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FOR REGISTRATION REGISTER OF DEEDS  
REBECCA T. CHRISTIAN  
NEW HANOVER COUNTY, NC  
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RETURN TO EUGENE B DAVIS

INSTRUMENT # 2004058105

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

**PROTECTIVE COVENANTS**  
**THE PRESERVE**

THIS DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS AND EASEMENTS, dated for purposes of reference only this the 29<sup>th</sup> day of October, 2004, is made by **T. Leber Corporation, a North Carolina Corporation** (hereinafter "Declarant").

RECITALS:

Declarant has, by recordation of a subdivision plat, subdivided certain property shown on said plat into lots intended for utilization for construction of single family homes. The subdivision plat is recorded in Map Book 46, Page 263, New Hanover County Registry, and all property shown thereon is hereinafter referred to as the "Subdivision." Each numbered lot shown on the recorded plat is referred to herein as a "Lot." The name of the subdivision is THE PRESERVE.

Within the Subdivision and as shown on the recorded plat, there has been privately dedicated a street right of way, and there will be constructed within said right of way, in accordance with applicable construction standards of the State of North Carolina, a subdivision road. Access to each Lot within the Subdivision is over the street shown on the recorded plat of the Subdivision.

In order to own, manage and maintain common areas and utilities as more fully set out hereinafter, and to enforce these Protective Covenants and to provide an organization for the benefit of the owner of each Lot within the Subdivision, Declarant has or will charter a North Carolina nonprofit corporation named THE PRESERVE HOMEOWNERS ASSOCIATION (the "Association"). The owner of each Lot is a member of the Association, and the owner of each Lot is obligated to pay dues and assessments to the Association for the benefit of the Association and the owner of each Lot within the Subdivision except that if two adjacent lots are combined for building purposes and only one residence is placed on the combined lots, then in that event the combined lots should be counted as one Lot for payment of Association dues and assessments. The organization and operation of the Association is described in these Protective Covenants and in the By-Laws of the Association.

It is the desire and intention of the Declarant, for its benefit and with the intent of preserving the value of each Lot, to restrict the utilization of and improvements on each Lot within the Subdivision in accordance with guidelines established herein. Therefore, Declarant hereby subjects the property described

hereinafter to the terms and provision of these Protective Covenants for the use and benefit of all present and future Lot owners within the Subdivision.

1. DESCRIPTION. This Declaration shall run with the land and shall bind and inure to the benefit of the owner of each Lot within the Subdivision, and the property made subject to these Protective Covenants is all of the property shown on that plat of THE PRESERVE recorded in Map Book 46, Page 263, New Hanover County Registry, as the same may be amended from time to time.

2. SINGLE FAMILY UTILIZATION. This Protective Covenant restricts all numbered Lots subjected to its terms to use only for single family residential purposes. No home or other structure constructed within the Subdivision shall be utilized for commercial purposes, except that Declarant or its assigns shall be entitled to use any structure located within the Subdivision for purposes of assisting in the sale of Lots within the Subdivision. Nothing contained herein shall limit to single family utilization property subjected to this Declaration by valid amendment hereto, but all such properties shall be limited to residential utilization.

3. BUILDING AND SITE RESTRICTIONS. The Architectural Control Committee must give prior approval of any removal of any tree of a size of twelve inches in diameter or greater from any Lot or the construction of any improvement or structure on any lot in accordance with the procedures described in Paragraph 4 of these Protective Covenants. In addition, the following restrictions shall apply:

(a) No storage shed or carport shall be permitted unless architecturally compatible with the primary dwelling structure on the Lot.

(b) No more than one (1) single family house shall be allowed per Lot and each house shall have a minimum two car garage which may be attached or detached.

(c) All homes must be constructed substantially on site, and no modular home shall be located within the Subdivision and no homes constructed elsewhere shall be allowed to be conveyed into and located on a Lot within the Subdivision. No temporary structures shall be allowed.

(d) No sign shall be allowed on any Lot so as to be visible from any street right of way or any adjoining Lot, except as to the following signs, which shall be allowed:

(1) a sign, no greater than twenty four square feet in size, specifying the general contractor actually constructing a structure on a Lot. Such sign must be removed upon issuance of a certificate of occupancy for the structure;

(2) a sign identifying the property upon which such sign is placed only by the name of the owner and a street number. Such sign must be constructed at a size, and to specifications and styles established by the Architectural Control Committee, and must be located on the Lot in a place specified by the Architectural Control Committee;

(3) street or directional signs erected by the Association;

(4) any sign required to be constructed by any governmental agency; and

(5) identification and informational signs constructed by Declarant, or its agent, installed in places, for the purpose of assisting the Declarant in identifying the project and the location of sales offices, amenities, lots for sale, sales models or other nonresidential uses within the Subdivision.

(6) any other sign approved by the Architectural Control Committee.

All permitted signs, except those required to be constructed by a governmental entity, shall be constructed of materials, in a style of colors and in a location established and approved by the Architectural Control Committee.

(e) The minimum square footage of heated, enclosed living space for each approved residential structure shall be 2,000 square feet.

(f) There are no absolute building setback requirements other than those that may be imposed by a local government or those shown on the recorded plat of the Subdivision. However, no structure will be allowed within 30 feet of any street right of way, 10 feet of any side Lot line, or 10 feet of any rear Lot line, unless alternatives are approved by the Architectural Control Committee. NOTWITHSTANDING ANY SUGGESTED SETBACK, THE ARCHITECTURAL CONTROL COMMITTEE SHALL HAVE COMPLETE AUTHORITY TO DETERMINE THE APPROPRIATE BUILDING SITE ON EACH AND EVERY LOT. THERE IS NO PRESUMPTION THAT SUCH APPROVED BUILDING LOCATION SHALL BE WITHIN THE SUGGESTED SETBACKS SET OUT HEREINBEFORE.

(g) The heights of structures shall be subject to approval of the Architectural Control Committee in accordance with the standards set out in Paragraph 4 hereunder, but no structure may exceed in height the height limitation imposed by New Hanover County.

(h) Fences are subject to the complete jurisdiction of the Architectural Control Committee as to location, style, materials (except there shall be no chain link fencing allowed) and height. As used herein, fences shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility. The Architectural Control Committee shall only approve the construction of a fence upon a determination that the fence is aesthetically pleasing and does not detract from the reasonable value of any Lot. It is the responsibility of the Lot owner to ensure all structures or fences are constructed within their Lot.

(i) No satellite receiving dish, radio antennae or other similar device shall be located on any Lot unless approved by the Architectural Control Committee. The Architectural Control Committee shall approve the location of such device only upon making an affirmative finding that the location of the device on the Lot is in the area of minimum visibility from any surrounding Lot or from any street, and upon a further finding that the proposed location will not significantly detract from the aesthetic values of the Subdivision.

(j) No boat, boat trailer, other trailer, camper, recreational vehicle, utility vehicle or truck (to the extent that a truck is rated as a two and one-half ton truck or larger) shall be allowed to remain on any street right of way or on any Lot or on any common property overnight unless it is enclosed within a garage, solid fenced area or planted screen that has been constructed in accordance with the provisions of these Protective Covenants. Motor Homes of short term guests may be allowed to park on a lot temporarily overnight with permission of the Board of Directors.

(k) The Association shall have authority to adopt rules and regulations prohibiting or restricting the location of temporary or permanent clotheslines, the number of vehicles that may be parked on any Lot and the number, type and location of trash receptacles and trash receptacle enclosures which shall be required for all dwellings.

(l) No activity, whether active or passive, that is reasonably considered a nuisance by the Association shall be allowed on any Lot. This prohibition includes any activities within any structure, on any Lot or on any street or common area. The Association is specifically authorized by Paragraph 14 of

these Protective Covenants to adopt rules regarding conduct and use of any Lot; however, The Association may find any conduct or use of a Lot to be a nuisance notwithstanding the fact that such conduct is not specifically prohibited by these Protective Covenants or by an adopted rule. If any conduct is deemed by the Association to be a nuisance, and to the extent that such conduct is not specifically prohibited by the provisions of these Protective Covenants or by an adopted rule, the Association shall give written notice to the offending owner specifying the nature of the nuisance, and requesting that such nuisance be terminated. If any nuisance is not terminated within a reasonable time thereafter, the Association may, in addition to any other remedy, impose a fine in the amount of \$100.00 per violation. If the nuisance is of a continuing nature, a separate violation shall be considered made each day the nuisance continues. All such fines may be collected in the same manner as an assessment as more fully specified herein, and all attorney's fees incurred may be collected as allowed by Paragraph 6 herein.

(m) Improved and unimproved Lots must be maintained by the owner in a manner consistent with the Subdivision as determined by the Architectural Control Committee.

(n) All homes must be constructed under the minimum guidelines of the United States Environmental Protection Agency's "Energy Star" program and shall be certified as "Energy Star" labeled homes.

(o) Homes in The Preserve must be certified by a third party as being built to high performance standards using the current version of the NC HealthyBuilt Homes Checklist; current version is the version in force at the date of construction commencement. Homes must achieve, at minimum, a bronze level of certification and must meet the following passive solar design minimum requirements within the checklist: each home will be oriented with long dimension within 15 degrees of solar south, and provide passive solar heating for at least 20% of its heating needs. The glass area on southern side wall of home shall be at least 6% of total floor area, eastern wall glazing shall be less than 3% of total floor area, west glazing less than 2% of total floor area and must provide an eave overhang at least 2' deep. For reference, the NC HealthyBuilt Homes is administered by the NC Solar Center at NC State University through the Industrial Extension Service. Contact the NC Solar Center at 919-515-3480 or at [WWW.NCSC.NCSU.EDU](http://WWW.NCSC.NCSU.EDU).

(p) Wetlands shall be left in their natural state. No buildings or site improvements shall be permitted within the wetlands; however, piers or pile-supported walkways are permitted. Prohibited activities shall include denuding, clearing, cutting of trees, seeding, or altering the existing grade. No fill may be placed or discharged in any wetland area, nor may any excavation be performed in any wetland area unless specific approval is obtained from the Department of the Army for fill in jurisdictional wetlands.

4. ARCHITECTURAL CONTROL COMMITTEE PROCEDURES. At least thirty (30) days prior to the anticipated commencement of any landscaping or construction of any structure or improvement on any Lot, the owner of such Lot (or his duly appointed agent) shall submit to the Chairman of the Architectural Control Committee a survey of the Lot, which survey shall show each Lot corner. There shall further be shown on said survey the proposed location of all proposed and existing structures or improvements, including driveways, bulkheads, piers, patios, decks and walkways, and further including a specific delineation of the proposed location of all improvements that will result in the creation of impervious surfaces as defined by the Department of Environmental Management of the State of North Carolina in accordance with the North Carolina coastal storm water regulations. There shall further be provided to the Architectural Control Committee sufficient building elevations and other site plans, including a statement of exterior building materials and proposed exterior colors, to allow the Architectural Control Committee to appropriately and accurately evaluate what is proposed for construction on the Lot. The survey shall be prepared by a registered or licensed land surveyor, and the building elevations and other site plans shall be prepared professionally. There shall be submitted two copies of all information required to be submitted.

The owner of each Lot shall notify the Architectural Control Committee of the identity of the contractor proposed for construction of any major improvements on any Lot. Major improvements shall be all improvements of a reasonable construction cost of \$10,000.00 or more. The owner of each Lot shall include with the name of the contractor a statement as to the classification of contractor's license held by such contractor and the address and telephone number of the contractor. This information shall be submitted to the Architectural Control Committee at time of submission of plans, if such information is available at that time; if the information is not available as that time, the information shall be submitted to the Architectural Control Committee at least thirty (30) days prior to commencement of construction.

Within thirty (30) days after receipt of all required information, the Architectural Control Committee shall submit in writing to the owners of the Lot whether or not the requested improvements are approved. Unless a response is given by the Architectural Control Committee within thirty (30) days, the plan shall be deemed approved. The response of the Association may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the thirty (30) day time for response shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and construction then begins, the construction shall be deemed approval by the owner of the Lot of the conditions imposed.

The Architectural Control Committee shall approve the plans as submitted, if all required information is submitted, and the following affirmative findings are made by the Architectural Control Committee:

(a) that the improvement sought to be constructed will not have negative economic impact on any other Lot within the subdivision;

(b) that all required specific building standards and other conditions contained within the Protective Covenants and other applicable legal documents have been complied with;

(c) that the improvements are architecturally compatible with proposed or constructed improvements on other Lots within the Subdivision;

(d) that the natural features of the Lot have been retained to the maximum extent feasible;

(e) that the impervious surface limitation coverage proposed on each Lot is consistent with the requirements of the Department of Environmental Management coastal storm water regulations. An average Lot shall not contain impervious surfaces as defined by said regulations in excess of 4500 square feet. Excess impervious surface area allotment not used on a particular lot may be transferred from that lot to another lot within the subdivision upon agreement between the affected lot owners and upon approval by the Architectural Control Committee. At no time shall the total impervious surface coverage on all lots, including Lots which have construction existing or approved thereon exceed the amount of impervious surfaces determined by multiplying the number of said lots by 4500 square feet; and,

(f) that all runoff from the built-upon areas on the lot drain into the permitted system. The developer has determined that this will be accomplished through grading each lot in the subdivision to drain from the back to the front, where the runoff will drain into the street. Lots that will naturally drain into the system are not required to provide these additional measures.

In addition to plan approval, the Architectural Control Committee must approve the contractor selected by the owner of each Lot. A contractor shall be approved if the contractor has an appropriate North Carolina general contractor's license in good standing, is of good financial standing, has a good reputation in the community and has constructed to the satisfaction of the owner of property comparable structures on

a regular and routine basis.

Any owner of any Lot disagreeing with the finding of the Architectural Control Committee may appeal its decision to the Board of Directors of the Association by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of notice of denial. The Board of Directors of the Association shall then review the plans, giving the Chairman of the Architectural Control Committee the opportunity to present to the Board of Directors of the Association specific reasons why the plans were denied, in the presence of the owner of the lot or his agent, and the owner of the Lot or his agent may present information challenging the findings of the Architectural Control Committee. The decision of the Architectural Control Committee shall only be overridden by unanimous vote of the Board of Directors of the Association.

All notices required to be given herein shall be given in writing, hand-delivered or mailed postage prepaid, return receipt requested, and the Architectural Control Committee shall be obligated to specify the particular grounds upon which denial of any application is founded. One set of plans, denoted as approved (or approved with specified conditions) shall be retained by the Architectural Control Committee and the other shall be returned to the applicant.

The Architectural Control Committee shall have the right to issue rules and regulations governing the maintenance of construction sites and the procedures to be followed by contractors and owners of lots during construction periods. Contractors will be expected to keep all construction areas clean at all times.

5. ASSOCIATION. The owner or owners of every Lot shall be a voting member of the Association. However, only one vote shall be allowed per Lot; to the extent that there is more than one owner of any one Lot, said owners shall determine among themselves, and designate, one voting member, which voting member shall cast the vote allocated to said Lot. If the owners cannot agree among themselves, the board of Directors of the Association shall determine and designate a voting member from among the owners of the Lot. In the event two adjacent lots are combined for building purposes and only one residence is placed on the combined lots, then in that event the combined lots should be counted as one Lot for voting purposes. The Association shall be governed by a Board of Directors, selected in accordance with the By-laws of the Association, and the Association shall operate and do business in accordance with the terms of its By-laws, see attached Exhibit "A".

The Association shall have the responsibility of maintaining a sightly appearance along all street rights of way and utility easements, to the extent that the same are utilized for common ingress and egress or benefit.

The Association shall have the responsibility of maintaining in good condition all common areas, and shall be responsible for adopting rules and regulations governing utilization of such common areas. The Association shall be obligated to accept ownership of all common area designated on any recorded subdivision plat the properties of which are made subject to the provisions of this Declaration. To the extent necessary, the Association may employ personnel necessary to perform its obligations, or needed to benefit the owners of Lots within the Subdivision.

The Association shall have the obligation to provide for itself and for the benefit of the owner of each Lot all necessary professional services to promote the proper maintenance of all streets and other common areas and to provide the smooth, proper and legal administration of the Association. These services may include services of an engineer, lawyer, accountant or other professional. The Association is specifically authorized to provide such other incidental services for the benefit of the Subdivision and in the management of the Association as deemed reasonably necessary by the Board of Directors of the Association. The Association shall also have an affirmative obligation to maintain common elements in

good condition, utilizing its funds so to do, notwithstanding the utilization of such facilities by any or all Lot owners.

The Association shall have the optional authority to provide any service to the Lots it believes desirable, including, but not limited to cable television, waste collection or utility service. Such services may be provided by the Association directly, by a subsidiary owned by the Association or by contract with a third party. Assessments may be collected to pay for the provision of such services.

In order to fund its obligations, the owner of every Lot (or combined Lot if two lots are, as previously discussed, combined with one dwelling built upon them) is obligated and bound, whether or not expressly stated in any instrument of conveyance, to pay to the Association the following:

- (a) annual charges or dues; and
- (b) special assessments.

All such assessments, charges, and dues, together with any interest thereon, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessments are made. Liens shall be perfected in the manner of mechanics or materialmen's lien under North Carolina General Statutes, and any lien for dues unpaid shall be filed within nine (9) months after the due date of the payment of such assessment. The due date shall be the first day of the fiscal year of the association, as to annual dues; and the date established for payment of a special assessment, as more fully set out hereinafter. Any such lien may be enforced in the manner of a deed of trust with power of sale, as allowed by North Carolina General Statutes, through a foreclosure proceeding. This instrument shall be deemed to give to the President of the Association said power of sale.

Annual assessments shall be in an amount determined by a majority vote of the Directors of the Association. The fiscal year of the Association shall be the calendar year; dues for the first year of the Association, prorated by date of closing, shall be payable to the Association at closing. Declarant shall pay dues for all unsold Lots beginning on the first day of the month following the first conveyance of a Lot to a third party by Declarant. Beginning with the first day of the month following the issuance of a Certificate of Occupancy for a home on a Lot, the dues for each such Lot for which the Certificate of Occupancy has been issued shall be twice the then determined assessment for each unimproved Lot. No amendment to these protective Covenants, unless approved by Declarant and all owners of Lots within the Subdivision, shall alter the ratio of dues paid by the owner of an unimproved Lot compared to the dues paid by an owner of an improved Lot.

A special assessment may be levied from time to time by vote of a minimum of 70% of the total votes cast in any regular or special meeting, called in accordance with the By-Laws. A special assessment may be made for any purpose for which expenditures are allowed in accordance with this Declaration. The resolution approving a special assessment shall specify the date payable.

Notwithstanding any provisions of these Protective Covenants, including this Paragraph 5, the Board of Directors shall have authority to levy any special assessment if, in the sole discretion of said Directors, the assessment is reasonably required to protect properties impacted in case of an emergency, such as a storm causing severe erosion. In such event, the Directors shall give written notice to the members so affected as promptly as possible after the determination of said assessment and the action shall be binding as though ratified by the requisite vote of the owners of Lots.

The Declarant shall retain control of the Association until Eighty percent (80%) of the Lots have been sold and closed, or until Declarant gives control to the owners, whichever comes first.

6. **ENFORCEMENT**. These Protective Covenants, including any amendment hereto, may be enforced by any individual Lot owner; by the Association, upon action by its Board of Directors; or by Declarant, as long as Declarant owns any Lot within the Subdivision. Appropriate remedies shall include, but are not limited to, specific performance. In any action to enforce these Protective Covenants, including any action to collect assessments, either regular or special, or to foreclose upon any real property for payment of such assessment, all costs associated with said collection, including court costs and reasonable attorney's fees, shall be collected as an additional assessment. In addition, interest at the rate of twelve percent (12%) per annum shall be collected from the due date of any assessment, until the assessment is paid in full.

The State of North Carolina is given specific authority to enforce these covenants to the extent necessary to cause compliance with the impervious surface limitation of the North Carolina coastal storm water regulations, and these covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8020709, as issued by the Division of Water Quality under NCAC 2H.1000. The State of North Carolina is made a beneficiary of these covenants and is specifically granted authority to enforce these Protective Covenants for such purpose, with remedies available to the State of North Carolina including, but not limited to, the remedy of specific performance. These covenants are to run with the land and be binding on all persons and parties claiming under them. The covenants pertaining to storm may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

7. **SETBACKS**. All setback and building restriction areas, and allowable building area, as shown on the recorded subdivision plat of the Subdivision, shall be incorporated herein by reference.

8. **AMENDMENTS**. These Protective Covenants shall continue in full force and effect until 12:00 noon on OCTOBER 1, 2014, at which time it shall automatically extend for additional successive periods of ten (10) years, unless a document terminating or modifying these Protective Covenants is recorded prior to any renewal date in the office of the Register of Deeds of New Hanover County, which amendment shall require approval of sixty-seven percent (67%) of the lots subjected to these Protective Covenants (including any amendments hereto). The covenants pertaining to storm water may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

9. **BINDING EFFECT**. All covenants, restrictions, reservations, easements and privileges contained herein shall run with the land and the grantee, by accepting any deed to any portion of such land described herein, accepts the same subject to these Protective Covenants and its terms and conditions and agrees for himself, his heirs, successors and assigns, to be fully bound by each and all of the terms and conditions of these Protective Covenants, jointly, separately, and severally.

10. **RESERVATION OF RIGHTS**. Declarant hereby reserves the right to utilize all streets and roads within the Subdivision for purposes of ingress and egress to Lots within such Subdivision owned by it, or for purposes of providing access to other contiguous properties owned by it. This right shall be assignable by Declarant to successors in interest to it of other contiguous properties. Any utility easements reserved as shown on any recorded plat (and all roadways shall be deemed for this purpose a utility easement) shall be available for utilization by Declarant, authorized utility companies, or by the owner of any Lot within THE PRESERVE, for purposes of providing utility services or necessary drainage, but only upon approval of the Association given by its Board of Directors.

11. **RESUBDIVISION**. No resubdivision of any single Lot shall be allowed, if any resulting Lot will be smaller in size than any of the Lots resubdivided, prior to resubdivision. Nothing contained herein shall prohibit conveyance of more than one Lot, or portions of contiguous Lots, as long as site resulting Lot or

Lots are greater in size than those originally subdivided. The deed of conveyance of any such resubdivided or recombined Lots shall restrict the construction thereon to one single family residential home per redivided Lot, so that the maximum number of homes which can be constructed within the Subdivision shall not increase. Upon the recombination of any Lots to reduce the total number of allowable building Lots within the Subdivision, for purposes of membership in the Association and for purposes of the payment of dues and assessments, any recombined Lots shall be considered a single Lot. Furthermore, should any Lot be determined by Declarant to be unbuildable, and should such Lot then be deeded to the Association as common area, or dedicated by Declarant as a recreation or open space area for the benefit of the Association, all by document duly recorded in the office of the Register of Deeds of New Hanover County, there shall be no further dues owed from the date of such recordation; however, any dues prepaid shall not be reimbursed.

12. UTILITY EASEMENTS. There is hereby reserved for the benefit of the Association and the owner of each Lot within the Subdivision a utility, drainage and maintenance easement running parallel to each street a width of 10 feet, and parallel to each side and rear Lot line a width of five feet and adjacent to any body of water (whether natural or manmade) a width of ten feet. Utilization of such easement by anyone other than the Lot owner across which such easement runs shall be made only upon approval of the Board of Directors of the Association. In addition to the above named easements, all lots will be subject to the easement granted City of Wilmington, the provider of water to the development.

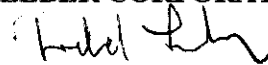
13. MINOR AMENDMENT. Declarant, or its successors or assigns, shall be allowed to amend these Protective Covenants, notwithstanding any other provision contained herein, and without joinder of any other party, for the purpose of correcting any discovered error contained herein, clarifying any ambiguity contained herein, or adding or deleting any incidental provisions deemed in the sole discretion of Declarant to be in the best interest of the Subdivision, and the owner therein. This right may be exercised, and shall be effective, only upon the recordation of a "Corrected Declaration" in the office of the Register of Deeds of New Hanover County, which Corrected Declaration shall specifically reference this document, and the provision impacted.

14. RULES. The Board of Directors may from time to time establish rules for use of any property within the Subdivision in order to protect the value of Lots, the aesthetic qualities of the Subdivision and the tranquility of the owners of Lots. Said rules may include, but are not limited to, reasonable restrictions on pets, rental use of homes, and parking of cars, trailer, boats, campers and other vehicles on Lots and streets. All such rules shall be effective after written notice of adoption is mailed to the record owners of all Lots. All such rules shall be enforceable as though set out within these Protective Covenants.

15. FEES AND BONDS. The Board of Directors is specifically authorized, but is not required, to charge application or processing fees for approval of plans, and to require the posting of reasonable bonds or deposits prior to commencement of construction to protect the Association against damage to streets or other common area or costs incurred in causing correction of any construction or site work performed otherwise and in accordance with approved plans.

IN TESTIMONY WHEREOF, said party has caused this instrument to be executed in its corporate name by its corporate officers all by order of its Board of Directors first duly given, this the day and year first above written.

**T. LEBER CORPORATION**

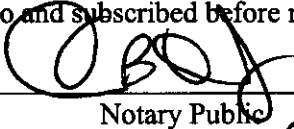


BY: TODD LEBER, Vice President

**STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER**

I, Eugene B. Davis, Jr., a Notary Public for the said County and State, do hereby certify that TODD LEBER personally came before me this day and acknowledged that he/she is the Vice President of T. LEBER CORPORATION and acknowledged the due execution of the foregoing instrument.

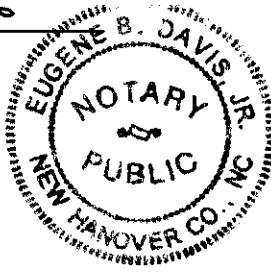
Sworn to and subscribed before me this 29th day of October, 2004.



Notary Public

(Notary Seal)

My Commission Expires: 20 Nov 2006



**EXHIBIT A**  
**BYLAWS OF**  
**THE PRESERVE HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**  
**ASSOCIATION MEMBERS**

Section 1. ANNUAL MEETING OF MEMBERS. The annual meeting of the Members of the Association shall be held at the principal office of the Association, at an hour to be fixed by the President, on the second Tuesday in January of each year for the purpose of electing directors and for the transaction of such other business as may be brought before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

Section 2. SUBSTITUTE ANNUAL MEETING. If the annual meeting shall not be held on the day designated in these Bylaws, a substitute annual meeting at the principal office of the Association may be called in accordance with the provisions of Section 3 of this Article I. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 3. SPECIAL MEETINGS OF MEMBERS. Special meetings of the members may be held in the principal office of the corporation, or elsewhere by consent of the members, whenever called in writing by the President or any member of the Board of Directors of the corporation or by members representing twenty percent (20%) of the membership entitled to vote.

Section 4. NOTICE OF MEETING. Written or printed notices stating the time and place of meeting shall be mailed or delivered by the Secretary to each member of record at the member's last known address. The notice of each meeting shall be mailed or delivered by the Secretary not less than ten days nor more than fifty days prior to the date set for such meeting and as to special meetings, the Notice shall indicate the purpose or purposes thereof.

Section 5. QUORUM. At any meeting of the members, forty percent (40%) of the members entitled to vote, present in person or represented by proxy, shall constitute a quorum of the membership for all purposes. If a quorum is not present, the meeting may be recessed from time to time by announcement from the chair at the time such meeting was set and such shall be sufficient notice of the time and place of the recessed meeting. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 6. ORGANIZATION. The President, or, in his absence, the Vice President, shall preside over all meetings of members and the Secretary of the Association shall act as Secretary at all meetings of the members; provided, however, in the Secretary's absence the President may appoint a Secretary for the meeting of the members.

Section 7. VOTING. Each member of the Association, as defined in the Articles of Incorporation of said Association, shall be entitled to one vote for each unit owned on each matter submitted to a vote at a meeting of members. The vote of a majority of the members at a meeting of members at which a quorum is present shall be the act of the members on that matter, unless the vote of a greater number is required by law or by the charter or other Bylaws of this Association. Cumulative voting shall not be allowed.

Section 8. VOTING BY PROXY. The vote allocated to a member may be cast pursuant to a

dated written proxy signed by the member. A member may not revoke a proxy except by written notice delivered to the person presiding over a meeting of the Association. A proxy terminates one year after its date, unless it specifies a shorter term.

## **ARTICLE II BOARD OF DIRECTORS**

Section 1. **NUMBER AND TERM OF OFFICE.** The affairs of the Association shall be managed by a Board of Directors of three (3) members, which shall be entitled to act on behalf of the Association, in all routine, day to day operations of the Association. Said Board shall consist of the President, Vice President and Secretary of the Association. The term of office for each Board member shall be until the successors to such offices shall have been duly elected and qualified as hereinafter stated. Corporate members, including the Declarant and Developer, may elect individual candidates to said offices as hereinafter provided.

Section 2. **COMPENSATION.** No Board member shall receive compensation for any service he may render to the Association. However, with the prior approval of the Board, any Board member may be reimbursed for actual expenses incurred in the performance of his duties.

Section 3. **ACTION WITHOUT MEETING.** The Board shall have the right to take any action in the absence of a meeting which it could take at a duly held meeting by obtaining the written consent of all of the Board members to the action. Any action so approved shall be filed in the corporate books and records and shall have the same effect as though taken at a meeting of the Board.

Section 4. **MEETINGS.** Meetings of the Board shall be held quarterly without notice, at such place and hour, as may be fixed from time to time by resolution of the Board. Special meetings of the Board may be called by any member of the Board after not less than five (5) days' notice to each Board member.

Section 5. **QUORUM.** A majority of the Board members shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Board members present at a duly held meeting shall be regarded as the act of the Board.

Section 6. **POWERS AND AUTHORITY OF THE BOARD OF DIRECTORS.** Subject to the provisions contained herein and applicable law, the Board shall have the power and authority to exercise all of the rights and powers of the Association, including, but not limited to, the following powers:

(a) To adopt rules and regulations governing the use of the common area and facilities, the personal conduct of the members and their guests thereon, and establish penalties for the infraction thereof;

(b) To suspend the voting rights and right of use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association; and to suspend such rights, after notice and hearing, for infraction of published rules and regulations for a period of at least 60 days;

(c) To declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;

(d) To employ a manager, an independent contractor, or other employees as is deemed necessary, and prescribe their duties; provided, that any contract for professional management must contain a clause requiring not more than 90 days termination notice;

(e) To procure, maintain, and pay premiums on, insurance policy(s) and equitably assess the members same for their prorata portion of such expense;

(f) To impose and receive any payments, fees, or charges for the use, rental, or operation of the common areas or elements other than for service provided to members;

(g) To open and maintain bank account(s) on behalf of the Association and designate the signatures required therefor;

(h) To exercise any other powers necessary and proper for the governance and operation of the Association;

(i) To have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of North Carolina by law may now or hereafter have or exercise; and

(j) To exercise all other powers that may be exercised in this state by legal entities of the same type as the Association.

Section 7. DUTIES OF THE BOARD OF DIRECTORS. It shall be the duty of the Board to do the following:

(a) To cause the common elements to be maintained, repaired, and replaced as necessary, and to assess the members to recover the cost of the upkeep of the common elements;

(b) To serve as the architectural committee or to appoint an architectural committee as provided in the Bylaws;

(c) To keep a complete record of all its acts and corporate affairs and present a statement thereof to the members at the annual meeting, or at any special meeting when such statement is requested in writing by twenty percent (20%) of the members;

(d) To supervise all officers, agents and employees of the Association, and see that their duties are properly performed;

(e) To fix the amount of the annual assessment at least three (3) months in advance of each annual assessment period based on the projected budget for the annual assessment period and pursuant to the provisions set forth in the Declaration of Covenants, Conditions and Restrictions;

(f) To send written notice of each assessment to every member at least thirty (30) days in advance of the due date for each annual assessment;

(g) To foreclose any unpaid assessments and liens resulting therefrom against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the member personally obligated to pay the same;

(h) To issue, or have issued, for a reasonable charge, a certificate setting forth whether or

not any assessment has been paid; provided, however, that if a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment as to all parties except the member and lot owner as of the date of the assessment;

(i) To procure and maintain, at all times, adequate hazard insurance on the property owned by the Association and all property for which the Association has the duty to maintain, and sufficient liability insurance to adequately protect the Association as provided in the Declaration of Covenants, Conditions and Restrictions; and

(j) To cause all officers or employees, including officers and employees of professional management, having fiscal responsibilities to be bonded, as it may deem appropriate.

**Section 8. LIABILITY OF THE BOARD OF DIRECTORS:** The members of the Board of Directors shall not be liable to the Association or any of its members for any mistake of judgement, negligence, or otherwise except for their own individual willful misconduct or bad faith. The members of the Association shall indemnify and hold harmless each member of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Articles of Incorporation or these By Laws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. It is also intended that the liability of any member of the Association arising out of any contract made by the Board of Directors or out of the indemnity in favor of the members of the Board of Directors shall be limited to the such proportions of the total liability thereunder as his interest in the Association bears to the interest of all members of the Association in the Association. Every agreement made on behalf of the Association shall provide that the members of the Board of Directors are acting only as agents for the Association and shall have no personal liability thereunder (except as members of the Association), and that each member of the Association's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the Association bears to the interest of all members of the Association.

### **ARTICLE III OFFICERS**

**Section 1. OFFICERS.** The Executive officers of this Association shall be a President, Vice President, and Secretary/Treasurer.

**Section 2. ELECTION OF OFFICERS.** Each officer shall be elected from member-candidates nominated from the floor at the annual meeting of the Association. Election shall be by secret written ballot and by a majority of the members present at such meeting provided that a quorum is present. Corporate members, including the Declarant and Developer, may elect individual candidates to said offices. Cumulative voting shall not be allowed. Each officer elected shall serve until the next annual election or until his successor shall have been elected and qualified.

**Section 3. POWERS AND DUTIES OF THE EXECUTIVE OFFICERS.**

(a) The President shall preside at all meetings of the Board; he shall see that orders and resolutions of the Board are carried out; he shall sign all leases, mortgages, deeds and other written instruments; and he shall co-sign all checks and promissory notes. The President shall have all the general powers and duties incident to the office of the President of a corporation organized under the Business Corporation laws of the State of North Carolina.

(b) The Vice President shall act in the place of the President in the event of his absence, or his inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; he shall keep the associate seal and affix it on all papers requiring said seal; he shall serve notice of meetings of the Board and of the members; he shall keep appropriate current records showing the members of the Association together with their addresses; he shall prepare, execute, certify, and record amendments to the Declaration of Covenants, Conditions and Restrictions on behalf of the Association; and he shall perform such other duties as required by the Board.

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by the Board; he shall sign all checks and promissory notes (such checks and promissory notes to be co-signed by the president) of the Association; he shall keep proper books of account; he shall cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and he shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its annual meeting, and deliver a copy to each member.

Section 4. ACTION WITHOUT MEETING. The Officers shall have the right to take any action in the absence of a meeting which they could take at a duly held meeting by obtaining the written consent of all of the Officer members to the action. Any action so approved shall be filed in the corporate books and records and shall have the same effect as though taken at a meeting of the Officers.

Section 5. REMOVAL. Any Executive Officer, may be removed with or without cause, by a vote of at least sixty-seven percent (67%) of all members present and entitled to vote at any meeting of the members at which a quorum is present. In the event of death, resignation or removal of an executive officer, his successor shall be selected by the Board to serve until the next annual meeting of the members at which election of officers shall be had when his successor shall be elected.

#### **ARTICLE IV BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member or a mortgagee of any member. The Articles of Incorporation and the Declaration of Covenants, Conditions and Restrictions and Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

#### **ARTICLE V FORMS OF PROXY AND WAIVER**

Section 1. FORMS OF PROXY. The following form of proxy shall be deemed sufficient, but any other form may be used which is sufficient in law:

**THE PRESERVE HOMEOWNERS ASSOCIATION, INC.**

Know all men by these presents that the undersigned member of The Preserve Homeowners Association constitutes and appoints \_\_\_\_\_ the attorney and proxy of the undersigned to annual and special meeting of the members of The Preserve Homeowners Association, at which I am not present, until the secretary of the Association receives from me a letter revoking this