

8



FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2005 JUL 11 02:23:12 PM
BK: 4874 PG: 2944-2952 FEE: \$35.00

INSTRUMENT # 2005038124

Prepared by and Return to: 343-1432

G. Grady Richardson, Jr., Esq.
Hedrick & Morton, L.L.P.
3208 Oleander Drive, Suite 100
Wilmington, North Carolina 28403

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

ANNEXATION OF PROPERTIES AND
THIRD AMENDMENT TO DECLARATION
OF PROTECTIVE COVENANTS AND RESTRICTIONS

FOR

DEMAREST VILLAGE SUBDIVISION
(ALL SECTIONS AND PHASES)

THIS ANNEXATION OF PROPERTIES AND THIRD AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR DEMAREST VILLAGE SUBDIVISION (hereinafter collectively referred to as "Third Amendment") made as of this the 8th day of July, 2005 by INLAND HARBOUR PROPERTIES, L.L.C., a North Carolina Limited Liability Company (hereinafter, "Declarant").

WITNESSETH:

WHEREAS, Declarant heretofore subdivided and developed, and continues to subdivide and develop, certain real property it owns in New Hanover County, North Carolina into the subdivision development known as Demarest Village Subdivision by the recording of various maps, deeds and plats in the New Hanover County Registry (hereinafter, "Registry"). Reference is hereby made to all of the records of the

aforementioned Registry for a more particular description of the maps, plats and other documents pertaining to in any manner whatsoever the Demarest Village Subdivision and the Declarant relative to said subdivision, and each such map, plat and other records for the Demarest Village subdivision is incorporated herein by this reference for the description of Demarest Village Subdivision, all sections and phases.

WHEREAS, as part of the common scheme and plan of development for Demarest Village Subdivision, all sections and phases, Declarant caused all of the certain lots and parcels of land comprising the Demarest Village Subdivision, and any future lands added or annexed by Declarant into the Demarest Village Subdivision, to be subject to and conveyed subject to certain covenants, conditions, easements and restrictions as described in that certain instrument recorded in the Registry on August 20, 1999 in Deed Book 2629 at Page 0565 entitled, "Declaration of Protective Covenants and Restrictions for Demarest Village" (hereinafter, "Original Covenants"). Reference is hereby made to said instrument, and any and all amendments thereto specifically including without limitation the amendments recorded on December 28, 1999 in Deed Book 2684 at Page 684 (hereinafter, "First Amendment") and on July 26, 2001 in Deed Book 2998 at Page 113 (hereinafter, "Second Amendment") both in the aforementioned Registry, for the particular covenants, conditions, easements and restrictions as set forth therein.

WHEREAS, some but not necessarily all lands comprising the Demarest Village Subdivision are as reflected on the maps, plats, deeds and other instruments of title in the aforementioned Registry, including without limitation the maps of record in Map Book 36 at Page 369; Map Book 37 at Page 84; Map Book 37 at Page 173; Map Book 38 at Page 204; Map Book 39 at Page 141; Map Book 39 at Page 264; Map Book 39 at Pages 294-95; Map Book 40 at Page 7; Map Book 40 at Page 11; Map Book 40 at Page 98; Map Book 40 at Page 196; Map Book 42 at Page 21; Map Book 44 at Page 399; Map Book 45 at Page 314; and, Map Book 46 at Page 191, reference to all of which is hereby made and incorporated herein by reference.

WHEREAS, pursuant to the above maps of Demarest Village Subdivision and other matters of record in the Registry, Declarant is still the owner of lands within Demarest Village Subdivision, specifically including without limitation, all of the common areas and recreational spaces such as, without limitation, the Village Green, Village Park, Fountain Park and the land upon which the future "Promenade" recreational and open space will be situated upon.

WHEREAS, among other sections and provisions, Article III, Section §3.06 and, Article XI, Section §11.05 of the Original Covenants provide, *inter alia*, that Declarant has the right and power, in its sole discretion and authority, to amend the Original Covenants for Demarest Village Subdivision.

WHEREAS, among other sections and provisions, Article III, Section §3.01, of the Original Covenants provides, *inter alia*, that Declarant shall have the right and the power in its sole discretion to add any lands into the Demarest Village Subdivision and/or

to subject said added or annexed lands to the restrictive covenants and conditions of Demarest Village Subdivision.

WHEREAS, in light of its status as the Declarant under the Original Covenants and any and all amendments thereto, the Declarant has deemed it advisable, for the efficient preservation of the values and amenities in said Demarest Village Subdivision, all sections and phases, to: (1) add and thereby annex additional lands into the Demarest Village Subdivision and make said lands subject to all covenants and restrictions of record applicable to said Subdivision; and, (2) further amend the Original Covenants to the Demarest Village Subdivision, as specifically provided herein.

WHEREAS, it is the intent of the Declarant that in the event of a conflict between the Original Covenants, First Amendment or Second Amendment with the provisions contained herein this "Annexation of Properties and Third Amendment to Declaration of Protective Covenants and Restrictions," the provisions contained in this Third Amendment shall control.

NOW, THEREFORE, the Declarant does hereby declare in consideration of the premises and intending to be legally bound: that all of the Demarest Village Subdivision properties, described herein, including the properties added and annexed into the said Subdivision by virtue of this Third Amendment, shall be hereafter held, transferred, sold, conveyed, leased, mortgaged, encumbered, occupied and used subject to the covenants, conditions, restrictions, easements, assessments, liens and obligations hereinafter set forth in this Third Amendment, together with the Original Covenants, First Amendment and Second Amendment (unless specified otherwise, all of these covenants shall hereinafter be collectively referred to as "Demarest Village Covenants"), all of which are for the purpose of, *inter alia*, enhancing and protecting the value, desirability and attractiveness of all the real property in Demarest Village Subdivision. The Demarest Village Covenants' easements, restrictions, covenants and conditions shall run with the real property described herein and shall be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each Owner thereof.

ANNEXATION OF ADDITIONAL PROPERTIES INTO DEMAREST VILLAGE SUBDIVISION

1. By General Warranty Deed dated and recorded July 25, 2001 in Deed Book 2997 at Page 590 of the aforementioned Registry, Caroline S. Baldwin and husband, Ralph C. Baldwin, Grantors, conveyed certain real property to Declarant totaling approximately 10.35 acres, as more specifically described in said instrument, reference to which is hereby made and incorporated herein by reference (hereinafter, "Additional Property").

2. The Additional Property acquired by Declarant is immediately adjacent to lands already developed by Declarant as a section or phase of its Demarest Village Subdivision.

3. Pursuant to, *inter alia*, Article III, Section §3.01 of the Original Covenants, Declarant does hereby add and annex all of the Additional Property described hereinabove into the Demarest Village Subdivision; and, further, Declarant does hereby expressly subject said Additional Property to all of the Demarest Village specifically including this Third Amendment.

SPECIFIC AMENDMENTS TO ORIGINAL COVENANTS

1. Article I, Section §1.03 "DEMAREST VILLAGE" is hereby amended and revised to now recite only the following:

"DEMAREST VILLAGE" shall mean and refer to those certain lands located in New Hanover County, North Carolina, now owned, or formerly owned and developed, by Declarant and as specifically noted and described as a part of Demarest Village Subdivision on the following maps or plats of record in the Registry: Map Book 36 at Page 369; Map Book 37 at Page 84; Map Book 37 at Page 173; Map Book 38 at Page 204; Map Book 39 at Page 141; Map Book 39 at Page 264; Map Book 39 at Pages 294-95; Map Book 40 at Page 7; Map Book 40 at Page 11; Map Book 40 at Page 98; Map Book 40 at Page 196; Map Book 42 at Page 21; Map Book 44 at Page 399; Map Book 45 at Page 314; and, Map Book 46 at Page 191, reference to all of which is hereby made and incorporated herein by reference; specifically provided, however, that the lands depicted on the plat in Map Book 40 at Page 98 as "*Future Development, Inland Harbour Properties, LLC, Demarest Village Square, Tract 1, 2.00 +/-*"; and, "*Future Development, Open Space, Map Book 38 at Page 204*"; and, "*Future Development, Map Book 39 at Page 294*" shall not be deemed to be part of Demarest Village Subdivision unless or until Declarant shall expressly make said lands a part thereof by subsequent instrument of record in the Registry. Unless specifically noted as being lands that are a part of any one or more sections or phases of Demarest Village Subdivision, any lands not so noted but are shown or depicted on said maps and plats, shall not be deemed to be lands that are part of Demarest Village Subdivision unless made a part thereof by other instrument of record in the Registry. By way of illustration and not limitation, lands depicted on said foregoing maps as "future development" or similar term are not part of Demarest Village Subdivision unless Declarant adds or annexes said lands in accordance with the Original Covenants and any amendments thereto. In addition to the lands specifically referenced and described as part of Demarest Village Subdivision on the foregoing maps and plats, the Declarant's Additional Property described herein is now made a part of Demarest Village Subdivision and subject to all of the Demarest Village Covenants.

2. Article II, Section §2.02 "Classes of Voting Rights" is hereby amended and revised to now recite only the following:

"The COMMUNITY shall have two classes of voting membership:

Class A. Class A Members shall be all OWNERS, with the exception of the DECLARANT, which is to be a Class B Member, who shall have voting rights as may be

specified in all of the Demarest Village Covenants and Bylaws, as the same may be amended from time to time, to the Community.

Class B. Declarant shall be the only Class B Member, and shall have voting rights superior to Class A Members as provided herein. Declarant's Class B status shall only cease upon the happening of either of the following events, whichever first occurs:

(i). When, if ever, Declarant no longer owns any land that comprises any part of Demarest Village Subdivision, or is adjacent to or contiguous to present Demarest Village Subdivision boundaries, such that no additional lands can be added or annexed into Demarest Village Subdivision by Declarant; or,

(ii). After the expiration of December 31, 2020."

3. Article II, Section §2.04 "Voting Rights" is hereby amended and revised to now recite only the following:

"Voting Rights. Class A Members shall be entitled to one vote for each Property Unit, as defined in the Original Covenants, owned by the Owner. Declarant, as a Class B Member, and for so long as Declarant owns any land that is a part of Demarest Village Subdivision specifically including without limitation common areas, recreational areas, parks, playgrounds and open spaces, shall always possess a Seventy-Five Percent (75%) vote of the entire Community Membership irrespective of how much land Declarant owns that is a part of Demarest Village Subdivision."

4. Article II, Section §2.06 "Voting Control" is hereby amended and revised to now recite only the following:

"Voting Control. For so long as Declarant is a Class B Member as defined herein, Declarant shall possess a Seventy-Five Percent (75%) vote of the entire Community Membership irrespective of how much land Declarant owns that is a part of Demarest Village Subdivision."

5. Article II, Section §2.07 "Transfer of Control to the Community" is hereby amended and revised to now recite only the following:

"Transfer of Control to the Community.

A. Transfer of control of the COMMUNITY by Declarant shall only be when Declarant is no longer a Class B Member or the Declarant otherwise expressly agrees in a writing duly signed, executed and recorded in the Registry.

B. Declarant's transfer of control of the COMMUNITY shall not constitute a waiver or surrender of any powers, rights, or benefits reserved unto Declarant for a period that is of greater duration than when Declarant's transfer of control of the COMMUNITY occurs.

C. So long as the Declarant remains a Class B Member (as defined herein), the COMMUNITY may not take any action that would be detrimental to the sales of lands of Demarest Village Subdivision owned by Declarant.”

6. Article III, Section §3.01(A.) “Additions to The Properties” is hereby amended and revised to now recite only the following:

“Section 3.01. Additions to the Properties.

A. DECLARANT shall have the unfettered right, power and ability in its sole discretion to add any lands within the boundaries and/or adjacent lands to DEMAREST VILLAGE Subdivision by recording an instrument subjecting such additional lands to all of the Demarest Village Covenants.”

7. Article III, Section §3.08 “Transfer of DECLARANT’S Rights” is hereby amended and revised to now recite only the following:

“Transfer of DECLARANT’S Rights.

The COMMUNITY shall fully and promptly assume all of DECLARANT’S rights, powers, abilities and duties and obligations as specified in all of the Demarest Village Covenants immediately upon the happening of either of the following events:

- A. DECLARANT is no longer a Class B Member as defined herein; or,
- B. The expiration of December 31, 2020; or,
- C. At such earlier time as DECLARANT may elect in a writing duly signed, executed and recorded in the Registry designating the COMMUNITY as its assignee.”

8. Article VI, Section §6.02 “Easements” is hereby amended and revised by adding a subsection “D” to said Section to recite and provide the following:

“Section 6.02, Easements, Subsection ‘D’: Any and all streets, rights-of-way, common areas, and the like of Demarest Village Subdivision as the same are reflected on the maps and plats or other instruments of record in the Registry, shall be subject to and available for the rights of ingress, egress and regress, parking, and use by any and all persons of the public accessing lands, properties, recreational areas and facilities, shops, professional businesses, offices, commercial businesses and the like, now owned and/or being developed by Declarant and/or its successors, assigns and representatives, and/or owned and/or developed in the future by Declarant and/or its successors, assigns and representatives, that are located in, around, adjacent to,

contiguous to, or in close proximity to Declarant's Demarest Village Subdivision, all sections and phases."

9. Article VIII, Section §8.02(A.) "Approval of Plans and Specifications" is hereby amended and revised to now recite only the following:

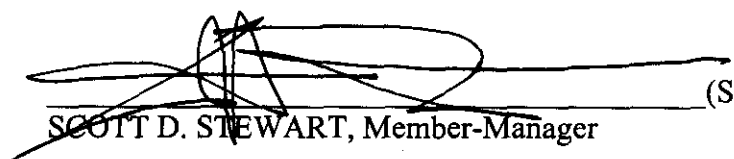
"A. Declarant shall have the authority to enforce the provisions of this Article so long as Declarant is a Class B Member in the Demarest Village Subdivision. The provisions of Section 3.07 shall apply to this paragraph; provided, however, said provisions are not inconsistent with this paragraph, in which event, this paragraph and the provisions of this Third Amendment shall control."

10. Article XI, Section §11.11 "Construction" is hereby amended and revised to now recite only the following:

"Construction and Conflicts of Provisions. The provisions of all Demarest Village Covenants shall be liberally construed and interpreted to provide maximum control, authority and flexibility to Declarant and in accordance with and pursuant to the Master Development Plan and pursuant to the purposes set forth in all of the Demarest Village Covenants, including preambles and recitals. In the event of any conflict between the Original Covenants, First Amendment or Second Amendment with the provisions contained in this "Annexation of Properties and Third Amendment to Declaration of Protective Covenants and Restrictions," the provisions contained in the Third Amendment shall control."

IN WITNESS WHEREOF, the undersigned has executed this instrument this the 8th day of July, 2005.

INLAND HARBOUR PROPERTIES, L.L.C.

By:  (SEAL)
SCOTT D. STEWART, Member-Manager

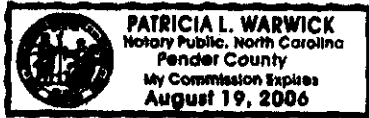
STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, PATRICIA L. WARWICK, a Notary Public of the County of PENDER and State of North Carolina, do hereby certify that SCOTT D. STEWART, personally appeared before me this day and acknowledged the foregoing instrument as a Member-Manager of INLAND HARBOUR PROPERTIES, L.L.C., a North Carolina Limited Liability Company.

WITNESS my hand and official stamp or seal, this 8th day of July, 2005.

Patricia L. Warwick
Notary Public



My Commission Expires:

August 19, 2006



REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 07/11/2005 02:23:12 PM
Book: RE 4874 Page: 2944-2952
Document No.: 2005038124
DECL 9 PGS \$35.00

Recorder: JACQUELINE NELSON

State of North Carolina, County of New Hanover

The foregoing certificate of PATRICIA L WARWICK Notary is certified to be correct. This 11TH of July 2005

REBECCA P. SMITH, REGISTER OF DEEDS

By: 
Deputy/Assistant Register of Deeds

YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

2005038124

2005038124