

55

STATE OF NORTH CAROLINA, COUNTY OF NEW HANOVER. DECLARATION OF ARTICLES OF COVENANTS, CONDITIONS AND RESTRICTIONS MARSH COURT PATIO HOMES AT THE CAPE

THIS DECLARATION, made this the 20 day of MAY, 1985, by SUGGS AND HARRELSON, INC., a Delaware corporation, authorized to do business in the State of North Carolina, hereinafter referred to as "Declarant";

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Declarant is the fee simple owner of a certain tract of real property located in Federal Point Township, New Hanover County, North Carolina as hereinbelow defined; and

WHEREAS, the Declarant desires to establish certain restrictions, covenants, and conditions with respect to the use, enjoyment and ownership of the hereinbelow defined property for the purpose of protecting the value and desirability of the hereinbelow defined property, and which shall run with the said property, and which shall be binding on all parties having any right, title or interest in said property, or any parcel thereof, their heirs, devisees, personal representatives, successors and assigns, and which shall inure to the benefit of each owner thereof;

NOW, THEREFORE, with respect to all of the hereinbelow defined property and for the purposes stated hereinabove, the Declarant does hereby declare that all of the hereinbelow defined property shall henceforth be held, sold, and conveyed subject to the following Articles of Covenants, Conditions and Restrictions:

ARTICLE I

DEFINITIONS

For the purpose of these Articles of Covenants, Conditions and Restrictions, the following definitions shall apply:

- 1. "DECLARANT" shall mean and refer to SUGGS AND HARRELSON, INC., a Delaware corporation, duly authorized to do business in the State of North Carolina, and/or its successors or assigns.
2. "ASSOCIATION" shall mean and refer to MARSH COURT PATIO HOMES AT THE CAPE OWNERS' ASSOCIATION, INC. a non-profit corporation organized pursuant to the laws of the State of North Carolina, with its principal office being located in the County of New Hanover, State of North Carolina, and/or its successors in interest.
3. "PROPERTY" shall mean and refer to all of the real property subject to this Declaration described as follows:

BEING located within Federal Point Township, New Hanover County, North Carolina, and being all of MARSH COURT PATIO HOMES AT THE CAPE, a planned unit development to be developed on that tract of land shown on that map of Jack Stocks, R. L. S. identified as Marsh Court Patio Homes at The Cape, all Phases, attached hereto and marked Exhibit "C",

Upon the recording of any map of any phase or section of MARSH COURT PATIO HOMES AT THE CAPE in the New Hanover County Registry, said phase or section and any present and future owners of any lot shown on any said maps shall automatically become subject to the provisions of this Declaration of Articles of Covenants, Conditions and Restrictions.

- 4. "LOT" shall mean and refer to any one of those parcels of real property, developed as part of MARSH COURT PATIO HOMES AT THE CAPE and designated beginning with Number 1 and extending

RECORDED AND VERIFIED REBECCA P. TUCKER REGISTER OF DEEDS NEW HANOVER CO. NC MAY 20 4 25 PM '85

consecutively upward and shown upon the maps of the property referred to hereinabove.

5. "PATIO HOME" or "TOWNHOUSE" shall mean and refer to any one of the 25 single-family residential dwellings constructed within MARSH COURT PATIO HOMES AT THE CAPE, any section.

6. "OWNER" shall mean and refer to any one of those persons, firms, or corporations, or other entities who hereafter shall purchase, and/or are conveyed, and/or hold a fee simple title to any lot and patio home, including contract sellers, but excluding the Declarant and those holding or acquiring such title merely as security for the performance of any obligation.

7. "COMMON ELEMENTS" shall mean and refer to:

(a) all of the real property located within the development which is not a part of a lot; and

(b) all of the improvements on the real property described in Paragraph (a) hereinabove, including, but not limited to:

(i) driveways and parking areas;

(ii) all lawns, trees, shrubs, and other vegetation located upon the common elements;

(iii) all drainage and sewer pipes and other such facilities located upon or under the common elements;

(iv) all utility installments, fixtures, and facilities of whatever nature, including, but not limited to, such facilities, fixtures, and installations for electricity, lighting, and water located upon, under or for the benefit of the common elements;

(v) all other apparatus, equipment and installations existing upon, beneath or for the benefit of the common elements, of whatever nature or kind.

8. "DEVELOPMENT" shall mean and refer to MARSH COURT PATIO HOMES AT THE CAPE, all sections, which shall consist of all of the Property, which the Declarant has subdivided into any number of lots and the common elements, plus the improvements to the common elements, as described hereinabove. Each of the lots shall be improved by the Declarant by the construction thereon of a patio home; each patio home being a separate, detached and independent dwelling; except, however, said patio home may be clustered in groups of patio homes. Each cluster of patio homes shall share and enjoy a common roof and a common concrete slab, with one inch of continual air space existing from roof to slab between the interfacing outer fire walls of each patio home located within one of the above referred to clusters. The common elements, with the improvements constructed thereon by the Declarant shall be conveyed to and owned by the Association. The development shall be a private residential community and all of the Property, and all of the improvements thereon, shall be private property and nothing in these Articles nor in the recording of any map or deed pursuant hereto, shall dedicate (or be deemed to dedicate) to public use any of the Property, or the improvements thereon.

## ARTICLE II

### MARSH COURT PATIO HOMES AT THE CAPE OWNERS' ASSOCIATION

1. PURPOSE: MARSH COURT PATIO HOMES AT THE CAPE OWNERS' ASSOCIATION is a non-profit corporation organized pursuant to the Non-Profit Corporation Act of the State of North Carolina; the Articles of Incorporation for which are recorded in the New

1288 0240

Hanover County, North Carolina Registry, in Book \_\_\_\_\_ at Page \_\_\_\_\_ the purposes for said corporation being the establishment of a private owners association for the owners of the lots and patio homes in the residential development known as MARSH COURT PATIO HOMES AT THE CAPE and to provide the essential services necessary to preserve, protect, maintain, and care for the development known as MARSH COURT PATIO HOMES AT THE CAPE to the mutual benefit of all owners of lots and patio homes therein, all as outlined hereinbelow and more particularly described in the Articles of Incorporation of said Association and the By-Laws thereof.

2. MEMBERSHIP. There shall be one membership in the Association for each lot in the development and no others. Each membership shall be appurtenant to the ownership of a lot and patio homes in the development, and may not be severed or transferred separate or apart from the transfer of the lot and patio homes to which it is appurtenant. For the purpose of this Article, the Declarant shall be deemed an owner so long as it owns any lots and patio homes in MARSH COURT PATIO HOMES AT THE CAPE.

3. OWNERSHIP: The Association shall be conveyed by the Declarant and shall own in fee all of the common elements of the property, and all of the improvements thereon. Additionally, the Declarant hereby grants to the Association an easement of ingress, egress and regress over and upon each lot and patio home for the purpose of performing the exterior and roof maintenance to the patio homes as more particularly described hereinbelow.

4. MANAGEMENT AND CONTROL: Subject to the provisions of Article III of this Declaration, the affairs of the Association shall be governed, managed and controlled by the Board of Directors, elected by the membership as provided in the Association's By-Laws, attached hereto and marked Exhibit "A", the terms and provisions of which are incorporated herein as if fully set forth.

5. POWERS, PRIVILEGES, RIGHTS AND OBLIGATIONS: The Association, in order to fulfill the purposes for which it has been formed, as stated in its Articles of Incorporation named hereinabove, shall have and possess, and shall perform and exercise the following powers, privileges, rights and duties:

(a) RULE MAKING: The Association shall, from time to time, make and amend, pursuant to the provisions of its By-Laws, reasonable rules and regulations governing the owners' use and enjoyment of their patio homes, lots, the common elements and the improvements thereon.

(b) MAINTENANCE: The Association shall be responsible for the upkeep, maintenance, protection, preservation, repairs, reconstruction, and/or replacement of (i) the common elements, (ii) all improvements and any additions to the common elements, (iii) the asphalt shingle roofs of the patio homes, and (iv) the exteriors and appointments to the patio homes; provided, however, that in the event that any of the above is necessitated by the willful act or active or passive negligence of any owner, his family, guests, invitees or tenants, then the cost of the same shall legally be the personal obligation of said owner and if not paid to the Association upon demand, may be added to the annual assessment levied against said owner's lot and patio home, as said assessment is defined hereinbelow;

(c) INSURANCE: The Association shall obtain and maintain to the extent obtainable, the following:

(i) FIRE INSURANCE with extended coverage, vandalism, and malicious mischief endorsements insuring all improvements upon the common elements and all patio homes (including the bathroom and kitchen fixtures initially installed therein by the Declarant, but not including furniture, furnishings, or other personal property supplied or installed by owners or tenants of owners) and covering the interests of the Association, the Board of Directors and all owners and their mortgagees or beneficiaries under deeds of trust as their respective interests may appear.

(ii) FLOOD INSURANCE covering all of the lots and patio homes if required or deemed necessary by the Association.

(iii) PUBLIC LIABILITY INSURANCE in such limits as the Board of Directors of the Association may, from time to time, determine necessary covering each member of the Board of Directors, each officer of the Association, the Association and each owner of a lot and patio home, such public liability insurance shall also cover cross-liability claims of one insured against another.

(iv) SUCH OTHER INSURANCE as the Board of Directors may determine is necessary for the protection of the development, the Association, its directors, officers and members.

(v) THE OWNERS of patio homes and lots shall not be prohibited from carrying other insurance for their own benefit provided that such policy shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance obtained by any owner of a patio home and lot in the development.

(vi) INITIAL ASSESSMENT - At the time of conveyance of title to the owner by the Declarant, the owner of each such lot shall pay, as a special assessment, an amount equal to the annual hazard and flood insurance premium imputable to the lot or lot's owner, to be commingled with the other general funds of the Association.

(d) ASSESSMENTS, LIABILITY, LIEN AND ENFORCEMENT. The Association has heretofore been given the authority to administer the operation and management of the common areas of the property, it being recognized that the delegation of such duties to one entity is in the best interests of the owners of all residential lots and patio homes in MARSH COURT PATIO HOMES AT THE CAPE. To properly administer the operation and management of the common areas, the Association will incur, for the mutual benefit of all the owners of residential lots and patio homes, costs and expenses sometimes herein referred to as "common expenses". To provide the funds necessary for such proper operation, management and capital improvement, the Association is hereby granted the right to make, levy and collect assessments against the members of the Association and their residential lots and patio homes. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation of, the management of and for capital improvements to the common areas, which for the purpose of these Articles shall be deemed to include, but not be limited to, the exteriors and roofs of all buildings in MARSH COURT PATIO HOMES AT THE CAPE, and all other improvements, the following shall be

operative and binding upon the owners of all residential lots and patio homes:

(1) CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS: The Declarant, for each lot owned within the property, and each owner of each 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:

(i) annual assessments or charges, and

(ii) special assessments for capital improvements or special assessments as established by the Board of Directors of the Association, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with the interest, costs, and reasonable attorney's fees, if any, shall be a charge on the lots and shall be a continual lien upon each lot against which they are levied. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person or entity who is the owner of such lot at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to any successor in title unless expressly assumed by him.

(2) PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the property and in particular for the maintenance, repair and replacement of any and all improvements made to the common areas, exteriors and roofs of all buildings in MARSH COURT PATIO HOMES AT THE CAPE, as well as the acquisition and maintenance of any and all other common areas of the property, including the costs of repairs, repaving, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against any of the common areas, utility services and the procurement and maintenance of insurance as may be deemed necessary by the Board of Directors.

(3) MAXIMUM ANNUAL ASSESSMENTS: The maximum annual assessment for each calendar year shall be established by the Board of Directors and may be increased by the Board of Directors for any calendar year without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year. The maximum annual assessment for any calendar year may be increased WITHOUT LIMIT by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting called for this purpose.

(4) SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS: In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special

assessment for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair, replacement or repaving of a capital improvement to the common areas, exteriors and roofs of any buildings in MARSH COURT PATIO HOMES AT THE CAPE, including fixtures, and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all lots and may be collected on a monthly basis.

(5) NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS (d) (3) and (4): written notice of any meeting called for the purpose of taking any action authorized under (3) and (4) shall be sent to all members not less than ten (10) 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 percent (60%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(6) RATE OF ANNUAL ASSESSMENT. Annual and special assessments must be fixed at a uniform rate for all lots and shall be collected on a monthly basis. The books and records of the Association will be kept in such a manner that it is possible to determine and ascertain such sums as are expended by the Association for the development, improvement, maintenance and upkeep of all common area facilities, exteriors and roofs as set forth herein, provided, however, that due to the fact that the Declarant shall not make any use whatsoever of any of the common areas, exteriors and roofs other than as is necessary for the development, marketing, and selling of lots in MARSH COURT PATIO HOMES AT THE CAPE, no lots owned by the Declarant shall be assessed for either annual or special assessments.

(7) DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES: The annual assessments provided for herein shall be collected on a monthly basis and shall commence as to all lots on the first day of January, 1985, and thereafter as to owners other than the Declarant on the first day of the month following the conveyance of a lot to any such owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment, the Board of Directors shall fix the amount of the annual assessment and furnish same to every owner

subject thereto. The due date shall be established by the Board of Directors. 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.

(8) EFFECT OF NONPAYMENT OF ASSESSMENTS; 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 allowed by North Carolina Law. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the lot or patio home and interest, costs, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of any of the common areas or abandonment of his lot.

(9) LIEN: The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the public records of New Hanover County, North Carolina, which claim shall state the description of the lot encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien provided for herein shall be subordinated to the lien of any first mortgage or deed of trust and any person, firm, corporation, or other entity acquiring title to any lot by virtue of any foreclosure, deed in lieu of foreclosure or judicial sale, shall be liable and obligated only for assessments as shall accrue and become due and payable subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a lot by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment, or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all owners of all lots as a part of the common expenses, although nothing herein contained shall be construed as relieving the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

(10) EFFECT OF DEFAULT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY THE ASSOCIATION: Upon default by the Association in the payment to any governmental authority entitled thereto of any ad valorem taxes levied against any of the common areas owned by the Association or assessments for public improvements to the common areas which default shall continue for a period of six (6) months, each owner of a lot in the Development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of lots in the property. If such sum is not paid by the owner thirty (30) days following the receipt of notice of the amount due, then said sum shall become a continuing lien on the lot of the then owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may bring either an action at law or may elect to foreclose the lien against the lot of the owner.

(e) Upon the sale of one hundred percent (100%) of the lots in MARSH COURT PATIO HOMES AT THE CAPE, all sections, and phases, the Declarant will turn over control of the Owners' Association to the Board of Directors to be elected by the membership in accordance with the By-Laws of the Association. Until such time, however, the Declarant shall elect the Board of Directors of the Association.

### ARTICLE III

#### THE CAPE HOMEOWNERS' ASSOCIATION

In addition to MARSH COURT PATIO HOMES AT THE CAPE referred to in Article II hereto, the Declarant has heretofore created and established THE CAPE HOMEOWNERS' ASSOCIATION for the purpose of maintaining the common areas, streets, amenities and entrances to and in all sections and phases of THE CAPE. Every owner of any lot in MARSH COURT PATIO HOMES AT THE CAPE shall automatically become a member of THE CAPE HOMEOWNERS' ASSOCIATION upon the purchase of his lot:

(a) MEMBERSHIP AND VOTING RIGHTS. The qualification for membership in THE CAPE HOMEOWNERS' ASSOCIATION, the manner of admission to membership in said Association, the manner of termination of such membership, and the voting rights of the members of said Association are set forth in the Articles of Incorporation of the Association, which are recorded in Book 1234 at Page 1970 of the New Hanover County Registry, the provisions of said Articles being incorporated herein by reference.

(b) ASSESSMENTS, LIABILITY, LIEN AND ENFORCEMENT. The authority in the Association to assess, levy and collect assessments are identical to those created and established for THE CAPE, Section 2-B as provided for in that certain Declaration of Restrictions for THE CAPE, Section 2-B as recorded in Book 1244 at Page 1207 of the New Hanover County Registry. The terms and provisions of Paragraph Twenty First (b) and all subparagraphs of said Declaration of Restrictions are hereby incorporated herein by reference.

## ARTICLE IV

## THE OWNERS

Every owner of a fee simple title to a lot and patio home within the development shall be deemed to own, possess and have accepted:

(a) The membership(s) in the Association(s) appurtenant to his lot(s) and patio home(s).

(b) An undivided equal interest with all other owners, for each membership in the Association owned, in the Associations and all of its assets.

(c) An easement of enjoyment, equal to that of all other owners in and to the common elements, subject to:

(1) the right of the Associations to charge reasonable admission and other fees for the use of any of the common elements;

(2) the right of the Associations to suspend the voting rights and the right to the use of any of the common elements by any 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 the published Rules and Regulations of the Associations governing the use and enjoyment of the common elements;

(3) the right of the Associations to dedicate or transfer all or any part of the common elements for such purposes and subject to such conditions as the Associations may determine, acting by and pursuant to the provisions of their duly enacted By-Laws;

(4) the right of the Associations to enact reasonable Rules and Regulations governing the use and enjoyment of the common elements and the improvements thereto; the initial rules and regulations duly adopted by the Association are attached hereto and marked Exhibit "B" and incorporated herein by reference;

(5) the right of any owner to delegate in accordance with the By-Laws of the Associations, his right of enjoyment to the common elements and its facilities to members of his family, his tenants, or contract purchasers who reside on the property.

(d) The duty of complying with and abiding by all of the provisions of these Articles, the By-Laws of the Associations and the Rules and Regulations of the Associations.

## ARTICLE V

THE DECLARANT

In addition to all other rights, powers and privileges reserved herein to the Declarant, the Declarant further:

(a) Reserves the right and power to appoint or designate the members of the Board of Directors of the Association until either:

(i) the date on which 100 percent of the patio homes and lots within the development have been sold by the Declarant and paid for, or

(ii) December 31, 1994,

whichever date first occurs. Until said date occurs the Declarant, acting by and through its appointees or designees, shall have absolute control of the Association and its affairs, and no action taken by the membership of the Association pursuant to this Declaration or the By-Laws of the Association shall have any effect whatsoever without the prior written approval of the Declarant, acting by and through said appointees or designees. Upon either of the above referenced dates, the president of the Association shall follow the procedures outlined in the By-Laws of the Association for the transition of control of the Association from the Declarant to the membership of the Associations;

(b) Reserves the right absolutely to change, alter or redesignate the allocated, planned, platted or recorded use or designation of any of the property (so long as the Declarant retains title to said property) including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities or facilities as may, in the sole judgment and discretion of the Declarant be necessary or desirable;

(c) Reserves unto itself, a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain, and use electric and telephone poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone, television and cable facilities, gas, sewer, water or other public conveniences or utilities on, in or over any of the property. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any gradings of the soil or to take any other similar actions reasonably necessary in the opinion of the Declarant to provide economical and safe utility installations;

(d) Reserves the right to subject the property to contracts with electric, telephone, cable television, and other utilities for the installation of underground cables, wires, pipes, or other necessary conduits, for utilities, any of which may require an initial payment and continuing monthly payments for the use thereof by the owners of lots and patio homes within the development.

#### ARTICLE VI

##### EASEMENT

In the event that any lot or patio home shall encroach upon any of the common areas and facilities or any other lot or patio home, for any reason not caused by the purposeful or negligent act of the lot or patio homeowner, or agents of such owner, then an easement appurtenant to such lot or patio homeowner shall exist for the continuance of such encroachment upon the common areas and facilities or upon a lot or patio home for so long as such encroachment shall naturally exist, and, in the event that any portion of the common areas and facilities shall encroach upon any lot or patio home, then an easement shall exist for the continuance of such encroachment of the common areas and facilities upon any lot or patio home for so long as such

encroachment shall naturally exist. If any lot or patio home or common areas and facilities shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings and if upon reconstruction of such lot or patio home and/or common areas and facilities in accordance with this Declaration, there exist encroachments of portions of the common areas and facilities upon any lot or patio home or of any lot or patio home upon any other lot or patio home or upon any portion of the common areas and facilities, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

## ARTICLE VII

### GENERAL PROVISIONS

**ENFORCEMENT.** The Association, the Declarant or any owner, shall have the right to enforce, by any proceeding at law or in equity, all of the conditions, covenants, and restrictions of these Articles, and any and all liens hereinafter imposed pursuant to the provisions of these Articles. Failure by the Association, the Declarant or any owner to enforce any of the above shall in no event be deemed a waiver of the right to do so thereafter. In addition to the foregoing, the Declarant shall have the right, whenever there shall have been built on any lot any structure which is in violation of these Articles, the By-Laws or the Rules and Regulations of the Association, to enter upon said lot where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days' written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass.

**INVALIDATION.** The invalidation of any one of the covenants, conditions or restrictions contained in these Articles by any Court, agency or legislature shall in no way effect any of the other covenants, conditions or restrictions contained in these Articles, and they shall remain in full force and effect.

**DURATION AND AMENDMENT.** All covenants, conditions or restrictions set forth within these Articles shall run with the property, and all portions thereof, and shall be binding upon all parties having any right, title or interest in the property, or any portion thereof, their personal representatives, heirs, devisees, successors and assigns, and shall inure to the benefit of the same, for a term of twenty (20) years, commencing with the date these Articles are recorded in the New Hanover County Registry, after which term these Articles shall be automatically extended for successive periods of ten (10) years, unless seventy-five percent (75%) of the then owners agree to revoke the same and do so by an instrument signed by seventy-five percent (75%) of the then owners and recorded in the New Hanover County, North Carolina Registry. These Articles may be amended during the first twenty (20) years by an instrument signed by not less than ninety percent (90%) of the owners and recorded in the New Hanover County Registry; and thereafter by an instrument signed by not less than seventy-five percent (75%) of the owners and recorded in the New Hanover County Registry. The word "owner" as used in this Paragraph is intended to include the Declarant as well as the owners of lots and patio homes but not those having an interest in any of the property for the purpose of securing the performance of any obligation.

**GENDER:** The use of the masculine gender in these Articles shall be deemed to include the feminine and the neuter gender and the use of singular shall be deemed to include the plural whenever the context so requires.

**CAPTIONS:** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit the scope of these Articles, or the intent of any provision thereof.

INCORPORATION: All of the powers, duties, privileges, obligations and rights of the Association, their Boards of Directors, officers, members, the Declarant and all others who may hereafter own, hold, or have any right, title or interest in or to the property or any portion thereof all as set forth in, and all other provisions of, the duly enacted By-Laws and Rules and Regulations, and all duly adopted amendments, modifications and repeals thereof, of the Association are incorporated herein by reference and are made a part hereof as if fully stated herein.

IN WITNESS WHEREOF, SUGGS AND HARRELSON, INC., the Declarant, has caused this Declaration to be signed in its corporate name by its President and attested by its Assistant Secretary and sealed with its corporate seal, all the day and year first hereinaforescribed.

ATTEST: [Signature]  
Asst. Secretary

SUGGS AND HARRELSON, INC.

BY: David C. Laybelle  
President

(CORPORATE SEAL)  
SUGGS AND HARRELSON, INC.

STATE OF NORTH CAROLINA,

COUNTY OF NEW HANOVER.

I, Danniel Ruth Gardner, a Notary Public in and for the said County and State, hereby certify that Joseph C. Beane personally came before me this day and acknowledged that he is Asst. Secretary of SUGGS AND HARRELSON, INC., a Delaware corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was duly signed in its name by its President, sealed with its corporate seal and attested by himself as its Asst. Secretary.

WITNESS my hand and seal, this the 8th day of May, 1985.

Danniel Ruth Gardner  
NOTARY PUBLIC



My Commission expires: 7/28/85

STATE OF NORTH CAROLINA, New Hanover County

The Foregoing Certificate(s) of Danniel Ruth Gardner and annexed certificates of Jo Ellen Shipp and Lynn G. Brooks and Andy B. Falls, Notaries Public.

~~(is)~~(are) certified to be correct.

This 20 day of May, A.D., 19 85.

Rebecca P. Tucker, Register of Deeds

By: Sharon J. Harris  
Deputy

JOINDER AND CONSENT OF TRUSTEES AND BENEFICIARIES/MORTGAGEES

P. E. DAVENPORT, JR. AND JAMES OLIVER CARTER, as Trustees, and UNITED CAROLINA BANK, and PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION, North Carolina banking corporations, as Mortgagees, join in the execution of this Declaration of Covenants, Conditions and Restrictions for Marsh Court Patio Homes at The Cape, for the sole purpose of subjecting, submitting and subordinating, and they, and each of them, do hereby subject, submit and subordinate any and all right, title and interest in the property described in Exhibit "A", attached hereto, that they have, or either of them has, or may have, by virtue of those deeds of trust recorded in Book 1260 at Page 807 and in Book 1284 at Page 1873 of the New Hanover County Registry, to said Supplemental Declaration, and every provision hereof, and to the jurisdiction of MARSH COURT PATIO HOMES AT THE CAPE HOMEOWNERS ASSOCIATION, as the same may be amended from time to time.

IN WITNESS WHEREOF, P. E. DAVENPORT, JR., AND JAMES OLIVER CARTER, Trustees, have hereunto set their hands and seals and UNITED CAROLINA BANK AND PEOPLES FEDERAL SAVINGS & LOAN ASSOCIATION have caused this JOINDER AND CONSENT to be signed in their corporate names by their duly authorized officers and their respective corporate seals to be hereunto affixed by authority of their Boards of Directors all on this the 3rd day of MAY, 1985.

ATTEST:

*M. Bunnay*  
Secretary  
(CORPORATE SEAL)

UNITED CAROLINA BANK

BY:

*[Signature]*  
President

ATTEST:

*L. H. Hamm*  
Secretary  
(CORPORATE SEAL)  
PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION  
INCORPORATED  
★  
1906  
NEW HANOVER CO. N.C.

PEOPLES FEDERAL SAVINGS & LOAN ASSOCIATION

BY:

*[Signature]*  
VICE President

*[Signature]* (SEAL)  
P. E. DAVENPORT, JR., TRUSTEE  
*[Signature]* (SEAL)  
JAMES OLIVER CARTER

STATE OF NORTH CAROLINA,  
COUNTY OF NEW HANOVER.

I, *Opdell Shipps (Hickman)* a Notary Public in and for the County and State aforesaid, hereby certify that P. E. DAVENPORT, JR., TRUSTEE, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the uses and purposes therein expressed.

WITNESS my hand and notarial seal, this 3rd day of May, 1985.

*Opdell Shipps (Hickman)*  
NOTARY PUBLIC

My commission expires:

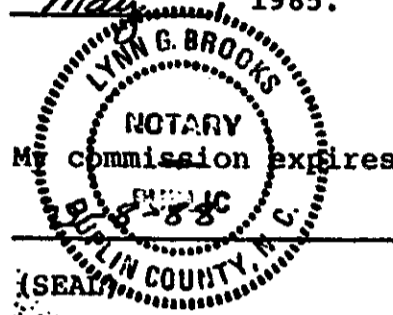
*4/20/87*  
(SEAL)  
PUBLIC  
COMMISSIONER

STATE OF NORTH CAROLINA,

COUNTY OF NEW HANOVER.

Duplin, Lynn B. Brooks, a Notary Public in and for the County and State aforesaid, hereby certify that JAMES OLIVER CARTER, TRUSTEE, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the uses and purposes therein expressed.

WITNESS my hand and notarial seal, this 3 day of May, 1985.



Lynn B. Brooks  
NOTARY PUBLIC

STATE OF NORTH CAROLINA,

COUNTY OF NEW HANOVER.

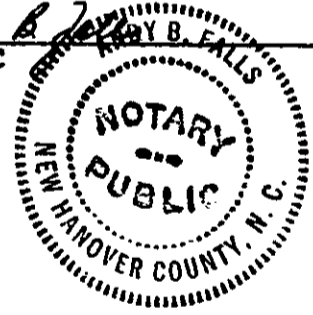
I, Andy B. Falls, a Notary Public in and for the State and County aforesaid, do hereby certify that LOUISE W. HARM personally appeared before me this day and acknowledged that she is Secretary of PEOPLES FEDERAL SAVINGS & LOAN ASSOCIATION, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its VICE President, sealed with its corporate seal and attested by its Secretary.

WITNESS my hand and notarial seal, this 3rd day of May, 1985.

My commission expires:  
3-12-88

(SEAL)

Andy B. Falls  
NOTARY PUBLIC



STATE OF NORTH CAROLINA,

COUNTY OF NEW HANOVER.

I, Joellen Ship (Hickman), a Notary Public in and for the state and county aforesaid, do hereby certify that Lynn M. Burrey personally appeared before me this day and acknowledged that she is Secretary of UNITED CAROLINA BANK, 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 Burrey as its Secretary.

WITNESS my hand and notarial seal, this 3rd day of May, 1985.



Joellen Ship (Hickman)  
NOTARY PUBLIC

BY-LAWS  
of  
MARSH COURT PATIO HOMES AT THE CAPE OWNERS' ASSOCIATION

ARTICLE I

GENERAL PROVISIONS

SECTION 1. IDENTITY: These are the By-Laws of MARSH COURT PATIO HOMES AT THE CAPE OWNERS' ASSOCIATION, a non-profit corporation organized under the laws of the State of North Carolina; the Articles of Incorporation for which have been recorded in Book at Page in the Office of the Register of Deeds of New Hanover County, North Carolina.

SECTION 2. INCORPORATION. The provisions of these By-Laws supplement and are enacted pursuant to the provisions of the above referenced Articles of Incorporation and that certain Declaration of Articles of Covenants, Conditions and Restrictions applicable to that residential development more particularly described as follows:

BEING all of MARSH COURT PATIO HOMES AT THE CAPE located within the Federal Point Township, New Hanover County, North Carolina and being the same as appears on maps of MARSH COURT PATIO HOMES AT THE CAPE, all sections, recorded or to be recorded as Exhibit "C" to the Declaration of Articles of Covenants, Conditions and Restrictions for MARSH COURT PATIO HOMES recorded in Book at Page in the Office of the Register of Deeds of New Hanover County, North Carolina.

The provisions of said Declaration are incorporated herein by reference and made a part hereof as if fully set forth.

SECTION 3. APPLICATION. These By-Laws shall, in conjunction with the above referenced Articles of Incorporation and Declaration, govern the affairs, rights, privileges, duties and obligations of the Association, all owners, the Declarant, all mortgagees, beneficiaries under Deeds of Trust, Lessees and occupants of all lots and patio homes, their employees, and all others who may use or enjoy any of the property known as MARSH COURT PATIO HOMES AT THE CAPE, all sections, and the acceptance of a deed for or conveyance of, or the succeeding to title to, or the entering into a lease for, or the actual occupancy of, or use of a lot, patio home, the common elements or any of the improvements thereon by any of the above shall constitute an acceptance by the same of the provisions of these By-Laws, the Rules and Regulations enacted pursuant hereto and the provisions of the herein above referenced Declaration, and an agreement to comply and abide by the same.

SECTION 4. PRINCIPAL OFFICE. The principal office of the Association and of the Board of Directors shall be located at 725 Wellington Avenue, Wilmington, New Hanover County, N. C. 28401.

ARTICLE II

MEMBERSHIP

SECTION 1. IDENTIFICATION. The Association shall have any number of memberships. Each membership shall be appurtenant to and shall not be severed from the fee simple ownership of a lot and patio home within the development. The rights, duties, obligations, powers and privileges appurtenant to each membership shall be exercised by the fee simple owner of the lot and patio home to which such membership is appurtenant. Any devisee, contract for the sale of, Deed or other means of conveyance of any lot and patio home within the development shall be deemed to include the appurtenant membership in the Association. No