

RETURNED TO
DRAWN BY

X *David Hester* 1432 1209

RECORDED AND VERIFIED
REBECCA P. TUCKER
REGISTER OF DEEDS
NEW HANOVER COUNTY, NC

OCT 4 9 49 AM '88

STATE OF NORTH CAROLINA : RESTRICTIVE COVENANTS OF
COUNTY OF NEW HANOVER : OAK VILLAGE AT AIRLIE
SUBDIVISION

WHEREAS, Airlie Joint Venture, the developer, desires to submit the properties described in a Plat of Oak Village at Airlie Subdivision recorded in Map Book 29 at Page 26 of the New Hanover County Register of Deeds Office to restrictive covenants.

NOW, THEREFORE, the developer, Airlie Joint Venture does hereby declare that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property and which shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the above described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1: "Association" shall mean and refer to Oak Village at Airlie Homeowner's Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 2: "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 3: "Building" shall mean and refer to a home and associate garage constructed or erected on a lot shown on a recorded map of the property or each single family residential structure.

Section 4: "By-Laws" mean the By-Laws of the Association as they now or may hereafter exist.

Section 5: "Home" shall mean and refer to a detached, free-standing dwelling or place of residence and attached or detached garage constructed upon a lot within the property, and each dwelling unit or residential structure designed to accommodate and be occupied by a single family unit.

Section 6: "Common Area" shall mean and refer to all land within the property owned by the Association, or designated "Common Area" on the recorded plat along with facilities and improvements erected or constructed thereon, including but not limited to rights-of-way for ingress and egress as shown on the recorded plat of the subdivision. Said common areas shall

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be maintained by the Association.

Section 7: "Common expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses of administration, maintenance, repair, replacement of or construction upon the common areas specifically including improvements to streets, utilities, signs, lights, sprinkler systems, landscaping and fences;
- (c) Expenses declared to be common expenses by the provisions of this Declaration or the By-Laws;
- (d) Liability or such other insurance premiums as the Declaration or By-Laws may require the Association to purchase;
- (e) Expenses agreed by the members to be common expenses of the Association;
- (f) Any ad valorem taxes and public assessments levied against the Common Area.

Section 8: "Common profits" shall mean and refer to the balance of all income, rents, profits and revenues of the Association remaining after the deduction of the common expenses or reserves therefore. Common profits shall not mean or include any sums lawfully assessed against members by the Association.

Section 9: "Declarant" shall mean and refer to the Developer, Airlie Joint Venture, its successors and assigns.

Section 10: "Lot" shall mean and refer to any plot of land or subdivision thereof, other than the common area, shown on the recorded plat of the subdivision referred to above and upon which a home has been or may be constructed.

Section 11: "Member" shall mean and refer to every person who is a member of the Association as said membership is determined pursuant to Article III hereof.

Section 12: "Owner" shall mean and refer to the record owner whether one or more persons or entities, of a fee simple title to any lot, building or home which is a part of the property, including contract sellers, but excluding those who have such interests merely as security for the performance of any obligation.

Section 13: "Person" shall mean and refer to an individual,

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corporation, partnership, association, trustee or other legal entity.

Section 14: "Property" shall mean and refer to that certain real property shown on the plats referred to above.

ARTICLE II

PROPERTY RIGHTS

Section 1: Owner's Easements of Enjoyment: Every Owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every assessed lot, subject to each of the following provisions:

(a) The right of the Association to limit the number of guests of members.

(b) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the common area and facilities and in aid thereof to mortgage said property, and the rights of the lot owners herein in said properties shall be subordinate to the rights of any mortgagee.

(c) The right of the Association to suspend the voting rights and rights to use of the Common Area and facilities (except streets) by a member, or any person to whom he has delegated his voting right, for any period during which any assessment against his lot remains unpaid; and for a period not to exceed ninety (90) days for an infraction of its published rules and regulations.

(d) The right of the Association to formulate, publish and enforce rules and regulations as provided in ARTICLE VIII.

(e) Easements as provided in ARTICLE VIII hereof.

Section 2: Delegation of Use: Any owner may delegate, in accordance with the By-Laws, his right of enjoyment of the common area to the members of his family, his tenants, or contract purchasers, provided, every such delegee shall reside on the property.

Section 3: Parking Rights and Restrictions: Adequate off-street parking shall be provided by the owner of each lot for the parking of automobiles and other vehicles owned or controlled by such owner. Members of the owner's family or employees of the owner and tenants, and owners (including family members and tenants) of lots covenant and agree not to store or house their automobiles, trucks, boats, trailers and other vehicles on the streets or common areas located on the property.

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Section 4: Easements in Favor of Developer: The common area is hereby subjected to the right of the Developer to subject said common area to utility easements for the benefit of the subdivision or future extensions hereof and easements for sewer and water lines which may be for the subdivision and any future phases or extensions thereof. Developer also reserves a twenty foot wide utility, sewer, and water line easement, ten feet on each side of the dividing lines between each lot.

ARTICLE III

MEMBERSHIP

Every person who is record owner of a fee or undivided fee interest in any lot or subdivision which is subject by covenants of record to assessment by the Association including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of the Association. Ownership of such interest shall be the sole qualification for such membership; no individual owner shall have more than one membership in the Association and there shall be only one vote per lot in such Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

ARTICLE IV

VOTING RIGHTS

Section 1: Classes: The Association shall have one class of voting membership.

The membership shall be all owners. Members 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. The vote for such lot shall be exercised as the owners thereof determine, but in no event shall more than one vote be cast with respect to any lot, and no fractional vote may be cast with respect to any lot.

ARTICLE V

COVENANT FOR ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments: The Declarant hereby covenants, and every other Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and

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agree to pay to the Association:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements.

Such assessments shall be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon, costs of collection thereof, and reasonable attorney's fees as may be established by the Association, shall be a charge on the land and shall be a continuing lien upon the lot or home and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the lot at the time the assessment became due. The personal obligations of an owner for delinquent assessment shall not pass to his successors in title unless expressly assumed by them and then only with the consent of the Association. All assessments shall be shared equally by the owners of each lot.

The Association may combine with other Associations within any future sections or phases of Oak Village at Airlie Subdivision as shown in Map Book 29 at Page 26 or within future phases of the Subdivision which maps shall be recorded in the New Hanover County Registry for the maintenance of common areas provided the lots or units comprising the membership of each association shall be assessed a pro-rata share of the common expenses for common area maintenance on a per lot or unit basis.

Section 3: Amount of Annual Assessments:

(a) Initial Annual Assessment: The initial annual assessment shall be established by the Board of Directors of the Association in an amount sufficient to service the Association's anticipated budget for fiscal year in which these restrictions are recorded, at a meeting of the Board to be held within one hundred eighty (180) days after the recordation of these Restrictive Covenants.

(b) Increase by Members: From and after the date specified in subparagraph (a) above, the annual assessment may not be increased by more than fifty percent (50%) of the prior years annual assessment without an affirmative vote of one-half (1/2) of the members who are in person or by proxy, at a meeting duly called for such purpose, written notice of which,

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setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitation herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment: In proposing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs.

(e) Lots Owned by Declarant: Notwithstanding anything in this Article V to the contrary, all lots owned by Declarant and held for sale shall be assessed at the same amount as all other lots.

(f) Initial Set up Fee: In order to cover fixed expenses until sufficient assessments are collected a \$100.00 set up fee shall be payable at closing for creation of an operating account from which insurance and other common expenses shall be paid.

Section 4: Special Assessments for Capital Improvements: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repairs, or replacement of a described capital improvement upon the streets or common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-third (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting.

Section 4: Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for all lots, on a per lot basis, and may be collected on a monthly, quarterly or annual basis.

Section 5: Quorum for an Action Authorized under Sections 2 and 3: At the first meeting called, as provided in Sections 2 and 3 hereof, the presence at the meeting of members or of proxies entitled to cast fifty-one (51%) percent of all the votes of each member shall

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constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 3 and 4 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6: Date of Commencement of Annual Assessments; Due Dates:

The annual assessments provided for herein shall be paid in monthly, quarterly or annual installments and the payment of such shall commence as to each lot on the first day of the year following the recordation of the Declaration. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 7: Effect of Nonpayment of Assessments; Remedies of the

Association: Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of twelve (12%) percent per annum. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and, in either event, interest, costs and reasonable attorney's fees of any such action 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 the common area or abandonment of his lot.

Section 8: Subordination of the Lien to Mortgages and Ad Valorem

Taxes: The lien of the assessments provided for herein on any lot shall be subordinate to the lien of any first mortgage and ad valorem taxes on such lot. The sale or transfer of any lot shall not affect the assessment lien;

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however, the sale or transfer of any lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, signs, wall or other structure shall be commenced, erected, or maintained upon the property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the said improvements or alterations shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Developer. The Developer shall have the right to approve or disapprove of submitted plans on purely aesthetic or any other grounds in their sole discretion. In the event that the Developer fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to them, approval will not be required and this Article will be deemed to have been fully complied with; provided, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data or fail to present accurate information upon which the Committee can arrive at a decision. No temporary structures of any type may be located upon a lot except during construction. Construction must be completed within twelve months from commencement or Developer may complete construction at the lot owners sole expense and file a lien pursuant to Chapter 44A of the N.C. General Statutes for cost of completions.

The said Developer shall have the right, at its election, to enter upon any lot during construction, erection or installation or improvements or alterations to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE VII

USE RESTRICTIONS

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Section 1: Rules and Regulations: The Board of Directors of the

Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the common areas. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

Section 2: Use of Property: Each lot, building, and the home thereon shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the By-Laws:

(a) All lots, and buildings shall be used for residential and related purposes. No lot may be subdivided into an area of less than 10,000 square feet and then only by the Developer, except for Lot 6 which may be used in whole or part as common area or which may be subdivided by the Developer in the Developer's sole discretion. The Developer may use one or more homes for offices and/or models for sales purposes. The foregoing shall not be construed to limit or prohibit offices within the home provided said offices are not open to the public or held out to be for public visitation, use or convenience.

(b) No immoral, improper, offensive or unlawful use shall be made of the property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations, or requirements of any government agency having jurisdiction thereof, relating to any portion of the property, shall be complied with, by and at the sole expense of the owner or the Association, whichever shall have the obligation to maintain or repair such portion of the property.

(c) No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained or permitted on any part of the property, except that Developers, Contractors or their agents may use up to two homes for sales or display purposes. This section shall not prohibit offices within the home related to personal business pursuant to subsection (a) hereof. No signs shall be allowed without approval of Developer or Architectural Committee.

(d) No person shall undertake, cause, or allow any alteration or

erection of buildings in or upon any portion of the common area except at the direction and with the express written consent of the Association, subject to Article VIII.

(e) The common area shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the dwelling units, subject to any rules or regulations that may be adopted by the Association pursuant to its By-Laws, and subject to any other uses permitted herein.

(f) No animals may be kept, penned, raised or breed on the property except for dogs, cats or household pets which are kept indoors.

(g) Garbage or trash receptacles shall be recessed in the ground and/or screened from view of the street or neighbors.

(h) No outside antennas or satellite discs are permitted unless specifically authorized pursuant to Article VI hereof.

ARTICLE VIII

• EASEMENTS

Section 1: Walks, Drives, Parking Areas and Utilities: All of the property, including common area, shall be subject to a perpetual non-exclusive easement or easements in favor of all Owners of lots for their use and the use of their immediate families, guests, invitees, tenants or lessees for all proper and normal purposes and for ingress and egress and regress and to such easements for streets, driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, and other public utilities as shall be established prior to subjecting the property to this Declaration. The Association shall have the power and authority to grant and to establish in, over, upon and across the common area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the property. The Association or Declarant do hereby retain an easement over any private roads and common areas for the purpose of running utilities, underground sewage or water lines for the benefit of one or more lots and future phases of the subdivision.

Section 2: Easements in Favor of Declarant: An easement is hereby established in favor of Declarant, assigns and the Association over all common areas for access to adjacent properties for the purposes of future development and the installation of streets and public utilities.

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An easement is hereby established in favor of Declarant over all common areas for the exercise of any retained mineral rights including exploration, production and removal of any minerals, provided the common areas are returned to their original state or condition subsequent to the exercise of said rights.

Section 3: Each lot is hereby subjected to a 10 foot wide easement along each sideline for wells, water lines, and sewer lines, in favor of the Declarant.

ARTICLE IX

GENERAL PROVISIONS

Section 1: Enforcement: The Association, or any owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the 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: Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3: Amendment: The covenants, conditions and restrictions of this Declaration shall run with and bind the land 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. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than ninety (90%) of the lots, and thereafter by an instrument signed by the owners of not less than seventy-five (75%) of the lots. All amendments shall be certified as an official act of the Association by the Secretary thereof and shall forthwith be recorded in the New Hanover County Registry. All amendments shall become effective upon recordation.

Section 4: Conflict: In the event of any irreconcilable conflict between the Declaration and the By-Laws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the By-Laws of the Association and the Articles of Incorporation of the Association, the provisions of the

Articles of Incorporation shall control.

Section 5: Future Phases: The Developer hereby reserves the right to develop contiguous properties into future phases of the subdivision and subject the common areas to use by the members of such future phases provided the lots or units of such future phases shall be by members of the Association and shall share the common expenses of the association by payment of assessments which shall be assessed pro-rata.

IN WITNESS WHEREOF, the Declarant has executed this instrument and affixed their seals hereto.

AIRLIE JOINT VENTURE, A NC GENERAL PARTNERSHIP
BY: NICK GARRETT, INC. GENERAL PARTNER
BY: *Nick Garrett (inc.)*
NICK GARRETT, PRESIDENT



(CORPORATE SEAL)

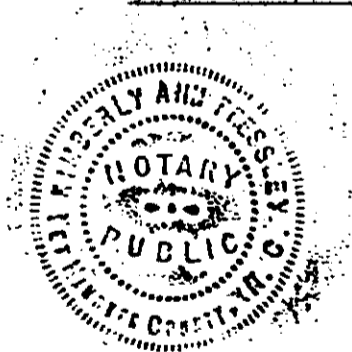
State of North Carolina
County of New Hanover

I, a Notary Public of the County and State aforesaid, certify that Lee Brewer Garrett personally came before me this day and acknowledged that she is her Secretary of AIRLIE JOINT VENTURE, A NC GENERAL PARTNERSHIP, BY: NICK GARRETT, INC. GENERAL PARTNER of AIRLIE JOINT VENTURE 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 1st day of July, August 1988.

Kimberly Ann Presler
Notary Public

My Commission Expires:
3-17-91

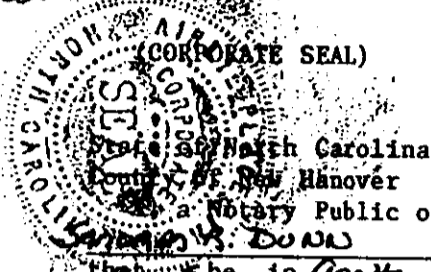


AIRLIE PLACE, INCORPORATED, GENERAL PARTNER

BY: Sammy A. Harding
PRESIDENT

ATTEST:

assist. Landra L. Quinn
SECRETARY



a Notary Public of the County and State aforesaid, certify that W. DUNN personally came before me this day and acknowledged that she is Asst. Secretary of AIRLIE PLACE, INCORPORATED, GENERAL PARTNER of AIRLIE JOINT VENTURE 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 to by her as its Assistant Secretary.

Witness my hand and official stamp or seal, this 1st day of August, 1988.

Carmel C. Stuart
Notary Public

My Commission Expires:
Jan. 13, 1990



STATE OF NORTH CAROLINA
New Hanover County
The Foregoing Certificate of Carmel C. Stuart, & Kimberly Ann Pressley
Notaries Public
is certified to be correct.
This the 4 day of October 19 88

Rebecca P. Tucker, Register of Deeds
By Phyllis Lynn
Deputy