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STATE OF NORTH CAROLINA :
COUNTY OF NEW HANOVER : DECLARATION, AGREEMENT AND ASSOCIATION

The undersigned, being all of the owners of lots 7, 8, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 in that certain subdivision known as ARJEAN, as the same is shown on map recorded in Map Book 5 at page 119 in the New Hanover County Registry, in order to promote a uniform and harmonious development of said lands as a desirable residential community and so as to provide for the joint use and maintenance of a recreation area and boat ramp and for the maintenance of the channel in Pages Creek where it adjoins the lots in Arjean Sub-division; do hereby covenant and agree to and with each other and with all persons, firms, or corporations now owning or hereafter acquiring any portion of any of said land, that the use of all of said land is hereby made subject to the following restrictions, covenants, conditions and agreement of association, which shall be appurtenant to the ownership of any portion of any of said land, and which shall run with the ownership of said land and any portion or portions thereof and be binding upon each portion of said land and whomsoever owns the same, to wit:

SECTION ONE-DEFINITIONS

- (1) "Association" shall mean and refer to Arjean Recreation Association, an unincorporated non-profit association established for the construction and maintenance of recreational and boating facilities to serve the members of the Association.
- (2) "Owner" shall refer to the owner of record of any portion of the land covered by this instrument, but excluding those holding an interest in any Lot for security purposes.
- (3) "Recreation Area" shall be that area on Pages Creek, or elsewhere, set aside for the joint use of the members of the Association for recreational purposes.

(4) "Trustees" shall refer to the three (or more) Trustees in whom title to the Recreation Area is vested for the members of the Association.

(5) "Developer" refers to D. A. Gardner, his heirs, successors or assigns.

(6) "Development" refers to all real estate either now or hereafter owned by the Developer in the vicinity of Arjean Subdivision which he elects to include in this community.

(7) "Lot" refers to those portions of the Development specifically allocated by the developer for sale and use for residential purposes.

SECTION TWO-RESTRICTIONS ON USE OF PROPERTY.

1. All Lots shall be used exclusively for residential purposes, except portions may be used for streets and roads, and the Southwestern portion of Lot 12 of Arjean Subdivision may be used for a recreational area. No Lot or Lots shall be used or occupied for the manufacture or sale of any articles or for any commercial purpose of any kind or character whatsoever or for the purpose of carrying on any business, or for a hotel, motel or rooming or boarding house.

2. No dwelling shall be erected on any Lot nearer than 75 feet from the centerline of Arjean Drive. Water front Lots are excepted from this requirement.

3. No residence, improvements or alterations on said premises shall be constructed or started until the construction plans and specifications and a plan showing the proposed location of the structure on the Lot have been submitted in writing and approved by the Developer, except that upon written request of a Lot Owner for approval of plans, the Developer shall have ten days in which to approve or disapprove plans, and in the event of failure to approve or disapprove within ten days, such approval shall not be required provided the design of the proposed buildings is in harmony with the existing structures in this area.

4. No Lot in this Development shall contain less than twenty thousand square feet, and no dwelling shall be erected on any Lot other than one detached single family dwelling, not to exceed two and one-half stories in height and a one or two car garage.

5. No Lot in this Development shall be resubdivided so as to make it smaller than when conveyed by the Developer unless all parts of a subdivided Lot become parts of other whole Lots, or unless provision for such subdivision is contained in the deed of said Lot by the developer. 6. No mobile home, basement, tent, shack, garage apartment, barn or other out-building shall ever be used as living quarters on any Lot.

7. No farm animals or poultry of any kind, and no cats, shall be raised, bred or kept on any Lot. Dogs will be permitted only if they are confined to the property belonging to their owners and provided that they are not kept, bred or maintained for any commercial purpose or in such numbers or in such a manner as to become an annoyance or nuisance to neighbors or other Lot owners.

8. No Noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.

9. All dwellings erected on any Lot shall have a minimum interior living space of not less than eighteen hundred square feet of enclosed heated living area exclusive of porches, garages, attics, etc.

10. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or waste and such materials may not be kept on any Lot except in sanitary containers kept on the premises in such a manner as to not be visible from the street giving access to the premises. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

11. No surface closets or outhouses shall be kept or maintained on any Lot and sewage disposal shall be by septic tank only, which shall comply with the requirements of the North Carolina State Board of Health, until such time as a general sewage disposal system may be installed, at which time sewage disposal shall be only by such system.

12. Once a structure has been begun on any Lot it shall not be permitted to remain in excess of six months in an unfinished condition from the date of the laying of the foundation. If the entire exterior is finished it shall satisfy this requirement.

13. The purchaser of a Lot shall have three years from the date of recording of deed to the Lot from the Developer in which to construct a residence, otherwise the Developer may, at his option, return the principal amount of the purchase price paid for the Lot (retaining any interest, if a time purchase), and require a reconveyance of the Lot either to the Developer or as the Developer may direct.

14. These restrictions shall constitute covenants running with the land and shall be binding on all purchasers from the Developer and all persons claiming by, through and under them until January 1, 1992, at which time said covenants shall be automatically extended for successive periods of ten years unless they are modified or abolished by the recording of a written instrument executed by the owners of a majority of the Lots amending or revoking them.

15. An owner of any Lot in the Development shall have the right to prosecute a proceeding at law and/or in equity against any person or persons, firms or corporations violating or attempting to violate any of these restrictive covenants, either to prevent or stop such violation or for the recovery of damages, or for both.

16. Invalidation of any one or more of these restrictive covenants by statute or court order shall not affect any of the other covenants which shall remain in full force and effect.

SECTION THREE-ARJEAN RECREATION ASSOCIATION.

Every Owner of a Lot in the Development, ^{except for water front Lots} shall be a member of the Association upon the terms and conditions hereinafter set forth:

1. RECREATION AREA. Developer will convey to three Trustees the Southwestern portion of Lot 12 of Arjean Subdivision, such conveyance to be of all of said Lot that lies Southwest of a line drawn parallel with Arjean Drive as shown on map recorded in Map Book 5 at

Page 119 in the New Hanover County Registry and a distance of 335 feet from the Southwestern line of Arjean Drive when measured at right angles to said Drive. The three original Trustees shall be named by the Developer to serve until the next annual meeting of the Association following their appointment, at which meeting Trustees will be elected by the membership for the next year. Conveyance of this property will be made by the Developer as soon as nineteen Lots have been sold.

2. EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Recreation Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions: (a) The right of the Association to charge dues and assessments to construct and maintain a boat ramp and other recreation facilities on the Recreation Area. (b) The right of the Association to suspend the boating rights and right to use of the Recreation Area by an Owner for any period during which any dues or assessments against such Owner's Lot are overdue and unpaid, and for a period of not to exceed sixty days for any infraction of rules and regulations established by the Association to control the use of the Recreation Area. (c) The use of the Recreation Area shall be subject to the joint rights of all other Owners to use the area, all pursuant to rules and regulations established by the Association from time to time. (d) This right of use shall extend to the Owner, members of the family of the Owner, tenants of the Owner so long as the tenancy exists, and contract purchasers from an Owner who reside on the property; but the right to use shall extend to only one family of Owners, tenants or contract purchasers at any one time, and in no event shall exceed eight persons for any one Lot.

3. MEMBERSHIP AND VOTING RIGHTS. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Persons or entities which hold an interest in a Lot merely as security for the performance of an obligation shall not be members. Each Lot shall have

one vote at all meetings of the membership of the Association. When more than one person or entity holds an interest to any one Lot each such Owner shall have the same fractional vote that his fractional interest in the Lot bears to the whole Lot. Members may vote either in person or by proxy, but if by proxy, the same must be in writing and delivered to the Secretary of the Association prior to, or at the start of, the meeting at which the proxy is to be exercised. Every proxy shall be revocable and shall automatically cease upon the conveyance by the member of his Lot.

4. MEETINGS OF MEMBERSHIP. There shall be an annual meeting of the members held each year between January 1 and 15 in New Hanover County, North Carolina, with the specific date, time and place to be determined by the President of the Association unless the Board of Directors or a meeting of the membership has already specified the exact date, time and place. The presence at the meeting of a member or members entitled to cast, either in person or by proxy, fifteen votes shall constitute a quorum for the transaction of all business except such as may otherwise expressly be provided for in this instrument. Special meetings of the membership may be called at any time either by the President, the Board of Directors or five members. All meetings shall be in New Hanover County and held at a time, date and place as will be convenient for a majority of the members. Seven days written notice must be given all members of the annual or a special meeting of the membership, but this requirement may be waived.

5. OFFICERS. The Association shall have three officers, a President, a Vice-President and a Secretary-Treasurer. The officers shall be elected at the annual meeting of the Association to serve for a term of one year or until their successors have been elected. The President shall act for the Association, but shall not have the authority to obligate the credit of the Association, or the members thereof, without authorization of either the Board of Directors or the membership. All checks written on any bank account of the Association shall be signed both by the Secretary-Treasurer and by either the President or Vice-President.

6. BOARD OF DIRECTORS. Routine business of the Association shall be conducted by a Board of Directors consisting of seven members, three of whom shall be the officers of the Association, and the other four of whom shall be elected annually for a term of one year by the membership at the annual meeting of the membership of the Association. Meetings of the Directors shall be held at such times and in such places as the Directors shall determine from time to time. The Directors shall, subject to the authority of a meeting of the membership to change the same, establish rules and regulations for the use and operation of the Recreation Area and facilities.

7. TRUSTEES. There shall be three Trustees for the Association in whom shall be vested legal title to the land constituting the Recreation Area, and said Trustees shall hold title to such land for the benefit of the Association and at the direction of the Board of Directors of the Association. The initial Trustees shall be appointed by the Developer, as herein provided, but at the next annual meeting of the membership following such appointment, the Trustees shall be elected for the succeeding year, to serve for a period of one year or until their successors are elected.

8. REMOVAL OF OFFICERS, DIRECTORS AND TRUSTEES. Any one or more of the Officers, Directors or Trustees may be removed at any time, without specifying any cause, by a majority vote of the membership at any properly called meeting of the membership. Upon the removal of any Officer, Director or Trustee the membership shall elect a replacement to fill the unexpired term.

9. DUES AND ASSESSMENTS. Each purchaser of a Lot from the Developer in the development, by the acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association such annual dues and special assessments for capital improvements as shall be established from time to time by the membership of the Association. Such annual dues and special assessments, together with interest, costs, and reasonable attorney fees,

shall be a charge on the land and shall be a continuing lien on the land against which each assessment is made, until paid. In addition such annual dues and special assessments shall also be the personal obligation of the Owner of the Lot at the time the dues or assessment became due. This personal obligation shall not pass to a successor in title to the Owner unless expressly assumed by such successor. The dues and any assessments shall be used exclusively to promote the recreation, health, safety and welfare of the members of the Association and for improvements, maintenance and acquisition of the Recreation Area or Areas, and construction, acquisition and maintenance of the private streets or roads serving the Lots in the development. The lien of the annual dues and special assessments provided for herein shall be subordinate to the lien of any first mortgage. No sale or transfer of any Lot shall affect the lien for unpaid dues or special assessments. The annual dues shall be payable annually in advance, and shall be due and payable on the 1st day of January of each year, however, the Board of Directors may elect to collect dues in monthly installments. A pro-rata portion of the dues levied for the year of purchase shall be collected by the Developer from the purchaser of each Lot at the time the sale is closed. This money shall be paid by the Developer to the Association. The amount of the annual dues shall be the sum of Ten Dollars (\$10.00) per year per Lot until such amount is changed by the Board of Directors. The amount of the annual dues for each year shall be fixed prior to the annual meeting of the membership held at the start of the year for which the dues are levied. The notice of the annual meeting shall inform each Lot Owner of the amount at which the annual dues for the coming year have been fixed. Dues and special assessments must be fixed at a uniform rate for all Lots. Annual dues shall commence as to all Lots on the date deed of the Lot from the Developer is recorded. Dues for the year of purchase shall be adjusted on a pro-rata basis according to the number of days remaining in the calendar year. In addition to the annual dues the Association may levy a special assessment for the purpose of defraying,

in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvements upon the Recreation Area, or for acquiring additional lands for the Recreation Area, or for the purpose of meeting any obligation of the Association, or for any other related purpose, PROVIDED, HOWEVER, that any such special assessment must have the assent of a two-thirds vote of the membership of the Association at a meeting duly called for this purpose, and for which the notice of the meeting clearly states that a vote is to be held on whether to levy such special assessment. Any annual dues or special assessments not paid within thirty days after the due date shall bear interest from the due date at the rate of eight (8%) percent per annum.

10. ADDITIONAL RECREATION AREA. When as many as nineteen Lots have been sold, Developer will convey to the Trustees or the Association, land within a fifty foot radius of the center of the trunk of a large oak tree now growing on Lot 27 of Arjean Subdivision, together with a walkway eight feet in width running from said land Northeastwardly to a proposed road, such area to be intended as a park or playground area for small children.

11. RIGHT OF WATER FRONT LOTS TO JOIN ASSOCIATION. The Owners of water front Lots in this development are not required to become members of the Recreation Association, but they shall have the privilege of becoming members upon paying an assessment of Three Hundred Dollars (\$300.00) to the Recreation Association, and a recording of an instrument in the Register of Deeds of New Hanover County subjecting such Lot to the provisions of Section Three of this Declaration Agreement and Association.

SECTION FOUR-MEMBERSHIP IN ARJEAN CHANNEL ASSOCIATION.

Every Owner of a Lot in the Development, effective immediately upon recording of deed, automatically becomes a member of Arjean Channel Association upon the terms and conditions set out in the Agreement and Association establishing said Arjean Channel Association.

SECTION FIVE-EASEMENTS OVER PRIVATE STREETS AND ROAD. Whether expressly set out in the deed from the Developer or not, each Owner of a Lot is hereby given and granted, as appurtenant to said Lot and running with the land, an easement and right of way for ingress and egress in, to, through and over all of the private streets and roads shown on the map of Arjean Subdivision recorded in Map Book 5 at Page 119 in the New Hanover County Registry and all other private streets and roads which are now open or which may be hereafter opened or laid out by the Developer on any property owned by him in the area of Arjean Subdivision, and specifically all streets and roads necessary to give access to the Lot belonging to the Owner, and giving access from such Lot to the Recreation Area or areas belonging to Arjean Recreation Association.

SECTION SIX-ALL PRIOR RESTRICTIONS CANCELLED. The undersigned being all of the Owners of those Lots in Arjean Subdivision covered by those restrictive covenants which were recorded May 30, 1972 in Book 938 at Page 383 in the New Hanover County Registry, do hereby cancel said restrictions and in place thereof adopt as the restrictive covenants covering said Lots and tracts of land, the restrictive covenants contained in this Declaration, Agreement and Association.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, this the 18 day of ~~November~~, 1974
Jan

D. A. Gardner (SEAL)
D. A. Gardner

Doyle P. Gardner (SEAL)
Doyle P. Gardner

Lee D. Weddle (SEAL)
Lee D. Weddle

Bettielou Schutt Weddle (SEAL)
Bettielou Schutt Weddle

Tancil A. Horne (SEAL)
Tancil A. Horne

Elizabeth A. Horne (SEAL)
Elizabeth A. Horne

STATE OF NORTH CAROLINA : COUNTY OF NEW HANOVER

I, [Signature], a Notary Public in and for the State and County aforesaid, do hereby certify that D. A. GARDNER and wife, DOYLE P. GARDNER, personally appeared before me this date, and acknowledged the due execution of the foregoing instrument.

Witness my hand and Notarial Seal this the 19th day of ^{January} November, 1974.



[Signature]
Notary Public

STATE OF NORTH CAROLINA : COUNTY OF NEW HANOVER

I, [Signature], a Notary Public in and for the State and County aforesaid, do hereby certify that LEE D. WEDDLE and wife, BETTIELOU SCHUTT WEDDLE, personally appeared before me this date, and acknowledged the due execution of the foregoing instrument.

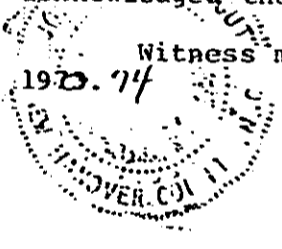
Witness my hand and Notarial Seal this the 18th day of ^{January} November, 1974.



[Signature]
Notary Public

STATE OF NORTH CAROLINA : COUNTY OF NEW HANOVER

I, Joseph P. Nemargut, a Notary Public in and for the State and County aforesaid, do hereby certify that TANCIL A. HORNE and wife, ELIZABETH A. HORNE, personally appeared before me this date, and acknowledged the due execution of the foregoing instrument.



Witness my hand and Notarial Seal this the 18 day of ^{Jan.} November, 1974.

Joseph P. Nemargut
Notary Public

My commission expires:

STATE OF NORTH CAROLINA : COUNTY OF NEW HANOVER

The foregoing certificates of Charles S. Lowrinore, Jr., and Joseph P. Nemargut, Notaries Public, are certified to be correct.

This the 25th day of January, 1974, 1974.

LOIS C. LERAY, REGISTER OF DEEDS

DRAWN BY: CALDER AND STANLEY, ATTORNEYS AT LAW

By: [Signature]
Deputy

Received and Recorded
January 25, 1974 at 1:50 PM.
[Signature]
Register of Deeds

Book 994

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