

STATE OF NORTH CAROLINA  
 COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS  
 OF ORCHARD PARK AT WEST BAY  
 ESTATES

THIS DECLARATION, made the 10th day of April, 1997, by DLH DEVELOPMENT CO., LLC, a North Carolina Limited Liability Company, hereinafter referred to as "Declarant";

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

BEING all of ORCHARD PARK AT WEST BAY ESTATES, as the same is shown on a map entitled "ORCHARD PARK AT WEST BAY ESTATES", recorded in Map Book 36, Page 298 in the Office of the Register of Deeds of New Hanover County, North Carolina, reference to which is hereby made for a more particular description.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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## ARTICLE I.

DEFINITIONS

As used herein, the following terms shall mean:

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

Section 2. PROPERTIES shall mean and refer to all of ORCHARD PARK AT WEST BAY ESTATES as described above.

Section 3. Lot shall mean and refer to any numbered Lot shown upon the recorded plat of any section of ORCHARD PARK AT WEST BAY ESTATES, now or hereafter recorded in the New Hanover County Registry.

Section 4. DECLARANT shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) to mean and refer to DLH DEVELOPMENT CO., LLC, and its successors and assigns.

Section 5. DECLARATION shall mean this instrument as it may be from time to time amended or supplemented.

## ARTICLE II.

EASEMENTS

Section 1. In addition to easements herein reserved by Declarant, perpetual, alienable easements are reserved over, across, above, and under the Properties for installation and maintenance of underground facilities and drainage facilities, said easements being shown and delineated on the recorded plat of Orchard Park at West Bay Estates.

Section 2. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and

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*Shyllis E. Williams - 256-4475*

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

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

Section 4. The easements herein reserved and as shown on the map of Orchard Park at West Bay Estates are for the benefit of the Properties and all Owners of Lots within the Properties. The Owner of any Lot encumbered by such easements shall neither permit construction of any improvements or landscaping within said easements nor the accumulation of any debris, waste or other materials within said easements which interfere, hinder, restrict or inhibit the functioning and utilization of said easements for their intended purposes.

### ARTICLE III.

#### SEWER/WATER

Section 1. Sewer Service. All Lots will be connected to and served by the New Hanover County Sewer System. All monthly charges for sewer service will be the responsibility of each Lot Owner.

Section 2. The Owner of each Lot shall be personally liable for the payment of Operational Costs of the Torchwood Lift Station as more particularly set forth in that certain Sanitary Sewer Construction, Maintenance and Service Agreement recorded in Book 2164, at Page 0266 of the office of the Register of Deeds of New Hanover County.

Section 3. Each Lot is subjected to a sewer maintenance easement across the front 10 feet of each Lot.

Section 4. All water to be used in said Properties for any purpose whatsoever shall be obtained from the New Hanover County water system. An easement is reserved by the Developer and/or New Hanover County for maintenance and repair around each water meter consisting of a circle with a radius of eight feet centered around the water meter.

Lot Owners may drill shallow wells for irrigation purposes and for non-domestic use with the consent of the utility company, its successors and assigns, and provided such wells are not visible from any street.

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STREETS - OWNERSHIP AND MAINTENANCE

Section 1. Undivided Ownership of Streets. Whether or not specifically set forth in the deed conveying any Lot, the conveyance of the Lot shall be deemed to be together with an undivided interest in and to the street shown on the recorded plat of the Properties for which the Owner of said Lot is responsible for maintenance, upkeep and repair as set forth in this Article. The undivided ownership interest of any such Owner shall be equal with the undivided interest of other Owners who are likewise responsible for the maintenance, upkeep and repair of the same street. The ownership among the Owners in the same street shall remain undivided and no Owner, or any other person, shall bring any action for partition or division of any part thereof. This restraint against partition shall not apply to individual Lots.

Section 2. Maintenance. The Owners of Lots 1, 2, 3 and 4 shall be responsible for the maintenance, upkeep and repair of Orpin Court as shown on the recorded map of Orchard Park at West Bay Estates.

The Owners of Lots 7, 8, 9, 10, 11, 12, 13 and 14 shall be responsible for the maintenance, upkeep and repair of Corum Lane as shown on the recorded map of Orchard Park at West Bay Estates.

The Owners of Lots 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 shall be responsible for the maintenance, upkeep and repair of Peters Lane as shown on the recorded map of Orchard Park at West Bay Estates.

ARTICLE V.

USE RESTRICTIONS

Section 1. Land Use. All Lots shall be single family residential Lots and shall be used for residential purposes only.

Section 2. Setbacks. No house shall be erected closer than 25 feet to the front Lot line or nearer to any side line than the minimum distances established by applicable governmental agencies and ordinances. On corner Lots, the side having the least frontage shall be considered the front Lot line.

Section 3. Building Type. No residence being fewer than 1400 square feet of heated floor space, exclusive of porches, steps, walks, garages, carports, and storage areas will be permitted. In addition, at least a two car garage must be constructed at the time the main structure is constructed. In the case where the heated floor space is not more than ten percent below the minimum set out above, the Developer or its designated agents may, at their option, approve the construction of the dwelling if it is in conformity with the general development in the Properties.

Section 4. Impervious Surface. No more than 4500 square feet of any Lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, slate or similar materials, but specifically excluding walkways and decks of wood provided that such walkways and decks are constructed in such a manner as to allow storm water run off to infiltrate the soil beneath the same. This covenant is intended to insure compliance with storm water run off rules heretofore adopted by the State of North Carolina. Accordingly, its provisions may be enforced by the State of North Carolina.

Section 5. No concrete block, concrete brick, asbestos siding, aluminum siding, cinder block or tar paper composition may be used for the exterior of any residence constructed on any Lot. Only conventional frame, brick, wood, clay brick, vinyl or wood

composite exteriors will be accepted unless specifically approved in written form by the Declarant.

Section 6. No house trailer, utility trailer, mobile home, travel trailer, camper, or other recreational vehicle, tent, shack, or temporary structure of any nature shall be located on any Lot or used at any time for storage or as a residence, temporarily or permanently.

Section 7. All storage buildings should be located on the back third of the Lot and no closer than 4 feet to any Lot line. The storage building shall not exceed 80 square feet in size and shall not cause the total impervious surface to exceed the maximum impervious surface allowance in Section 4 above. The storage building must be constructed of the exact same materials used to construct the residential structure, including but not limited to: siding, roof shingles and windows. The colors of the building must identically match the colors of the residential structure, including but not limited to: siding, exterior trim, soffits and roof. The storage building when not enclosed by a fence (as identified in Section 10 below) must be landscaped in such a fashion to eliminate harsh views from all sides. Plantings shall match the landscape of the residential structure and be maintained on a regular basis. On corner Lots storage buildings must be located on the opposite side of the Lot as far away from the street as possible.

Section 8. Boats shall be parked or stored so as not to be visible from any street.

Section 9. No satellite dish larger than 1 meter shall be allowed on any Lot. All satellite dishes must be mounted so as not to be seen from the street. All satellite dishes when and where possible should be painted to blend with surroundings and/or hidden from view.

Section 10. No fence shall be permitted nearer the front Lot line than the back corner of the house constructed on said Lot. Fence may extend up to 6 feet beyond a screen porch providing the porch is located on the rear portion of the house. All fences must be constructed of pressure treated wood and must remain natural in color. Fences should not exceed 6'8" in height. On corner Lots, the side of a fence bordering the street must have plantings at each corner of the fence with additional plants every 12 feet in between the corners. These plants must be at least 18" tall when planted. The fence should not be closer than 8 inches to neighboring Lots; unless being shared by the neighboring Lot, and should not set inside of utility easements on corner Lots. Fences and landscaping around fences are the sole responsibility of the Lot Owner and must be maintained on a regular basis.

Section 11. Modular or prefabricated homes and previously constructed houses may not be erected or placed on any Lot.

Section 12. No advertising signs or bill boards shall be erected on any Lot or displayed to the public on any Lot, except one sign of not more than five square feet used to advertise a completed dwelling for sale and one sign of similar size to identify the builder/general contractor. This restriction does not apply to signs erected by the Developer to identify and advertise the Properties as a whole.

Section 13. No fuel tanks may be exposed to view. Fuel tanks should be buried whenever possible.

Section 14. No storage receptacles may be exposed to view at any time. Each Lot Owner shall provide receptacles for garbage and all cans, carts and bags must be kept in a secured area and not visible from any street except on garbage pick-up days.

Section 15. No yard sales or garage sales shall be permitted more often than once every 12 months upon any Lot. No clothes lines shall be permitted on any Lot.

Section 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 the Properties which may be or may become an annoyance or nuisance to the neighborhood. All dogs and cats must remain under their Owners' control at all times. All pets must be housed inside the residences. Dog runs, either temporary or permanent, will not be permitted. No domesticated farm animal or fowl shall be kept on the Properties.

Unsightly, inoperative or unlicensed cars and like eyesores cannot be maintained on the Properties either prior to or after the residence has been erected.

Section 17. The Owner of each Lot shall keep the Lot, including that area from the Lot line to the edge of the paved street, mowed regularly and clear of unsightly objects. Ditch banks, washouts and/or erosion on the Lots shall be properly tended to by the respective Lot Owner.

Section 18. So long as the Developer owns a Lot in the Properties, no Lot shall be subdivided or its boundary line changed without the written consent of the Developer. The Developer, however, reserves the right to replat any Lot or Lots or to change the alignment or placement of any road.

Section 19. All unrecorded maps, plans and promotional materials and other advertising materials are purely for planning purposes and are not to be relied upon as any promise, representation or covenant of any kind or nature. Developer shall be obligated for only those plans, plats and restrictions that are recorded.

Section 20. Each Lot must have a paved driveway at a location approved by the Developer. Off-street parking for no fewer than four automobiles must be provided on each Lot prior to the occupancy of any residence constructed on said Lot.

Section 21. Construction must be substantially completed within twelve (12) months of the original closing date. The dwelling must be approved for occupancy, its exterior finished and landscaping completed within that period. All driveways, steps and walkways must also be completed in addition to other items mentioned within these restrictions.

Section 22. Window Coverings. All drapes, curtains, or other similar materials hung at windows, or in any manner as to be visible from the outside of any building erected upon any Lot shall be of a white or neutral background material.

Section 23. Exterior Lights. All light bulbs and other lights installed in any fixture located on the exterior of any building or any Lot shall be clear or white.

Section 24. All mail and newspaper boxes shall be uniform in design. The design for mail and newspaper boxes shall be furnished by Declarant.

Section 25. All service utilities, and wood piles are to be enclosed within a wall or plant screen, so as to preclude the same from causing an unsightly view from any highway, street or way within the Properties, or from any other residence within the Properties.

ARTICLE VI.  
ARCHITECTURAL CONTROL

So long as Developer owns a Lot in the Properties, no dwelling, wall, fence or other structure shall be commenced, erected, or maintained upon any Lot in the Properties, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made, until the plans and specifications showing the nature, kind, shape, heights, materials, colors, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant. Refusal of approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Declarant for its records. The Declarant shall not be responsible for any structural or other defects in plans or specifications submitted to it or any structure erected according to such plans and specifications.

ARTICLE VII.

GENERAL PROVISIONS

Section 1. Enforcement. Any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, conditions, reservations liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Enforcement of Storm Water Runoff Regulations. The State of North Carolina is hereby made a beneficiary of this Declaration to the extent necessary to enforce its storm water runoff regulations as the same may be amended from time to time.

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

Section 4. Lots Subject to Declaration. All present and future Owners, tenants and occupants of Lots and their guests, tenants or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and any amendments. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 5. Amendment of Declaration. Except as provided in Section 6 below, the covenants and restrictions of this Declaration may be amended only by an instrument duly recorded in the Office of the Register of Deeds of New Hanover County executed by not less than two-thirds (2/3) of the Lot Owners. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto the Declarant.

Section 6. Amendments by the Declarant. The following amendments may be effected by the Declarant, without consent of the members:

- a. Prior to the sale of the first Lot, this Declaration may be amended by the Declarant. After the sale of one or more Lots this Declaration can be amended by the Declarant with approval of a majority of the Lot Owners.
- b. The Declarant may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction.
- c. The Declarant, so long as it owns any Lot within the Properties, shall have the right to amend this Declaration for the purpose of clarification, to correct any oversights or omissions, or to conform to the requirements of any law or governmental agency having legal jurisdiction over the Properties or to qualify the Properties or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Properties, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, the United States Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Corporation, or the Federal National Mortgage Association requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

Section 7. All of the provisions set forth in this Declaration shall run with and bind the Properties for a term of twenty (20) years from the date of the recording of this Declaration in the office of the Register of Deeds of New Hanover County, after which time, the Declaration, and all of its provisions, shall be automatically extended for successive periods of five (5) years, unless amended as permitted herein.

IN WITNESS WHEREOF, DLH DEVELOPMENT CO., LLC, a North Carolina limited liability company, the Declarant herein, has caused this Declaration to be executed in its corporate name and its corporate seal affixed by its duly authorized officers, this the 10th day of April, 1997.

DECLARANT:

DLH DEVELOPMENT CO., LLC (SEAL)

BY: 

RODNEY Q. HARRIS, Manager

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, PHYLLIS E. WILLIAMS, a Notary Public in and for the state and county aforesaid, do hereby certify that Rodney Q. Harris personally came before me this day and acknowledged that he is Manager of DLH Development Co., LLC, the North Carolina limited liability company described, and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto; and that the instrument is the act and deed of said limited liability company.

WITNESS my hand and notarial stamp or seal, this the 10<sup>th</sup> day of April, 1997.

Phyllis E. Williams  
Notary Public

My Commission Expires:

(Notarial Seal)



STATE OF NORTH CAROLINA  
New Hanover County

The Foregoing/ Annexed Certificate(s) of  
Phyllis E. Williams

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

This the 10 day of April 1997  
by Patricia Barnes  
Deputy/Assistant