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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATIONS OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF **KINGSWOOD AT WEST BAY**  
ESTATES HOA, INC.

THIS DECLARATION, made the 23rd day of March, 1998, by **DALLAS HARRIS LAND COMPANY, LLC**, a North Carolina corporation, hereinafter referred to as "Declarant"

Whereas, Declarant is the owner of certain property in New Hanover County, North Carolina, which is more particularly described as follows:

Being all of **KINGSWOOD**, AS THE SAME IS SHOWN ON A MAP ENTITLED "**KINGSWOOD AT WEST BAY ESTATES**", recorded in Map Book 37, Page 367, in the office of the Register of Deeds of New Hanover County, North Carolina, reference to which is hereby made for a more particular description

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 desirability of, and which shall run with the real property 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.

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**ARTICLE I**  
**DEFINITIONS**

As used herein, the following terms shall mean:

Section 1. **ASSOCIATION** shall mean and refer to **KINGSWOOD AT WEST BAY ESTATES HOA, INC.**, a North Carolina non-profit corporation, its successors and assigns, the owners' association organized for the mutual benefit and protection of the Properties. All property owners of lots in **KINGSWOOD** and any adjoining areas hereafter developed and subjected to this Declaration, if any, shall be members of the Association, which membership shall be appurtenant to and may not be separated from the ownership of such single family or multi-family lot.

Section 2. **OWNER** shall mean and refer to the record owner, whether one or more persons or entities, of 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 3. **PROPERTIES** shall mean and refer to all of **KINGSWOOD** as described above, and any of the additional properties that may hereafter be brought within the jurisdiction of the Association as herein provided.

Section 4. **ADDITIONAL PROPERTIES** shall mean and refer to any lands adjoining the Properties or within a one mile radius thereof which now are owned or may be hereafter acquired or developed by the Declarant and annexed to and made a part of the Properties by the Declarant and subjected to this Declaration without the assent or vote of the owners of lots as hereinafter provided. The annexation of such Additional Properties shall become effective by the recording by the Declarant of an amended declaration for each new section annexed.

Section 5. **COMMON AREA** shall mean and refer to all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot shall be all the area designated as "Common Area" on the plat of **KINGSWOOD**, if any, recorded or to be recorded in the New Hanover County Registry.

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Section 6. **LOT** shall mean and refer to any numbered lot shown upon the recorded plat of any section of **KINGSWOOD**, now or hereafter recorded in the New Hanover County Registry.

Section 7. **Declarant** shall be used interchangeably with **Developer** (which designations shall include singular, plural, masculine and neuter as required by the context) to mean and refer to **DALLAS HARRIS LAND COMPANY, LLC**, and its successors and assigns, if such successors and assigns should acquire undeveloped property from the Declarant for the purpose of development.

Section 8. **DECLARATION** shall mean this instrument as it may be from time to time amended or supplemented.

Section 9. **MEMBERSHIP** shall mean and refer to the rights, privileges, benefits, duties and obligations which shall inure to the benefit of and burden each member in the Association.

Section 10. **MEMBER** shall mean and refer to every person or entity who has a membership in the Association.

Section 11. **LIMITED COMMON AREA AND FACILITIES** shall mean and include those common areas and facilities which are reserved for the use of a certain unit or units to the exclusion of other units, as more specifically defined herein.

## ARTICLE II

### PROPERTY RIGHTS

**Owners' Easements of Enjoyment.** Every owner shall have a right and easement of enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- a. The right of the Association to suspend the voting rights and privileges of an owner for any period during which any assessment against his lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- b. The right of the Association to mortgage or convey the Common Area, or to dedicate or transfer all or part of the Common Area, if any, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective until approved by a vote of at least two-thirds (2/3) of the members, excluding the developer, as indicated in an instrument executed by the corporation and recorded in the New Hanover County Registry;
- c. The right of the Association to impose regulations for the use and enjoyment of the Common Area, if any, and improvements thereon, which regulations may further restrict the use of the Common Area.

## ARTICLE III

### EASEMENTS

Section 1. Perpetual, alienable easements are reserved as necessary in the Properties and the Common Areas thereof for installation and maintenance of underground facilities and drainage facilities.

Section 2. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releaseable easement and right of way, on, over and under the ground for men and equipment to erect maintain, inspect, repair and use electric and telephone poles, wires, cables,

conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each lot and such other areas as are shown on the plat of the Properties recorded or to be recorded in the office of the Register of Deeds of New Hanover County, provided further, that the Declarant may cut drain ways for surface water whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights of way 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 economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Declarant further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or on any residential lot now or subsequently designated for such use or to locate same upon any lot with the permission of the owner of such lot. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

Section 3. The Developer reserves the right to subject the real property in this subdivision to a contract with Carolina Power and Light for the installation of street lighting, which requires a continuing monthly payment to Carolina Power and Light by each residential customer.

Section 4. Sewer Service. All lots will be connected to the New Hanover County Water and Sewer System. All monthly charges for water and sewer service will be the responsibility of each individual lot owner. No private wells shall be permitted on any lot except for irrigation purposes, and then only with the consent of the New Hanover County Water and Sewer Department, its successors and assigns.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

Section 2. Each member shall be entitled to one vote in the affairs of the Association 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 the owners of such lot among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

#### ARTICLE V

##### MANAGEMENT AND CONTROL

Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with the Declaration and the By-Laws; **PROVIDED, HOWEVER,** that all of the powers and duties of the Board of Directors may be exercised by the Declarant until such time as 75% of the lots have been sold and conveyed by the Declarant to purchasers or until December 31, 2000, whichever occurs first. Management and control may be transferred to the lot owners at any time but no later than 120 days after the happening of the earlier of the above events.

#### ARTICLE VI

##### COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each lot owned within the properties, hereby covenants and agrees to pay 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 pay to the Association:

- a Annual assessments or charges in the initial sum of \$480.00 per year to be paid at the rate of \$40.00 per month, and
- b Special assessments for capitol improvements, such assessments to be established and collected as hereinafter provided, and
- c Insurance assessments as hereinafter provided, and
- d To the appropriate governing taxing authority, a pro rata share of ad valorem taxes levied against the Common Area, if any.

The annual, special and insurance assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each 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 the owner's successors in title unless expressly assumed by them.

Section 2. **Purpose of assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of all easements, utilities and the Common Area. The funds arising from said assessments or charges may be used for any or all of the following purposes: Maintenance and improvement of the common open space, buffer areas, private streets, private cul-de-sacs, private roads, private drives, drainage and utility easements and rights of way and enforcing these restrictions; and, in addition, doing anything 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 **KINGSWOOD**.

Section 3. **Annual Assessments.** Annual assessments shall be in an amount to be fixed from year to year by the Board of Directors which may be established different rates from year to year as it may deem necessary for the purpose set forth in Section 2 above. The amount of the annual assessment against each lot for any given year shall be fixed at least 30 days in advance of the annual assessment period; provided, however, that the first annual assessment shall be set prior to the conveyance of the first lot to an owner and written notice to the owners to be subjected thereto shall be delivered to the owners at or prior to the closing of their lots. Written notice of each annual assessment thereafter shall be sent to every owner subject thereto. The due date shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. 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 specified lot have been paid.

- a From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the annual assessment may be increased each year not more than ten percent (10%) above the assessment for the previous year without a vote of the membership, except as herein provided.
- 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 each year above ten percent (10%) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- c The Board of Directors may fix the annual assessment at an amount not in excess of the assessment for the previous year plus an increase of ten (10%).

Section 4. **Special Assessments for Capitol Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capitol improvement upon the Common Area, that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. **Insurance.** The Board of Directors on behalf of the Association, as a common expense, shall at all times keep the property of the Association, if any, insured against loss or damage by fire or other hazards and other such risks, including, but not limited to, directors' liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the Properties and common area, which insurance shall be payable in case of loss to the Association for all members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each member to insure his personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by members or their mortgagees.

Section 6. **Insurance Assessment.** All insurance policy premiums on the Common Area 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 equally as an additional annual assessment, (herein called "Insurance Assessment") which shall be in addition to the amounts provided for under Section 3 above, an amount sufficient to pay the annual cost of all such insurance premiums and deductibles.

Section 7. **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 Sections 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum.

Section 8. **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.

Section 9. **Commencement of Assessments.** Assessments for each lot shall commence upon the date of acceptance by an owner of a deed from Declarant. Declarant shall not be required to pay maintenance assessments on unsold lots retained by the Declarant, except for those lots retained for rental purposes for which Declarant shall pay maintenance assessments which shall commence upon the date the same are occupied by a tenant. Provided, however, that for any lots retained by Declarant for other than rental purposes, Declarant shall pay to the Association annually, in lieu of any other assessments, the pro rata share of insurance assessments attributable to the lots owned by Declarant, as the same became due.

Section 10. **Effect of Nonpayment of Assessments and Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the owner personally obligated to pay the same, and/ or foreclose the lein against the property and may pursue any other legal or equitable remedy available. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or by abandoning his lot.

Section 11. **Subordination of the lein to Mortgage** The lein of the assessments provided herein shall be subordinate to the lein of any first mortgage. Sale or transfer of any lot shall not affect the assessment lein. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lein 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 lein thereof.

Section 12. **Working Capitol Assessment.** At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capitol reserve amount equal to a two month's estimated homeowner's dues or assessments. Such funds shall be used solely for initial operating and capitol expenses of the Association, such as pre-paid insurance, supplies, repairs and improvements of the common areas and facilities, furnishings and equipment, etc. Amounts paid into the working capitol funds remaining at the end of the first full operating year shall be

transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors

## ARTICLE VII.

### ARCHITECTURAL CONTROL

Section 1 **Developer's Rights.** All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the By-laws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any lot in the Properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration

Section 2. **Building and Site Improvements.** No dwelling, wall or other structure shall be commenced, erected, or maintained upon any lot in the Properties, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights materials, colors, 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 declarant, or its designee, or after the sale of all lots by Declarant, by the Board of Directors of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board. Refusal of approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant or Architectural Control Committee shall be deemed sufficient. One copy of all plans related data shall be furnished to the Declarant or Architectural Control Committee, as the case may be, for its record. Neither the Declarant nor the Architectural Control Committee shall be responsible for any structural or other defects in plans or specifications submitted to it or any structure erected according to such plans and specifications.

#### Section 3. **Approval of Plans.**

a. No house plans will be approved unless the proposed house shall have a minimum 1,000 square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirement shall be the total enclosed area within a dwelling; provided, however, that such term does not include terraces, decks, open porches, and like areas; provided, futher, that shed-type porches, even though attached to the house are specifically excluded from the defination of the aforesaid term "enclosed dwelling area".

b. Since the establishment of inflexible building setback lines for location of houses on lots tend to force construction of houses directly to the side of other homes with detrimental effects on privacy, view preservation of important trees and other vegetation, ecological and related considerations, no specific front, rear or side setback lines shall be established. In order to assure, however, that the forgoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any lot shall be controlled by and must be approved absolutely by the Declarant or Architectural Control Committee, as the case may be. Provided, however, that no dwelling shall be constructed closer than five (5) feet to any dwelling on any adjoining lot. That is to say, side line restrictions may be waived by Declarant so long as there is maintained a seperation of at least five (5) feet between buildings constructed on adjoining lots.

c. The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have 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. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any lot except one single family dwelling not to exceed one (1) story in height ( unless the Declarant or Architectural Control Committee, as the case may be, approves in writing a structure of more than one (1) story)

e All service utilities, fuel tanks, cloths lines, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Declarant or Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes shall be uniform in design. Design for mail and newspaper boxes shall be furnished by Declarant. No fences shall at any time be placed or permitted to remain on any lot without approval of the Declarant or Architectural Control Committee.

f Landscaping and off street parking for not less than two (2) automobiles must be provided on each lot prior to the occupancy of any dwelling constructed on said lot. Such parking areas and the driveways thereto shall be constructed of concrete or such other material as may be approved by Declarant.

**Section 4 Maintenance by Association.** The Association, at its expense, shall be responsible for maintaining, repairing and replacing the planting easement areas, the storm water drainage system, including the retention pond, all drainage lines, pipes and ditches which are located on the properties, except those constructed by individual lot owners and located within individual lots. The Association shall have the right to go onto the lots at reasonable times for the purpose of maintaining, repairing and replacing all utility and drainage lines and pipes which might be located on such lots and for the mowing of the front lawns and maintenance of privacy fences; and each owner hereby grants permission to the Association to enter his lot for such purposes.

In the event that such need for maintenance, repair or replacement (other than such being caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance Policies) is caused through the willful, or negligent act of the owner, his family, guests or invitees, the cost of such maintenance, replacement, or repair, shall be added to and become a part of the assessment to which such lot is subject. Notwithstanding the foregoing, the Association shall have the right to recover through legal action the cost of such maintenance, replacement or repair, including interest, court cost and a reasonable attorney's fee, from those persons legally responsible for causing damage to the property of the Association.

The Association shall maintain all Common Areas, including roadways, plantings and shrubbery, boardwalks or walkways, located thereon, and lighting fixtures and shall pay all costs of operation thereof including premiums associated with general liability insurance insuring the Association from liability arising from ownership and operation thereof.

In addition to the maintenance and repair of the common areas, the association shall be responsible for and provide for the maintenance and repair of grassed areas of the front yards of each lot, and all privacy fences.

In order to enable the Association to accomplish the foregoing there is hereby reserved to the Association the right to unobstructed access over, on, upon, through and across each lot and the structures and improvements thereon and its limited common area, if any, at all reasonable times to perform the maintenance and repair required under this Article.

In the event that any maintenance or repair of the lot, and any structures and improvements thereon, is required to be done or performed as a result of the negligent or willful acts of the Owner, as determined by the Board of Directors of the Association, or the family, tenants, contract purchasers, guest or invitees of the owner, or is caused by fire, wind, rain, blowing water, lightning smoke or other hazard or casualty, then, in the sole discretion of the Board of Directors the costs of such maintenance or repairs, not fully covered by insurance, may be levied as a special assessment against only the lot sustaining such damage which the owner shall pay to the Association within fifteen (15) days of the date of written notice to the owner from the Association requesting such payment. Ordinary wear and tear is not contemplated as being within the coverage of this paragraph.

#### ARTICLE VIII.

**USE RESTRICTIONS**

Section 1. **Land Use and Building Type.** Except as provided in Section 14 below, no lot in Kingswood shall be used for any purposes except residential purposes. All lots ( herein referred to as "single family lots" ) shall be restricted for construction of single family dwellings only. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article VII of this Declaration relating to architectural control.

Section 2. **Impervious Surface.** No more than 4000 square feet of any lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, slate or similar materials, but specifically excluding walkways and decks of wood provided that such walkways and decks are constructed in such a manner as to allow storm water run off to infiltrate the soil beneath the same. This covenant is intended to insure compliance with storm water run off rules, heretofore adopted by the state of North Carolina. Accordingly, its provisions may be enforced by the State of North Carolina.

Section 3. **Nuisances.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No one shall maintain any plants or animals, nor device or thing of any sort whose normal activities or existence or other nature may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, or unkept condition of buildings or grounds on such lot which would tend substantially to decrease the beauty of the neighborhood as a whole or the specific area.

Section 4. **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be placed on any lot either temporarily or permanently without the written consent of the Association or its designee.

Section 5. **Recreational Vehicles.** No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle, shall be permitted to remain on any lot or any street in the properties at any time, without the written consent of the Association or its designee.

Section 6. **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 not allowed to run free and are at all times properly leashed.

Section 7. **Television Satellite Dishes and Outside Antennas.** No television satellite signal receiving dishes will be permitted on any lot and no outside radio or television antennas shall be erected on any lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its Architectural Control Committee.

Section 8. **Window Coverings.** All drapes, curtains, or other similar materials hung at windows, or in any manner as to be visible from the outside, of any building erected upon any lot shall be of a white or neutral background material.

Section 9. **Exterior Lights.** All light bulbs and other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white or non-frost lights or yellow bug bulbs.

Section 10. **Junk Vehicles and Tractor Trailers.** No inoperable vehicle or vehicle without registration and insurance, and no tractor-trailers will be permitted on the premises. The Association shall have the right to have all vehicles towed away at the owners expense.

Section 11. **Signs.** No signs (including "For Rent", "For Sale", and other similar signs) or property identification signs shall be erected or maintained on any lot except with the express written permission of the Declarant, its successor or assigns, except as may be legal proceedings, however, that the Declarant or its agents may place "For Sale" or "For Rent" signs on any lots for

sale and in suitable places on the Common Area approved by the Association, provided, however, that during the development of the property and the initial marketing of lots, the Declarant may maintain a sales office and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws. Such permitted signs shall be placed in the approximate center of a lot and six feet from the road curb. No sign shall be nailed to trees.

Section 13. **Alterations.** No person shall undertake, cause, or allow any alteration of construction in or upon any portion of the Common Area except at the direction or with the express written consent of the Association.

Section 14. **Subdividing.** No lot shall be subdivided, or its boundary lines changed, except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter of the Board. However, the Declarant hereby expressly reserves unto itself, its successors and assigns, the right to replat any two (2) or more lots shown on the plat of any subdivision of the property in order to create one or more modified lots; to further subdivide tracts shown on any such subdivision plat into two or more lots; to recombine one or more tracts or lots or a tract and lots to create a larger tract; to eliminate from this Declaration lots that are not otherwise buildable or are needed for access to any area of the Property or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such replatted lots or tracts suitable and fit as a building site or access area or roadway, 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.

## ARTICLE IX

### RIGHTS OF INSTITUTIONAL LENDERS

Section 1. "Institutional Lender" or "Institutional Lenders" as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, the Veterans Administration, the Federal Housing Authority, the Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any lot, or shall be the owner of any lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- a. To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such financial statement and report to be furnished by April 15 of each calendar year.
- b. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and By-Laws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.
- c. To be given notice of default in the payment of assessments by any owner of a lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principle office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.
- d. To inspect the books and records of the Association and the Declaration, By-Laws and any Rules and Regulations during normal business hours, and to obtain copies thereof.
- e. To be given notice by the Association of any substantial damage to any part of the Common Area.

f. To be given notice by the Association if any portion of the Common Area is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Section 2. Whenever any Institutional Lender, guarantor or insurer desires the benefits of the provisions of this section requiring notice to be given or to be furnished a financial statement, such lender shall serve written notice of such fact upon the Association by registered mail or certified mail addressed to the Association and sent to its address stated herein, or to the address of the property, identifying the lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender

## ARTICLE X

### ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Except as provided in Section 2 below, annexation of additional property shall require the assent of two-thirds (2/3) of the members at a meeting called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 2. If the Declarant, its successors or assigns shall develop all or any portion of the Additional Properties, said Additional Properties or any portion thereof may be annexed to said Properties without the assent of the members, provided however, the development of the Additional Properties permits no more than 50 additional dwelling units. Annexation provided for in this section shall become effective upon the filing by the Declarant of a supplemental or amended declaration in the office of the Register of Deeds of New Hanover County.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1. **Enforcement.** The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, conditions, reservations liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an 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. **Enforcement of Storm Water Runoff Regulations.** The State of North Carolina is hereby made a beneficiary of this Declaration to the extent necessary to enforce its storm water runoff regulations as the same may be amended from time to time.

Section 3. **Severability.** Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 4. **Lots Subject to Declaration.** All present and future owners, tenants and occupants of lots and their guests or invitees, shall be subject to , and shall comply with the provisions of the Declaration, and any amendments. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the owner of any lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any lot, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this

Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 5. **Amendment of Declaration.** Except as provided in Article XI, Section 2 above, Section 6 below, and elsewhere herein, the covenants and restrictions of this Declaration may be amended only by an instrument duly recorded in the Office of the Register of Deeds of New Hanover County executed by the duly authorized officers of the Association upon the vote of not less than two-thirds (2/3) of the Lot Owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant.

Section 6. **Amendments by the Declarant.** The following amendments may be effected by the Declarant, or the Board, as the case may be, with out consent of the members:

- a. Prior to the sale of the first lot, this Declaration may be amended by the Declarant.
- b. Declarant may amend this Declaration upon annexation of additional lands as specified in Article XI, Section 2, herein.
- c. The Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction.
- d. The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, the United States Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the government National Mortgage Corporation, or the Federal National Mortgage Association requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.
- e. The Declaration, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status.
- f. The Declarant for so long as it has control of the Board may amend this Declaration to include any platting change of the Property as permitted herein.

**N WITNESS, DALLAS HARRIS LAND COMPANY, LLC**, a North Carolina corporation, the Declarant herein, has caused this Declaration to be executed in its corporate name and its corporate seal affixed by its duly authorized officers, the day and year first above written.



**DECLARANT:  
DALLAS HARRIS LAND COMPANY LLC**

BY: *Dallas L Harris*  
DALLAS L. HARRIS, PRESIDENT

ATTEST

*Kara S. Staradumsky*  
KARA S. STARADUMSKY, SECRETARY

(CORPORATE SEAL)

STATE OF NORTH CAROLINA

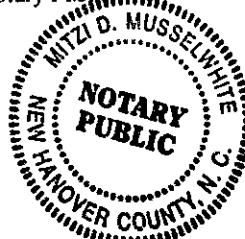
COUNTY OF NEW HANOVER

I, *Mitzi D. Musselwhite*, a Notary Public in and for the county aforesaid do hereby certify that *Kara S. Staradumsky* came before me this day and acknowledged that she is Secretary of Dallas Harris Land Company, LLC, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary.

Witness my hand and official stamp or seal, this the *29* day of *July*, 1997.

*Mitzi D. Musselwhite*  
Notary Public

My commission expires: *4-7-2002*



(NOTARIAL SEAL)

STATE OF NORTH CAROLINA  
New Hanover County  
The Foregoing / Annexed Certificate(s) of

*Mitzi D. Musselwhite*

Notary (Notaries) Public is / are certified to be correct.

This the *31* day of *July*, 19*98*  
by *Mary Sue Oots*, Registry of Deeds  
*Patricia Burns*  
Deputy / Assistant