

STATE OF NORTH CAROLINA,
COUNTY OF NEW HANOVER.

DECLARATION OF RESTRICTIONS, CONDITIONS, EASEMENTS,
COVENANTS, AGREEMENTS, LIENS AND CHARGES
(OR RESTRICTIVE COVENANTS)

CEDAR LANDING

THIS DECLARATION made this the 20th day of May, 1988, by HALCO BUILDERS, INC., a North Carolina corporation, with its principal place of business at 108 North Kerr Avenue, Wilmington, North Carolina, hereinafter called "Declarant";

W I T N E S S E T H :

WHEREAS, Declarant is the owner of that certain real property located in New Hanover County, North Carolina, as set forth on that certain survey map or plat entitled:

"CEDAR LANDING SUBDIVISION - NEW HANOVER COUNTY, NORTH CAROLINA," hereinafter sometimes referred to as "map", which map or plat is recorded in Map Book 28 at Page 140 in the Office of the Register of Deeds of New Hanover County, North Carolina, said property being more particularly described on said map or plat.

WHEREAS, it is the desire and intention of Declarant to sell the above described real property and to impose upon it mutually, beneficial restrictions, conditions, easements, covenants, agreements, liens and charges under a general plan or scheme of improvements for the benefit of all said lands and the future owners of said lands;

NOW, THEREFORE, Declarant hereby declares that all of the property described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the following provisions, restrictions, conditions, easements, covenants, agreements, liens and charges, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the said real property and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of said real property and every part thereof, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the described lands or any part thereof.

127057

•dw3•stovall•cedar.dec

RETURNED TO Talmage Jones

1. DEFINITIONS. As used in this Declaration of Restrictive Covenants, the following terms shall mean:

(a) "Declarant" (sometimes referred to as the "Company" as used herein shall mean HALCO BUILDERS, INC., its successors and assigns.

(b) "Record" or "Recording" refers to record or recording with the Register of Deeds of New Hanover County, North Carolina.

(c) "Property" generally means the lands known as CEDAR LANDING SUBDIVISION, New Hanover County, North Carolina, said lands also known as "CEDAR LANDING".

(d) "Residential Lots" or "Lots" means those portions of the property specifically allocated, platted and/or recorded as lots for sale and/or use as a single family residence.

(e) "Association" shall mean the CEDAR LANDING PROPERTY OWNERS' ASSOCIATION, INC., its successors and assigns.

(f) "Restrictions" shall mean the restrictions and covenants set forth in this Declaration of Restrictive Covenants.

2. APPLICABILITY. These Restrictions shall apply to all lots shown on the above referred to map of CEDAR LANDING.

3. (a) RESERVATIONS. The Company reserves the right to change, alter or redesignate roads, utility and drainage facilities, and to change, alter or redesignate such other present and proposed amenities or facilities as may, in the sole judgment of the Company, be necessary or desirable.

(b) VARIANCES. The Company and/or the Architectural Committee appointed by the Company shall have power to and may allow adjustments of the conditions and restrictions herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the regulations contained herein, provided, however, that such is done in conformity to the intent and purposes hereof, and provided, also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood. Variances and adjustment of height, size and setback requirements may be granted hereunder.

(c) BUILDING AND SITE IMPROVEMENTS. No building, fence, wall, bulkheading or other structure shall be erected, placed or altered on any residential lot, nor shall the grade or elevation or physical characteristics including, but not limited to, slopes, ridges, and tree growth, of any such lot, or portion thereof, be altered in any way whatsoever, until the proposed building plans, specifications, exterior colors and finishes, including brick siding, etc., site and landscaping plans (showing the proposed location of such building or structure, drives, parking areas and proposed alterations to the grade, elevation or physical characteristics of the site), and construction schedule shall have been approved in writing by the Company. Refusal of approval of any such plans, location or specifications may be based by the Company upon any grounds including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Company shall seem sufficient. Without the prior written consent of the Company, no changes or deviations in or from such plans or specifications as approved shall be made. No alterations in the exterior appearance of any building or structure, or in the grade, elevation, or physical characteristics of any lot shall be made without like approval by the Company. One (1) copy of all plans and related data shall be furnished the Company for its records. The Company shall not be responsible for any structural or other defects in plans or specifications submitted to it or in any structure erected according to such plans and specifications.

4. APPROVAL OF PLANS. (a) No house plans will be approved unless the proposed house will have the minimum required square footage of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum size requirements shall mean the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas. The minimum enclosed dwelling area shall be 2400 square feet.

(b) CEDAR LANDING BUILDING SETBACK GUIDELINE REQUIREMENTS are as follows: the front building setback line shall be a

minimum of fifty (50) feet from the front of each lot. The side building setback line shall be a minimum of fifteen (15) feet from each side of each lot. The rear building setback line shall be a minimum of fifty (50) feet from the rear of the lot. In the event of any conflict between these guideline requirements and any less stringent requirement later imposed by any governmental authority, Declarant's guideline shall govern.

Since the establishment of standard inflexible building setback lines for location of houses on lots tends to force construction of houses both directly behind and directly to the side of other homes with detrimental effects on privacy, view of the Sound, preservation of land contour, important trees and other vegetation, ecological and related considerations, variances for these specific setback guidelines are permitted under these Restrictions in Paragraph 3 (b) hereinabove. In order to assure, however, that the foregoing considerations are given maximum effect, the Company reserves the right to control and approve absolutely the site and location of any house or dwelling or other structure upon any lot.

(c) The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall be commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergency or natural calamities.

(d) Each lot owner shall provide receptacles for garbage, in a screened area not generally visible from the road, or provide underground receptacles or similar facility in accordance with reasonable standards established by the Company.

(e) Each lot owner shall provide space for parking three (3) automobiles off the street prior to the occupancy of any dwelling constructed on said lot in accordance with reasonable standards established by the Company.

(f) No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any residential lot other than a detached single family dwelling not to exceed two and one-half (2-1/2) stories in height, unless the Company

approves in writing a structure of more than two (2) stories pursuant to Paragraphs 3(b) and 4(a) hereof, and/or small accessory building (which may include a pool house, servants' quarters, or guest facilities; provided the use of such dwelling or accessory building does not in the opinion of the Company overcrowd the site, and provided, further, that such buildings are not used for an activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building. No garage will be open from the front of a residence unless such a design is approved in writing by the Company. No building or other structure, or part thereof, at any time situate on such residential lots shall be used as a professional office or charitable or religious institution, or for business or manufacturing purpose, or for any use whatsoever other than residential and dwelling purposes as aforesaid; and no duplex residence or apartment house shall be erected or placed on or allowed to occupy such residential lots and no building shall be altered or converted into a duplex residence or apartment house thereon.

(g) If the finished building or other structure does not comply with the submitted plans and specifications, the Company retains the right to make the necessary changes at owner's expense, and the further right to file under the North Carolina lien laws notice of liens for any costs incurred.

5. RESIDENTIAL USE: (a) All of the above described lots shall be used for residential purposes exclusively.

(b) No trailer, tent, mobile home, or other structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the lot after completion of construction.

(c) No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only

within an accessory building, within a screened area, or buried underground; provided, however, that nothing contained herein shall prevent the Company from erecting, placing or permitting the placing of tanks, or other apparatus, on the property for uses related to the provision of utility or other service.

6. MAINTENANCE. (a) It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

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

7. ASSESSMENTS. (a) The owner of each residential lot shall, by the acceptance of a deed or other conveyance for such lot, be deemed obligated to pay to CEDAR LANDING PROPERTY OWNERS' ASSOCIATION an annual assessment or charge to be fixed, established and collected on a lot by lot basis as hereinafter provided. Said annual assessment or charge shall be due on January 1 of the year for which it is assessed, provided that the Association may make provision for payment thereof in installments. Each annual assessment or charge (or installment thereof) shall, when due, become a lien against the lot against which such assessment or charge is made. Upon demand, the Association shall furnish to any owner or mortgagee a certificate showing the assessments or charges, or installments thereof, due as of any given date. Each lot subject to these restrictions is hereby made subject to a continuing lien to secure the payment of each assessment or charge (or installment thereof) when due.

(b) Such assessment or charge shall be in an amount to be fixed from year to year by the Association, which may establish

different rates from year to year as it may deem necessary and may establish different rates for various general classifications of lots according to the use or location of said lots. No assessment shall be charged prior to January 1, 1989, at which time a figure shall be determined by the Association. The Association may levy additional assessments if necessary to meet any emergency conditions arising out of the prosecution of the purposes outlined in 7(c) below.

(c) The funds arising from said assessment or charge or additional assessment may be used for any or all of the following purposes: Maintenance, operation, improvement and protection of the property; collecting and disposing of garbage, ashes, rubbish and the like; maintenance and improvement of the streets, roads, drives, rights-of-way, community land and facilities, docks, piers, gazebos, green areas; employing watchmen; enforcing these restrictions; and, in addition, doing any other things necessary or desirable in the opinion of the Association to keep the property in neat and good order and to provide for the health, welfare and safety of owners and residents of CEDAR LANDING SUBDIVISION.

(d) Upon the failure of the owner of any lot to pay any such assessment or charge, additional assessment, or installment thereof when due, the Association or its agent shall have the right to collect the amount thereof by an action at law against the owners as for a debt, and may bring and maintain such other suits and proceedings at law or at equity as may be available. Such rights and powers shall continue in the Association and its agent and the lien of such charge shall be deemed to run with the land and the successive owners of each lot, by the acceptance of deeds therefor, shall be deemed personally to assume and agree to pay all unpaid assessments or charges or additional assessments, which have been previously levied against the property, and all assessments or charges or additional assessments as shall become a lien thereon during their ownership. Unpaid assessments or charges, additional assessments, or installments thereof, shall

bear interest at twelve percent (12%) from the due date thereof, until paid.

(e) The monies collected by virtue of the assessments or charges or additional assessments, or the lien provided by this Section, shall be paid to the Association to be used in such manner and to the extent as the Association may determine, in accordance with Paragraph 7(c) hereof, for the benefit of the residents of CEDAR LANDING SUBDIVISION. The judgment of the Association in the making of assessments or charges or additional assessments and the expenditures of funds shall be final.

(f) The Association shall not be obligated to spend in any one calendar year all of the sums collected during said year by way of assessments or charges or additional assessments and may carry forward to surplus any balance remaining. The Association shall be obliged to apply any such surplus to the reduction of assessments in the succeeding year.

(g) The Association shall have authority, in its discretion, to borrow money to expend for the purposes set forth in Paragraph 7(c) hereof upon such terms and security and for such periods as it may determine, and to repay such borrowings and the interest thereon from the assessments or charges or additional assessments provided for in this Paragraph 8.

(h) No assessment shall be levied on a given lot until such time as all streets and water and sewer improvements have been completed up to and in front of said lot.

8. ENTRY. The Company reserves for itself, its successors and assigns, and its agents the right to enter upon any residential lot, such entry to be made by personnel with tractors or other suitable devices, for the purposes of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, or for the purpose of building or repairing any land contour or other earthwork, which in the opinion of the Company detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed a trespass. The Company and its agents may likewise enter upon any lot to remove any trash which has collected without

such entrance and removal being deemed a trespass. The provisions in this Paragraph shall not be construed as an obligation on the part of the Company to undertake any of the foregoing.

9. MISCELLANEOUS EASEMENTS. The Company reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground with men and equipment to erect, maintain, inspect, repair and use wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity and telephone equipment, gas, sewer, water or other public conveniences of utilities on, in or over the rear ten (10) feet of each lot and ten (10) feet along one side of each lot and such other areas as shown on the applicable plat; provided, further, that the Company may cut drainways for surface water whenever action may appear to the Company to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economic and safe utility installation and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any licensee of the Company, but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.

10. SUBDIVIDING. (a) No lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Company. However, the Company hereby expressly reserves to itself, its successors and assigns, the right to replat any two (2) or more lots shown on the map in order to create a modified building lot or lots; and to take such steps as are reasonably necessary to make such replatted lot suitable and fit as a building site, said steps to include, but not to be limited to, the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted lots.

(b) No lot shall be increased in size by filling in the waters on which it abuts without prior written approval of the Company and state and federal agencies.

11. DOCKS, ETC. In the event the owner of a waterfront lot elects to construct a pier extending into the water from the lot, the following terms and conditions must be complied with:

(i) Complete plans and specifications including site, material, color, and finish must be submitted to the Company in writing.

(ii) Written approval by the Company of such plans and specifications must be secured, the Company reserving the right in its uncontrolled discretion to disapprove such plans and specifications on any grounds, including purely aesthetic reasons.

(iii) Any alterations of plans or specifications or of the completed structure must also be submitted to the Company in writing, and the Company's approval in writing must be similarly secured prior to construction, the Company reserving the same rights to disapprove alterations as it retains for disapproving the original structures.

(iv) The Company shall not be responsible for any structural or other defects in plans or specifications submitted to it or in any structure erected according to such plans or specifications.

12. MEMBERSHIP IN ASSOCIATION. By the recording of the deed to his or her lot, the lot purchaser becomes and agrees to continue to be a member of the Association and agrees to abide by, and be subject to, the charter and by-laws of the Association and these Restrictions.

13. COVENANTS RUN WITH THE LAND. All covenants, restrictions and affirmative obligations set forth in these Restrictions shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of the Company, for a period of ten (10) years from the date hereof after which time all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of lots substantially affected by

such changes in covenants, has been recorded, agreeing to change said covenants in whole or in part.

14. VIOLATIONS. In the event of a violation or breach of any of these Restrictions by any lot owner, or agent of such owner, the Company or owners of any other property in CEDAR LANDING SUBDIVISION, or any of them jointly or severally shall have the right to proceed at law or equity to compel a compliance with the terms hereof or to prevent a violation or breach. In addition to the foregoing, the Company shall have the right, whenever there shall have been built on any lot any structure which is in violation of these restrictions to enter upon the lot on which said violation exists and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement for removal shall not be deemed a trespass. The failure to enforce any right, reservations, restrictions, or condition contained in these Restrictions, however, long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach, or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

15. DEDICATION TO PUBLIC USE. Nothing in these Restrictions, nor in the recording of any plat or deed pursuant hereto, shall dedicate (or be deemed to dedicate) to public use any of the streets, common lands or other grounds within CEDAR LANDING SUBDIVISION.

16. EASEMENT OF ACCESS AND OPEN SPACE. (a) Each and every lot owner is hereby granted an easement to pass over, use and enjoy open spaces now or subsequently designated on recorded plats as community open space, and all roads, piers and docks, provided, however, that the Company, its successors and assigns, shall, in its sole discretion, retain the right to establish rules and regulations for the use and enjoyment of all such property.

(b) The Company reserves the right to erect and maintain utilities, drainways and other public conveniences in common lands, including the right to cut any trees, bushes or shrubbery,

make any gradings of the soil, build buildings or take any similar action reasonably necessary or desirable to provide economical and safe installation and service, to establish reasonable fees, and to maintain reasonable standards of health, safety and appearance.

17. No mail box or paper box or other receptacle of any kind for the use in the delivery of mail or newspaper or magazines or similar material shall be erected or located on any building lot unless and until the size, location, design and type of material for said box or receptacle shall have been approved by the Company.

18. Exterior radio and television aerials for reception of commercial broadcasts shall not be permitted in the CEDAR LANDING SUBDIVISION; and no other aerials (for example, without limitation, amateur short wave or ship to shore) shall be permitted in CEDAR LANDING SUBDIVISION without permission of the Company as to design, appearance and location.

19. During construction all vehicles involved including those delivering supplies must enter the building lot on the driveway only as approved by the Company so as not to damage unnecessarily trees, street paving and curbs. Each lot shall have a concrete apron extended from street to edge of right of way prior to commencement of construction. During construction builder must keep the homes, garages, and building sites clean. All building debris, stumps, trees, etc., must be removed from each building lot by builder as often as necessary to keep the house and lot attractive. Such debris will not be dumped in any area of the Subdivision.

20. No property owner will do or permit to be done any act upon his property which may be or is or may become a nuisance to any other property owner or resident. There shall be no discharging of firearms, guns or pistols, of any kind, caliber, type, or method of propulsion, and no hunting of any type shall be carried on or conducted on said land.

21. No sign of any character shall be displayed upon any part of the property except a sign bearing the name of the owner, size 5 inches by 20 inches, to be approved by the Company.

22. No animals, birds, or fowl shall be kept or maintained on any part of the property except dogs, cats and pet birds, which may be kept thereon in reasonable numbers as pets for the pleasure and use of the occupants but not for any commercial use or purpose.

23. Clotheslines or drying yards shall be located as not to be visible from the street or common easement area serving the premises or from the waterfront.

24. No trailers or habitable motor vehicles of any nature, boats or canoes on or off trailers, may be parked on any part of the property unless inside an enclosed garage. These prohibitions also apply to the common easement area.

25. No individual water supply system shall be permitted except a non-potable lawn irrigation system not connected to any building. A shallow well may be permitted for such water supply but drilling or construction for such shallow well must have prior written approval of the Utility Company servicing the Subdivision. The pump, pressure tank, and pump house, if any, shall be considered structures.

26. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

27. The Company may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not lower the standards of the covenants and restrictions set forth herein.

28. If the Company shall transfer or assign the development of such Subdivision or if it shall be succeeded by another in the development of such Subdivision, then such transferee, assignee, or successor shall be vested with the several rights, powers, privileges, or authorities given said Company by any part or paragraph hereof. The foregoing provisions of this Paragraph shall be automatic, but the Company may execute such instrument as

it shall desire to evidence the vesting of the several rights, powers, privileges, and authorities in such transferee, assignee, or successor.

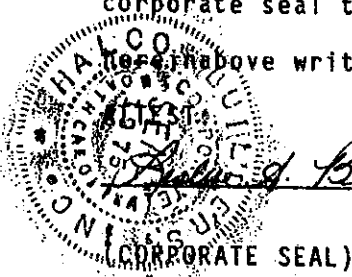
29. The owner, from time to time, of each lot, prior to commencement of the erection of any residence on such lot, shall cut, or cause to be cut, and keep cut or cause to be kept cut, all weeds and brush on such lot and shall remove any resulting debris, to comply with Paragraph 6 hereof. Should such owner fail to do so, the Company may do so, and the reasonable expenses thereof shall be paid by such owner to the Company within thirty (30) days thereafter. In the event of a failure of such owner to pay the Company as above provided, the Company shall have the right to file a notice of lien in the Office of the Clerk of the Superior Court of New Hanover County, North Carolina, and from and after the filing of such notice of lien, the Company shall have a lien on such lot for the payment of such sum, with interest at the rate of eight percent (8%) per annum, all in like manner as if the Company had performed such work at the instance and request of such owner. Any such lien, however, shall be subordinate and inferior to the mortgage of any institutional lender then or thereafter encumbering such lot.

30. The covenants and restrictions herein shall be deemed to be covenants running with the land. If any person claiming under the Company shall violate or attempt to violate any of such restrictions or covenants, it shall be lawful for the Company, or any person or persons owning any residential lot on said land: (A) To prosecute proceedings at law for the recovery of damages against the person or persons so violating or attempting to violate any such covenant or restriction, or (B) to maintain a proceeding in equity against the person or persons so violating or attempting to violate any such covenant or restriction for the purpose of preventing such violation, provided however, that the remedies in this Paragraph contained shall be construed as cumulative of all other remedies now or hereafter provided by law. Without limiting the foregoing provisions of this Paragraph

enforcement of these covenants and restrictions may be by the CEDAR LANDING PROPERTY OWNERS ASSOCIATION, INC.

31. And the said Company hereby covenants and agrees that every contract of sale or deed made by the Company wherein is described any residential lot of said land shall include or be subject to, by reference or otherwise, each and every covenant and restriction herein written, or the substance thereof, and, subject to the reservation herein, the Company shall conform with and abide by the foregoing covenants as to all of said land.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed in its name by its proper corporate officers and its corporate seal to be hereto affixed, all on the day and year first above written.



HALCO BUILDERS, INC.

BY:

Leslie A. Bierwiler Secretary
[Signature] President

STATE OF NORTH CAROLINA,
COUNTY OF NEW HANOVER.

I, DAVE F. WATERS, a Notary Public in and for the County of NEW HANOVER and State of North Carolina do hereby certify that LESLIE A. BIERWILER personally appeared before me this day and acknowledged that he is Secretary of HALCO BUILDERS, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was duly signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary.

WITNESS my hand and notarial seal, this 19th day of MAY, 1988.

Dave F. Waters
NOTARY PUBLIC

My commission expires: August 1992

