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DECLARATION FOR CHESNEY PLACE

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ADMITTED TO RECORD  
28 DAY OF July 1998  
AT 11:01 A.M.  
MARY SUE GOTS  
REGISTER OF DEEDS  
NEW HANOVER COUNTY PAGE

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## DECLARATION FOR CHESNEY PLACE

This Declaration made and entered into as of the 24th day of July, 1998, by and between HARRIS RESIDENTIAL CONSTRUCTION, LLC, a North Carolina limited liability company (hereinafter "Declarant"); SOUTHLAND ASSOCIATES, INC., Trustee; CENTRAL CAROLINA BANK AND TRUST COMPANY; and ALL PROSPECTIVE PURCHASERS AND OWNERS of any of the property hereinafter described including, but not limited to, that shown on Exhibit A;

## W I T N E S S E T H:

WHEREAS, Declarant owns in fee simple the real estate designated as Submitted Property and described on Exhibit A to this Declaration and has elected to subject the Submitted Property to certain covenants, restrictions, reservations, easements, servitudes, liens and charges, all of which are more particularly set forth hereinafter;

WHEREAS, Declarant anticipates that it may acquire fee simple title to certain real estate in the vicinity or the Submitted Property and may elect hereafter to subject all or any portion of such real estate subsequently acquired by Declarant to the provisions of this Declaration and the amendments thereto, such said property to be designated as the Additional Property;

WHEREAS, Declarant deems it desirable and in the best interests of all the prospective purchasers and owners of the real estate subject to this Declaration to protect the value and desirability of such real estate by providing for the development of such real estate in accordance with a common plan and the maintenance of certain shared facilities; and,

WHEREAS, to provide a means for meeting the purposes and intents set forth herein, Declarant has caused to be created Chesney Place Owners Association, Inc., a nonprofit corporation incorporated under Chapter 55A of the General Statutes of North Carolina (North Carolina Nonprofit Corporation Act).

NOW, THEREFORE, Declarant does hereby covenant and declare, on behalf of itself and its successors and assigns, that

the real estate designated as Submitted Property in Exhibit A hereto shall, from the date this Declaration is recorded in the office of the Register of Deeds of New Hanover County, North Carolina, be held, conveyed, acquired and encumbered subject to the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all prospective purchasers and parties who may acquire any right, title, estate or interest in or to any of such real estate or who may acquire any right of occupancy or entrance upon any portion thereof, all subject to the right of the Declarant or the Association to amend this Declaration according to its terms and to add all or any portion of the Additional Property to be subject to this Declaration.

#### ARTICLE 1

##### GENERAL PROVISIONS

Section 1.1. Definitions. Terms used throughout this Declaration shall have the meanings specified for such terms below unless the context otherwise requires:

(1) "Additional Property" means such real property as may be subsequently acquired by Declarant within a radius of one mile of the Submitted Property and which Additional Property Declarant may submit to this Declaration and to the jurisdiction of the Association, or any real estate that the Association may submit to the Declaration and assume jurisdiction over pursuant to Section 4.2.

(2) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of Chesney Place Owners Association, Inc., as may be amended from time to time.

(3) "Association" means Chesney Place Owners Association, Inc.

(4) "Association Documents" means collectively the Articles of Incorporation, this Declaration, the Bylaws and the Rules and Regulations adopted by the Association, all as may be

amended, restated and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

(5) "Bylaws" means the bylaws of the Chesney Place Owners Association, Inc.

(6) "Common Elements" means any real estate within the Property owned or leased by the Association other than a Lot and, any and all personal property and fixtures owned, leased, maintained or operated by the Association for the benefit of the Property or the Owners.

(7) "Common Expenses" means expenditures made by or financial obligations or liabilities of the Association, together with any allocations to reserves.

(8) "Common Expense Liability" means the liability for common expenses allocated to each Lot pursuant to Section 6.2.

(9) "Covenants Committee" means the committee that may be established by the Executive Board pursuant to Article 9 to assure that the Property shall be owned, maintained, operated, enjoyed and used in a manner consistent with the purposes and intent of this Declaration.

(10) "Declarant" means Harris Residential Construction, LLC, its successors or assigns.

(11) "Declaration" means this Declaration for Chesney Place and all amendments, restatements and revisions hereto including all amendments to the Declaration amending the provisions herein submitting Additional Property to the terms of this Declaration and the jurisdiction of the Association.

(12) "Design Guidelines" means the standards developed by the Covenants Committee pursuant to Article 9 and any standards established by the Declarant prior to the submission of real estate to this Declaration by an amendment hereto adding Additional Property.

(13) "Development Period" means the period ending on the earliest of:

(a) The later of five (5) years from the date of the recordation of this Declaration or two (2) years from the date of recordation of the most recent amendment to the Declaration made by the Declarant adding Additional Property; provided, however, that once the Development Period has expired, the recordation of a subsequent amendment to the Declaration shall not reinstate the Development Period; and provided, further, that if the Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond the Declarant's control, then the aforesaid period shall be extended for the length of the delay or two (2) years, whichever is less, upon written notice to the Association of such extension;

(b) Or the date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date.

(14) "Development Plan" means the plan for development of the Property and Additional Property approved by New Hanover County, as amended from time to time, and such additional development as may be approved for any Additional Property. The total number of Lots which may be created pursuant to the Development Plan is 42.

(15) "Executive Board" or "Board" means the executive and administrative entity established by the Articles and the Bylaws to act on behalf of the Association and function as the governing body of the Association.

(16) "Lot" means a separately numbered portion of the Property (but not including the real estate designated as Common Elements) on plats of the Property recorded in the office of the Register of Deeds of New Hanover County, North Carolina, and

includes any improvements now or hereafter appurtenant to that real estate.

Lots may be identified numerically, alphabetically or by a combination of the two. For example, a Lot may be designated as the number "1", the letter "A" or the dual designation "1A", "1B", et seq. For purposes of the Association Documents, a Lot comes into existence on the date which a map or plat depicting said Lot is recorded in the office of the Register of Deeds of New Hanover County, North Carolina.

(17) "Majority Vote" means a simple majority (more than fifty percent (50%)) of the votes actually cast in person or by proxy at a duly held meeting of the members of the Association at which a quorum is present or at a duly held meeting of the Executive Board at which a quorum is present.

(18) "Mortgagee" means an institutional lender (commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies and any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such lenders) holding a first mortgage or first deed of trust ("Mortgage") encumbering a Lot.

(19) "Owner" means one or more Persons who own a Lot in fee simple but does not mean any Person having an interest in a Lot solely by virtue of a contract of purchase or as security for an obligation.

(20) "Person" means one or more natural persons, corporations, partnerships, limited liability companies, trusts or other entities capable of holding title to real estate.

(21) "Property" means, at any given time, the real estate then subject to this Declaration and includes all improvements and appurtenances thereto now or hereafter existing.

(22) "Rules and Regulations" means the rules and regulations governing the use, occupancy, operation and physical appearance of the Property adopted from time to time by the Board.

(23) "Section" means a portion of the Property designated as provided in Section 4.3 hereof.

(24) "Submitted Property" means the real estate designated as such in Exhibit A hereto and all real estate which is from time to time submitted to the Declaration.

(25) "Upkeep" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

Section 1.2. Construction of Association Documents.

(1) Caption. The captions are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of the Article, Section, Subsection or any other portion of this Declaration.

(2) Severability. Each provision of the Association Documents is severable from every other provision and the validity of any one or more provisions shall not change the meaning of or otherwise affect any other provision.

(3) Interpretation. If there is any conflict between the Association Documents, the Declaration shall control. Particular provisions shall control over general provisions. The provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted pursuant to any of the Association Documents.

Section 1.3. Chesney Place Owners Association, Inc.

(1) The Association. The Association is a nonprofit corporation organized and existing pursuant to Chapter 55A of the General Statutes of North Carolina charged with the duties and vested with the powers prescribed by law and set forth in the Association Documents.

(2) Membership. Members of the Association shall at all times be, and shall be limited to, the Persons who constitute Owners of the Lots. If more than one Person owns a Lot, then all of the Persons who own such Lot shall constitute collectively one Owner and be one member of the Association. Each Person is entitled to attend all meetings of the Association.

Membership in the Association is mandatory. Upon acquiring title to a Lot, each new Owner shall immediately give written notice to the Secretary of the Association stating the name and address of such new Owner and the Lot acquired by such new Owner. If the new Owner fails to give the Secretary such notice within thirty (30) days of acquiring title to such Lot, then the costs of locating each new Owner and reasonable record keeping costs incurred by the Association may be assessed against such Owner.

(3) Classes of Members and Voting Rights. During the Development Period, the Association shall have two (2) classes of membership as follows:

(a) Class A - Class A Members shall be the Owners of Lots with the exception of the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

(b) Class B - The Class B Member shall be the Declarant. The Class B Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership and, in addition, shall be entitled to appoint a majority of the members of the Executive Board of the Association during the Development Period as specified in the Bylaws. The Class B Member shall have a veto power over all actions of the Executive Board or any committee as may have been appointed by the Executive Board or established by the Bylaws. The Class B Membership shall terminate and become converted to Class A membership upon the earlier of (i) the conveyance of seventy-five percent (75%) of the Lots

(including those Lots which may be created pursuant to the Development Plan) to Owners other than a declarant; (ii) two (2) years after all declarants have ceased to offer Lots for sale in the ordinary course of business; (iii) two (2) years following the last exercise of the rights of a declarant to add Additional Property or (iv) when, in its discretion, the Declarant so determines.

(c) Board Authority to Act. Unless otherwise specifically provided in the Association Documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Executive Board on behalf of the Association.

## ARTICLE 2

### COMMON ELEMENTS

Section 2.1. Conveyance and Title. Declarant shall convey the Common Elements in the Property to the Association in fee simple released from any encumbrance securing the repayment of monetary obligations incurred by the Declarant, but subject to all easements and other encumbrances appearing of the public records including those created by this Declaration. The conveyance of the Common Elements as contemplated herein shall occur prior to or simultaneously with the conveyance of the first Lot to an Owner.

The Association shall accept title to real estate or personal property offered to the Association by the Declarant.

Section 2.2. No Dedication. Nothing contained herein shall be construed as a dedication to public use or as an assumption of responsibility for upkeep of any Common Elements by any public or municipal agency, authority or utility, nor shall it be constructed to prevent the Board of the Association from permitting public access to or use of any Common Elements.

Section 2.3. Regulation of Common Elements. The Association shall have the right to regulate the use of the Common Elements pursuant to Section 8.3 hereof and to charge fees for the use thereof. In the event the Association imposes fees for the use

of the Common Elements, such fees to be charged to Persons entitled to use the Common Elements shall be uniform and shall not discriminate against any one or more Persons or groups of Persons entitled to use the Common Elements. The Association may also mortgage, dedicate, convey or grant easements across the Common Elements subject to the restrictions in Section 15.5 hereof.

Section 2.4. Leasing of Common Elements. The Association shall have the right to lease the Common Elements and improvements located thereon subject to rules, regulations and fees adopted by the Association from time to time.

### ARTICLE 3

#### EASEMENTS

Section 3.1. Development Easements.

(1) Easements Reserved to the Declarant.

(a) Easement to Facilitate Development. The Declarant hereby reserves to itself and its designees a nonexclusive blanket easement over and through the Property and Common Elements for all purposes reasonably related to the development and completion of improvements on the Property and Common Elements, including without limitation: (i) temporary slope and construction easements; (ii) drainage, corrosion control, and storm and sanitary sewer easements (including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter the Declarant shall restore the affected area as near as practicable to its original condition); (iii) easements for the storage (in a sightly manner) of reasonable supplies of building materials and equipment necessary to complete the improvements; and (iv) easements for the construction, installation and Upkeep of improvements (e.g., landscaping, street lights, signage, etc.) on the Property and Common Elements or reasonably necessary to serve the Property and Common Elements.

(b) Easement to Facilitate Sales. The Declarant hereby reserves to itself and its designees the right to: (i) use any Lots owned by the Declarant, any other Lot with the written consent of the Owner thereof, or any portion of the Common Elements as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; (ii) place and maintain in any location on the Common Elements and on any Lot street and directional signs, temporary promotional signs, plantings, street lights, entrance features, "theme area" signs, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features; provided, however, that all signs shall comply with applicable governmental regulations and the Declarant shall obtain the consent of the Owner of any Lot upon which the improvements are to be located; and (iii) relocate, within the areas permitted by this paragraph, or remove all or any of the above from time to time at the Declarant's sole discretion. These rights and easements shall continue throughout the Development Period.

(c) Easement for Utilities and Related Services. The Declarant hereby reserves to itself and its assignees, during the Development Period, the right to grant and reserve easements, rights of way and licenses, over, through, upon and under the Property and the Common Elements for ingress, egress, installation and Upkeep of equipment for providing to any portion of the Property or Common Elements any utilities including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private, or for any other purpose necessary or desirable for the orderly development of the Property. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where initially installed with the permission of the Declarant, where contemplated

on any site plan approved by the Declarant or where approved by resolution of the Executive Board.

(d) Easements for Future Access and Utilities. The Declarant hereby reserves for itself, its heirs, successors and assigns, non-exclusive easements for (i) ingress, egress and regress for pedestrian and vehicular access to and from the Additional Property, and (ii) the installation, maintenance and provision of utilities including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private, or for any other purposes necessary or desirable for the orderly development of the Additional Property, across, under, over and upon a portion of the Common Elements, more particularly described on Exhibit C to this Declaration.

(e) Dedications and Easements Required by Governmental Authority. The Declarant hereby reserves to itself and its designees, during the Development Period, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Elements or the Property.

(2) Further Assurances. Any and all conveyances made by the Declarant to the Association with respect to any of the Common Elements or the Property shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. Upon written request of the Declarant, the Association and each Owner shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

(3) Assignment of Development Rights. The Declarant may assign its rights under Section 3.1, or share such rights with, one or more other Persons, exclusively, simultaneously or consecutively with respect to the Common Elements, or Lots and Additional Property owned by the Declarant or such Persons. The Declarant

shall notify the Association of any such assignment or designation by the Declarant.

Section 3.2. Association Power to Make Dedications and Grant Easements. The Declarant, on behalf of itself and its successors and assigns, hereby also grants to the Association the equal rights and powers as reserved to the Declarant by Paragraphs 3.1(1) (a), (b) and (c) hereof. These rights and easements may be exercised by the Association, subject to Section 15.5 hereof; provided, however, that the limitations on duration applicable to the Declarant shall not apply to the Association. If the Declarant or any Owner requests the Association to exercise its powers under this section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

Section 3.3. Easement for Upkeep.

(1) Association Access. The Declarant, on behalf of itself and its successors and assigns, hereby grants the right of access over and through any Lot to the Association and any other Person authorized by the Executive Board in the exercise and discharge of their respective duties and responsibilities including, but not by way of limitation, those duties and responsibilities to make inspections, correct any condition originating in a Lot or in the Common Elements threatening another Lot or the Common Elements, correct drainage, perform installations or Upkeep of utilities, landscaping or other improvements located on the Property for which the Association is responsible for Upkeep, or correct any condition which violates the Association Documents. The agents, contractors, officers and directors of the Association may enter any area of any Lot (including any building) in order to utilize or provide for the Upkeep of the areas subject to easements granted in this Article to the Association.

(2) Declarant Access. Until the expiration of any applicable warranty period, the Declarant hereby reserves to itself and its designees a right of access over and through the Common