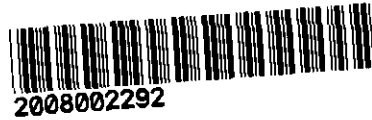


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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2008 JAN 18 12:52:32 PM
BK: 5269 PG: 2839-2857 FEE: \$65.00
INSTRUMENT # 2008002292

JAMES STOKLEY- MAIL
700 ARJEAN DR
WILMINGTON NC 28411

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
ARJEAN BY THE SOUND, INC.**

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EXHIBIT A – CURRENT LIST OF DEEDED MEMBERS

STATE OF NORTH CAROLINA, COUNTY OF NEW HANOVER

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, D. A. Gardner (herein the "Declarant") and wife, Doyle P. Gardner (herein collectively, the "Gardners"), and others (herein collectively, the "Declarants"), being the owners of Lots 7, 8, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 in the subdivision known as Arjean by the Sound, according to the map thereof recorded in the New Hanover County Registry ("NHCR") in Map Book 5 at Page 119 (the "Original Arjean Plat"), heretofore executed a certain "Declaration, Agreement and Association" (the "Gardner Arjean Restrictions") with respect to the aforesaid numbered lots (the "Gardner Restricted Arjean Lots") and caused the same to be recorded in Book 994 at Page 690, NHCR, subjecting said lots to restrictive covenants and creating two unincorporated associations known as "Arjean Recreation Association" and "Arjean Channel Association" (the "Arjean Associations"), and thereafter the Gardners executed an amendment thereto recorded in Book 1090 at Page 665, NHCR, (the "Gardner Amendment"; the Gardner Arjean Restrictions and the Gardner Amendment being herein collectively referred to as the "Prior Arjean Restrictions"); and

WHEREAS, Declarant thereafter resubdivided a portion of Lots 16 through 26 of the Gardner Restricted Arjean Lots and caused a plat of same entitled "Revision in Part Arjean by the Sound" to be recorded in Map Book 18 at Page 5, NHCR (said plat for convenience being herein called the "Arjean Revision") the resubdivided lots being herein referred to as Lots 1 through 18 of the Arjean Revision, all of which were subjected by the Declarant to the Prior Arjean Restrictions; and

WHEREAS, Declarant further resubdivided, sold and conveyed other portions of Lots 16 through 28 of the Gardner Restricted Arjean Lots, subjecting them to the Prior Arjean Restrictions without recording a plat thereof (herein the "Unplatted Gardner Arjean Lots") which lots are herein referred to for convenience as Lots 19 through 27 of the Unplatted Gardner Arjean Lots; and

WHEREAS, Walter L. Bland and wife, Elizabeth W. Bland (the "Blands") the owners of a tract of land located on Sea Shell Lane, adjacent to Arjean Revision, (said tract being on the southeasterly side of what was originally called Mary Lee Avenue and changed by them to Sea Shell Lane), which tract was subdivided originally into five lots and revised by them to four lots (the "Bland Addition"), entered into a contract with the Gardner's, whereby the Bland's agreed to widen Mary Lee Avenue (Sea Shell Lane) in exchange for the agreement of the Gardner's to permit owners of the Bland Lots to become members of the Arjean Associations, thereby entitling them to use the boat ramp and recreation areas of the Arjean Associations; and

WHEREAS, the Arjean Associations were intended to be merged into a single association by the incorporation of a non-profit corporation known as Arjean Homeowners Association, Inc., (herein the "Arjean HOA") but no amendment to the Declaration was recorded to confirm and effectuate such merger; and

WHEREAS, the lots subjected to the Prior Arjean Restrictions are the original Lots 7, 8, 10, 11 and 12 as shown on the Original Arjean Plat (Lots 10, 11, and 12 are now 10A, 10B, 11A, 11B), Lots 1 through 18 of Arjean Revision, Lots 19 through 27 of the Un-platted Gardner Arjean Lots, and the four lots of the Bland Addition, making 35 lots plus 2 more lots created by the re-subdivision of Lots 10 and 11 shown on the Original Arjean Plat, making 37 in all, all of the owners of which are known as "Deeded Members" because their lots were subjected to the Prior Arjean Restrictions by deed (the "Deeded Lots"); and

WHEREAS, in addition to the Deeded Lots there are certain other lots in Arjean as shown on the Original Arjean Plat that were not owned by Gardner and were not subjected to the Prior Arjean Restrictions, namely, Lot 1 (which has been combined with Santa Maria lots and re-subdivided into Lots 1 thru 4, Point Santa Maria), Lot 2 (which has been re-subdivided into Lots 2A and 2B), and Lots 3, 4, 5, 6 and 9 (herein, the "Non Gardner Arjean Lots"), some of the owners of which desire to become deeded members of the Association and subject their lots to this Declaration; and

WHEREAS, the Prior Arjean Restrictions provide in Paragraph 14 of the Gardner Arjean Restrictions that the same may be amended or abolished by record owners of a majority of the (Deeded) Lots, and the

undersigned Deeded Members, being the owners of a majority of the Deeded Lots, have the right to, and now desire to revise and replace the Prior Arjean Restrictions with this Declaration; and

WHEREAS, the owner of Lot 1, Point Santa Maria as shown on the plat thereof recorded in Map Book 1582 at Page 136-137, NHCR; ("Lot 1 Point Santa Maria") desires to become a deeded member of the Association and subject said lot to this Declaration; and

WHEREAS, the undersigned owners of the Non-Gardner Arjean lots; and Lot 1 of Point Santa Maria, desire to join with the owners of the Deeded Lots (all of which lots together comprising the "Property") to subject their lots to this Declaration.

NOW, THEREFORE, the undersigned Deeded Members, in consideration of the premises, hereby declare that the Prior Arjean Restrictions shall, upon the execution and recording of this instrument become null and void, and shall be superseded and replaced by this Revised and Restated Declaration of Covenants, Conditions and Restrictions, and the undersigned Deeded Members, the undersigned owners of Non-Gardner Arjean Lots and the owner of Lot 1 Point Santa Maria, in consideration of the premises, hereby declare that this Declaration shall henceforth be applicable to all the Deeded Lots, the Non-Gardner Arjean Lots that become deeded and Lot 1 Pointe Santa Maria should it become deeded comprising the Property, all of which shall hereafter, be held, sold and conveyed subject to the laws of North Carolina, as well as the following easements, restrictions, covenants, and conditions.

ARTICLE I – DEFINITIONS

SECTION 1. Act. Shall mean and refer to the North Carolina Planned Community Act set forth in Chapter 47F of the General Statutes of North Carolina, as the same may be amended from time to time.

SECTION 2. Additional Property shall mean and refer to any Lots shown on the Original Arjean Plat, other than the Deeded Lots and the Non-Gardner Arjean lots, including, without limitation, the subdividable Non-Gardner Arjean Lots 3, 4, 5, 6, and 9, (if subdivided into no more than 2 lots each and Lot 2 Arjean which has been subdivided into Lots 2A and 2B) and Lot 1, Pointe Santa Maria ("PSM"), any or all of which, if not joined herein, may be hereafter annexed to and made a part of the **Arjean by the Sound** Community (as hereinafter defined), by Amendment to this Declaration.

SECTION 3. Allocated Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

SECTION 4. Associate Member is a member of the Association who is not required by the Prior Arjean Restrictions to be a member of the Association, but is invited to be a member of the Association by the Deeded Members subject to terms and conditions of membership. Associate Members shall have limited voting rights and do not share in ownership of the Common Elements or the Common Funds. An Associate Member has the right to withdraw from the Association at any time.

SECTION 5. Arjean Revision shall mean and refer to the plat entitled "Revision in Part Arjean by the Sound" recorded in Map Book 18 at Page 5, NHCR comprised of portions of Lots 16 thru 28 as shown on Original Arjean Plat that were resubdivided and renumbered and herein referred to as Lots 1 through 18 of the Arjean Revision.

SECTION 6. Association shall mean and refer to Arjean Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

SECTION 7. Bland Addition shall mean and refer to the four lots adjacent to the Arjean Revision that were subjected to the Prior Arjean Restrictions by that certain Contract between the Gardner's, and Walter L. Bland and wife, Elizabeth W. Bland recorded in Book 1090 at Page 667, NHCR.

SECTION 8. Boat Ramp and Floating Dock Facilities. The amenities of the Association include a boat ramp with a floating dock for embarking and debarking only. All members of the Association in good standing shall have full use and enjoyment of the boat ramp and floating dock facilities ("Ramp and Dock Privileges").

SECTION 9. Common Elements shall mean and refer to all lands and easements within or appurtenant to the Arjean by the Sound Community owned by the Association and intended for the common use and enjoyment of the Owners, including, without limitation, that portion of Lot 12, Arjean, deeded to the Association by the deed recorded in NHCR. Common Elements shall also include any open space areas, recreation facilities, landscaping, lighting, signs, and irrigation located within the boundaries of the common elements.

SECTION 10. Common Elements Assessment shall mean and refer to an assessment imposed upon all lots other than deeded lots that desire to become deeded members as a fee for the purchase of the right to use the recreational facilities and the water rights associated with the portion of Lot 12 owned by the "Association.

SECTION 11. Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

SECTION 12. Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise by law.

SECTION 13. Common Funds shall mean and include the cash and invested funds of the Association used for the common purposes of the Association, including, without limitation, recreation, channel dredging, maintenance and repair and replacement of the bulkhead, boat ramp and floating dock.

SECTION 14. Common Funds Assessment. shall mean an assessment based on a pro-rata share of the Common Funds (section 13) which shall be charged to all members of the Association who have previously paid no dues for the common expenses of the Association plus any funds expended on capital improvements exceeding \$2,000, less depreciation.

SECTION 15. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 16. Deeded Lots shall mean and refer to those lots shown on the Original Arjean Plat, the Arjean Revision, the Bland Addition and the Gardner Unplatted Lots that were subjected to the Prior Arjean Restrictions, as enumerated in Paragraph 27 below. For purposes of this Declaration with respect to waterfront lots if a lot is subdivided, the upland portion will become Lot A and the waterfront portion will become Lot B. To date, only Lots 10 and 11 have been subdivided into Lots 10A, 10B and Lot 11A and 11B.

SECTION 17. Board of Directors means the body designated in this Declaration to act on behalf of the Association.

SECTION 18. Lot(s) shall mean and refer to any portion of the Arjean by the Sound Community designated for separate ownership.

SECTION 19. Lot Owner shall mean any Person who owns a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 20. Member shall mean and refer to every person who is a deeded member of the Association. Membership shall be limited to resident persons having an ownership interest in a lot(s).

SECTION 21. Membership shall mean and refer to the rights, privileges, benefits, duties and obligations, which shall inure to the benefit of and burden each deeded Member of the Association.

SECTION 22. Manufactured Home A manufactured home which carries the HUD seal, or Modular Home which is considered "on-frame", in that they retain their metal underpinning.

SECTION 23. Modular Home Homes which are "off-frame" structures retaining no metal underpinning, and prefabricated site built homes utilizing panels or pre-cut or pre-assembled construction elements; provided such structures meet or exceed all other building guidelines as set forth in Section V and local, state, and federal Building Codes.

SECTION 24. Non-Gardner Arjean Lots. Being those of the lots numbered 2, 3, 4, 5, 6 and 9, Arjean by the Sound, as shown on the Original Arjean Plat; Lot 2 has been re-subdivided into Lots 2A (upland) and 2B (waterfront); and also, Lot 1 Arjean that has been subdivided and combined with Santa Maria property to form Lots 1, 2, 3 and 4 of Point Santa Maria ("PSM").

SECTION 25. Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

SECTION 26. Arjean by the Sound Community shall mean and refer to the Property plus any Additional Property made a part of Arjean by the Sound Community.

SECTION 27. Prior Arjean Restrictions shall mean and refer to the restrictive covenants made applicable to a portion of Arjean by the Sound recorded in Book 994 at Page 690, NHCR, as amended by the Amendment recorded in Book 1090 at Page 665, NHCR.

SECTION 28. Property shall mean and refer to all of that portion of Arjean by the Sound and additions thereto, referred to in the preambles above, which were subject to the Prior Arjean Restrictions, including 7, 8, 10, 11 and 12 as shown on the Original Arjean Plat, Lots 1 through 18 of Arjean Revision, Lots 19 through 27 of the Arjean Gardner Un-platted Lots, and the four lots of the Bland Addition, plus 2 additional lots created by the re-subdivision of Lots 10 and 11 shown on the Original Arjean Plat, making 37 in all, (herein the "Deeded Lots"), together with the "Non-Garner Arjean Lots" Lots 2A, 2B, 3, 4, 5, 6, and 9 of Arjean, Lot 1 of Pointe Santa Maria, and any Additional Property that may hereafter be brought within the jurisdiction of the Association as herein provided.

SECTION 29. Purchaser means any Person, other than a Person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 30. Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

ARTICLE II – PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Resident Lot Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners;

- (b) The Association may, with the written consent of at least eighty percent (80%) of the Members, mortgage or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that the Association may without the consent of the Owners grant easements over the Common Elements for drainage systems and public utilities servicing the Arjean by the Sound Community and that any conveyance or encumbrance of Common Elements shall be subject to any rights of ingress and egress to any Lot over private streets.
- (c) The Board of Directors on behalf of the Association, as a Common Expense, may at all times keep the Common Elements and other assets of the Association, if any, insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. In addition, the Board of Directors, as a Common Expense, may at all times insure the Board of Directors for liability insurance, upon such terms and for such amounts as may be reasonably necessary .

SECTION 2. Easements in Favor of the Association. The following easements are granted to the Association, its successors and assigns:

- (a) easements as necessary in the lands constituting the Common Elements for the installation and maintenance of utilities and drainage facilities; including the right of the Association to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of New Hanover County; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate water and sewer facilities, wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the owner of such Lot. No structures or plantings or other material shall be placed or permitted or remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. These easement areas (whether or not shown on the recorded plats for the Arjean by the Sound Community) and improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

SECTION 3. Other Easements. The following additional easements are granted:

- (a) An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties.
- (b) In case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the right to enter any Lot for the

purpose of remedying or abating the causes of such emergency and making any other necessary emergency repairs not performed by the Lot Owners, and such right of entry shall be immediate.

- (c) Easements are hereby granted to Members over the streets, ways, and Common Elements as necessary for access, ingress and regress to and from the boat ramp and recreational facilities.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Association, its successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional Property, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

ARTICLE III – OWNERS' ASSOCIATION

SECTION 1. The Association. Arjean Homeowners Association, Inc (the "Association") is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements in accordance with this Declaration, its Charter and Bylaws.

SECTION 2. Deeded Membership. Every Resident Deeded Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

SECTION 3. Voting Rights. All Lot Owners shall be entitled to one vote for each lot owned by a Member. When more than one person holds an interest in any Lot, all such persons shall have a fractional vote. The votes for such Lot shall be exercised as they determine, but in no event shall the Owners of the Lot collectively be entitled to cast more than one vote with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

SECTION 4. Government Permits. All duties, obligations, rights and privileges of the Declarant under any water, sewer, storm water and utility agreements, easements and permits for the Arjean by the Sound Community with municipal or governmental agencies or public or private utility companies shall be the duties, rights, obligations and privileges the responsibility of the Association.

SECTION 5. Associate Membership. That the Resident owners of Lots 1, 2, 3, & 4 Point Santa Maria and the resident owners of lots 2B, 3B, 4B, 5B, 6B and 9B of Arjean By the Sound may elect to remain or become Associate members of the Arjean Homeowners Association subject to the terms and conditions for Associate Membership as further defined In and by the Bylaws of the Association.

ARTICLE IV – COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Each Lot Owner covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

- (a) Annual Assessments;
- (b) Special Assessments for Capital Improvements;
- (c) Insurance assessments;
- (d) To the appropriate governing taxing authority, a pro rata share of ad valorem taxes levied against the Common Area, if any.

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also

be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

SECTION 2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and Additional Property, if any, and for the maintenance, repair and replacement of the Common Elements. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Operations, maintenance and improvement of the Common Elements, including, without limitation, adequate maintenance and continued operation of the boat launching ramp, bulkhead and the Arjean channel, open space and active recreational areas, and including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization or master association of which the Association is or may become a member; and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Elements in good operating order and repair.

SECTION 3. Annual Assessments. At least 30 days before the beginning of each calendar year, the Board of Directors shall establish a proposed operations and maintenance budget for the calendar year. If the amount of the budget does not exceed the prior years' budget by over 10 percent, then the budget shall become final without approval of the members. If the budget exceeds the prior year's budget by 10 percent, then within 30 days after adoption of the proposed budget, the Board of Directors shall provide to all of the Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The budget is ratified unless at the meeting a majority of all of the attending Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors.

Except as provided in SECTION 6 below, the Annual Assessment for each Lot shall be fixed at a uniform rate for all lots on a per lot basis and shall be determined by dividing the total budget by the number of member lots in the subdivision. Notwithstanding the foregoing and except as provided in SECTION 7 below, the first Annual Assessment shall be set by the Association. The due date for payment shall be established by the Board of Directors. The Board of Directors shall have the authority to require the assessments to be paid in periodic installments.

SECTION 4. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of maintenance of the Arjean Channel, or for any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose, and provided further that no special assessments will be authorized for acquisition, construction, and maintenance of private roads.

SECTION 5. Rate of Assessment. The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed structures for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

SECTION 6. Commencement of Assessments. Assessments for each Lot for the calendar year 2006, which has already been assessed, if not already paid, shall be paid in full on or before December 31,

2006. The assessments for each Lot for the year 2007 and subsequent years shall be payable annually, semiannually, quarterly, or monthly, in advance, as determined by the Board of Directors.

SECTION 7. Effect of Nonpayment of Assessments and Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same and place a lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

SECTION 8. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 60 days or longer.

- (a) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. Fees, charges, late charges, fines, interest, legal fees, and other charges imposed pursuant to this Declaration are enforceable as Assessments.
- (b) The lien under this section shall be prior to all liens and encumbrances on a Lot, except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.
- (c) The lien for unpaid assessments is extinguished unless proceedings to enforce the tax lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.
- (d) Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.
- (e) Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners, or written off as bad debt as determined by the Board of Directors, including such purchaser, its heirs, successors and assigns.
- (f) A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

SECTION 9. Ownership Transfer Fees. Transfers of ownership of any Lot may be subject to reasonable transfer fees to be established by the Board of Directors in its discretion. In addition to the foregoing, the following additional fees will be assessed, as applicable:

- (a) **Common Elements Assessments.** The Common Elements Assessment is imposed upon all Lots other than the Deeded Lots as a fee for the purchase of the right to use the recreational facilities and the water rights associated with the portion of Lot 12 owned by the Association. The Deeded Lots are deemed to have paid a common elements assessment as part of the purchase price paid by original purchasers from the Gardners. These fees are assessable as follows:
 - (1) **Non Gardner Arjean Lots.** Those Non-Gardner Arjean Lots (Lot 1PSM, 2B, 3, 4, 5, 6 and 9) that have been paying dues but have paid no common element assessments will be required to pay a common elements assessment fee of \$1,000.00, or any increase in that fee hereafter established by the Board.
 - (2) **Non Gardner Arjean subdivided Lots.** To date, only Lot 2 has been subdivided into Lots 2A and 2B. Lot 2A (inland lot) has paid no previous fees or dues. Lot 2A is required to pay common elements assessment of \$20,000. If Lots 3, 4, 5, 6 and 9, or any of them, are

subdivided, the Inland portion of any such subdivided lot (herein for convenience referred to as Lots 3A, 4A, 5A, 6A, and 9A) would each be required to pay a common elements assessment of \$20,000, or any increase in that fee hereafter determined by the CPI, US Bureau of Labor and Statistics. \$20,000 is the common element assessment for 2007 as determined by independent third party appraisal. Assessment becomes due upon establishment of residence. Effective January 1, 2008, the value of the Common Elements Assessment will be indexed to the Consumer Price Index, U.S. Bureau of Labor and Statistics. The Board of Directors may at anytime adjust the Common Elements Assessment by using a paid licensed independent real estate appraiser.

- (3) Gardner Arjean Lots. Lots 7 and 8, being Deeded Lots, each have credit for one common elements assessment. If subdivided into two lots each (Lots 7A and 8A would be considered the inland Lots and Lots 7B and 8B, the waterfront lots; Lots 7A and 8A would be required to pay a common elements assessment fee of \$20,000.00 each, or any increase in that fee hereafter as specified in Section 2 above.
- (b) Common Fund Assessments. The Common Funds assessment would be required of all Lots for which no common fund dues have been paid. The Common Funds assessment for the year 2007 is \$4,350. After December 31, 2007 and each year thereafter, a pro rata share (Value of Common Funds divided by the number of members equals pro rata share) of all accounts including cash accounts, mutual funds, and any account or capital expenditure greater than \$2,000, less depreciation considered value to Arjean Homeowners Association will become the new Common Funds Value. At such time a member elects to sub-divide a lot, such member must advise the current board of directors in writing. The Common Fund Value will be determined as of the date of the request. The Board of Directors will respond within 15 business days to the member. After receiving the assessment cost from the Board of Directors, the member has 120 days to complete the process and make payment. If the 120 days pass and the member fails to complete the process, the Board of Directors may recalculate the assessment. Only when the assessment is paid in full to the Arjean Homeowners Association, will said requirement be met.
 - (1) Gardner Arjean Lots. Lot #21 "Arjean Unrecorded Lots" (located at 721 Arjean Drive) and Lot #4 "Arjean Revision" (located at 713 Ramblewood), being deeded lots and therefore credited with "Common Element" assessment, have paid no assessments to date for "Common Funds". Therefore, Lot #21 and Lot #4 will be required to pay pro-rata share of "Common Funds" upon receipt of a Certificate of Occupancy permit for each lot.
 - (2) Potential Gardner Arjean Lots. If Lots 7 and 8 are subdivided, 7A, 7B, and 8A have paid no assessments to date for "Common Funds". They would be required to pay a pro-rata share of "Common Funds" at the time a Certificate of Occupancy is issued for a dwelling on each such lot.
 - (3) Non Gardner sub-dividable and potential sub-divided lots. Lot 2A, 3A, 4A, 5A, 6A, 9A, have paid no assessment to date for the "Common Funds". They must pay pro-rata share of "Common Funds" upon receipt of Use and Occupancy Permit.

ARTICLE V – USE RESTRICTIONS, ARCHITECTURAL CONTROL AND MAINTENANCE

SECTION 1. Approval of Plans for Building and Site Improvements. No building, wall or other structure shall be commenced, or erected, upon any Lot, nor shall any exterior addition to or change in or alteration therein be made until the plans and specifications showing the nature, kind, shape, heights, materials shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors. In the event the Board of Directors or its designee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, provided the design, plans and specifications are in conformity with the general scheme of development in the Arjean by the Sound Community. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations that in the sole and uncontrolled discretion of the Board or its designee, shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Board for its records. The Board of Directors shall not be responsible for

any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

SECTION 2. Minimum Standards for Site Improvements.

- (a) **Exterior Materials.** The exterior of all buildings shall be constructed hereafter of wood, masonry, stucco and/or glass or other materials approved in writing by the Board of directors or the Architectural Control Committee, as the case may be.
- (b) **Minimum area of houses.** Houses *constructed* hereafter on lots within the Arjean by the Sound Community shall be no less than 2,000 square feet of heated area.
- (c) **Setbacks.** The site and location of any house or structure upon any Lot shall be controlled by the New Hanover County zoning lot setback regulations.
- (d) **Screening.** All service utilities, garbage receptacles, exterior storage areas and fuel tanks, are to be enclosed with a screen of a type and size approved by the Board of Directors so as to preclude the same from causing an unsightly view from any highway, street or way within the Development, or from any other Lot within the Development.
- (e) **Utilities.** All secondary power lines and communication lines on a Lot hereafter shall be placed underground.
- (f) **Reservation for Progress Energy.** Further, the Association reserves the right to subject all vacant lots in the property including the Common Area, lot 12 to a contract with the Power Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or continuing monthly payment to the Power Company by the Association on behalf of the Lot Owners as a common expense.

SECTION 3. Use Restrictions.

- (a) **Land Use And Building Type.** No Lot shall be used for any purpose except for single-family residential purposes other than the "Common Area" which may be used for recreational purposes. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article V of this Declaration relating to architectural control. No garage apartment or outbuilding may be rented separate and apart from the dwelling on any Lot.
- (b) **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Development. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the character of the Development as a single family residential Arjean by the Sound development. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkempt condition of buildings or grounds on the Owner's lot which would tend to decrease the beauty of the Development as a whole or the specific area.
- (c) **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time, either temporarily or permanently, without the written consent of the Board of Directors or the Architectural Control Committee, as the case may be provided, however, that this shall not prevent the use of a construction trailer or office on any part of the Arjean by the Sound Community until the construction of improvements are completed.
- (d) **Construction in Common Elements.** No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.
- (e) **Signs.** No permanent signs shall be permitted on any Lot or in the Common Elements without prior written permission of the Board of Directors except for those signs that indicate addresses of home owners and common area signs.
- (f) **Subdividing.** No Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Board of Directors. This restriction shall not apply to Lot 2 Arjean which has been subdivided into Lots 2A and 2B, and it shall not apply to Lots 3, 4, 5, 6, 7, 8, and 9 if they are subdivided into no more than two lots each.

- (g) No Manufactured Homes, mobile home, double-wide or similar structure shall be placed or erected on any Lot, provided, however, that the Board of Directors may grant permission for temporary structures for storage of materials during a defined construction period. Exceeding such defined construction period agreement shall incur a fine or penalty as determined appropriate by the Arjean HOA Board of Directors.
- (h) Modular Homes are allowed, design subject to regular board approval (see Article V – Section 1).
- (i) No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. No animals, livestock or poultry of any kind may be raised, bred or kept in any of the Common Elements. In consideration of all property owners, pet owners should remove any and all excrement from their neighbor's property as affected by their pet. In consideration of all property owners, pet owners should abide by North Carolina State and New Hanover County laws affecting pet ownership.
- (j) Stripped, partially wrecked, non-operational motor vehicles, or any motor vehicle not displaying a current valid license plate and inspection sticker shall not be permitted to be parked or kept on any Lot unless secured in a garage or behind an enclosed fence.
- (k) Storage of personal property such as tires, appliances, disassembled motorized and non motorized items, household furnishings, or any part thereof, shall not be kept outside on porches, patios, driveways, or lots, unless obscured in a closed garage or behind an enclosed fence.

SECTION 4 – Maintenance. Each Lot Owner shall keep his Lot free from underbrush or refuse piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. All shrubs, trees, grass and plantings shall be kept neatly trimmed and properly cultivated. Each Owner shall maintain and keep in good repair the exterior of all structures and all parking areas and other exterior facilities. Any structures damaged or destroyed by fire or other casualty shall be repaired, replaced, or demolished and the site left clean and neat within 180 days of the damaged or destroyed property.

ARTICLE VI – LOTS SUBJECT TO DECLARATION/ENFORCEMENT

SECTION 1. Lots Subject to Declaration. The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of the *Arjean by the Sound* Community and the Lots contained in it. All present and future Owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, their heirs, successors and assigns, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated by the Lot Owners.

SECTION 2. Enforcement and Remedies. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The Board of Directors shall be entitled to enforce its Articles of Incorporation, this Declaration, Bylaws and Rules and Regulations. In addition to the remedies otherwise provided for herein concerning the collection of Assessments, the following remedies shall be available:

- (a) Association to Remedy Violation. In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance, correct an architectural control violation, or other activities required by this Declaration, the Association's Bylaws, Charter or Rules and Regulations, the Board of Directors or its designee, after 30-days notice may impose fines. Such amounts shall be due and payable within 30 days after an Owner is billed. If not paid within said 30 day period, the amount

thereof may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors of the Association, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot.

- (b) **Fines.** The Association may establish a schedule of and collect fines in accordance with applicable provisions of the North Carolina General Statutes for the violation of this Declaration or of the Association's Articles of Incorporation, Bylaws or Rules and Regulations. If an Owner does not pay the fine when due, the fine shall immediately become a part of and be added to the Annual Assessment against the Owner's Lot and may be enforced by the Association as all other Assessments provided for herein.
- (c) **Suspension of Services and Privileges.** The Association may suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner's lot remain unpaid for at least 30 days or for any period that the Owner or the Owner's Lot is otherwise in violation of this Declaration or the Association's Charter, Bylaws, or Rules and Regulations.

SECTION 3. Miscellaneous. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.

ARTICLE VII – AMENDMENT TO DECLARATION

SECTION 1. Amendment of Declaration. This Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

IN TESTIMONY WHEREOF, the Association and the undersigned Deeded Members, non-deeded owners of Non-Gardner Arjean Lots and the owner of Lot 1 Point Santa Maria have executed this Declaration.

ARJEAN HOMEOWNERS ASSOCIATION, INC.

By: _____ (SEAL)
President

STATE OF NORTH CAROLINA, COUNTY OF NEW HANOVER

I, _____ a Notary Public in and for the aforesaid County and State do hereby certify that _____ personally appeared before me this day and acknowledged that he is President of **ARJEAN HOMEOWNERS ASSOCIATION, INC.**, and that he, as President, being authorized to do so, executed the foregoing deed on behalf of the Association.

WITNESS my hand and notarial seal, this the ___ day of _____ 2008.

Notary Public

(OFFICIAL SEAL)

(Typed or Printed Name of Notary Public)

Commission Expires

ARJEAN BY THE SOUND, INC.
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

SECTION 3. Miscellaneous. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.

ARTICLE VII – AMENDMENT TO DECLARATION

SECTION 1. Amendment of Declaration. This Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

IN TESTIMONY WHEREOF, the Association and the undersigned Deeded Members, non-deeded owners of Non-Gardner Arjean Lots and the owner of Lot 1 Point Santa Maria have executed this Declaration.

ARJEAN HOMEOWNERS ASSOCIATION, INC.

By: James B. Stokley Jr. (SEAL)
President

**STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER**

I, Nancy S. Jones a Notary Public in and for the aforesaid County and State do hereby certify that James B. Stokley Jr. personally appeared before me this day and acknowledged that he is President of **ARJEAN HOMEOWNERS ASSOCIATION, INC.**, and that he, as President, being authorized to do so, executed the foregoing deed on behalf of the Association.

WITNESS my hand and notarial seal, this the 15 day of June 2008. 7

Nancy S. Jones
Notary Public

Nancy S. Jones
(Typed or Printed Name of Notary Public)

My Commission Expires: 1/26/08

