

SECTION III

The Cape Homeowners Association Summary of Restrictive Covenants

1. Home Owners Association

The Developers have formed, or chosen to participate, in an Owners Association, known as "The Cape Homeowners Association" for the purpose of maintaining the common areas, streets and entrances to an in THE CAPE, all sections and phases. Every lot or condominium unit owner shall automatically become a member of the Association upon the acceptance and the recording of a Deed to any lot or condominium unit.

2. Membership and Voting Rights

The qualifications for membership in the Association, the manner of admission to membership in the Association, the manner of termination of such membership, and the voting rights of the members of the Association shall be set forth in the Articles of incorporation of the Association.

3. Assessments, Liability, Lien and Enforcement

The Association has heretofore been given the authority to administer the operation and management of the common areas of the property; it being recognized that the delegation of such duties to one entity is in the best interests of the owners of all residential lots and condominium units in THE CAPE. To properly administer the operation and management of the common areas, the Association will incur, for the mutual benefit of all the owners of residential lots and condominium units, costs and expenses sometimes herein referred to as "common expenses". To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make levy and collect assessments against the members of the Association and their residential lots and condominium units. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation of, and for capital improvements to the common areas, which for the purpose of these Articles shall be deemed to include, but not be limited to, the private streets and roads of THE CAPE and all other improvements, the following shall be operative and binding upon the owners of all residential lots and condominium units:

(1) Creation of the Lien and Personal Obligation of Assessments:

The Developer, for each lot or condominium unit owned within the property, and each owner of any lot or unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (i) annual assessments or charges, and
- (ii) special assessments for capital improvements or special assessments as established by the Board of Directors of the Association, such assessments to be established and collected as hereinafter provided.

(Fairways; Lakeside)

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, if any, shall be a charge on the lots and units and shall be a continual lien upon each lot and unit against which they are levied. Each such assessment, together with interests, costs and reasonable attorney's fees shall also be the personal obligation of the person or entity who is the owner of such lot or unit at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to any successor in title unless expressly assumed by him.

4. Invalidation of Restrictions

Invalidation of anyone of these covenants by judgments or court order shall in no way affect any of the other covenants herein, which shall remain in full force and effect.

5. Violation of Restrictions

If the parties hereto, or any of them, or their heirs or assigns, shall violate any of the covenants herein, it shall be lawful for any person or persons, owning any real property situated in said Shipwatch Village, any phase, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, and either to prevent him or them from doing or to recover damages or other dues for such violation.

6. Amendments to Restrictions

At any time prior to April 15, 1984, these restrictions may be amended by the Developer at its discretion, but no to impair the property value of the lot owners. Thereafter, these restrictions may be amended by vote of the owners of two-thirds (2/3's) of the lots in Shipwatch Village, all phases.

7. Authority of Covenants and Restrictions

All covenants, restrictions and affirmative obligations set forth in the Restrictions shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not limited to, the successors and assigns, if any, of the Developer, for a period often (10) years from the date hereof after which time all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the owners of a majority of the lots (not including mortgagees or trustees under Deeds of Trust) substantially affected by such changes in covenants, has been recorded, agreeing to change said covenants in whole or in part.

8. Home Sites

1. All lots shall be used for residential purposes only.

2. No house trailer, mobile home, tent, shack or temporary structure of any nature shall be located or used at any time as a residence

3. On corner lots, the side having the least frontage shall be considered the front lot line.

4. No lot may be subdivided, nor its boundary lines changed, except with the prior written consent of the developer. However, the Developer hereby expressly reserves to itself: its successors and assigns, the right to replat any two (2) or more lots in order to create a modified building lot or lots, and to take such steps as are reasonably necessary to make such replatted lot suitable and fit as a building site, said steps to include, but not limited to, the relocation of easements, walkways and rights of way to conform to the new boundaries of the said replatted lots.

9. Architectural Control Committee

1. The Developer shall create and establish an Architectural Control Committee for the purpose of reviewing and approving any and all proposed buildings and improvements as to conformity and harmony of external design and consistency with plans of existing residences or other buildings, and site improvements.

2. The Architectural Control Committee shall be composed of a minimum of three (3) representatives, appointed by the Developer, including at least one (1) resident, and shall adopt such administrative procedures as will ensure the submission, review and approval of any and all buildings and/or improvements construction.

3. No buildings, fence, wall or other structure shall be erected, placed or altered on any lot, until the proposed building plans, specifications, exterior finishes, site plan showing locations of such building or structure, and construction schedule shall have been approved in writing by the Architectural Control Committee. Refusal or approval of any such plans, location or specifications may be based by the approving authority on any ground, including purely aesthetic and environmental considerations that in the sole uncontrolled discretion of the approving authority shall seem sufficient. Failure of the Architectural Control Committee to issue a written approval or denial for properly submitted plans within twenty (20) days after submission shall be construed as an approval of said plans.

4. In addition to requiring approval of external harmony and design, the Architectural Control Committee shall monitor the compliance with all prospective covenants, conditions and restrictions, including (but not by way of limitation) prohibited activities, building setbacks, minimum floor areas, natural growth preservation, utility easements, and all improvements.

10. Construction

1. No modular homes of any nature shall be erected on any lot; however, upon review and approval prefabricated homes may be erected.

2. The Cape, Shipwatch Village, Sections 1 & 2-
No residence smaller than 1,500 square feet for one story structures, nor smaller than 1,100 square feet on the first level of structures in excess of one story shall be allowed and any lot. Said measurements shall be exterior finish, which said square footage shall be exclusive of porches, steps, walks, garages, carports, storage areas, etc.

2a. The Cape, Chandlers Place, Section 1 -
No residence smaller than 1,200 square feet for one story structures, nor smaller than 1,000 square feet on the first level of structures in excess of one story shall be allowed and any lot. Said measurements shall be exterior finish, which said square footage" shall be exclusive of porches, steps, walks, garages, carports, storage areas, etc.

2c. The Cape, Sections 2B, 3A, 4A, 5, 6, 7, 8; Lakeside; Fairways -
No residence smaller than 1,350 square feet for one story structures, nor smaller than 1,000 square feet on the first level of structures in excess of one story shall be allowed and any lot. Said measurements shall be exterior finish, which said square footage shall be exclusive of porches, steps, walks, garages, carports, storage areas, etc.

3. No structure shall be erected, altered, placed or permitted to remain on this lot exceeding 2.5 stories in height above floor or piling level.

4. The exterior of any structure under construction on any lot must be completed

within six (6) months after the beginning of construction, acts of God notwithstanding.

5. No concrete block, concrete brick, asbestos siding, cinder block or aluminum siding shall be used for the exterior of any residence constructed on any lot nor shall composition tar paper exterior dwelling be permitted, it being intended that only conventional frame or stucco exteriors be constructed on any lots subject to these covenants.

6. Construction activity on a lot shall be confined within the boundaries of said lot. Each lot owner shall have the obligation to collect and dispose of all rubbish and trash resulting from construction on his lot. All requests for approval of plans and construction of any house on any lot shall be accompanied by a \$200 deposit against clean up. The \$200 deposit shall be returned to the depositor thereof upon a lot owner's failure to collect and dispose of such trash within thirty (30) days after receipt of a written notice from the Architectural Control Committee, the committee may collect and dispose of such rubbish and trash and deduct the cost thereof from the clean up deposit.

(Lakeside)

7. A landscape plan will be submitted with all building plans, and landscaping work shall be completed within two (2) months after the building is completed.
(Lakeside)

11. Accessory Buildings

1. Small accessory buildings (which may include a detached garage, but not garage apartments) are allowed, provided such buildings are not used for any activity normally conducted as a business, and provided that any such buildings shall be constructed of similar materials and design as the main structure upon such lot.

(Lakeside; Fairways)

Garages will be attached to the main structure and accommodate two (2) cars.

2. No accessory buildings as defined in (1) above shall be constructed prior to the construction of the main building on any lot, and shall be approved by the Architectural Control Committee.

12. Building Setbacks

Since the establishment of standard inflexible building setback line for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines are established, as long as said structures meet the minimum setback and sideline limitations established from time to time by the New Hanover County Board of Commissioners. In order to assure however, that the foregoing considerations are given maximum effect, the Architectural Control Committee reserves the right to control and approve absolutely the site and location of any house or dwelling or other structure upon any lot, subject to the limitations herein set forth.

13. Tree Cutting

Prior to the start of any construction on any lot, all trees to be removed shall be marked by the owner of said lot or his agent, and no tree may be removed from any lot without the specific consent of the Architectural Control Committee.

14. Water and Sewer

If community water and sewer services are available, all lots therein must tap on to the services provided. No wells or septic tanks will be permitted upon any such lot where community services are available.

15. Utility and Drainage Easements

Easements for installation and maintenance of utilities and drainage facilities are reserved over the rear ten (10) feet of all lots and easements for drainage and utilities are reserved as shown and designated on the plat of said property. The Developer shall have no responsibility for maintaining drainage easements in connection with any said lots sold. All maintenance shall be the responsibility of the purchaser of a lot, his heirs, successors and assigns, within said easements. No structure, planting or other material 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 of flow of drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

(Fairways)

There is hereby reserved unto the Developer, The Cape Owners Association, and their respective agents, employees, successors and assigns, the perpetual, non-exclusive rights and easement over and across each lot and all unimproved portions of each dwelling area which is adjacent to the fairways and greens of the golf course. This reserved right and easement shall permit, but shall not obligate, Developer, the Association, and their respective agents, employees, successors and assigns, to go upon any such lot or dwelling area to maintain or landscape the areas encumbered by such easement. Such maintenance and landscaping shall include planting of grass, watering, application of fertilizer, mowing and the removal of underbrush, stumps, trash or debris, and trees of less than six (6) inches in diameter at a level of four (4) feet above the ground level. The area encompassed by this easement shall be limited to the portion of such lot, or dwelling area, within thirty (30) feet of those boundary lines of such lot or dwelling area which are adjacent to such fairways or greens; provide, however, the entire lot and all unimproved portions of such dwelling area shall be subject to such easement until the landscaping plan for such lot or dwelling area has been approved and implemented by the Architectural Control Committee.

Each lot and dwelling area adjacent to a golf course fairway or green shall be subject to the right and easement on the part of registered golf course players and their caddies to enter upon such lot and upon the unimproved portions or such dwelling area to remove a ball or to play a ball, subject to the official rules of the golf course, with such entering and playing not being deemed to be trespass, provided that after a residential unit is constructed on a lot, such easement shall be limited to the recovery of balls only and not play.

Notwithstanding the foregoing, golf course players or their caddies shall not be entitled to enter on any such lot or dwelling area with a golf cart or other vehicle, nor to spend any unreasonable amount of time on any such lot or dwelling area, or in any way commit a nuisance while on any lot or dwelling area.

16. Fences

1. No fence, wall or hedge in excess of five (5) feet in height shall be erected or permitted on any lot. No fence, wall or hedge, or any portion of a fence erected shall be closer to the front line, of any lot, than the rear corner of any dwelling erected upon said lot. All fences shall be of wood, and no wire or chain link fences of any nature shall be permitted.

(Lakeside)

All fences shall be stained or painted a color approved by the Architectural Control Committee.

17. Fuel Tanks, etc.

1. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within the main dwelling house, within an accessory building, within a screened area, or buried underground.

18. Property Appearance

1. It shall be the responsibility of each *lot* owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds of such lot, which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

2. It shall be the responsibility of all river front lot owners to prevent and to keep clean that portion of ill's property abutting upon the Cape Fear River.

19. Trash and Refuse

Each property owner shall provide receptacles for garbage. All cans, carts and bags must be kept in a screened area, accessory building or other storage facility, not visible from the street, except on garbage pickup days.

20. Noxious or Offensive Activities

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the neighborhood. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof

21. Advertisements

1. No advertising signs or billboards shall be erected on any lot or displayed to the public on any lot subject to these Restrictions, except that one (1) sign of not more than five (5) square feet in area may be used to advertise a complete dwelling for sale. No "For Sale" signs are allowed on any vacant property. This covenant shall not apply to signs erected by the owner/Developer used to identify and advertise the subdivision as a whole, or by a contractor for an item of work being performed on a given lot.

22. Animals and Pets

1. No animals shall be kept on the property other than household pets. The control of such pets is the responsibility of the owner, and all such pets shall be kept inside or within an approved fenced area or upon a leash when outside.

23. Mail boxes and Newspaper Boxes

All mail boxes and newspaper boxes shall be approved by the Architectural Control Committee prior to the erection thereof. All such boxes shall be in harmony with the general designs of the dwellings in the neighborhood.

24. Yard Sales / Garage Sales

No yard sales or garage sales shall ever be allowed on any lot in said subdivision.

25. Outside Antennas

No outside television antenna, radio antenna or satellite dish shall be permitted on any residential lot in the subdivision.

26. Boat Docks (Shipwatch Village. Sec. 1 & 2, Ref 1.)

1. Boat docks shall be constructed by the Developer so as to provide one (1) boat slip for each lot owner in the development.

2. Upon the sale and closing of the first lot for any grouping as established by the By-Laws of the Homeowners Association and upon written request from the purchaser thereof, the Developer shall construct the dock for that particular grouping.

3. Upon completion of construction of any dock, the owners of the boat slips assigned to said grouping shall immediately begin the payment of an additional monthly maintenance and reserve fee to the Homeowners Association., which fee will be set from time to time by said Association.

4. All funds for boat dock maintenance and reserve received by the Homeowners Association shall be kept in a :separate bank account designated for said purpose, and said Association shall keep accurate records as to the identity of the payee, the amounts paid, and the dates of receipt of all payments.

5. The Developer shall not be responsible or liable for payment of dock maintenance or reserve fees for boat slips owned by it.

SECTION IV

REFERENCES

- Section I. Articles of Incorporation; The Cape Homeowners Association
(Incorporated September 28, 1983)
- Section II. By-Laws of The Cape Homeowners Association
(Filed; November 16, 1989, Amended; December 15, 1992)
- Section III. Declaration of Condominiums and Declarations of Restrictions
1. The Cape, Shipwatch Village, Section 1, Revised May 23, 1983
(Amended; September 28, 1983)
 2. The Cape, Chandlers Place, Section 1, May 27, 1983; (Amended;
October 3, 1983; July 19, 1983; April 12, 1985)
 3. Lakeside at The Cape, July 29, 1993
 4. Fairways at The Cape, June 23, 1992