

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF RESTRICTIONS
MASONBORO VILLAGE

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RECORDED & VERIFIED
BY ONE OF THE
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KNOW ALL MEN BY THESE PRESENTS:

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That the undersigned, **BAKER PRECYTHE DEVELOPMENT COMPANY**, a North Carolina corporation, hereinafter called Developer is the owner and Developer of all of the interest and equity in that certain tract of land known as **MASONBORO VILLAGE** and it is the desire of the undersigned, the Developer of this land, to insure the use of said property for attractive residential purposes only, to prevent the impairment of the attractiveness of the property, to maintain the desired tone of the community, and thereby to secure to each lot owner the full benefit and enjoyment of his home with no greater restriction upon the free and undisturbed use of his lot than is necessary to insure the same advantages to the other lot owner;

NOW, THEREFORE, the undersigned does hereby covenant, agree and declare to and with all persons, firms or corporations now owning or hereafter acquiring any property in **MASONBORO VILLAGE** that all of the lots in said subdivision as shown on a map recorded in Map Book 38 at Page 12 of the New Hanover County Registry, are hereby made subject to the following restrictions as to the use thereof, running with the land by whomsoever owned, to wit:

1. All lots in said Subdivision shall be known as single-family residential lots, and shall be used for residential purposes only.
2. No dwelling, building, fence, wall or other structure shall be erected, placed or altered on any lot, until the proposed building plans, specifications, and site location have been approved in writing by the Developer, or its successors and assigns. Approval or disapproval of any plans may be based by the Developer upon any grounds, including purely esthetics and environmental considerations, that the Developer in its sole discretion may deem sufficient. Contained in this Declaration are guidelines for development of plans meeting the Developer's approval. If Developer has not indicated disapproval within thirty days from receipt of all of the required documentation for the approval process, the plan shall be deemed approved. In addition no modifications of the exterior of houses regarding color or materials may be made without Developers Approval.
3. No residence smaller than 1,300 square feet of heated floor space, exclusive of porches, steps, walks, garages, carports, storage areas, etc., shall be constructed or located on any building lot; provided, that in cases where the area is not more than ten percent (10%) below the minimum above set out, Developer, may, at their option, approve the construction of the dwelling if it is otherwise in conformity with the general development scheme of the subdivision.
4. No concrete block, concrete brick, asbestos siding, cinderblock nor tarpaper composition shall be used for the exterior of any residence constructed on any building lot herein conveyed, it being intended that only residences with conventional frame, brick, or clay brick exteriors be constructed on the lots subject to these covenants. This restriction is not intended to prohibit use or installation of vinyl siding or aluminum soffits.
5. Any storage or outbuildings built on any lot shall be of the same or similar design and materials as the primary dwelling located on the property. Any such improvements must be located behind the rear line of the dwelling on the property. Any pet shelters must be placed in the rear yard and no nearer to side lines than the corners of the house and must be screened from view from all streets.
6. No owner or purchaser of any lot may clear-cut all the trees on the lot for any reason without Developer approval. It is the intention of the Developer to maintain as many mature trees in the development as possible. The trees to be cut and retained shall be marked on the plans delivered to Developer for approval as set out above. This provision shall not apply to trees whose diameter is less than 1 inch as measured 12 inches above ground level, or a circumference of 3 and 1/4 inches as so measured.
7. All boats, campers, recreational vehicles and utility trailers must be kept in the rear yard and not visible from the street or screened so that they are not visible from the street.

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8. Since the establishment of standard inflexible building setback lines for location of houses on lots tends 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 setback lines are established by these Restrictions. In order to assure, however, that the foregoing considerations are given maximum effect, Developer reserves the right to control and approve absolutely the site and location of any house or dwelling or other structure upon any lot. Notwithstanding the foregoing no structure shall be located closer than ten feet from any existing structure nor closer to any lot line than a line drawn parallel to the lot line from each rear corner of the house footprint to the rear lot line.

9. No house trailer, mobile home, tent, shack or temporary structure of any nature 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.

10. No fence shall be erected on any lot, unless written approval thereof has first been obtained from Developer. No fence shall be permitted nearer the front lot line than the rear corner of the house on subject lot. All fences must be shadowbox with dog-eared slats and non-decorative posts.

11. Modular and prefabricated homes and previously constructed houses may not be erected or placed on any lot except for construction trailer to be used by Developer.

12. No advertising signs or billboards shall be erected on any lot or displayed to the public on any lot subject to these Restrictions, except that one sign of not more than five (5) square feet in area may be used to advertise a complete dwelling for sale. No "For Sale" signs are allowed on any unimproved lot. This covenant shall not apply to signs erected by the Owner/Developer used to identify and advertise the subdivision as a whole, or by a contractor for an item of work being performed on a given lot.

13. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within the main dwelling house, within an accessory building, within a screened area, or buried underground.

14. A ten foot (10') Utility Easement is reserved along all lot lines bordering on any of the roads of the subdivision.

15. Sewage disposal shall be only by tapping onto the county sewer system. Potable water shall be from the community water system.

16. No noxious or offensive 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 may become an annoyance or nuisance to the neighborhood. No domesticated farm animals or fowls shall be kept on the property. Unsightly inoperative junk cars, junk boats or trailers and like eyesores cannot be maintained on the property, either prior to or after the residence has been erected.

17. The Buyer or Purchaser of each lot shall keep the lot mowed regularly, including that area from the lot line to the edge of the paved street, and clear of any unsightly objects, and in the event that the Buyer or Purchaser of any lot within the said Subdivision breaches this restriction, the right is reserved to the Developer to enter upon the lot and mow the grass, clean up the lot, and remove unsightly structures and objects at the owner's expense.

18. The Developer reserves the right to subject the real property in this Subdivision to a contract with Carolina Power and Light Company for the installation of underground electric cables and or the installation of street lighting, either or both of which may require an initial payment and or a continuing monthly payment to Carolina Power and Light Company by the owner of each building.

19. Each lot owner shall provide receptacles for garbage and all cans, carts and bags must be kept in a screened area, accessory building or other storage facility, and not visible from the street, except on garbage pick-up days.

20. Firewood will be allowed provided it is neatly stacked in the rear yard and not visible from the street. No other wood piles are allowed on any lot. No clothes lines, outside antennas or satellite dishes shall be allowed on any lot. No animals, other than dogs and cats and other household pets, are allowed on any lot as maintained. Specifically, no pigs, chickens,

livestock or poultry are allowed on any lot. No animals of any kind shall be raised for sale. No lawn ornaments may be placed in front yards without Developer approval.

21. *Each Purchaser of a lot in MASONBORO VILLAGE shall commence construction of the primary dwelling to be located thereon within twelve months from the date of closing. In the event a Purchaser does not commence within the said twelve months, Developer retains the right to buy the lot back from the said Purchaser or owner upon the terms set forth herein. All dwellings must be completed within twelve months from the commencement of construction.*

The price for the buy back will be the purchase price for which the lot was sold by Developer to the first time buyer of the said lot. The deed to the Developer shall be a General Warranty Deed, containing only the typical and ordinary exceptions for deeds in this locale. Ad valorem taxes and Homeowner's Association dues shall be prorated as of the delivery of the buy back funds. The buy back shall occur and be completed within forty-five (45) days from written notice by Developer to the then owner of the Developer's exercise of the buy back option. Upon delivery of the buy back funds and buy back deed, the Developer and the lot owner shall be automatically released from any claim of the other based upon or arising out of the purchase, sale and buy back of the said lot.

The Developer's right to exercise this buy back clause shall terminate as to any lot twenty-four (24) months after the lots sale to a Purchaser, not the Developer or any officer or director thereof.

22. *Construction activity on a lot shall be confined within the boundaries of said lot. Each lot owner shall have the obligation to collect and dispose of all rubbish and trash resulting from construction on his lot. Upon a lot owner's failure to collect and dispose of such trash within thirty (30) days after receipt of a written notice from Developer, or the Homeowner's Association, Developer, or the Homeowner's Association, may collect and dispose of such rubbish and trash at the lot owner's expense; such expense shall be an additional assessment, payable and collectable as homeowners' dues.*

23. *Property owners shall neither maintain nor permit on his lot or on any of the streets in MASONBORO VILLAGE, all sections, any trucks in excess of three-quarter (3/4) ton, trailers, tractors, motor homes, campers, or any type of motor vehicle or other machinery that produces excessively loud noises or excessive wear to streets, or are unsightly.*

24. *Invalidation of any one of these covenants by judgments or court order shall in no way affect any of the other covenants herein, which shall remain in full force and effect.*

25. *If the parties hereto, or any of them, or their heirs and assigns shall violate or attempt to violate any of the covenants herein set forth, it shall be lawful for any person or persons or persons owning any real property situated in said MASONBORO VILLAGE to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, and either to prevent him or them from doing or to recover damages or other dues for such violation.*

26. *At any time prior to May 1, 2020, these restrictions may be amended by developer upon approval by the Developer and the owners of a majority of the lots sold by developer to third parties. Thereafter, these restrictions may be amended by the vote of the owners of two-thirds (2/3) of the all of the lots in MASONBORO VILLAGE. No amendment to these restrictions will be effective or valid if it acts to the detriment of the Developer and Developer's right to develop, sell and improve subdivision property. To be effective any amendment must be recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.*

27. *All covenants, restrictions and affirmative obligations set forth in these Restrictions shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not limited to, the successors and assigns, if any, of Developer, for a period of twenty (20) years from the date hereof, after which time all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the owners of two-thirds (2/3) of the lots (not including mortgagees or trustees under deeds of trust) substantially affected by such changes in the covenants, has been recorded, agreeing to change said covenants in whole or in part.*

28. *Developer has incorporated a Homeowner's Association in the name Masonboro Village Homeowner's Association, Inc., or a similar name, which shall be a North Carolina, non-profit corporation homeowners association for the owners of lots in MASONBORO VILLAGE.*

Every owner of a lot in MASONBORO VILLAGE shall be a member of the Association. Membership shall be appurtenant and may not be separated from ownership of any lot which is subject to this declaration. The qualifications for membership in the Association, the manner of admission, the manner of termination and the voting rights of members shall be set forth in the Articles of Incorporation and the By-laws of the Association.

The Association shall have two (2) classes of voting membership:

Class A, which members shall be all owners with the exception of developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members, however, the vote for such lot shall be exercised as the multiple owners determine among themselves, but in no event shall more than one vote be cast with respect to any lot.

Class B, which member shall be the developer and shall be entitled to three (3) votes for each lot owned. The Class B Membership shall cease and be converted to Class A membership when the total votes outstanding in Class A membership exceeds the total votes outstanding in the Class B membership.

In the event developer expands MASONBORO VILLAGE, the Class B membership shall not end, or shall be reinstated, as applicable, and developer shall have sufficient votes to assure developer a majority of votes in all matters under the control of the Homeowners Association. All lot owners in MASONBORO VILLAGE, by acceptance of a deed to a lot in MASONBORO VILLAGE, are deemed to assent to developer retaining, or regaining, as applicable, majority voting control of the Homeowners Association upon expansion of MASONBORO VILLAGE.

The Association has the authority to administer the operation and management of the common areas of the property, so as to provide for efficient administration and maintenance of such areas for the benefit of all lots in MASONBORO VILLAGE. The Association will incur costs and expenses in the maintenance, upkeep and administration of the common areas. To provide the funds necessary to pay such costs and expenses the Association has the right to make, levy and collect assessments against the members of the Association and their lots in MASONBORO VILLAGE. In furtherance of this authority of the Association to make, levy and collect assessments, the following shall be operative and binding upon the owners of all lots in MASONBORO VILLAGE:

A. The Developer, for each lot owned within the property, and each owner, for 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:

- (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.*

(iii) other assessments, fines or fees provided for in this Declaration.

All assessments shall be established and collected as provided for herein.

The annual, special, and other 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.

B. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the property.

C. Until January, 1999, the maximum annual assessment shall be \$50.00 per lot. Assessments shall be paid semi-annually and shall be due and payable June 30 and December 31.

(i) from and after January 1, 1999, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(ii) from and after January 1, 1999, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of the membership who are voting in person or by proxy, at a meeting duly called for this purpose.

(iii) the Board of Directors may fix the annual assessment at an amount not to exceed the maximum.

D. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of improving any common area, defraying in whole or in part, the costs of any construction, reconstruction, repair, or replacement of a common area of the property, 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 to the uniform rate for all lots and may be collected on a monthly basis.

E. Written notice of any meeting called for the purpose of taking any action authorized under C and D 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.

F. Annual and special assessments must be fixed at a uniform, equal rate for all lots and may be collected on a monthly or semi-annual basis. However, in the event maintenance or repairs are called for or required due to the acts, actions or inactions by or on behalf of one, or more, lot owners in Masonboro Village, then the lot owner or owners, as appropriate, shall be responsible for bearing the cost, or reimbursing the Homeowners Association, for such maintenance or repairs. 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 of the Association.

G. The annual assessments provided for herein shall be collected twice a year and shall commence as to all lots on the conveyance of a lot by the Developer to a purchaser. The first semi-annual assessment shall be adjusted according to the number of months remaining in the calendar year. 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.

H. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property; any 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 non-use of any of the common areas or abandonment of his lot.

I. 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 within thirty (30) days following the receipt of notice of the amount due,

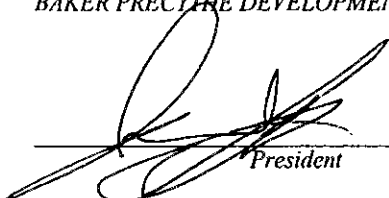
then said sum shall become a continuing lien on the lot of the then owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may bring either an action at law or may elect to foreclose the lien against the lot of the owner.

J. The lien provided for herein shall be subordinated to the lien of any mortgage, mortgages, deed of trust, or deeds of trust. The sale or transfer of any lot shall not affect the assessment lien or liens provided for in the preceding sections. However, the sale or transfer of any lot which is subject to any mortgage or deed of trust pursuant to a foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer. No such sale or transfer shall release such lot from liability for any assessments thereafter becoming due or from the lien thereof. But the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust or deeds of trust.

IN TESTIMONY WHEREOF, Baker Precythe Development Company, the Developer, has caused this instrument to be executed this 27th day of May, 1998.

BAKER PRECYTHE DEVELOPMENT COMPANY

By:

 (SEAL)
President




Sandi S. Haigler
Secretary

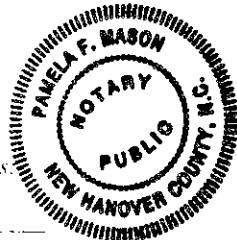
NORTH CAROLINA

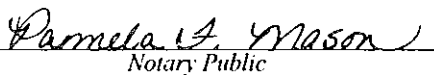
NEW HANOVER COUNTY

I, Pamela F. Mason, a Notary Public of the State and County aforesaid, certify that Sandi S. Haigler personally came before me this day and acknowledged that he is Asst. secretary of Baker Precythe Development Company, 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 himself as its secretary.

herself Asst.

WITNESS my hand and official seal this 27th day of May, 1998.




Pamela F. Mason
Notary Public

My commission expires

October 26, 2001

NORTH CAROLINA

BOOK

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NEW HANOVER COUNTY

The foregoing certificate of Pamela F. Mason, Notary Public, is certified to be correct.

This 27 day of May, 1998.

MARY SUE OOTS,
REGISTER OF DEEDS OF NEW HANOVER COUNTY

BY:

Patricia Barnes
Deputy