

NORTH CAROLINA

BEAUFORT COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF

NORTH CREEK LANDING

THIS DECLARATION, Made and entered into this the 12th day of June, 1987, by and between ARIE DeHOOG, JR., and wife, JANET H. DeHOOG, and EARL DeHOOG, and wife, NANCY VANDER WEIT DeHOOG, Parties of the First Part (hereinafter referred to as "Developer"); and PROSPECTIVE PURCHASERS of lots in NORTH CREEK LANDING SUBDIVISION, Parties of the Second Part (hereinafter referred to as "Owners");

W I T N E S S E T H:

WHEREAS, Developer is the owner of all of that tract of real property located in Bath Township, Beaufort County, North Carolina, and being more particularly shown and described on that certain map or plat entitled North Creek Landing, Section A, recorded in Plat Cabinet D , at Slide 183 , in the Office of the Register of Deeds of Beaufort County, reference to said plat being hereby specifically made; and,

WHEREAS, Developer proposes to sell and convey certain lots shown on the aforesaid plat to be used for residential purposes and to develop said lots, and additional property within the Development Area which may be acquired by Developer, into a well planned community; and,

WHEREAS, Developer, prior to selling and conveying the aforesaid residential lots, desires to impose upon such lots certain mutual and beneficial restrictions, covenants and conditions and charges (hereinafter collectively referred to as "Restrictions") for the benefit and complement of all of the residential lots in the subdivision in order to promote the best interests and protect the investments of Developer and Owners;

NOW, THEREFORE, Developer hereby declares that all numbered lots shown on the aforesaid plat entitled North Creek Landing, Section A, recorded in Plat Cabinet D. , at Slide 183, in the Office of the Register of Deeds of Beaufort County, North Carolina, and any additional property within the Development Area as may by subsequent amendment be added to and subjected to this Declaration, are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to this Declaration and to the following Restrictions. This Declaration and the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to this Declaration.

ARTICLE 1

DEFINITIONS

As used herein,

- A. "Articles" means the Articles of the Incorporation of NORTH CREEK LANDING HOMEOWNERS ASSOCIATION, INC.
- B. "Corporation" means NORTH CREEK LANDING HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation. The "Board of Directors" or "Board" shall be the elected body governing the Corporation and managing the affairs of the Corporation.
- C. "By-laws" means the Bylaws of NORTH CREEK LANDING HOMEOWNERS ASSOCIATION, INC.
- D. "Community Use Areas" means all real and personal property, together with those areas within dedicated portions of the Development Area and the Subdivision, which may be deeded to or acquired by the Corporation for the common enjoyment of the members of the Corporation including but not limited to Lot "AA" as shown on plat entitled North Creek Landing, Section A.
- E. "Common Expenses" means and includes actual and estimated expenses of maintaining and operating the common area and operating the Corporation for general purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board of Directors pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Corporation.
- F. "Dedication" means the act of committing a portion of the Development Area or the Subdivision to the purposes of this Declaration.
- G. "Developer" means ARIE DeHOOG, JR., and EARL DeHOOG, DBA, DeHOOG BUILDERS, their successors or assigns or any legal entity acquiring ownership of portions of the Development Area heretofore not dedicated with the intent and for the purpose of further development.

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H. "Development Area" shall mean that property described by Deed recorded in Book 868, Page 644 in the office of the Register of Deeds of Beaufort County, North Carolina, and the easement described in a map entitled "North Creek Landing Easements" recorded in Plat Cabinet D at Slide 182, of the Beaufort County Registry.

I. "Lot" means a separately numbered tract of land lying within the Subdivision or other dedicated portion of the Development Area and which, according to the plat of that portion recorded at the dedication thereof, may be conveyed by the Developer and owned in fee by the Grantee thereof, and held for such uses as are consistent with this Declaration and the Restrictions covering the area wherein the tract is located. No tract of land shall become a "Lot" as that word is used herein until the area on which the same is located is "dedicated". The Owner of all of a numbered Lot may combine such numbered Lot, part or parts of another such numbered Lot and the aggregate shall be considered as one (1) Lot for the purpose of these Restrictions.

Each Lot adjacent to North Creek includes that property lying within the extension of the side lot lines of each such Lot, along the same course of the side lines of said lot, to the mean high water line of North Creek and the conveyance of a Lot shall be deemed to include said property.

J. "Subdivision" means North Creek Landing, Section A, and any portion of the Development Area which has been dedicated pursuant to this Declaration.

## ARTICLE 2

### APPLICABILITY

These Restrictions shall apply to all subdivided numbered Lots shown on the aforesaid plat or map, all property adjacent to North Creek Drive as shown on the Plat of North Creek Landing, Section A. If there is non-residential development within the Development Area, the Developers agree to maintain a twenty-five (25) foot buffer of vegetation between residential and non-residential development.

## ARTICLE 3

A. A Corporation named NORTH CREEK LANDING HOMEOWNERS ASSOCIATION, INC. has been or will be 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 the Owners of Lots. Its purposes are to own, manage, maintain, and operate the Community Use Areas and facilities located upon the Community Use Areas; to enforce the restrictions contained herein; and to make and enforce rules and regulations governing the Owners' use and occupation of Lots.

B. Each Owner of each Lot within the Subdivision shall be a member of the Corporation. The Declarant, by this Declaration, and the Owners of individual Lots by their acceptance of individual Deeds thereto, covenant and agree with respect to the Corporation:

1. 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 Corporation;

2. That each shall be subject to the rules and regulations of the Corporation with regard to ownership of a Lot; and

3. That any unpaid assessment, whether general or special, levied by the Corporation in accordance with these Restrictions, the Articles or the Bylaws shall be a lien upon the Lot upon which such assessment was levied, and shall be the personal obligation of the Owner of the Lot at the time the assessment fell due.

C. Each membership in the Corporation shall relate to and have a unity of interest with an individual Lot which may not be separated from ownership of said Lot.

D. The Corporation shall have one (1) class of members who shall be all Owners. Each member shall be entitled to one (1) vote for each Lot owned; provided, however, when more than one (1) 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, determine, but in no event shall more than one (1) vote or any fraction of a vote be cast with respect to any Lot.

#### ARTICLE 4

##### MANAGEMENT AND ADMINISTRATION

The management and administration of the affairs of the Community Use Areas of the Subdivision shall be the sole right and responsibility of the Corporation. The management shall be carried out in accordance with the terms and conditions of these Restrictions, the Articles and the Bylaws of the Corporation, but may be delegated or contracted to managers or management services.

#### ARTICLE 5

##### COMMUNITY EXPENSES

The Community Expenses of the Subdivision include:

A. All amounts expended by the Corporation in operating, administering, managing, repairing, replacing and improving the Community Use Areas of the Subdivision; all amounts expended by the Corporation in insuring the Community Use Areas in the Subdivision; all amounts expended by the Corporation in legal, engineering, or architectural fees; all similar fees which may be incurred by the Corporation from time to time in performing the functions delegated to the Corporation by these Restrictions; and all amounts expended in any form by the Corporation in enforcing these Restrictions, the Articles or the Bylaws.

B. All amounts expended by the Corporation in carrying out any duty or discretion as may be required or allowed by these Restrictions, the Articles or the Bylaws.

C. All amounts declared to be Community Expenses in the Bylaws or in these Restrictions.

D. All taxes and special assessments which may be levied from time to time by any governmental authority upon the Community Use Areas in the Subdivision.

ARTICLE 6

ANNUAL GENERAL ASSESSMENT

A. The Declarant for each Lot owned, hereby covenants and each 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 agrees to pay to the Corporation annual general assessments or charges as hereinafter provided. The annual general assessments, together with interest costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the provisions of Paragraph 6 of this Article, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.

B. Until June 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment shall be ONE HUNDRED AND 00/100 (\$100.00) DOLLARS per Lot.

1. From and after June 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment may be increased each year not more than ten percent (10%) above the assessment for the previous year without any vote of the membership.

2. From and after June 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment may be increased by an amount greater than ten percent (10%) of the assessment for the previous year provided the proposed increase is approved by a vote of two-thirds (2/3rds) of the members who are voting in person or by a proxy at a meeting duly called for this purpose.

3. The Board of Directors may fix the annual general assessment at an amount not in excess of the maximum.

4. Once the annual general assessment has been set, notice of the annual general assessment shall be given to all members. After the initial notice of the assessment, the assessment shall become due and payable as provided by the Board of Directors.

C. Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 2(B) shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

D. The annual general assessments levied by the Corporation shall be used exclusively to improve, maintain and repair the Community Use Areas, to pay the expenses of the Corporation, to pay the cost of lighting the Community Use Areas, to pay the cost of any insurance the Corporation determines to purchase and to promote the recreation, health, safety and welfare of the members and to pay taxes levied upon the Community Use Areas.

E. The Corporation shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Corporation setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Corporation as to the status of assessments on a Lot is binding upon the Corporation as of the date of its issuance.

F. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE 7

SPECIAL ASSESSMENTS

Special assessments may be levied against Lots for such reasons as are provided in these Restrictions, the Articles or the Bylaws and on such terms as provided by the Board of Directors or the members. Either the Board of Directors or the members may levy and impose special assessments upon a majority vote. The purposes for which special assessments may be levied include, but are not limited to, providing funds to pay Community Expenses which exceed the general assessment fund then on hand to pay same and providing a contingency fund for capital improvements and extraordinary expenses. Furthermore, special assessments may be assessed against specific Lots. In the event the Owner of a Lot fails to comply with the provisions of Article 13 hereof, the Corporation may perform such task or remedy such matter and levy the cost of such performance against the Owner of such Lot and such Lot as a special assessment.

ARTICLE 8

LIEN FOR ASSESSMENTS

Any general or special assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the rate of ten percent (10%) per annum, costs of collection, Court costs, and reasonable attorneys' fees shall constitute a lien against the Lot upon which such assessment is levied. The Corporation may record notice of the same in the Office of the Clerk of Superior Court of Beaufort County or file a suit to collect such delinquent assessments and charges. The Corporation may file 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.

ARTICLE 9

COMPLIANCE WITH THIS DECLARATION, THE ARTICLES  
AND THE BYLAWS OF THE CORPORATION

In the case of failure of a Lot Owner to comply with the terms and provisions contained in this Declaration, the Articles or the Bylaws of the Corporation, the following relief shall be available:

A. The Corporation, an aggrieved Lot Owner or Owners within the Subdivision on behalf of the Corporation, or any Lot Owner on behalf of all the Lot Owners within the 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.

B. The Corporation shall have the right to remedy the violation and assess the costs of remedying same against the offending Lot Owner as a special assessment.

C. If the violation is the nonpayment of any general or special assessment, the Corporation 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 Community Use Areas in the Subdivision for any period during which an assessment against the Lot remains unpaid.

D. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.

E. The failure of the Corporation or any Person to enforce any restriction contained in these Restrictions, the Articles or the Bylaws shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character.

Prior to availing itself of the relief specified herein, the Corporation shall follow the hearing procedures as set forth in the Bylaws.

ARTICLE 10

PROPERTY RIGHTS OF LOT OWNER, CROSS-EASEMENTS,  
AND EXCEPTIONS AND RESERVATIONS BY DECLARANT

A. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, shall have a perpetual easement over and upon the Community Use Areas within the Subdivision for each and every purpose or use to which such Community Use Areas were intended as determined by their type, or for which such Community Use Areas generally are 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 Corporation shall have the right to make reasonable rules and regulations respecting the use of same.

2. The Corporation shall have the right to suspend the voting rights of a Lot Owner and his right to use the Community Use Areas within the Subdivision for any period during which any due assessment against such Owner's Lot remains unpaid as is provided in Article 9 hereof, and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations.

3. The Corporation shall have the right to charge reasonable fees for the purpose of maintaining and improving any recreation facility situated upon the Community Use Areas.

B. The Corporation hereinafter may grant easements for utility purposes for the benefit of the Subdivision and the Lots now or hereafter located thereon, over, under, along and through the Community Use Areas. Provided, however, that no such grant of easement shall have a material adverse effect on the use, enjoyment or value of any Lot.

C. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Community Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

D. Developer shall have the right, at its election, without the consent of any Owner or Owners, to bring within the coverage and operation of these Restrictions additional properties within the Development Area as may be developed in the future. The addition to property authorized hereby shall be made by filing of record in the Office of the Register of Deeds of Beaufort County, North Carolina, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of this Declaration to such additional property. The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or appropriate in the sole judgment of the Developer to reflect the different character, if any, of the added properties and as are not inconsistent with the plan, intent and spirit of this Declaration.

E. Easements and rights of way over and upon each Lot for drainage and the installation and maintenance of utilities and services are reserved exclusively to Developer for such purposes as Developer may deem incident and appropriate to its overall development plan, such easements and rights of way being shown or noted on the aforesaid recorded plat of the Subdivision, which plat is incorporated by reference and made a part hereof for a more particular description of such easements and rights of way. The easements and right of way areas reserved by Developer on each Lot pursuant hereto shall be maintained continuously by the Owner, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Improvements within such areas also shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

F. The rights of the use of utility and service easements and right of way areas as provided and defined herein for any type of cable transmission system is reserved exclusively to Developer, and no other cable transmissions service company or organization shall be permitted to service any Lot or combination of Lots except with the expressed permission of Developer.

ARTICLE 11ARCHITECTURAL STANDARDS AND  
ARCHITECTURAL STANDARDS COMMITTEE

The Board of Directors shall establish an Architectural Standards Committee (hereinafter referred to as the "Committee") which shall be composed of five (5) members. The Board of Directors shall have the right to appoint and remove, at any time and without cause, three (3) members. The Developer shall have the right to appoint and remove two (2) members of the Committee so long as the Developer continues to own any portion of the Development Area. At such time as the Developer no longer owns any portion of Development Area, or upon notification by the Developer to the Board of Directors that it does not desire to continue to appoint two (2) members of the Committee, all five (5) members shall be appointed or removed, at any time and without cause, by the Board of Directors.

A. No construction, which term shall include within its definition clearing, excavation, grading and other site work, shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Committee has been obtained.

B. The Committee shall have exclusive jurisdiction over all original construction on any Lot and later changes or additions after initial approval thereof, together with any modifications, additions or alterations subsequently to be constructed on any Lot or made to any improvements initially approved. The Committee shall prepare and, on behalf of the Board of Directors, shall promulgate architectural standard guidelines ("guidelines") and application and review procedures ("procedures"). The guidelines and procedures shall be those of the Corporation and the Committee shall have the sole and full authority to prepare and to amend the guidelines and procedures. The Committee shall make the guidelines and procedures available to Owners, builders and developers who seek to engage in the development of or construction upon the Lots and who shall conduct their operations strictly in accordance therewith.

C. The Committee shall have the absolute and exclusive right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of these Restrictions and the guidelines; if the design, color scheme or location upon the Lot or Lots of the proposed improvements are not in harmony with the general surroundings or adjacent structures; if the plans or specifications submitted are incomplete; or in the event the Committee deems the plans, specifications or details or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the real property subject to this Declaration or the Owners thereof.

D. The Committee shall approve or disapprove plans, specifications and details submitted in accordance with its procedures within thirty (30) days from the receipt thereof and the decisions of the Committee shall be final and not subject to appeal or review. Provided, however, that plans, specifications and details revised in accordance with Committee recommendations may be resubmitted for determination by the Committee. In the event that the Committee fails to approve or disapprove plans, specifications and details within thirty (30) days after submission of the same to the Committee, approval, for the purposes of this Article, shall be deemed to have been given by the Committee.

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E. The Committee, or its agent, shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans, specifications and details. Upon completion of the construction in accordance with the approved plans, specifications and details, the Committee shall issue a certificate of completion to the Owner.

F. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence or permitted pertinent structures, or to paint the interior of the same any color desired.

G. Neither the Developer nor the Committee nor the Board of Directors or any architecture agent thereof shall be responsible in any way for any defects in plans, specifications or details submitted, revised or approved in accordance with the provisions contained herein or in the guidelines, nor for any structural or other defect in any construction.

H. The requirements of this Article shall not constitute a lien or encumbrance on any Lot on which construction is completed, and any subsequent purchaser thereof for value without notice thereof is in no way affected by the failure of his predecessors in title to comply with the terms hereof. The requirements of this Article shall not apply to the Developer with regard to original erection or construction of a dwelling on a Lot.

ARTICLE 12

FORMATION AND ENFORCEMENT OF THIS DECLARATION  
PENDING FORMATION OF THE CORPORATION

A. The Corporation known as NORTH CREEK LANDING HOMEOWNERS ASSOCIATION, INC. may be formed and incorporated at any time that the Developer may deem desirable after the recording of this Declaration.

B. The Corporation shall be formed and incorporated and the Community Use Areas shall be deeded to the Corporation when seventy-five percent (75%) of the Lots described on the plat known as North Creek Landing, Section A have been sold to persons other than the Developer.

(1) Any Deed to the Corporation of a Community Use Area shall contain a perpetual right of easement for ingress, egress, regress and use by the Developer, their heirs, successors or assigns.

C. Pending the formation and incorporation of the Corporation, the Developer shall have all the rights, privileges and duties associated with fee simple ownership, as well as all the rights and authority this document confers on the Corporation.

ARTICLE 13

RESTRICTIONS ON USE AND OCCUPANCY

A. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed, or be permitted to remain on any Lot other than one (1) detached single-family dwelling with or without a basement, plus not more than two and one-half (2½) stories and a private garage, attached or detached, for the use only of the occupants of said dwelling. No Duplexes will be allowed.

B. Any dwelling constructed on a Lot subject to these Restrictions shall contain not less than twelve hundred (1,200) square feet with a minimum of Eight Hundred (800) square feet on the main floor, if more than one (1) story, of fully enclosed and heated floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, garages and any outbuildings). No house trailers, double-wide trailers, modular homes or manufactured homes shall be permitted.

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