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RECORDED AND VERIFIED
REBECCA P. TUCKER
REGISTER OF DEEDS
NEW HANOVER CO. NC

BOOK

PAGE

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STATE OF NORTH CAROLINA : DECLARATION OF COVENANTS, CONDITIONS,
: AND RESTRICTIONS FOR
COUNTY OF NEW HANOVER : BAYBERRY FOREST, PHASE I

THIS DECLARATION, Made and entered into this 5th day of December
1989, by HESS PROPERTIES, INC., a North Carolina Corporation, hereinafter
referred to as "DECLARANT;"

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W I T N E S S E T H:

WHEREAS, the DECLARANT is the fee simple owner of a certain tract of real
property located in New Hanover County, North Carolina, said tract being more
particularly described as all of Phase I, Bayberry Forest as the same is shown
on a map thereof recorded in Map Book 30, at Page 149, of the New Hanover
County Registry; and,

WHEREAS, the DECLARANT desires to establish certain restrictions, cove-
nants and conditions with respect to the use, enjoyment and ownership of the
property described above for the purpose of protecting the value and desir-
ability of the property, said restrictions, covenants and conditions to run
with the property and to be binding on all parties having any right, title or
interest in said property or any parcel thereof, their heirs, successors and
assigns for the benefit of both DECLARANT and all owners thereof.

NOW, THEREFORE, with respect to the property described above and for the
purposes stated above, DECLARANT does hereby declare that all said property
shall henceforth be held, sold and conveyed subject to the following cove-
nants, conditions and restrictions:

ARTICLE I

DEFINITIONS

For the purpose of this instrument, the following definitions shall
apply:

A. DECLARANT: HESS PROPERTIES, INC., a North Carolina Corporation, with
its principal place of business being in New Hanover County and the State of
North Carolina and/or its successors in interest.

RETURNED TO

David Haffine

B. ASSOCIATION: The Bayberry Forest Homeowner's Association, a non-profit corporation organized pursuant to the laws of the State of North Carolina with its principal office being located in the County of New Hanover and the State of North Carolina and/or its successors in interest.

C. PROPERTY: All that real property described above, and such additions as may hereafter be brought within the jurisdiction of the Association.

D. LOT: Any one of those parcels of real property subdivided from the property and designated by numbers 5 through 20²⁷⁻³⁰ upon the map of Phase I, Bayberry Forest recorded in Map Book 30, at Page 149, of the New Hanover County Registry, reference to which is hereby made for a more complete description, together with the structure or dwelling constructed thereon which may be referred to as "House" or "Unit."

E. OWNER: Any one of those individuals or entities who hereafter are conveyed and/or hold fee simple title to any lot excluding, however, the DECLARANT, a mortgage holder, or any other person or entity acquiring title merely as security for the performance of an obligation.

F. COMMON AREAS: All of the real property shown upon the map of Bayberry Forest, Phase I, recorded in Map Book 30, at Page 149, of the New Hanover County Registry which is designated as common area and all of the improvements not located on a lot including, but not limited, all drainage and sewer pipes and other such facilities located upon or under the common areas, all utility installments, fixtures and facilities of whatever nature, including, but not limited to, such facilities, fixtures and installations for electricity, lighting and water located upon, under, above or for the benefit of the common areas, and all other apparatus, equipment and installations existing upon, beneath, above or for the benefit of the common elements, of whatever nature or kind, and all roads, driveways and/or parking areas.

G. LIMITED COMMON AREAS AND FACILITIES: Those areas, if any, designated as limited common areas on the aforementioned plat which are reserved for the use of a certain lot or lots to the exclusion of other lots.

H. DEVELOPMENT: The entire planned residential development to be known as "Bayberry Forest" which shall consist of all of the property including lots

and common elements and improvements to the common elements and other contiguous property which may hereafter be subjected to this Declaration.

ARTICLE II

ASSOCIATION

A. PURPOSE: The Bayberry Forest Homeowner's Association shall be a non-profit corporation, the purpose of said association being to provide the essential services necessary to preserve, protect, maintain and care for said development for the mutual benefit of all owners of lots and houses therein, all as outlined herein below and more particularly described in the By-Laws of the Association.

B. MEMBERSHIP: There shall be one membership in the Association for each lot and no others. Each membership shall be appurtenant to the ownership of a lot and house in the development and may not be severed or transferred separate and apart from the transfer of the lot and house to which it is appurtenant. For the purposes of this Article, the DECLARANT shall be deemed as owner so long as it owns any lots or houses in the development.

C. OWNERSHIP: The DECLARANT shall convey to the Association all of the common areas of the property and all of the improvements thereon subject to easements retained or conveyed by the DECLARANT and the rights of the DECLARANT stated herein.

D. MANAGEMENT AND CONTROL: Subject to the provisions of Article III of this Declaration, the affairs of the Association shall be governed, managed and controlled by the Board of Directors, elected by the membership as provided in the Association's By-Laws, the terms and provisions of which are incorporated herein as if fully set forth.

E. POWERS, PRIVILEGES, RIGHTS AND OBLIGATIONS: The Association, in order to fulfill the purposes for which it has been formed, shall have and possess and shall perform and exercise the following powers, privileges, rights and duties:

1. RULE MAKING: The Association shall, from time to time, make and amend, pursuant to the provisions of its By-Laws, reasonable rules and regulations governing the owners' use and enjoyment of their houses, lots, the common areas and the improvements thereon;

2. MAINTENANCE: The Association shall be responsible for the upkeep, maintenance, protection, preservation, repairs, reconstruction and/or replacement of (i) the common areas, (ii) all improvements and any additions to the common areas, (iii) the exterior and appointments to the houses, such improvements to include but not limited to the painting, repairing, replacing and care of gutters, downspouts, exterior building surfaces, decks, trees, shrubs, grass, walks and other exterior improvements, but not to include the roofs of the structure which shall be the responsibility of the individual unit owners. Such exterior maintenance shall not include glass surfaces. In the event that any of the above is necessitated by the willful act or active or passive negligence of any owner, his family, guests, invitees, or tenants, then the cost of the same shall legally be the personal obligation of said owner and if not paid to the Association upon demand, may be added to the annual assessment levied against said owner's lot and house, as said assessment is defined below;

3. INSURANCE: The Association shall obtain and maintain, to the extent obtainable, the following:

(a) Fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring all improvements upon the common areas and covering the interest of the Association, the Board of Directors and all owners and their mortgages or beneficiaries under deeds of trust, as their respective interest may appear;

(b) Public liability insurance in such limits as the Board of Directors of the Association may, from time to time, determine necessary covering each member of the Board of Directors, each officer of the Association, the Association and each owner of a lot, such public liability insurance to also cover cross liability claims of one insured against another;

(c) Such other insurance as the Board of Directors may determine is necessary for the protection of the development, the Association, its directors, officers and members;

(d) The owners of lots shall be responsible for purchasing and maintaining insurance on all improvements located within the lot conveyed to them and the Association shall have no obligation to provide any such insurance.

(e) All insurance policy premiums on the property for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the owners an additional annual assessment or include within the normal annual assessment an amount sufficient to pay the annual cost of insurance premiums.

(f) All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board. Proceeds of the insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner: (i) first to all reasonable expenses of the insurance Trustee; (ii) the remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which proceeds are paid; (iii) the balance of any such proceeds shall be retained by the Association for such common expenses or purposes as the Board may determine.

4. MISCELLANEOUS: The Association shall have, in addition to all of the above, any and all powers, privileges, rights and duties as set forth in its By-Laws and the general laws of the State of North Carolina pertaining to the non-profit corporations, and any and all incidental or necessary powers, privileges, rights and duties necessary to fulfill the purposes for which the Association has been formed and to provide for the mutual needs of the owners of the houses and lots within the development to insure the protection of the value and desirability of all of the property and improvements thereon of the development.

ARTICLE III

ASSESSMENTS

A. OBLIGATION FOR ASSESSMENTS: The DECLARANT hereby covenants and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed a covenant and agree to pay to the Association annual assessments or charges and special assessments for capital improvements as hereinafter provided. Such assessments, together with inter-

est, cost and reasonable attorney's fees shall be charged on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment together with interest, cost and reasonable attorney's fees shall also be a personal obligation of the person who is the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to said owner's successors in title unless expressly assumed by them.

B. PURPOSES OF ASSESSMENTS: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the property and for the improvements and maintenance of the common areas and of the houses situated upon the properties.

C. BUDGET: The Board of Directors shall be responsible for annually preparing a budget for the Association determining therein the projected annual cost to the Association for performing all of its duties. Once said budget has been approved by the membership of the Association as outlined in its By-Laws, the Association shall thereafter fix assessments at a uniform rate for all lots within the development, said assessments to be paid monthly, quarterly or annually, at the discretion of the Board. The initial proposed budget is attached hereto as Exhibit A and incorporated by reference herein.

D. ASSESSMENTS FOR CAPITAL IMPROVEMENTS: In addition to the assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of the members of the Association who are voting in person or by proxy at the meeting duly called for this purpose.

E. UNIFORM RATE OF ASSESSMENT: Both annual and special assessments must be fixed at a uniform rate for all lots, on a per lot basis, and may be collected on a monthly, quarterly or annual basis as determined by the Board of Directors.

F. COMMENCEMENT OF ASSESSMENTS: The assessments provided for herein shall commence as to all lots upon the first to occur of the following: (1) conveyance of a lot and a structure by the DECLARANT; (2) actual occupancy of the unit; (3) sixty (60) days after the issuance of a certificate of occupancy for the residence located on the lot. Except as set forth herein, DECLARANT shall have no obligation to pay assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific lot have been paid.

G. EFFECT OF NONPAYMENT: Any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12%) percent per annum. The Association may, at its option, bring an action against the owner personally obligated to pay the assessment or may foreclose the lien provided herein against the lot by way of judicial foreclosure as provided by the laws of the State of North Carolina for judicial foreclosure of mortgages and deeds of trust.

H. SUBORDINATION TO MORTGAGES: The lien for unpaid assessments provided for herein shall be subordinated to the lien of any first mortgage or first deed of trust against any lot and the lien, but not the personal obligation to pay, shall be extinguished by the foreclosure of any such first mortgage or deed of trust or the execution and delivery of a deed in lieu of such foreclosure.

I. WORKING CAPITAL RESERVE: At the time title is conveyed to an owner, each owner shall contribute to the Association, as a working capital reserve, an amount equal to two months estimated assessments. Such funds shall be used solely for initial operating and capital expenses of the Association, such as prepaid insurance, supplies for the Association and upkeep of the common areas and facilities. Amounts paid in to the working capital funds are not to be considered an advance payment of regular assessments. Any working capital funds remaining at the end of the first full year of operation shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

ARTICLE IVOWNERS

Every owner of fee simple title to a lot and house within the development shall be deemed to own, possess and have accepted the following:

A. Membership in the Association, appurtenant to his lot and house;

B. An easement of enjoyment, equal to that of all other owners, in and to the common areas, subject to the following:

1. The right of the Association to suspend the voting rights and the right to use any of the common areas by any owner for any period during which any assessment against his lot remains unpaid;

2. The right of the Association to dedicate or transfer all or any part of the common areas to any public agency, authority or utility for such purposes and subject to such conditions as the Association may determine, acting by and pursuant to the provisions of its duly enacted By-Laws;

3. The right of the Association to enact reasonable rules and regulations governing the use and enjoyment of the common areas and the improvements thereto;

4. The right of any owner to delegate, in accordance with the By-Laws of the Association, a right of enjoyment to the common areas and their facilities to members of his family, his tenants or to contract purchasers who reside on the property.

C. The duty of complying with and abiding by all of the provisions of these Articles, the By-Laws of the Association and the rules and regulations of the Association.

ARTICLE VDECLARANT

In addition to all other rights, powers and privileges reserved herein to the DECLARANT, the DECLARANT further reserves the following rights:

A. The right and power to appoint or designate the members of the Board of Directors of the Association until the first to occur of the following:

1. Forty (40) days after seventy-Five (75%) percent of the lots within the development, including all additional phases, have been sold by the DECLARANT; or,

2. Five (5) years after the first lot has been conveyed.

Until said date occurs, the DECLARANT, acting by and through its appointees or designees, shall have absolute control of the Association and its affairs, and no action taken by the membership of the Association pursuant to this Declaration or the By-Laws of the Association shall have any effect whatsoever without the prior written approval of the DECLARANT, acting by and through its appointees or designees. Upon either of the above referenced dates, the president of the Association shall follow the procedures outlined in the By-Laws of the Association for the transition of control of the Association from DECLARANT to the membership of the Association.

B. The right to change, alter or redesignate the allotted, planned, platted or recorded use or designation of any of the property (so long as the DECLARANT retains title to said property) including, but not limited to, the right to change, alter or redesignate roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present proposed amenities or facilities as may, in its sole judgment and discretion of the DECLARANT, be necessary or desirable.

C. A perpetual, alienable and releasable easement and right of way, over and under the ground, to erect, maintain, and use electric and telephone poles, wires and cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone, television and cable facilities, gas, sewer, water or other public conveniences or utilities on, in or over any of the property. These easements and rights expressly include the right to cut any trees, bushes or other shrubbery, make any gradings of the soil, or to take any other similar actions reasonably necessary in the opinion of the DECLARANT to provide economical and safe utility installations.

D. The right to subject the property to contracts with electric, telephone, cable, television and other utilities for the installation of underground cables, wires, pipes or other necessary conduits for utilities.

ARTICLE VINATURE OF OWNERSHIP

Each of the lots shall be improved by the DECLARANT by the construction thereon of a house, each house being a separate and independent dwelling, except that it may share and enjoy a common roof and party wall which shall extend down and along the dividing line between the lots. The common areas with the improvements constructed thereon by the DECLARANT, shall be conveyed to and owned by the Association. The development shall be a private residential community and all property, and all improvements thereon, shall be private property and nothing in these Articles, or in the recording of any map or deed pursuant hereto, shall dedicate (or be deemed to dedicate) to public use, any of the property, or the improvements thereon unless done by action of the DECLARANT or by action of the Board of Directors as provided in the By-Laws.

ARTICLE VIIEASEMENTS

A. EASEMENT FOR EXTERIOR MAINTENANCE: The Association, acting through its duly appointed agents, shall have the right to unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance called for herein. In addition, each lot owner is granted an easement over common areas, and, to the extent necessary over adjoining lots for the purpose of repairing roofs. Any owner using said easement shall be responsible for any damage caused to an adjoining lot owner by the use of the easement.

B. EASEMENT FOR ENCROACHMENTS: Easements are reserved over those portions of the common area, limited common areas, and facilities that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the common areas or limited common areas or the air and light space above such common areas. In addition, each lot and the property included in the common area shall be subject to an easement for encroachments created by construction, settling and roof overhangs for all buildings constructed by the DECLARANT. A valid easement for said encroach-

ments and for the maintenance of the same, shall and does exist. In the event any structure containing two or more houses is partially or totally destroyed and then rebuilt, the owners of the houses so affected agree that minor encroachments of parts of the adjacent house units or common areas due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

C. EASEMENTS FOR INGRESS AND EGRESS: Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the common areas and facilities, and for vehicular traffic over, through and across all streets, as from time to time may be paved and intended for such purposes for all lot owners in the development, their guests, family, invitees and lessees, the Association, DECLARANT, and its successors and assigns. The DECLARANT hereby reserves an alienable easement over all streets and common areas as necessary to provide access for future development by the DECLARANT or its successors and assigns of any properties adjoining the project.

D. EASEMENTS RUNNING WITH THE LAND: All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding upon the DECLARANT, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or in any part or portion thereof, regardless of whether or not reference to said easement is made and the respective deeds of conveyance, or in any mortgage or deed of trust or other evidence of obligation, to the easements and rights described in this Declaration.

ARTICLE VIII

PARTY WALLS

A. GENERAL RULES: Each wall which is built as a part of the original construction of the house upon the property and placed on the dividing line between the lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. REPAIR AND MAINTENANCE: The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

C. DESTRUCTION BY FIRE OR OTHER CASUALTY: If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners make use of the wall, they shall contribute to the cost of restoration thereof in proportion to use such without prejudice, however, to the rights of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

D. NEGLIGENCE OR DAMAGE BY OWNER: Notwithstanding any other provisions of this Article, an owner who, by his negligence or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

E. RIGHT TO CONTRIBUTION: The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owners successors in title.

F. ARBITRATION: In the event any dispute arises concerning a party wall or under the provisions of this Article, the dispute shall be settled by arbitration in accordance with the Uniform Arbitration Act as enacted by the State of North Carolina.

ARTICLE IX

USE RESTRICTIONS

A. RULES AND REGULATIONS: The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yards of each lot and common area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

B. USE OF PROPERTY: Each lot, building, the home thereon and the common area shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the By-Laws:

1. All lots, buildings and the common area shall be used for residential and related purposes.

2. No lot may be subdivided.

3. DECLARANT may use one or more homes for offices and/or models for sales purposes.

4. Nothing shall be kept and no activity shall be carried on in any building or home or on the common area which will increase the rate of insurance, applicable to residential use, for the surrounding property or the contents thereof.

5. No owner shall do or keep anything, or cause or allow anything to be done or kept, in his home or in the common area which will result in the cancellation of insurance on any portion of the property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation.

6. No waste shall be committed on any portion of the common area.

7. All garbage receptacles, containers and enclosures shall be located so as not to be unsightly and said locations shall be as originally designated or constructed by DECLARANT or as approved by the Architectural Committee.

8. No immoral, improper, offensive or unlawful use shall be made of the property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed.

9. Nothing shall be done in or to any home or garage or in, to or upon any of the common area which will impair the structural integrity of any building, home, garage, or portion of the common area or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

10. No industry, business, trade, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained or permitted on any part of the property, except that the DECLARANT or its agents may use up to two homes for sales or display purposes.

11. Except as may be required by municipal ordinance, no owner shall display, or cause or allow to be displayed to public view any sign, placard, poster, billboard or identifying name or number upon any home, building or any portion of the common area, except as may be allowed by the Association, provided, however, that the DECLARANT and any mortgagee who may become the owner of any lot, or their respective agents, may place "For Sale" or "For Rent" signs on any lot owned by them.

12. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the common area except at the direction of and with the express written consent of the Association.

13. The common area shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the homes, subject to any rules or regulations that may be adopted by the Association pursuant to its By-Laws.

14. No building shall be erected on a lot unless same contains at least 1,400 square feet exclusive of porches, decks and garages.

C. ANIMALS: 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 and provided further that they are kept in the home of the Owner.

D. LEASE OF HOMES: No home shall be leased for transient or hotel purposes, nor may any owner lease less than the entire unit, nor shall any such lease be for any period of less than thirty (30) days. Any lease must be in writing and provide that the terms of the lease and occupancy of the unit shall be subject in all respects to the provisions of the Declaration of Covenants, Conditions and Restrictions and By-Laws of the Association and any failure by a Lessee to comply with the terms of such documents shall be a default under the lease.

ARTICLE XARCHITECTURAL CONTROL

No building, fence, signs, wall, antenna, satellite dish, clothes line or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior addition to or change or alteration therein be made, including reconstruction or repair after fire, wind or other hazard until the plans and specifications showing the nature, kind, shape, height, materials and location of the said improvements or alterations shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee. In the event that the said Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to them, approval will not be required and this Article will be deemed to have been fully complied with; provided, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data or fail to present accurate information upon which the Committee can arrive at a decision.

The said Committee shall have the right, at their election, to enter upon any lot during construction, erection or installation of improvements or alterations to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

The initial Architectural Committee shall consist of Howard H. Hess, Jill Moeller and Gregory A. Hess. At such time as the Declarant no longer has the right to name the Board of Directors, the Architectural Committee shall be those persons named as such by the Board of Directors.

ARTICLE XIDEVELOPMENT IN PHASES

The DECLARANT intends to develop the property contiguous to the property described herein in phases. Each additional phase shall be subject to the terms and conditions of this Declaration upon the recordation of a plat