to subject the Lots to the restrictions, conditions, easements, and other encumbrances created

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hereby.

WHEREAS, Declarant has deemed it appropriate for the more complete and efficient achievement of the purposes and objectives of this Declaration to create a corporation of property owners to which should be delegated and assigned, and which is hereby delegated and assigned, the powers of owning, maintaining, and administering the common areas and facilities of Lobinger Pointe; to administer and enforce the covenants and restrictions encumbering the Subdivision; to levy and collect the dues, assessments, other charges against Lots provided for herein and which are required for the sound fiscal operation of the affairs of the corporation; and to perform such other proper purposes which it may be empowered to perform pursuant to its by-laws and this Declaration, or which may be reasonably necessary to the achievement of its specific purposes; and,

WHEREAS, for the aforesaid purposes the Declarant has formed said corporation under the name "Lobinger Point Property Owners Association, Inc.", a non-profit corporation chartered under the laws of the State of North Carolina, membership in which corporation shall be mandatory for all owners of the Lots; and,

NOW, THEREFORE, Declarant hereby declares that all of said Lots shown upon the recorded plat of Lobinger Pointe shall hereafter be held, owned, enjoyed, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions (collectively hereafter sometimes referred to as "covenants and restrictions"), all of which are for the general purposes stated above. These covenants and restrictions shall be appurtenant to and run with title to the Lots, and shall be binding on all parties having or acquiring any right, title or interest therein, whether specifically mentioned in any subsequent conveyance or not.

ARTICLE I

Definitions

As used herein and in any amendment hereto, the following definitions shall apply:

Section 1. "Declarant" shall mean and refer to Jay McDonald and Michael Dearth.

Section 2. "Lot" shall mean and refer to any of the twenty-five Lots shown upon the recorded plat of the Subdivision.

Section 3. "Owner" shall mean and refer to the record owner, including Declarant, whether one or more persons or entities, of a fee simple title to any Lot, including trusts, but

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excluding lienholders and owners of equitable interests.

Section 4. "Association" shall mean the Lobinger Pointe Property Owners' Association, Inc., a North Carolina non-profit corporation formed to administer, own, regulate, and enforce the common interests of the Owners in the Subdivision.

Section 5. "Subdivision" shall mean all of that property appearing upon the recorded plat of Lobinger Pointe recorded in map book 30, page 310, Carteret County Registry.

Section 6. "Common Area" shall mean all real property, amenities, fixtures, and facilities owned by the Association for the common use, benefit, and enjoyment of all members of the Association.

Section 7. "Member" shall mean and refer to every person or entity who holds a fee ownership interest in a Lot, excluding lienholders and owners of equitable interests.

Section 8. "Common Charges" shall mean and refer to all dues and assessments, both regular and special, which are levied by the Association against Owners and Lots which are reasonable and necessary for the accomplishment of the purposes of the Association, and include expenses provided or permitted specifically by the by-laws of the Association or this Declaration.

As used herein, "dues" and "assessments" are used interchangeably. Both are generally intended to mean payments for which Owners are obligated to pay the Association in order for the Association to meet its usual, recurring operating budget items. As used herein, "special assessments" are generally intended to mean non-recurring or unusual costs and expenses levied for a particular purpose. Dues, assessments, and special assessments are all "Common Charges". The Association shall have the authority to determine how Common Charges are payable, and may provide Owners with more than one payment option.

ARTICLE II

Easements

Section 1. Access Easement and Obligation to Maintain. Every Owner shall have a non-exclusive, perpetual easement for ingress, egress, and regress to and from their Lot to and from Live Oak Road (N.C. State Road # 1215) over and upon that right of way shown as M & J Court and Lobinger Court upon the recorded plat of the Subdivision, and Declarant hereby dedicates said right of way for such use and benefit of the Lot Owners. Further, for such time as said right of way has

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not been accepted for maintenance by the N.C. Department of Transportation or a municipal jurisdiction, the maintenance thereof shall be the responsibility of the Association which shall be bound to keep the paved surface of said roadway reasonably free of potholes and substantial defects, and in substantially the same general condition as it exists on the date of recordation of these covenants. The cost thereof shall be borne and paid by the Association from its operating revenues or capital reserves maintained for such purpose. However, any damage to roads, curbing, or other areas within the right of ways in the Subdivision which is caused by a Lot Owner, its general contractor or sub-contractors, or other permittees shall be the liability of such Lot Owner who shall promptly repair the same..

Section 2. Easement for Utilities and Right to Contract for Lighting. An easement ten feet (10') in width and running across each Lot along and with the streetside boundary lines of all Lots, and an easement ten feet (10') in width, the centerline of which runs along each shared side lot line of all Lots is hereby created and dedicated for the installation, maintenance, replacement, and repair of electrical, street lighting and poles, utility junction boxes, telephone, water, sewer, cable TV, and other utility service to the Subdivision and the Lots therein. Further, Declarant reserves the unilateral right to execute such easement instruments in favor of utility providers as are necessary to convey these easements.

The Declarant shall install street lighting in the Subdivision at its expense. This Declaration will subject the Association to a continuing periodic payment obligation for the use and maintenance of such street lighting to Carteret Craven Electric Cooperative at its regularly established rates for such service. Declarant reserves the unilateral right to enter into such a contract which will bind the Association for such payment accordingly.

Section 3. Easement for Drainage. Easements for drainage within the established ditching plan for the subdivision are hereby dedicated and reserved for the benefit of all Lots. The maintenance of these easements shall be the responsibility of the Association. However, any Owner whose acts or omissions cause or result in any impairment of these easements shall be solely responsible for any curative costs required. (An example of this would be placing any debris in a ditch). The location and dimensions of these easements are more particularly shown and depicted upon the recorded plat of the Subdivision. No construction, planting, or other impediment or

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interference with the free flow of drainage water within said easement shall be permitted.

Section 4. Easement for Septic and Wastewater Disposal. The map of Lobinger Pointe depicts a strip of land approximately 75 feet in width and 958 feet in length running along and with the northern boundary line of the Subdivision. This area is dedicated for use by Lots 1, 3, 4, 8, 9, 10, 11, 12, 13, 14, 16, 17, 23, 24, and 25 for septic and wastewater disposal from such Lots. Within this strip is located a separate drainfield for each Lot.

ARTICLE III

Property Rights, Obligations, and Use Restrictions

Section 1. Lots Restricted to Single-Family Residential Uses. No Lot shall be used by any Owner or permittee except as a primary or secondary residence for himself/herself, their families, or tenants. No in-home business or commercial activity of any sort shall be permitted, nor shall any Lot be used solely for storage purposes. No Lot shall be subdivided into two or more lots.

Section 2. Vehicular Parking, Equipment, Boats, and Right of Way Restrictions. No Owner or member of an Owner's family who maintains residence upon a Lot shall park or place, or permit anyone else to park or place, any vehicle, motorcycle, boat, trailer, ATV, camper, RV, motor home, travel trailer, tractor, jet ski, equipment, tools, riding lawnmower, paraphernalia, or any other item of personal property within the right of way of any street. However, temporary guests, invitees, and other such visiting permittees may temporarily park their vehicles against the street curb while visiting or attending to business upon a Lot.

Only one boat, required to be on a trailer and not exceeding 33 feet in overall length, shall be permitted upon a Lot, and only upon the concrete portion of the driveway leading to the garage from the street, or upon a poured and reinforced concrete pad adjoining the driveway. Nothing shall prohibit an Owner from keeping such a boat to the rear of the Lot behind the rear plane of a home.

No clothes line shall be placed upon that portion of a Lot which lies forward from the rear plane of the house upon such Lot.

No equipment or tools of any sort, stored items of any sort, firewood, building materials, RV, camper, dirt or rock pile, brush pile, vegetable garden, weight lifting or other sports equipment, basketball goal, jet skies, tractor, boat trailer, playground equipment, mulch station, pump house (excluding "well head", which is subsequently addressed herein), barbeque grill or pit, swing set,

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riding lawn mower, motorhome, ATV, travel trailer, or any similar item(s) shall be permitted upon a Lot except to the rear of the rear plane of the home on a Lot. Nothing herein contained shall impair an Owner's right to plant and maintain attractive landscaping on a Lot; accent lighting for foot traffic; or to install an underground sprinkler system.

The parking of personal vehicles of an Owner or members of his/her household shall be permitted only upon the concrete portion of a driveway and in the garage of each Lot. No vehicle, equipment, engine, or device of any type shall be worked on, repaired, modified, placed on risers or jacks, or oil changed on any Lot except inside the garage located upon a Lot. No vehicle which is inoperable shall remain upon any Lot for more than 120 days. No Lot shall be used simply for storage purposes with regard to any item. No vehicle having more than two axles shall be permitted upon any Lot, except temporary delivery vehicles in the course of making deliveries to Lots.

Section 3. Garage Door Requirement. To enhance the orderly appearance of the neighborhood, the garage door of a home shall be closed at all times that no Owner or other occupant is physically present upon the Lot. Owners are encouraged to maintain the interior of their garage and areas underneath a house built upon pilings in as neat and orderly a condition as possible, and to close the garage door when not in use, even when Owner or occupant is present upon the Lot.

Section 4. Mailboxes and Receptacles. No Lot shall have located upon it more than one receptacle for mail delivery and one receptacle for newspaper delivery. These receptacles may be placed adjacent to and inside of the street curb, and shall be kept sturdy, upright, and in good condition and appearance at all times.

Section 5. Fences. No fence (including portions thereof) shall be erected upon any Lot which is located or projects streetward from any rear vertical plane of the house constructed upon a Lot. No fence shall be constructed on any Lot which is higher than four feet (4') from ground level.

Section 6. TV and Radio Antennas. No TV or radio antennas or signal receiving devices of any sort shall be constructed or placed upon any Lot, except that a single TV "dish" receiver, not exceeding twenty-one inches (21") in diameter, may be affixed upon the rear side of a house located upon a Lot.

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Section 7. Restriction Against Construction or Placement of Detached Structures. Except as specifically provided below, no Owner shall construct or place, or have constructed or placed, upon any Lot any separate, detached, free-standing garage, shed, barn, tent, lean-to, car port, awning, covering, or other structure. This provision does not prevent the installation of street lights, junction boxes, and other utility devices by utility providers within easements designated for such purposes. All garages for vehicles shall be physically attached and integrated into the house structure. Provided, however, that a single, fully enclosed, storage building, not exceeding 120 square feet, may be erected on a Lot to provide general storage for Owner and Owner's family, providing the building has exterior siding of the same materials as that of the house siding, unless the house is brick, in which case the siding shall be brick or painted (or stained) "T-111", wood, vinyl, or hardi-board lap or panel siding, and is located to the rear of the rear vertical plane of the house. Any such storage building shall have a shingled roof with a pitch the same as the house.

Section 8. Utilities. All utility services to dwelling structures upon the Lots shall be installed underground.

Section 9. Prohibition Against Certain Dwelling Structures. Dwelling structures of the following design or composition shall not be permitted on any Lot:

- a. Any structure, or substantial part or component thereof, which is put together, constructed, or assembled, in whole or in part, at a place other than upon the Lot itself and transported to the Lot on any vehicle. Not included within this prohibition, however, are unassembled building materials and pre-fabricated floor or roof trusses.
- b. Mobile homes of any description.
- c. Modular homes of any description.
- d. Prefabricated homes of any description.
- e. "Log homes" of any description.
- f. "A-Frame" homes of any description.
- g. Homes which utilize exposed concrete blocks, in whole or in part, including exposed concrete block foundations. This prohibition does not prohibit brick, or brick foundation, homes.

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h. Homes utilizing aluminum siding, excluding however, aluminum trim for soffets, gutters, downspouts, trim, flashing, and other such nominal uses.

i. Houses may be built upon pilings or "stilts", provided the underside of the house floor structures (girders, beams, joists, sub-flooring, etc.) are completely enclosed and no wiring, plumbing, insulation, floor structures, and so forth are visible. If any enclosure of ground level floor space is constructed (such as a storage room, workshop, stairwell, etc.), then such enclosure shall contain a minimum of 100 square feet.

Section 10. Animals. No animals of any sort shall be kept on any Lot except domestic cats and dogs. No Owner shall have more than two pets of either type upon a Lot. No animals may be kept, bred or maintained for any commercial purpose. No animal shall be restrained outside of a home at any time on any leash, wire, cable, rope or other such device which is attached to any stake, post, tree, or other fixed object. All animals shall be on a leash or otherwise restrained when off the Lot of an Owner, and under no circumstances allowed to roam unrestrained about the neighborhood. No animal shall be allowed outside of any home if the animal barks or growls excessively or otherwise in any fashion creates continual disturbances or acts menacingly to the neighbors, especially during night time hours. All permitted animals shall have current rabies vaccinations. The standard by which such conduct is to be measured is what a reasonable homeowner living in a quiet, private, residential subdivision would find offensive or disturbing under all attendant circumstances.

Section 11. ^b No Noxious, Immoral, or Illegal Activity or Nuisances. No noxious, immoral, offensive, or illegal activity or nuisance shall be permitted upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

Section 12. Fuel Storage Tanks. Only storage tanks holding propane or other liquified natural gas shall be permitted upon a Lot, and then only if placed against the rear of the house so it cannot be seen from the street. No other chemicals or explosives shall be upon any Lot, except household, garden, and yard cleaning products, pesticides, and insecticides; nominal paint and varnish solvents for personal use; and firearms ammunition for personal use. This prohibition shall not prevent the periodic treatment of termites, fire ants, or other common pests by a licensed pest treatment company.

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Section 13. Signs. No sign, billboard, or advertising placard shall be allowed on any Lot, except:

- a. One sign per Lot, not exceeding 150 square inches, identifying the Lot by Owner name and address.
- b. One "For Sale" or "For Rent" sign not exceeding 6 square feet.
- c. During house construction only, signs which indicate the names of contractors and subcontractors, and building permits.

Section 14. Miscellaneous Prohibitions and Provisions. The accumulation or storage of any rubbish, trash, debris, or unused material is prohibited. Any construction debris or waste shall be removed no later than the day the occupant first begins occupancy of the home constructed upon a Lot.

No burning of household trash or of any man made items of any sort shall occur on a Lot. Only burning to remove collected vegetation, tree limbs, branches, and so forth shall be permitted, and then only to the rear of the rear plane of a home and in conformity with applicable burning laws.

All garbage containers shall be covered and kept to the rear of the home on a Lot, except on pick up days.

The yards of Lots shall be kept cut and free of weeds and uncontrolled vegetation. The Owner of a Lot shall be responsible to remove any dead trees to minimize the risk of injury to persons or property.

No window or other "unit" air conditioners shall be installed in any home.

An Owner renting a home to a tenant shall be responsible for any violation of this Declaration by the tenant, and shall make the tenant aware of these covenants and restrictions.

No Owner shall permit or allow any loud noises to originate from his/her Lot, such as that emanating from loudspeakers, exterior stereo speakers and radios, television sets, loud or boisterous party-goers, bands and musical groups.

Temporary, self-contained "port a john" units may be maintained upon the Lot during the construction of a house, but only to the minimum extent required by law.

No Owner may conduct more than two "yard or garage sales" of a day's duration each per calendar month.

No "solar panels" shall be attached to any roof of a house or elsewhere on a Lot which is visible from the street.

No Owner shall install, or have installed, any type of garbage disposal system in a house or any related part of a house or permitted outbuilding. This restriction is to assure that the waste water disposal system and related drain fields will not be impaired on account of having to handle garbage disposal waste.

ARTICLE IV

Restrictions on Living Structure

All houses built upon the Lots shall consist of not more than two and one-half floors of living space. Any storage room built at ground-level of a house constructed upon pilings (see Article III, Section 9, subparagraph i) shall not be considered a "floor" for purposes of this provision. A house may have an uncovered deck on the rear side, but not on the front side. All front entry stoops or porches shall be covered with a shingled roof. Each house built on a raised foundation, other than on pilings, shall have an attached two car garage, with garage doors, and with a poured concrete floor and concrete driveway leading to the street. Each house built upon pilings shall provide garage space for two cars underneath but without a requirement for garage doors, and shall have a poured concrete driveway leading to the street. No house shall have a flat roof. Each house shall consist of a minimum of 1,400 square of heated living space, excluding the garage and any storage room constructed at ground-level of a house built upon pilings. Only houses having an exterior of brick, stone, or stucco, or of vinyl, wood, or hardboard lap or shingle siding are allowed. No "octagonal" or "geodesic" houses are allowed, nor are houses constructed of logs. No exterior lighting shall be placed upon a Lot or home on a Lot which casts a beam of light toward the home of an adjoining Lot Owner, or otherwise unreasonably interferes with a neighbor's enjoyment of his/her property. No houses shall be built upon a slab foundation at ground level. All houses shall be built upon a foundation raised at least 30 inches above finish grade level, either upon piers or raised concrete slab. No exposed cinder or concrete block foundations shall be permitted. Foundations shall be veneered either with a brick or painted stucco, or other similar material. All houses must be completed within 12 months of the date of initial commencement.

No physical part of a house shall be erected closer to a boundary line than the minimum set

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back lines as shown on the recorded plat of the Subdivision. Because of the configuration of the Lots, these set back lines vary from Lot to Lot, and the Owner's attention is directed to the plat for further determination of the applicable set back requirements of a particular Lot. The construction of landscaping, a concrete driveway, or a permitted fence which lies within the set back area shall not violate this provision, but the location of the permitted storage building shall not lie within such area. All driveways shall be concrete.

ARTICLE V

General Provisions

Section 1. Enforcement. Any Lot Owner, individually or with other Lot Owners, shall have the right to enforce all restrictions, conditions, and covenants set forth herein in any proceeding at law or equity. Any forbearance or failure of any Lot 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 judgement or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

Section 3. Amendment of Covenants, Conditions, and Restrictions. This Declaration shall run with and bind the property in the Subdivision made subject hereto for a term of twenty-five (25) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years each, unless prior to such twenty-fifth year anniversary date, 90% of the Lot Owners execute an instrument terminating the same at the end of the initial twenty-five year period. If not so terminated, then the same termination procedure shall apply for each successive 10 year renewal period. This Declaration may be amended by the Association during the first twenty (25) year period by and with the consent of not less than ninety percent (90%) of the Owners of Lots, and thereafter by and with the consent of not less than seventy-five percent (75%) of the Owners of Lots (one vote per Lot); provided, however, that the Association may amend this Declaration at any time, without the consent of Owners, to correct any obvious error or inconsistency in drafting, typing, or reproduction. All amendments shall be effective from the date of recordation in the Carteret County Registry, provided, however, that no such amendment shall be valid until it has been indexed in the name of this Association. When any instrument purporting to

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amend this Declaration has been certified by the Board of Directors, recorded, and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots in the Subdivision.

Section 4. Amendment of Declaration by Declarant. The Declarant, without the consent or approval of any other Member or Owner, shall have the right to amend this Declaration to conform to the requirements of law or any governmental agency having legal jurisdiction over the Property, or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made or insured by a governmental agency, or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale of such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of the Subdivision, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U. S. Department of Housing and urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

For so long as Declarant holds a majority of the votes in the Association, Declarant may amend this Declaration, without the consent or approval of any Member or Owner, for any reason it deems appropriate. However, no such amendment shall be made or valid which results in any Lot previously sold and conveyed being in non-compliance with the amended Declaration, without the written consent of the Owner of such Unit. Further, no such amendment shall be made or valid which changes the overall general character of the Properties as a residential community; which results in, or creates the potential for, more Lots than originally platted; or which substantially changes the use or building restrictions of Lots, without the written consent of all Owners then owning Lots. For example, any change in minimum square footage of houses to be built or minimum set back lines shall

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be deemed a "substantial change" requiring the consent of all Lot Owners.

No amendment made pursuant to this Section shall be effective until duly recorded in the Register of Deeds of Carteret County.

Section 5. Stormwater Management Restriction. The following covenants are intended to assure compliance with State Stormwater Management Permit Number SW8-020920 as issued by the Division of Water Quality under NCAC 2H.1000:

1. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.
2. These covenants are to run with the land and be binding on all persons and parties claiming under them.
3. 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.
4. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.
5. The maximum built-upon area per Lot is 5,575 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, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.
6. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development, except for average driveway crossings, is strictly prohibited by any persons.
7. Each Lot will maintain a 30' wide vegetated buffer between all impervious areas and surface waters.
8. All roof drains shall terminate at least 30' from the mean high water mark of surface water.

ARTICLE VI

Membership in the Association

Every Owner of any Lot in the Subdivision shall be a Member of the Association. Membership in the Association shall be mandatory and no Owner may voluntarily withdraw from

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membership, although rights of Owners to the full enjoyment of the Common Areas may be curtailed or restricted by the Association for non-payment of dues and assessments or for non-compliance with its established rules and regulations. No curtailment shall acquit any Owner from the continuing obligation to pay Common Charges. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. The Association may enact reasonable rules relating to the proof of ownership of a Lot. No curtailment, for whatever reason, shall result in the termination of the use rights of any Owner of a Lot to the easement dedicated to such Lot for the discharge of the sewage and wastewater from such Lot.

ARTICLE VII

Voting Rights of Members

Section 1. Classes of Voting Members. The Association shall have two classes of voting membership:

'a. **Class A Members:** Class A Members shall be all those Owners as defined in Article I, with the exception of the Declarant. When more than one Owner holds an interest in any Lot, all Owners of such Lot shall be Members. Class A Member voting rights are as set forth in Section 2 below.

b. **Class B Member:** The Class B Member shall be the Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot in which it holds the interest required for membership by Article I, provided that the Class B membership shall cease and be converted to Class A membership when the total votes outstanding in Class A membership exceeds the total votes outstanding in Class B membership.

Section 2. Voting Rights. Members shall be entitled to vote at all annual and special meetings of the general membership on matters required by the by-laws of the Association, this Declaration, or any applicable statute to be voted upon. While all Owners shall be Members, there shall be only one vote per Lot entitled to be cast at meetings of the Association by the Owners of a Lot, except for Declarant who shall have ten (10) votes per Lot as provided in this Article VII. In cases where two people are Owners (such as husband and wife, parent and child, or brother and sister), a unanimous vote of the two will be required; and in the case of three or more people (such as heirs), a simple majority shall be required. In the event that only one of multiple

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Owners of a Lot attends a meeting of the Association at which a vote is taken, or votes in some other fashion by approved proxy or otherwise, such vote for the Lot so represented will be presumed to be and recorded as the vote made and entered for that Lot, with the approval of all, or a majority of, the Lot Owners.

Section 3. Suspension of Voting Rights. The right of any Member to cast a vote for a Lot may be suspended by the Association for a substantial violation of the Association's rules and regulations, or of this Declaration.

ARTICLE VIII

Common Charges

Section 1. Creation of the Lien and Personal Obligation for Common Charges.

Each Owner of a Lot, subsequent to the Declarant, shall be obligated to pay to the Association when due all Common Charges as hereafter provided and as may be duly enacted and levied by the Association against each Lot from time to time. The obligation of the first such subsequent Owner for such payment shall not commence until the first day of the month following the month in which the deed to such first subsequent Owner is recorded.

As security to the Association for such obligation, the Association is hereby granted a specific and continuing lien upon each Lot, effective as of the recording of this Declaration. In the event any such Common Charges are unpaid by an Owner beyond the due date for such payment, there shall be no necessity for the filing upon the public record of any lien, claim, lis pendens, or notice in order to perfect or establish such lien, unless such recording is otherwise required by applicable law. The recording of this Declaration creates and perfects the lien, and payment of such Common Charges from time to time shall not extinguish the lien on a Lot, as the lien exists as security for the continuing obligation of the Lot Owner to pay. Notwithstanding the above, however, a public record filing of the lien shall be permitted by the Association if the Association deems the same to be necessary, or applicable law otherwise requires.

The lien for Common Charges against Lots shall be subordinate to the lien of all lenders holding deeds of trust and the lien for property taxes, regardless of when such lender or tax liens are recorded or first arise.

Any Common Charge which remains unpaid beyond its due date shall bear interest at the rate

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of 1.5 percent (1.5 %) per month (18% per annum) until paid. In the event the Association engages an attorney to represent it in the collection of unpaid Common Charges against any Owner and Lot, then the Association shall be entitled to also recover its reasonable attorney fees incurred in such undertaking, consistent with applicable law. The lien created hereby shall also cover such interest and attorney fees. Further, the lien created hereby shall continue as a lien for any delinquent or prospective Common Charges beyond any subsequent transfer of title from one Owner to another.

In addition to constituting a lien as aforesaid, the Common Charges herein provided shall also be the personal obligation of the Owner(s) of the Lot at the time the Common Charge fell due. However, the personal obligation of any such Owner for delinquent Common Charges shall not become the personal obligation of any successor Owner, unless the successor expressly assumes them. All Owners of a Lot shall have personal joint and several liability for Common Charges, and an action to collect delinquent Common Charges may be maintained by the Association against such Owners and upon the lien, simultaneously, as provided by applicable law. However, there can only be one recovery.

Notwithstanding anything to the contrary in this Article, Declarant shall have no obligation for the payment of Common Charges for unsold Lots and in its inventory.

Section 2. Extent of Lien. The lien provided by this Article shall extend to the full boundaries of a Lot and all improvements situated within the Lot, as well as all beneficial rights, incidents, and easements appurtenant to the Lot.

Section 3. Purpose, Fiscal Year, and Determination of Common Charges.

The purposes for such Common Charges shall include, but not be limited by, general operations, responsibilities, and administration costs of the Association; maintenance of reserve accounts; capital improvements, repairs, maintenance, and replacements; insurance costs; property taxes on Common Areas; landscape maintenance; and any other purpose deemed reasonable and necessary to enable the Association to meet its obligations hereunder or which is otherwise for the accomplishment of the general purposes for which the Association is formed.

All such Common Charges shall be fixed, established, and collected from time to time by the Association as provided herein and in the by-laws. The fiscal year of the Association for the year 2003 shall begin on the date the Declarant conveys the first Lot sold to a subsequent Owner and end

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on December 31, 2003. Thereafter, the fiscal year of the Association shall be the calendar year.

Common Charges shall be established by the Association for each coming fiscal year and shall be determined, with written notice sent to all Members, no later than December 1 of each year. In establishing the Common Charges for coming the year, the Association shall consider all current costs and expenses of the Association; the increase, if any, in such costs and expenses over the prior year; the likelihood of any increase during the coming year; any fixed indebtedness; the necessity for reserves for future needs; and any other matter reasonably related to the obligations of the Association consistent with its purposes. For each coming fiscal year, the Association shall have the right to increase the regular, periodic annual dues by not more than ten percent (10%) above the amount established for the current fiscal year and without membership consent. Any increase above 10% shall require approval of not less than a two-thirds majority vote of a quorum of Members present and voting in person or by approved proxy at an annual meeting or at a special meeting called for that purpose, following due notice.

The Association, upon demand at any time from any person having a legitimate need to know, such as a settlement agent, lender, or attorney, shall furnish a certificate to such person in writing signed by an officer of the Association or his designee setting forth the status of Common Charges with respect to any Lot. No cost shall be assessed for such certificate. A properly executed certificate of the Association as to the status of such Common Charges is binding upon the Association as of the date of its issuance, whether accurate or not.

The Association, through its board of directors, shall have the right to employ a different rate structure in determining dues for Lots actually connected, or required to be connected, to the drainfields located within the 75' strip of land dedicated for such use upon the recorded plat of the Subdivision. The reason for this provision is that an Owner of a Lot that is not required to be connected to such drainfield, or an Owner of a Lot that is required to be connected to such a drainfield, but who has not yet built a house upon such Lot, should not be required to contribute to the cost of maintaining or repairing it.

Section 4. Specific Initial Periodic Dues For Fiscal Year 2003. The Owner (other than Declarant) of each Lot is obligated to pay to the Association regular dues for fiscal year 2003 in the amount of \$100.00 for the year (or prorated portion thereof, depending upon

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the date of closing by Owner on a Lot), or such other amount which is determined by the Board of Directors at the organizational meeting of the Association. Such dues shall commence and be payable on the first of the month following the month in which the deed for the Lot of the Owner is recorded, and on the first of each successive month thereafter during fiscal year 2003.

Section 5. Special Assessments for Capital Improvements, Repair, Replacement, and Acquisition. In addition to the regular, periodic dues as authorized in this Article, the Association may levy a special assessment applicable to a specified fiscal year or years for the purpose of defraying, in whole or in part, the costs of required capital improvements, repairs, replacements, or acquisitions to the Common Area. Provided, however, that such special assessment shall require approval of not less than a two-thirds majority vote of a quorum of Members present and voting in person or by approved proxy at an annual meeting or at a special meeting called for that purpose, following due notice.

Section 6. Uniform Rate of Assessment. Except as provided in Section 3 above, or otherwise provided elsewhere in this Declaration or by-laws, Common Charges must be fixed at a uniform rate for all Lots, on a per Lot basis, and may be collected on a monthly or other periodic basis.

Section 7. Collection of Common Charges. Remedies for collection of Common Charges and for enforcement of liens by the Association may include, among other remedies available by law, collection by lien enforcement procedures set forth in applicable North Carolina law.

Section 8. Subordination of the Lien to Mortgages. The lien securing Common Charges on any Lot shall be subordinate to the lien of any mortgage or mortgages on such Lot, whether or not the lien attached before or after the recording of any mortgage or mortgages. The sale or transfer of any Lot shall not affect the assessment lien or any arrearage owed for Common Charges. However, the sale or transfer of any Lot by a trustee pursuant to mortgage foreclosure shall constitute a discharge of the lien against said Lot securing such Common Charges due for said Lot up to the date of said sale or transfer. No such sale or transfer, however, shall discharge the lien for Common Charges nor relieve a Lot from liability for Common Charges which become due thereafter.

Nothing in this Section 8, however, shall discharge the personal obligation of a delinquent Owner for the payment of delinquent Common Charges.

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Section 9. Exempt Property. Any portion of the Property not constituted or used as a Lot, including such portions owned by the Association, shall be exempt from the Common Charges and the lien therefor.

ARTICLE IX

Architectural Control Committee

Construction and maintenance of of houses upon the Lots of the Subdivision shall be governed by the Architectural Control Committee of the Association created and described below.

Section 1. Composition and General Purpose. There is hereby created an Architectural Control Committee (hereinafter, the "Committee") of the Association. Said Committee shall consist of three (3) members. Declarant shall have the unilateral right to appoint, substitute, or remove the members of the Committee until such time as all Lots in the Subdivision are conveyed by Declarant, or until such earlier time as Declarant shall elect to transfer such rights to the Association. Such transfer shall be accomplished by written notice of same to the Association from Declarant. Upon such notice, or upon the conveyance by Declarant of the last Lot to be conveyed by Declarant, the Association shall thereafter appoint the members of the Committee. The period of service of individual members of the Committee shall, to the extent practical, be staggered to enhance continuity of experience.

The Committee shall exist for the general purpose of regulating the manner in which Lots and Common Areas are improved, landscaped, and utilized by the Owners and the Association; and the exterior appearance and design of houses constructed on Lots; and enforcing all other land use restrictions made applicable to Lots and Owners by this Declaration or the subsequent rules and regulations of the Association.

Section 2. Review of Proposals of Owners. No Owner shall commence construction of any improvement upon a Lot until the plans and drawings have been submitted to the Committee for approval. The Committee shall review proposals by Lot Owners for the construction of houses and landscaping of Lots and by the Association with respect to Common Areas. The Committee shall approve the proposals if they meet all of the specific requirements of this Declaration and the rules

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and regulations of the Association as may be enacted from time to time, and if in the opinion of the Committee, the overall appearance of the property, as improved, will be visibly compatible and harmonious with other Lots and houses constructed upon Lots in the Subdivision. Approval,

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conditional approval, or disapproval of such proposals shall be given to Owner within 30 days of the date such proposal was first presented to the Committee. Notification of approval or disapproval shall be in writing. No improvement which is approved and accomplished shall be subsequently disapproved by any later Committee.

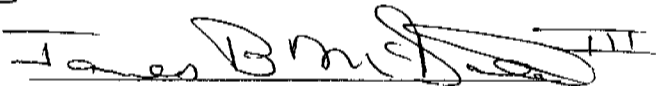
Section 3. Duty to Monitor. Further, the Committee shall monitor the ongoing beautification and development of the Properties generally to assure an aesthetically pleasing and manageable landscape. Any Owner deemed by the Committee to be in violation of any land use restriction, rule, or regulation shall be cited by the Association with appropriate notice delivered to him/her specifying the particularities of the perceived violation, and giving Owner 10, 20, or 30 days (as deemed most appropriate by the Committee) to cure the violation. Any failure to cure shall give rise to injunctive remedies in favor of the Association as provided by law.

Section 4. Right of Appeal. An Owner has a right of appeal to the full Board of Directors of the Association with respect to any proposal denied by the Committee or any citation of non-compliance. Such appeal must be communicated and delivered in writing to any member of the Board within 10 days of the date notification of rejection by the Committee is received by the Owner or within 10 days of receipt of any citation. The Board shall meet and act on the appeal within 30 days of the date appeal is first given. The appeal shall be denied if the only basis of the appeal is a general difference in opinion between the Owner and the Committee as to the suitability of the proposal or the substance of the citation, although the Board may sustain the appeal for any good cause it chooses.

WHEREFORE, this Declaration has been executed by Declarant on the date appearing on the first page above.



Michael A. Dearth



James B. McDonald, III

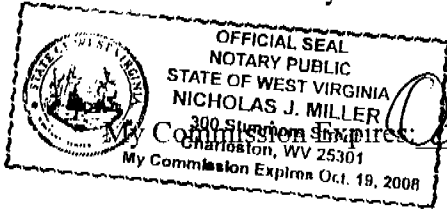
STATE OF WEST VIRGINIA
COUNTY OF JACKSON

I, NICHOLAS J. MILLER, a Notary Public of the County and state aforesaid, certify that Michael A. Dearth personally appeared before me this day and acknowledged

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the due execution of this instrument.

Witness my hand and official stamp or seal, this 9 day of June, 2003.



Nicholas J. Miller
Notary Public
October 19, 2008

NORTH CAROLINA
CARTERET COUNTY

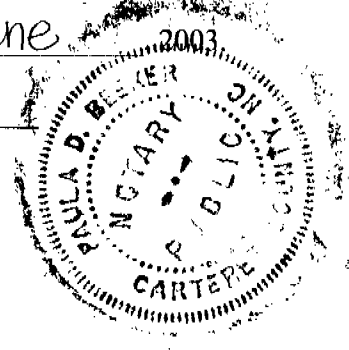
I, Paula D. Beeker, a Notary Public of the County and state aforesaid, certify that James B. McDonald, III personally appeared before me this day and acknowledged the due execution of this instrument.

Witness my hand and official stamp or seal, this 10th day of June, 2003.

Paula D. Beeker

Notary Public

My Commission Expires 2-16-08



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