

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
CYPRESS BAY

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR CYPRESS BAY, is made this 15th day of June, 1998, by D. Harold Gurganus and wife, Betsy R. Gurganus, (owners and developers) whose address is 704 John Small Avenue, Washington, NC 27889;

WHEREAS, Developer is the owner in fee simple of that tract or parcel of land in Long Acre Township, Beaufort County, State of North Carolina, designated as Cypress Bay, a planned unit Development, as set out in a map recorded in Plat Cabinet E, Slide 54-6, Beaufort County Registry; and

WHEREAS, it is desired that the property constituting said subdivision be made subject to certain covenants and restrictions for the benefit of said Developer and successors in title to Developer such that the subdivision will be developed in a uniform manner to benefit all present and future owners.

IT IS THEREFORE provided that said real property known as CYPRESS BAY, as recorded in Plat Cabinet E, Slide 54-6, Beaufort County Registry, be made subject to, and the same is hereby made subject to, the following covenants, restrictions, and conditions, to wit:

1. DEFINITIONS AS USED HEREIN.

(a). "Articles" of "Articles of Incorporation" mean the articles of incorporation of the Cypress Bay Homeowner's Association, Inc.

(b). "Built Upon Area" means that portion of an individual lot that is covered by impervious surfaces including buildings and pavement, but not including decking.

(c). "By-Laws" means the by-laws of Cypress Bay Homeowner's Association, Inc.

(d). "Common Areas" means those areas more particularly defined in paragraph fourteen hereunder which is specifically incorporated by reference herein.

(e). "Corporation" means the Cypress Bay Homeowner's Association, Inc.

(f). "Dedication" means the act of committing Cypress Bay to the purposes of these restrictive covenants and of the Subdivision. "Dedicate" means that act or series of acts culminating in dedication.

(g). "Lot" means the separately numbered parcels depicted on the above referenced survey map. Provided, however, that the owner of any of the numbered parcels on said map may combine with such numbered parcel, parts or portions of another numbered parcel or parcels and the aggregate shall be considered as one "lot" for the purpose of these restrictive covenants and conditions.

(h). "Subdivision" means Cypress Bay Subdivision which has been dedicated.

2. DEDICATION OF CYPRESS BAY.

That area depicted as Cypress Bay on the aforesaid plat and thereon dedicated as being divided into Lots and Common Areas, hereby is dedicated to the purposes of these Restrictive Covenants and this Subdivision, said area to be held and owned subject to and to have the benefit and the burden of the Restrictions enumerated herein.

3. ASSOCIATION.

(a). A corporation (hereinafter referred to as "Association" named Cypress Bay Homeowner's Association, Inc. has been formed pursuant to the rules and requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina as an association of owners of lots. Its purposes are to own, manage, maintain and operate the common areas and enforce the restrictions contained herein, in addition to the powers to be given it in the Articles of Incorporation and By-Laws of said corporation.

(b). Each owner of each lot within the subdivision shall be a member of the Association. The developer, by this declaration, and the land owners of individual lots by their acceptance of individual deeds thereto, covenant and agree with respect to the Association:

i). That for so long as each is an owner of a lot within the subdivision, each will perform all acts necessary to remain in good and current standing as a member of the Association.

ii). That each shall be subject to the rules and regulations of the Association with regard to ownership of a lot; and

iii). That any unpaid assessment, whether general or special, levied by the Association in accordance with these restrictions, the Articles of Incorporation or By-Laws of said corporation, shall be a lien upon the lot upon which such assessments was levied, and shall be the personal obligation of the owner of the lot at the time the assessment fell due.

(c). The Association shall have one class of members who shall be owners. Each member shall be entitled to one vote for each lot owned; provided, however, when more than one person holds an interest in any lot, all such persons shall be members and, the vote for such lot shall be exercised as they, among themselves, determined, but in no event shall more than one vote or any fraction of a vote be cast with respect to any lot.

(d). MANAGEMENT and ADMINISTRATION. The management and administration of the affairs of the common areas of the subdivision shall be the right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of these restrictions, the Articles of Incorporation and By-laws of the Association, but may be delegated or contracted to managers of management services. The Cypress Bay Homeowner's Association shall be responsible for replacing worn out roofing. However, damages to any roof that is covered by an owner's hazard policy shall not be the responsibility of the Cypress Bay Homeowner's Association.

(e). COMMUNITY EXPENSES. The community expenses of the subdivision include:

i). All amounts expended by the Association in operating, administering, managing, repairing, replacing and improving the common areas of the subdivision, as defined in Paragraph 9 herein; all amounts expended by the association in insuring the common areas in the subdivision; all amounts expended by the association in legal, engineering, or architectural fees; all similar fees which may be incurred by the Association from time to time in performing the functions delegated to the Association by these restrictions; all amounts expended in enforcing these restrictions, the Articles of Incorporation or the By-Laws of the Association.

ii). All cost expended in maintaining, repairing, replacing and improving the piers, docks, boat ramps and bulk heads along the Pamlico River.

iii). All amounts expended for utilities, including subdivision lighting, for the benefit of all the common areas.

iv). All taxes and special assessments which may be levied from time to time by any governmental authority upon the common areas in the subdivision.

v). All cost expended in the maintenance of the entire effluent collection, treatment and disposal system and said common area known as the effluent collection, treatment and disposal system shall receive the highest priority for expenditures by the Homeowner's Association except for Federal, State and local taxes and insurance.

(f). MONTHLY GENERAL ASSESSMENT. The monthly general assessment levied by the Association shall be used exclusively to improve, maintain and repair the common area, to pay the expenses of the Association, to pay the community expenses, to pay the cost of lighting the common areas, to pay the cost of any insurance the Association determines to purchase and to promote the recreation, health, safety and welfare of the members and to pay taxes levied upon common areas.

Each lot owner of any lot by acceptance of a deed for same, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the monthly general assessment as herein provided. The monthly general assessment together with the interest, cost, and reasonable attorneys fees shall be a charge and lien on the land and shall be a continuing lien on the property against which each such assessment is made. Additionally, lot owners shall be personally liable for payment of the assessment, and such liability shall continue after transfer of the lot to a third party. The monthly assessment as of the date of execution of this Declaration of Restrictive Covenants shall be \$100.00 per lot, per month, as lots are shown on the Plat, and shall cover December 1, 1998 through November 30, 1999. After November 30, 1999, the maximum monthly general assessment may be increased each year by the Board of Directors of the Association not more than twenty (20%) above the assessment for the previous year without a vote of two thirds (2/3) of the members of the individual lots of the subdivision voting in person or by proxy at a meeting called for said purpose and after thirty (30) days notice to lot owners. For purposes of this section the presence of 51% of lot owners at the meeting or by proxy shall constitute a quorum.

(g). LIEN FOR ASSESSMENT. Any general or special assessment, if not paid within thirty (30) days after the date of such assessment is due, together with interest at the rate of

eighteen percent (18%) per annum, costs of collection, court costs and reasonable attorney fees shall constitute a lien against the lot upon which such assessment is levied. The Association may record notice of same in the Office of the Clerk of Court of Superior Court of Beaufort County or file suit to collect such delinquent assessments and charges. The Association may file a notice of Lis Pendens, bring an action at law against the owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein.

The lien, as provided for herein, shall be subordinate to the lien of any deeds of trusts. Sale or transfer of any lot shall not affect the assessment lien provided for herein. However, the sale or transfer of any lot which is subject to any mortgage or deed of trust pursuant to a foreclosure proceeding, shall extinguish the lien of such assessment as to the payment which became due prior to such sale or transfer, but shall not extinguish the personal liability of the owner at the time the assessment fell due. No such sale or transfer shall receive such lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for shall continue to be subordinate to the liens of any deeds of trust.

(h). DEVELOPER EXEMPT FROM ASSESSMENT. All lots owned by the developer in the subdivision shall be exempt from any fees, assessments or other charges of any nature whatsoever in connection with the operation of the association or any assessment or charge required hereunder.

(i). COMPLIANCE. In case of failure of a lot owner to comply with the terms and provisions contained in this Declaration, the Articles of Incorporation or By-Laws of the Association, the following relief shall be available:

1. The Association, an aggrieved lot owner or any lot owner within the subdivision on behalf of the Association, or subdivision shall have the right to bring an action and recover sums due, damages, injunctive relief, and/or such other and further relief as may be just and appropriate, including recovery of reasonable attorneys fees.

2. The Association shall have the right to remedy the violation and assess the cost of remedying same against the offending lot owner as a special assessment.

3. If the violation is the non-payment of any general or special assessment, the Association shall have the right to suspend the offending owner's voting rights and the use by such owner, his agents, employees and invitees of the common areas in the subdivision for any period during which an assessment against the lot remains unpaid.

4. The remedies provided for herein (within Paragraph i) are cumulative, and are in addition to any other remedies provided by law.

5. The failure of the Association or any person to enforce any restriction contained in these restrictions, its Articles of Incorporation or By-Laws shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character.

(j). DEVELOPER CONTROL. The Developer shall elect the

Directors of the Association until such time the declarant owns less than SEVEN (7) lots within the subdivision. Thereafter, all owners of lots in the subdivision shall be entitled to One (1) vote for each lot owned in the election of the new Board of Directors, as further provided for in the Articles of Incorporation and the By-Laws of Cypress Bay Owners Association, Inc.

4. SEWAGE EFFLUENT COLLECTION, TREATMENT AND DISPOSAL SYSTEM.

(a). APPLICABLE LOTS: Only eighteen (18) lots within Cypress Bay shall utilize the central sewer system installed by the developer at no tap or charge to the lot owner, which system has been approved by the State of North Carolina Department of Human Resources, Division of Health Services.

(b). MAINTENANCE OF CENTRAL SEWAGE EFFLUENT, TREATMENT AND DISPOSAL SYSTEM. The central system, the location of which is shown on survey plat of record in Plat Cabinet , Slide , Beaufort County Registry, shall be maintained and operated by the Cypress Bay Owners Association, Inc. who shall have the right to assess all lots. All lots utilizing the central system for their pro-rata share of the maintenance of the central system for a sinking fund to replace pumps and other parts as the need arises. The Cypress Bay Owners Association, Inc., shall retain a licensed agent to operate and maintain the central system.

(c). PRIORITY FOR EXPENDITURES BY THE HOMEOWNERS ASSOCIATION. The common area known as the sewage effluent collection, treatment and disposal system will receive the highest priority for expenditures by the Homeowner's Association, except for Federal, State and local taxes and insurance.

5. STORMWATER MANAGEMENT:

(a). The allowable built upon area for the 18-unit townhouse development and the boat ramp shall not exceed 44,705 square feet, inclusive of that portion of the right of way between the front lot line and the edge of the pavement, structures, pavement, walkways of brick, stone, slate, not including wood decking.

(b). The covenants pertaining to stormwater regulations may not be changed or deleted without concurrence of the State of North Carolina.

(c). Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings is strictly prohibited by any persons.

(d). Each unit owner and the developer are bound by that State Stormwater Management Permit No. SW7970514, and the terms and conditions of said permit are incorporated herein by reference.

6. PROPERTY RIGHTS OF LOT OWNERS, GROSS EASEMENTS, EXCEPTIONS AND ASSOCIATION RIGHTS.

(a). Every owner of a lot within the subdivision, as an appurtenance to such lot, shall have a perpetual easement over and upon the common areas within the subdivision for each and

every purpose or use to which such common areas are generally used. Such easements shall be appurtenant to and shall pass with the title to every lot located within the subdivision, whether or not specifically included in a deed thereto, subject to the following provisions:

1. The Association shall have the right to make reasonable rules and regulations respecting the use of the same.

2. The Association hereinafter may grant easements for utility purposes for the benefit of the subdivision and the lots now or hereinafter located therein, over, under, along and through the common areas. Provided, however, that no such grant of easement shall have any material adverse effect of the use, enjoyment or value of any lot.

7. PARTY WALLS

(a). General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article. The general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b). Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c). Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d). Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e). Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f). Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose an arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators, and binding of the parties.

8. AMENITIES AND FACILITIES

The pier, boat docks and boat ramps, other recreational facilities, if any, dedicated access and other amenities appurtenant to the subdivision, except the streets of said subdivision, whether or not shown and delineated on any recorded plat of the subdivision, shall be considered private and for the sole and exclusive use of the owners of lots and their invited guests within the subdivision. Neither Developer's execution nor the recording of any plat nor any act of the developer with respect to such areas is, or is intended to be, or shall be construed as a dedication to the public of any such areas, facilities or amenities.

9. LAND USE

No lot shall be used except for residential purposes.

10. EASEMENTS.

(a). DRAINAGE, UTILITY and OTHER EASEMENTS: Easements for the installation and maintenance of utilities are reserved as shown on the plat of said subdivision. Developer reserves the right to subject the real property in this subdivision to a contract with the City of Washington and Tideland Electric Membership Corporation for the installation of underground electric cables and for street lighting which will require a continuing monthly payment for street lighting, which said payment shall be the responsibility of the Association. Developer also reserves the right to subject the real property in this subdivision to a contract with SPRINT for the installation of underground telephone cables. There is also a 36' foot easement reserved for river access leading from the existing right of way in favor of all lot owners as shown on the plat of said subdivision.

(b). Portions of the real property of the subdivision will be reserved by easement to serve as primary nitrification fields, repair areas, pump tanks, collection lines and other facilities required for a central sewer system to serve the approved lots in the subdivision. These easements will remain in effect until such time as the city, county or other party provides a means of sewer treatment rendering such easements over the designated land unnecessary for the purpose stated herein. Upon such occurrence, such easements will automatically release and developer and his heirs and assigns will retain ownership unencumbered by the easement provided for herein.

11. COMMON AREAS

The common areas of the subdivision shall be defined as follows:

- (a). Entrance signs, if any, and the property upon which they are located, unless it is street right of way.
- (b). Common area lighting and subdivision street lighting, if any.
- (c). That portion of the real estate as shown on the subdivision plat and the off-site wastewater disposal site plat which has been reserved and dedicated for sanitary sewer facilities.
- (d). Piers, boat docks, boat ramps, and bulkheads as

constructed by declarant and as shown on plat.

(e). Street right of way, shoulder and storm retention areas, if any, as shown on plat.

(f). All other property shown and labeled "Common Area" on the plat.

(g). Any areas the Association determines to be a common area in the future.

12. PETS. No animals shall be kept on the property save and except normal house pets. Not pets shall be kept, bred or maintained for any commercial purposes. Such pets shall be kept confined at all times in the rear yard within an approved enclosure if not inside the residence, and at no times shall said pets be allowed to roam free. Pets must be on a leash when not confined in an approved enclosure.

13. BOAT SLIPS At present the common area of Cypress Bay includes a pier and TEN (10) boat slips. The first ten property owners, other than the developer, shall be entitled to the use of a boat slip. The decision as to which particular boat slip a property owner is entitled to use is entirely in the discretion of the Cypress Bay Homeowner's Association. The Developer plans to enlarge the pier and increase the number of boat slips in the near future, but up and until such time, only the first ten townhouse owners are entitled to the use and privileges of the boat slips. This right to the use of a boat slip is a transferable interest. If one of the first ten property owners sells their townhouse prior to the completion of the enlarged pier and docks, then the subsequent purchaser has the same rights and privileges to the pier and boat slips as the prior owner.

14. PROHIBITIONS:

(a). No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

(b). No parking shall be allowed along any street in the subdivision.

(c). Unlicensed recreational vehicles shall not be allowed to operate on the streets of the subdivision.,

(d). No mobile homes shall be allowed upon any lot for any purpose. No "non-house" of any character, including, but not limited to, trailers, recreational vehicles, tents, shacks, garages, barns and the like shall be used on any lot as residence either temporarily or permanently.

(e). No stripped or partially wrecked or junked motor vehicle, or part thereof, shall be permitted on any lot.

(f). All fuel storage tanks, outdoor receptacles for ashes, trash, rubbish or garbage shall be screened or so placed and kept so as not to be visible from any road, or adjoining property except for waste pickup.

(g). No window air conditioning units shall be allowed on any structure.

(h). No person, persons, invitees or guests shall sleep on,

or maintain as their residence, a boat docked at the Cypress Bay pier without express written permission from the Cypress Bay Homeowner's Association. For purposes of these covenants, anyone who stays and/or sleeps on a boat for more than two consecutive nights is considered in violation of this covenant.

(i). No alterations or repairs, including painting, may be made to the exterior of any townhouse without prior written permission from the Cypress Bay Homeowner's Association.

15. LOT APPEARANCE.

Each Lot owner shall keep the lot mowed and weeds cut regularly. Grass shall not be allowed to be more than four (4") inches above ground level. Lots shall be kept clear of all unsightly objects and debris. All exterior garbage receptacles (trash cans) shall be screened so not to be visible from the street or adjacent property.

16. TERM.

These covenants are to run with the land and shall be binding on all parties and all persons, including Developer and all persons claiming under them for a period of twenty five (25) years from the date of recording of these covenants, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the owners of lots has been recorded, agreeing to change those covenants in whole or in part.


17. SEVERABILITY.

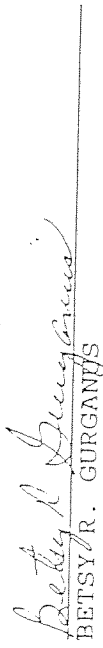
Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which provisions shall remain in full force and effect.

18. AMENDMENT TO DECLARATION.

Except for an increase in the annual general assessment by more than twenty (20%) percent, this Declaration may be amended by an instrument executed by not less than fifty-one (51%) percent of the lot owners in the subdivision. The amendment must be recorded in the Beaufort County Registry to become effective. For purposes of this paragraph the term "lot owner" shall mean and refer to an entity which owns one or more lots in the subdivision. For purposes of this section, each lot owner shall receive one (1) vote for each lot owned.

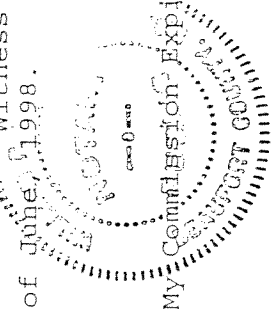
IN TESTIMONY WHEREOF, the parties hereto have hereunto set their hands and seals, this the 5th day of June, 1998.


D. HAROLD GURGANUS (SEAL)


BETSY R. GURGANUS (SEAL)

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, William P. May Jr., a Notary Public in and for the County and State aforesaid, do hereby certify that D. HAROLD GURGANUS and BETSY R. GURGANUS personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. 5th day of June, 1998.



William P. May Jr.
NOTARY PUBLIC

My Commission Expires: 8-20-2002



North Carolina
Beaufort County
The foregoing Certificate of William P. May Jr.
Notary Public/Notary Public is hereby certified to be correct
this 5th day of June, 1998, at 8:24 o'clock AM.
By [Signature]
E. Jennifer Leggett
Register of Deeds
Deputy Register of Deeds

COASTAL RIVERS
REALTY

MAYO & MAYO
ATTORNEYS AT LAW
WASHINGTON, NC

[Handwritten signature]