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1:00

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
INDEPENDENCE COURT VILLAS

THIS DECLARATION, made on the date hereinafter set forth by  
W. B. WARREN and wife, GLENDORA G. WARREN, hereinafter referred  
to as "DECLARANT".

W I T N E S S E T H:

WHEREAS, DECLARANT is the owner of certain property in the  
County of New Hanover, State of North Carolina, which is more  
particularly described as:

BEGINNING at the point of intersection of the  
Western right of way line of Independence  
Boulevard (100 foot right of way) with the  
Southern right of way line of Park Avenue  
(151 foot right of way); running thence from  
said beginning point with the Western right  
of way line of Independence Boulevard, South  
32 degrees 42 minutes West 315.0 feet to a  
point; running thence North 57 degrees 18  
minutes West 175.0 feet to a point in the  
Eastern right of way line of a 15 foot alley  
as shown on map of Oleander and Oleander  
Extension, recorded in Map Book 3, at Page 2,  
of the New Hanover County Registry; running  
thence with the Eastern right of way line of  
said 15 foot alley, North 32 degrees 42  
minutes East 315.0 feet to a point in the  
Southern right of way line of Park Avenue;  
running thence with the Southern right of way  
line of Park Avenue South 57 degrees 18  
minutes East 175.0 feet to the point of  
beginning. Containing 1.26 acres more or  
less. The same being that tract conveyed, or  
intended to be conveyed, to W. B. Warren in  
Record Book 1219, at Page 1808, of the New  
Hanover County Registry, and same being that  
tract conveyed, or intended to be conveyed,  
to the United States of America in Record  
Book 963, at Page 497, of the New Hanover  
County Registry, and upon which the DECLARANT  
has caused to be constructed four (4) resi-  
dential homes, all of which is known as  
INDEPENDENCE COURT VILLAS as shown on the  
Revised Map of INDEPENDENCE COURT VILLAS re-  
corded in Map Book 25 at Page 122 in  
the New Hanover County Registry of Deeds.

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

Nov 22 4 12 PM '85

NOW, THEREFORE, DECLARANT hereby declares that all of the  
properties described above shall be held, sold and conveyed  
subject to the following easements, restrictions, covenants, and  
conditions, which are for the purpose of protecting the value and

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RYALS, JACKSON & MILLS  
WILMINGTON, NORTH CAROLINA 28402-0147

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desirability of, and which shall run with, the real property herein and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof:

#### ARTICLE I

##### DEFINITIONS

Section 1. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "PROPERTIES" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the INDEPENDENCE COURT VILLAS homeowners association.

Section 3. "MAINTAINED AREA" shall mean all real property (including the improvements thereto) designated as such on the said recorded Revised Map. The "MAINTAINED AREA" shall include, but is not limited to, the 20' driveway easement as shown on the Revised Map of INDEPENDENCE COURT VILLAS in Map Book 25, at Page 122 in the New Hanover County Registry, and the privacy wall which extends along the Eastern boundary of the property and all of that grassed-in area including shrubbery and flowers located and lying generally easterly from the front of the four houses and the privacy fences connecting said houses all as shown on said map running to the eastern boundary of the property at Independence Boulevard.

Section 4. "LOT" shall mean and refer to that portion of land shown upon the revised map of INDEPENDENCE COURT VILLAS, recorded in Map Book 25, at Page 122 of the New Hanover County Registry, referred to hereinabove, specifically allocated, platted and/or recorded as lots for sale and/or use as single family residences.

ARTICLE II

PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to that portion of the Maintained Area which lies within that owner's lot and also to that portion of the Maintained Area which lies East of the private driveway/road and running up to the privacy fence located on Independence Boulevard which shall be appurtenant to and shall pass with the title to every Lot.

Section 2. DELEGATION OF USE. Any owner may delegate, in accordance with these Covenants, Conditions and Restrictions, the Articles of Incorporation of the Homeowners Association referred to below and the Bylaws for same, his right of enjoyment to the Maintained Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

HOMEOWNERS ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Upon the conveyance of the first lot by the DECLARANT, all owners of lots located within INDEPENDENCE COURT VILLAS shall form a Homeowners Association to administer the maintenance and preservation of the Maintained Area. The costs and assessments to fund such maintenance shall be as set forth in ARTICLE IV below.

Section 2. Every owner of a lot shall be a member of the Association and agrees to be subject to and abide by the Homeowners Association Bylaws and Regulations. Membership shall be appurtenant to and may not be separated from ownership of any lot.

Section 3. The Association shall have one class of voting membership, consisting of owners of lots within INDEPENDENCE COURT VILLAS, and there shall be one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any one lot.

## ARTICLE IV

ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATIONS OF ASSESSMENTS. The DECLARANT, for each lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to be assessed and agree to pay:

- (1) Annual assessments or charges; and
- (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees if required to collect same, shall be a charge on the land and shall be a continuing lien upon the property of the owner against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The annual and special assessments shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Maintained Area.

Section 3. MAXIMUM ANNUAL ASSESSMENT. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be THREE HUNDRED, SIXTY DOLLARS, (\$360.00) per lot, to be paid in equal monthly installments of \$30.00 per month to be used for the maintenance and preservation of the grassed-in areas, flowers, shrubbery and keeping the driveways free and clear of debris.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the

maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without the approval of at least three of the votes entitled to be cast.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of owners of three (3) lots who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to 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 Maintained Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the owners of three (3) lots, who are voting in person or by proxy at a meeting duly called for this purpose. Special assessments levied and collected by the Association shall be used exclusively for the maintenance, repair and improvement of the private road for ingress and egress, driveways, the four (4) foot high privacy wall or fence located and lying along the eastern boundary and northern boundary of the property and any other matter agreed upon by the owners of three (3) lots which is necessary or desirable to keep the property neat, in good order and to promote the health, safety and welfare of the owners and residents.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all owners of lots not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At any such meeting called, the presence of the owners of three (3) or their proxies shall constitute a quorum.

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Section 6. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis, unless otherwise determined by the homeowners association.

Section 7. EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The homeowners association or any owner of a lot herein may bring an action at law against an owner who does not pay an assessment, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Maintained Area or abandonment of his lot.

Section 8. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V

##### ARCHITECTURAL CONTROL

No exterior addition, modification or alteration to the front (or eastern side) of the houses on the Properties as shown on the Revised Map referred to hereinabove, unless and until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the owners of at least three (3) lots. In the event the design and location of said improvement is not approved or disapproved within forty-five (45) days after review, approval will not be

required and this Article will be deemed to have been fully complied with.

ARTICLE VI

STREETS, EASEMENTS AND RIGHTS-OF-WAY

(a) Each deed to a lot owner grants to the owner a non-exclusive easement over and across the private road running through the project as a means of ingress and egress for each lot owner. No structure, wall, fence, planting or anything else shall be erected or placed upon any part of said road which will interfere with another lot owner's right of ingress and egress.

(b) The owner of Lot 1 has an exclusive easement for the use, enjoyment and maintenance of that shaded area located on Lot 2, immediately adjacent to Lot 1, and denominated with the numeral 1 as shown on said Revised Map referred to hereinabove.

(c) The owner of Lot 2 has an exclusive easement for the use, enjoyment and maintenance of that shaded area located on Lot 3, immediately adjacent to Lot 2, denominated with the numeral 2 as shown on said Revised Map, and an easement over and across that shaded portion of the driveway located on Lot 1 denominated with the numeral 2 as shown on said Revised Map for ingress and egress purposes only.

(d) The owner of Lot 3 has an exclusive easement for the use, enjoyment and maintenance of that shaded area denominated with the numeral 3 located on Lot 4 immediately adjacent to Lot 3 and an easement for ingress and egress purposes only over those shaded areas denominated with the numeral 3 located on Lot 2 as shown on said Revised Map.

(e) The owner of Lot 4 has an easement for ingress and egress purposes only over those shaded areas denominated with the numeral 4 located on Lot 3 immediately adjacent to Lot 4 as shown on said Revised Map.

ARTICLE VII

GENERAL PROVISIONS

Section 1. APPLICABILITY. These Restrictions and Covenants

shall apply to all lots shown on the Revised Map referred to hereinabove and to all owners of said lots.

**Section 2. ENFORCEMENT.** Any Owner or the Homeowner's Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Owners or the Homeowner's Association or by any single Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. SEVERABILITY.** Invalidation of any one of these covenants or restrictions by Judgment or Court Order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 3. AMENDMENT.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of ten (10) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first ten (10) year period by an instrument signed by not less than owners of four (4) lots and thereafter by an instrument signed by not less than owners of three (3) lots. Any amendment must be recorded in the New Hanover County Register of Deeds.

**Section 4. ANNEXATION.** Additional property may be annexed to the Properties with the consent of the owners of three (3) lots.

**Section 5. RESIDENTIAL USE.** All lots are to be used for single family residential purposes only and shall not be used or occupied by other than a single family and shall not be used for other than residential use. No lot shall be subdivided.

**Section 6. GARBAGE DISPOSAL.** Each lot owner has been provided an enclosure located on the western side of the property adjacent to an alleyway, where all trash, rubbish or refuse shall be deposited or placed for pick up by the City of Wilmington;

trash may not be placed elsewhere on the property. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkept conditions of the residence, building or grounds on such lot which shall tend to substantially decrease the beauty of the INDEPENDENCE COURT VILLAS as a whole or the specific area.

Section 7. No housetrailer, mobile home, tent or shack shall be located on any lot or used at any time as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

Section 8. No sign or billboard of any description shall be displayed on any lot, other than private name plates or signs for identification of the residents, and signs advertising the property "For Rent" or "For Sale".

Section 9. No noxious or offensive trade or activity shall be carried on or maintained on any lot or part of any lot, nor shall any use be made of any portion of said property which may be or become an annoyance or nuisance to the neighborhood.

Section 10. No domesticated farm animals, livestock or fowls shall be kept on the property, it being the intention of the Declarant that only domesticated household pets shall be permitted and those only for noncommercial purposes and provided further that they are not allowed to run free.

Section 11. Unsightly, inoperative junk cars, large trucks, buses, or other similar eyesores shall not be maintained or stored on the property. This prohibition shall not be construed to prevent the maintenance or storage of recreational vehicles upon the property.

IN WITNESS WHEREOF, the undersigned, being the DECLARANT herein, has hereunto set its hand and seal this 15<sup>th</sup> day of October, 1985.

  
W. B. WARREN, Declarant

  
GLENORA G. WARREN, Declarant

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that W. B. WARREN and GLENDORA G. WARREN, Declarants, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 15TH day of OCTOBER, 1985.

Beverly A. Dunlow  
Notary Public

My Commission Expires:

My Commission Expires April 4, 1989  
(NOTARIAL SEAL)



STATE OF NORTH CAROLINA  
New Hanover County  
The Foregoing Certificate of \_\_\_\_\_  
Beverly A. Dunlow, \_\_\_\_\_  
Notary Public \_\_\_\_\_  
is certified to be correct.  
This the 22 day of Nov 19 85

Rebecca P. Tucker, Register of Deeds  
By Mary Sue Carter  
Clerk