

1 NORTH CAROLINA
2
3 CARTERET COUNTY

DECLARATION OF COVENANTS
AND ESTRICTIONS-PINE BLUFF
AT BRANDYWINE BAY

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7 THIS DECLARATION, made and entered into this 23rd day of August, 1983, by
8
9 BRANDYWINE BAY, INC., a North Carolina corporation with offices in Carteret
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11 County, North Carolina (hereinafter "Declarant"), with joinder of J. C. Livingston and
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13 SUNSTATES DEVELOPMENT COMPANY (formally Brandywine Bay Development
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15 Company), Trustee and Beneficiary, respectively, under that Deed of Trust recorded in
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17 Book 472, page 31, Carteret County Registry, and as modified in Book 473, page 229,
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19 Carteret County Registry, and with joinder of H. Buckmaster Coyne Jr., Trustee under
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21 that Deed of Trust recorded in Book 476, page 294, Carteret County Registry.

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23 BACKGROUND STATEMENT

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25 Declarant is the owner of certain property in Carteret County, North Carolina,
26
27 which Declarant is developing into a residential community. Declarant is now
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29 developing a portion of its property on Bogue Sound, as described below.

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31 NOW THEREFORE, Declarant hereby declares that all of that property known as
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33 Pine Bluff at Brandywine Bay, (Map Book 20, page 38, Carteret County Registry) and
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35 more Particularly described in Exhibit A, attached hereto, shall be held, sold and
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37 conveyed subject to the following easements, restrictions, covenants and conditions,
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39 which are for the purpose of protecting the value and desirability of, and which shall run
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41 with, the real property and be binding on all parties having any right, title or interest in
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43 the property described in Exhibit A hereto or any part thereof, their heirs, successors and
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45 assigns.

ARTICLE I

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50 A. "Association" shall mean and refer to Pine Bluff Association, Inc., its
51 successors and assigns.

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53 B. "Building" shall mean any structure built for the support, shelter or enclosure
54 of persons, animals, chattels or property of any kind which has enclosing walls for fifty
55 percent or more of its perimeter. The term "building" shall be construed as if followed
56 by words "or parts thereof", including porches, decks, carports, garages, sheds, roof
57 extensions and overhangs and any other projections.
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61 C. "Lot" shall mean and refer to any individual plot of subdivided land shown
62 upon a recorded subdivision map which is restricted by these covenants, or amendments
63 hereto, to use for detached single-family dwelling, but shall not include any property
64 designated in this Declaration (or amendments) or on a recorded subdivision map, as
65 "Common Area".
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68 D. "Owner" shall mean and refer to the record owner, whether one or
69 more persons or entities, holding the fee simple title to any lot, situated in the
70 property to which these covenants or amendments hereto, apply, but shall exclude
71 those entities holding interest merely as security for the performance of any
72 obligations.
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75 E. "Person" shall include any individual, partnership, corporation, trust or
76 other Entity.
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79 F. "Properties" shall mean and refer to all properties which are or shall
80 become subject to this Declaration.
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96 G. "Single-Family Dwelling" shall mean and refer to a building containing
97 one, and only one, living unit.
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99 H. "Family" shall mean and refer to one person living alone or two or more
100 persons, whether related to each other by birth or not, and having common housing
101 facilities.
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104 I. "BBA" shall mean and refer to Brandywine Bay Association, Inc., its
105 successors and assigns.
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108 ARTICLE II

109 PROPERTY RIGHTS

110 Sections 1. Owners' Easements of Enjoyment. Every owner shall have
111 a right and easement of enjoyment in and to the Common Area which shall be
112 appurtenant to and shall pass with the title to every Lot, subject to the following
113 provisions:
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116 A. The right of the Association to suspend the voting rights and right to use of
117 the recreational facilities by an owner for any period during which any assessment
118 against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction
119 of its published rules and regulations;
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122 B. The right of the Association to dedicate or transfer all or any part of the
123 Common Area to any public agency, authority, or utility for such purposes and subject to
124 such conditions as may be agreed to by the members. No such dedication or transfer
125 shall be effective unless an instrument agreeing to such dedication or transfer signed by
126 2/3rds of each class of membership has been recorded.
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190 A When the total votes outstanding in Class A membership equal the
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192 total outstanding in Class B membership, or

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194 B. On August 20, 1988.

195 Section 3. Creation of Lien and Personal Obligation of Assessments. The
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197 Declarant, for each lot owned by it within the property to which this Declaration applies,
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199 hereby covenants, and each owner of any lot within said property, by Acceptance of a
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201 deed therefor, whether or not is shall be so expressed in such deed, is deemed to covenant
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203 and agree to pay to the Association:
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- 205 1. Annual assessments or charges, and
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207 2. Special assessments for capital improvements, such assessments to be
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209 established and collected as hereinafter provided.
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212 The annual and special assessments, together with interest, cost and reasonable
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214 attorney's fees, shall be a charge on the land and shall be a continuing lien upon the
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216 property against which each assessment is made. Each such assessment, together with
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218 interest, cost and reasonable attorney's fees, shall also be the personal obligation of the
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220 person or entity who is the owner of such property at the time when the assessment fell
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222 due. The personal obligation for delinquent assessments shall not pass to his successors
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224 in title unless expressly assumed by them. Any assessment shall be deemed in default if
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226 not paid within 30 days of the billing date.
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228 Section 4. Use of Assessments. The assessments levied by the Association
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230 shall be used exclusively to promote the recreation, health, safety and welfare of owners
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232 of property to which this Declaration applies, and residents within said property, and for
233
234 the improvement and maintenance of Common Areas, specifically including, but not
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236 limited to, the streets and roads.
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Section 5. Amount of Annual Assessment. Until January 1 of the year

immediately following the conveyance of the first lot to an owner, the maximum assessment shall be \$ 72 per lot.

A. From and after January of the year immediately following the conveyance of the first lot to any owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

B From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum assessment may be increased above five percent (5%) by a vote of 2/3rds of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 6. Special Assessment. In addition to the annual assessment

authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement upon Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Such special assessments shall also require approval by the Board of Directors by 2/3rds vote.

Section 7. Uniform Rate of Assessment. Both annual and

special assessments must be fixed at a uniform rate for all lots. The annual

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288 assessment shall commence for a lot on the date of recordation of this Declaration, or an
289 amendment hereto, which makes the said lot subject to this Declaration. Written notice
290 of the annual assessment shall be sent to every owner subject thereto. Provided,
291 however, that when there is more than one owner for a lot, it shall be sufficient that
292 notice be sent only to one. The due dates for assessments shall be established by the
293 Board of Directors. The Association shall, upon demand, furnish a certificate signed by
294 an officer of the Association setting forth whether the assessments on a specified lot have
295 been paid. A properly executed certificate of the Association as to the status of
296 assessments on a lot is binding upon the Association as of the date of its issuance.
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305 Section 8. Effect of Non-Payment of Assessments. Any assessment not paid
306 within thirty (30) days after the due date shall bear interest from the due date at the rate of
307 twelve (12) percent per annum. The Association may bring an action at law against the
308 owner personally obligated to pay the same, or foreclose the lien against the property.
309 No owner may waive or otherwise escape liability for the assessments provided for
310 herein by nonuse of the Common Area or abandonment of his lot.
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314 Section 9. Subordination of the lien to Mortgages. The lien of the
315 assessments provided for herein shall be subordinate to the lien of any first mortgage.
316 Sale or transfer of any lot shall not affect the assessment lien. However, the sale or
317 transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof
318 shall extinguish the lien of such assessments as to payments which became due prior to
319 such sale or transfer. No sale or transfer shall relieve such lot from liability for any
320 assessment thereafter becoming due or from the lien thereof.
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384 Section 3. Setbacks. No building shall be erected or allowed to remain on
385 any of the lots in the subdivision which is located nearer the front (street) boundary line
386 than the minimum setback line shown or described on the recorded plat. Further, no
387 building shall be erected or allowed to remain which is less than thirty (30) feet from any
388 rear lot line (opposite the front lot line) or which is less than ten (10) feet from any side
389 lot line. With respect to side setback on a corner lot, the setback as shown on the
390 recorded plat, if different than ten (10) feet, shall control. Provided, however,
391 notwithstanding the above setback provisions, with respect to Lots 1-7, no structure shall
392 be erected or allowed to remain nearer than 50 feet from the south property line of said
393 lots, as said property line is shown on the recorded plat.
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403 Section 4. Motor Homes and Campers. Motor homes and travel trailers (also
404 know as "R/V's") shall not be stored or parked on any lot for longer for one week.
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406 Section 5. Signs. No sign or billboard of any kind shall be erected or allowed
407 on any lot other than one "For Sale" or one "For Rent" sign not larger than two (2) feet by
408 two (2) feet. This provision shall not be deemed to exclude use by Declarant, or its
409 assigns, of advertising signs which shall advertise the entire project. "For Sale" and "For
410 Rent" signs shall be removed upon completion of sale or rent transaction.
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412 Section 6. Re-division of Lots. No lot or lots shall be divided or re-
413 subdivided unless such division or re-subdivision yields a total number of lots which is
414 less than the total number of lots prior to division or re-subdivision as shown on the
415 recorded plat. In no event shall any building be erected, placed or allowed to remain on
416 any building site which has an area less than 1750 square feet.
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431 Section 7. Easements. Declarant hereby reserves an easement or right of way
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433 for purposes of installation of water lines, sewer lines, telephone lines, electrical
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435 lines, poles, wires, cables and all other equipment necessary for the installation,
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437 se and maintenance of utilities, including water, sewer, electricity, telephone, or
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439 drainage. Said easement shall be five (5) feet in width along each and every property line
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441 which abuts a road right of way as shown on the appropriate recorder plat.

442 Section 8. Temporary Structures and Trailers. No trailer, mobile
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444 home (specifically including "double wide mobile home"), nor any shed, shack, barn or
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446 other out-building shall be erected or placed on any lot except that a trailer for
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448 construction office or outbuilding used in conjunction with construction may be used
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450 during construction on a limited, temporary basis. No trailers, boats or campers can be
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452 stored on the lots.

453 Section 9. Animals. No animals or poultry of any kind other than house pets
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455 shall be kept or maintained on any part of said property. All dogs shall be on a leash
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457 when off the premises of the owner.
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460 Section 10. Waste. The disposal of waste matter, including garbage, refuse,
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462 etc., shall be in compliance with the regulations of the State Board of Health of North
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464 Carolina, the Board of Health of Carteret County and all other governing authorities
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466 which have jurisdiction thereover. It is expressly prohibited that any rubbish, garbage,
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468 etc., be placed or permitted to drain into any of the drainage areas. All living units shall
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470 be equipped to contain an accepted garbage disposal system. All exterior garbage cans
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472 shall be placed and/or screened in such a manner so as not to be visible from adjacent
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474 properties.
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Section 11. Tanks. Fuel oil tanks, if applicable, shall be buried, placed in the basement of dwelling house, or enclosed in such a manner that they will not be visible and such that a harmonious blending of the structure with the dwelling house shall be effectuated.

Section 12. Vehicles, Antennas, etc. No wrecked or junked motor vehicle or vehicle without current license plates or truck larger than one ton shall be permitted to remain on a lot. No satellite or other receiving disc or antennas shall be permitted unless expressly approved by the architectural control committee.

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

Section 1. General. There is hereby created an Architectural Control Committee for Pine Bluff at Brandywine Bay. Said committee shall consist of three (3) members. Until such time as Declarant owns less than 5 lots in Pine Bluff at Brandywine Bay, the members of the Committee shall be appointed by Declarant, and need not be members of the Association. After Declarant no longer owns 5 lots, as aforesaid, all members of the Committee shall be appointed by the Board of Directors from the membership of the Association. A majority of the Committee shall be deemed a quorum and decisions of the Committee shall be by simple majority vote.

Section 2. Submission of Plans. No person shall commence construction of any fence, building, outbuilding, mailbox or other structure, until plans for same shall have been approved by the Architectural Committee as provided herein. All plans and specifications must be submitted to the Architectural Control Committee at least ten (10) days prior to application for a building permit. The submissions shall show by plot plans,

527 elevations, and perspective sketches, all proposed improvements including locations,
 528 architectural features and landscaping. In the event said committee fails to act on a
 529 submission within thirty (30) days after sufficient plans have been submitted to it, this
 530 Article will be deemed to have been fully complied with. All plans shall be prepared in a
 531 professional manner. Construction must be by a licensed contractor.
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536 Section 3. Approval. The committee will review and shall approve the plans
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538 and specifications if the proposed improvements meet all of the requirements of these
 539 covenants and, if in its opinion, the exterior appearance of the property will be visibly
 540 compatible with other development in the subdivision or, at a minimum, will not be
 541 detrimental to future property sales or surrounding property values. No architectural
 542 "style" or materials will be excluded; however, all materials, features, and styles must be,
 543 in the opinion of the committee, professionally and esthetically acceptable.
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550 By acceptance of a Deed, purchasers agree that the actions of the committee are in
 551 the best interests of all owners within the subdivision and that they will abide by the
 552 decisions of the committee. Declarant, the committee, or other owners may seek
 553 injunctions to compel compliance with committee decisions, or damages resulting from
 554 failure to act in accordance with directions of the committee.
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560 Section 4. Architectural Standards. Tract owners, parcel owners, lot owners
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562 and all subsequent owners agree that the desired level of architectural quality of the entire
 563 property shall be consistently maintained and each building or structural element shall be
 564 compatible with its natural surroundings, adjacent existing structures and with future
 565 adjacent structures. Structures should reflect an influence of traditional architectural
 566 forms for residential buildings. Advante garde, highly-stylized, or thematic architecture
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575 is strongly discouraged. Building materials should be natural in character and color and
 576 the use of stained wood is strongly encouraged. Masonry should be considered as an
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 579 accent element and not a primary material. Roof planes should be 5 in 12 slopes as a
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 581 general rule, with variations used for avoidance of monotony. Building should
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 583 incorporate all energy-saving features if possible within a reasonable architectural
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 585 content. Orientation of windows, overhangs, porches and solar equipment should not
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 587 however, be the total controlling factor in the layout and design of the structure.

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 589 Section 5. Site Standards. Tract owners, parcel owners, lot owners and all
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 591 subsequent owners agree to leave all vegetation, trees, brooks, creeks, hillsides, springs,
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 593 water courses, and ravines in as near their natural state as is compatible with good
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 595 building and land use practices, to the end that an attractive exterior lot appearance will
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 597 be evident at Each building site, and in keeping with surrounding properties. A minimum
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 599 of thirty-five (35) percent of each lot or parcel shall remain undisturbed except for routine
 600
 601 maintenance. All trees over four (4) inches in caliper shall be preserved when possible.
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 603 The Architectural Control Committee must approve the removal of all trees four (4)
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 605 inches in caliper or greater. Natural drainage and the project drainage systems shall be
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 607 utilized to the fullest extent possible so as to minimize site disturbance to accommodate
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 609 drainage. All site plans must show exiting elevations and tree covers so that the
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 611 Architectural Control Committee may determine if this provision has been adequately
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 613 considered.

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 615 Section 6. Completion of Construction. Construction of any dwelling
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 617 or other structure on property to which these restrictions, or amendments hereto,
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 619 apply must be completed within twelve (12) months after commencement of
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623 construction. For purposes of this section, commencement of construction shall be
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625 deemed to be the first day on which materials are delivered to the site or labor
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627 commences with respect to said construction whichever date shall occur first.
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629 ARTICLE VI

630 UTILITIES

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632 Declarant covenants that either public or private water service will be available to
633
634 purchasers of property to which these covenants, or amendments hereto, apply and that
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636 such service will be sufficient to serve all lots. Purchasers of property, by acceptance of
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638 a deed, agree to pay rates established by the proper authorities for the use of the services,
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640 specifically including, but not limited to , "tap fees" and periodic user charges.
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642 Individual wells are prohibited except as used for swimming pools, landscape
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644 maintenance or air temperature control.
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646 ARTICLE VII

647 BRANDYWINE BAY ASSOCIATION

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649 With respect to the Brandywine Bay Association, Declarant, by this Declaration,
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651 and all owners, by acceptance of their deeds, covenant and agree as follows:
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654 Section 1. Automatic Membership. All Owners shall automatically be
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656 Member of the Brandywine Bay Association and shall enjoy the privileges and be bound
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658 by the obligations contained in said Association's Articles of Incorporation, Bylaws and
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660 Rules and Regulations, subject to:
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663 (i) The right of said Association to charge reasonable fees for the use of
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665 facilities situated upon its property;
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671 (ii) he right of said Association to suspend the voting rights and the right to
672 use facilities situated upon its property by a member for any period during which any
673 assessment against his lot remains unpaid, and for a period not to exceed sixty (60) days
674 for any infraction of its published rules and regulations;
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678 (ii) The right of said Association to dedicate or transfer all or any part of its
679 property to any public agency, authority, or utility for such purposes and subject to such
680 conditions as may be agreed to by the members. No such dedication or transfer shall be
681 effective unless an instrument or instruments signed by two-thirds (2/3) of each class of
682 members, agreeing to such dedication or transfer, has been recorded (such instrument or
683 instruments may be executed in several counterparts, each of which shall be deemed an
684 original but all of which shall constitute one and the same instrument);
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692 (iii) The right of said Association to limit the number of guests of members as
693 to the use of facilities situated upon said Association's property;
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697 (iv) The right of said Association, in accordance with its articles of
698 incorporation and Bylaws, to borrow money for the purposes of improving its property
699 and facilities and in aid thereof to mortgage and grant liens and encumbrances upon said
700 property and facilities, provided that the rights of any mortgagee of said Association's
701 property and facilities shall be subordinate to the rights of the member's hereunder;
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706 (v) The right of said Association, through its Board of Directors, to determine
707 the time and manner of use of any of the facilities situated upon its property by its
708 members;
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712 (vi) The right of said Association to reasonably regulate, locate and direct
713 access routes on its property and the location of parking thereon. Membership in the
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720 Brandywine Bay Association shall be appurtenant to and may not be separated from

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722 ownership of any Lot which is subject to assessment.

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724 Section 2. Covenant for Assessments. Each Owner of a Lot subject to this

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726 Declaration, by acceptance of a deed therefor, whether or not it shall be so expressed in

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728 such deed, is deemed to covenant and agree to pay to the Brandywine Bay Association:

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730 (i) annual assessments or charges, and (ii) special assessments for capital

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732 improvements, such assessments to be established and collected as hereinafter provided.

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734 All such annual and special assessments, together with interest, costs and reasonable

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736 attorney's fees for the collection thereof, shall be a charge and lien upon the Lot of the

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738 respective Owners thereof, and the same shall be a continuing lien upon the Lot against

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740 which each such assessment is made. Each such assessment, together with interest, costs,

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742 and reasonable attorney's fees for the collection thereof, shall also be a personal financial

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744 obligation of the person, or persons, who was, or were, the Owner or Owners of such Lot

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746 at the time when the assessment became due. All sums assessed by the Brandywine Bay

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748 Association but unpaid for the share of the common expenses chargeable to any Lot shall

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750 constitute a lien on such Lot prior to all other liens except (i) ad valorem tax liens and

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752 liens for special assessments on the Lot made by a lawful governmental authority, (ii) all

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754 sums unpaid on the Institutional Mortgage of record on such Lot, if any, and (iii) other

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756 liens, if any having priority by statutory authority.

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758 Section 3. Purpose of Assessments. The assessments levied by the

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760 Brandywine Bay Association shall be used exclusively to provide for necessary insurance

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762 coverage, reserve fund for replacements, maintenance and operation of its facilities and

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to promote the recreation, health, safety and welfare of the members.

Section 4. Maximum Annual Assessments. Until December 31, 1980, the

monthly payments towards maximum annual assessment made by the Brandywine Bay

Association on each Lot shall not exceed Twenty-One and 50/100 Dollars (\$21.50).

From and after December 31, 1980, the amount of annual assessments for the

Brandywine Bay Association shall be established in accordance with the terms and

provisions of this Declaration and the Articles of Incorporation and Bylaws of said

Association, subject to the following limitations:

(i) From and after December 31, 1980, the annual assessment may be increased each year not more than five percent (5%) above the budgeted annual assessment for the previous year without a vote of the membership of the Brandywine Bay Association, as hereinbelow provided.

(ii) From and after December 31, 1980, the annual assessment may be increased more than five percent (5%) of the budgeted annual assessment for the previous year by vote of two Thirds (2/3) of each class of members of the Brandywine Bay Association who are voting in person, or by proxy, at a meeting duly called for such purpose.

(iii) The Board of Directors may fix the annual assessment by an amount not exceeding five percent (5%) of the budgeted annual assessment for the previous year as herein provided.

Declarant shall have absolutely no obligation to make payments to or for the Brandywine Bay Association for any purposes except for its obligation to make periodic payment of assessments levied on Lots which Declarant may, from time to time,

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816 own, or assessments on any class or classes of membership which Declarant may from

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818 time to time hold in the Brandywine Bay Association.

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820 Section 5. Special Assessments for Capital Improvements. In addition to the

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822 annual assessments authorized above, the Brandywine Bay Association may levy, in any

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824 assessment year, a special assessment applicable to that year only for the purpose of

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826 defraying, in whole or in part, the cost of any construction, reconstruction, repair or

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828 replacement of a capital improvement, including (but not limited to) fixtures and

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830 personal property related thereto or the expense of any other contingencies; provided that

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832 any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of

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834 members of said Association who are voting in person or by proxy at a meeting duly

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836 called for such purpose.

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838 Section 6. Reserve Funds. The Brandywine Bay Association has established,

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840 or shall establish and maintain, a reserve fund or funds for replacement and maintenance

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842 of its property and by allocation and payment monthly to such reserve fund or funds in

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844 such amounts as are established from time to time by the Board of Directors of the

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846 Brandywine Bay association.

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848 Section 7. Notice and Quorum Requirement. Written notice of any meeting

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850 called for the purpose of taking any action authorized in this Article VII shall be sent to

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852 all members of the Brandywine Bay Association not less than seven (7) days nor more

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854 than sixty (60) days in advance of the meeting. At the first such meeting called, the

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856 presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of

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858 each class of membership in the Association shall constitute a quorum. If the required

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860 quorum is not present, another meeting may be called subject to the same notice

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863 requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of
864 the required quorum at the preceeding meeting. No such subsequent meeting shall be
865 held more that sixty (60) days following the date set for the preceeding meeting.
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868 Section 8. Date of Commencement of Annual Assessments Due Date. The
869 annual assessments provided for herein shall commence as to all lots on the ____ day of
870 _____, 1983. The class of membership, and consequently, the assessment amount,
871 shall be as provided in the Articles of Incorporation of the Brandywine Bay Association,
872 which Articles are incorporated herein, by reference. The first annual assessment for
873 each lot shall be adjusted according to the number of months remaining in the
874 corporation's fiscal year after the ____ day of _____, 1983. The Board of
875 Directors of Brandywine Bay Association shall fix the amount of the annual assessment
876 against each lot at least forty-five (45) days in advance of each annual assessment period.
877 Written notice of the annual assessment shall be sent to every member. The due date
878 shall be established by the Board of Directors, and, unless otherwise provided, said
879 Association shall collect each month from the members one-twelfth (1/12) of the annual
880 assessment for their lots. Said Association shall, upon demand, furnish a certificate
881 signed by an officer of said Association setting forth whether the assessment on a
882 specified lot has been paid. Such certificates shall be conclusive evidence of payment of
883 the assessment therein stated to have been paid, as to any purchaser or mortgagee of a
884 Lot who relies thereon.
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887 Section 9. Effect of Nonpayment of Assessments. Remedies of the
888 Brandywine Bay Association. Any assessments which are not paid when due shall be
889 delinquent. If the assessment is not paid within thirty (30) days after the due date, the
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 912 assessment shall bear interest from and after the due date at the rate of six percent (6%)
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 914 per annum, and the Brandywine Bay Association may bring an action at the law against
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 916 the member personally obligated to pay the same or foreclose the lien against the Lot, and
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 918 interest, costs, and reasonable attorney's fees of any such action for collection thereof
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 920 shall be added to the amount of such assessment. Each such Owner, by his acceptance of
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 922 a deed to a Lot, thereby expressly grants to and vests in the Brandywine Bay Association,
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 924 or its agents, the right and power to bring all actions against such Owner personally for
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 926 the collection of such charges and liens as a debt and to enforce the aforesaid charge and
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 928 lien by all methods available for the enforcement of such liens, including foreclosure by
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 930 an action brought in the name of the Association in a like manner as a mortgage or deed
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 932 of trust lien on real property, and such Owner expressly grants to said Association a
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 934 power of sale in connection with any such charge or lien. The lien provided for in this
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 936 Section 9 shall be in favor of said Association and shall be for the benefit of all other
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 938 members. Said Association, acting on behalf of the members, shall have the power to bid
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 940 in a Lot foreclosed at foreclosure sale and to acquire, and hold, lease, mortgage and
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 942 convey the same. **NO MEMBER MAY WAIVE OR OTHERWISE ESCAPE**
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 944 **LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NONUSE OF**
 945
 946 **THE BRANDYWINE BAY ASSOCIATION'S PROPERTY OR FACILITIES OR**
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 948 **ABANDONMENT OF HIS LOT.**

Section 10. Subordination of the Assessment Lien to Mortgages, Deeds of

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 952 Trusts and Similar Security Interests. The lien of the assessments provided for in this
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 954 Article VII shall be subordinate to the lien of any Institutional Mortgage on a Lot and
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 956 subordinate to tax liens and special assessments on the Lot made by a lawful

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959 governmental authority and other liens granted priority by statutory authority. Sale or
960 transfer of any Lot shall not affect the assessment lien. However, where the mortgagee of
961 an Institutional Mortgage or other purchaser of a Lot obtains title to the Lot as a result of
962 foreclosure of an Institutional Mortgage, such acquirer of title, his successors and assigns,
963 shall not be liable for the share of the common expenses or assessments of the
964 Brandywine Bay Association chargeable to such Lot which became due prior to the
965 acquisition of title to such Lot as a result of foreclosure by such acquirer. Such unpaid
966 shares of common expenses or assessments shall be deemed to be common expenses
967 collectable from all members of the Brandywine Bay Association including such
968 acquirer, his heirs, successors and assigns. No such sale of a Lot shall relieve such Lot
969 (or its owner) from liability for any Assessments thereafter becoming due and payable or
970 from the lien of any subsequent assessment.
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982 Section 11. Insurance: Insurance Assessments. The Board of Directors of
983 the Brandywine Bay Association or its duly authorized agent shall have the authority to
984 and shall obtain insurance for all the buildings and improvements owned by the
985 Association against loss or damage by fire other hazards in an amount sufficient to cover
986 the full replacement cost of any repair or reconstruction work in the event of damage or
987 destruction from any hazard, and shall also obtain a broad form of public liability policy
988 covering its property and facilities, and all damage or injury caused by the negligence of
989 said Association or any of its agents. Said insurance may include coverage against
990 vandalism. Premiums for all such insurance shall be an expense of said Association. All
991 such insurance coverage shall be written in the name of said Association as Trustee for
992 each of the Owners. In the event of damage or destruction by fire or other casualty to
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1007 any property covered by insurance written in the name of the Association, the Board of
1008 Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance
1009 proceeds, contract to rebuild or repair such damaged or destroyed portions of the property
1010 to as good a condition as formerly. All such insurance proceeds shall be deposited in a
1011 bank or other financial institution, the accounts of which bank or institution are insured
1012 by a Federal governmental agency, with the provisions agreed to by said bank or
1013 institution that such funds may be withdrawn only by signature of at least one-third (1/3)
1014 of the members of the Board of Directors, or by an agent duly authorized by said Board
1015 of Directors. The Board of Directors may advertise for sealed bids with any licensed
1016 contractors and they may negotiate with any contractor, who shall be required to provide
1017 full performance and payment bond for the repair, reconstruction or rebuilding of such
1018 damage or destroyed building or buildings. In the event the insurance proceeds are
1019 insufficient to pay all the costs of repairing and/or rebuilding to the same condition as
1020 formerly, the Board of Directors shall levy a special assessment against all members of
1021 the Association, to make up any deficiency for repair or rebuilding of its property and
1022 facilities.
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1038 Section 12. Disclaimer. THE PROPERTY AND FACILITIES OF

1039 BRANDYWINE BAY ASSOCIATION HAVE NOT BEEN SUBMITTED TO THIS
1040 DECLARATOIN BY DECLARANT, AND THE SAME SHALL NOT BE
1041 CONSIDERED AS A PART OF THE PROPERTY OF PINE BLUFF AT
1042 BRANDYWINE BAY, OR THE COMMON AREA OF PINE BLUFF AT
1043 BRANDYWINE BAY.
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ARTICLE VIII

GENERAL PROVISIONS

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

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which said other provisions shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by vote of seventy-five (75%) percent of each class of members voting, either in person or by proxy, at a duly constituted meeting of the Association, after due notice. Upon such vote, the amendment shall be signed by the appropriate officers of the Association. Thereafter, said amendment shall be recorded and shall be effective as of the date of recording. Recordation of an amendment signed by the officers of the Association and recorded as herein provided shall be conclusive evidence that all provisions of this Section 3, with respect to amendment, have been complied with.

Sec 4

EXHIBIT A

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Tract I: Being all of Pine Bluff at Brandywine Bay, as shown in May Book 20, page 38, Carteret County Registry.

Tract II: Being all that property between the southernmost property lines of Lots 1 through 7, Pine Bluff at Brandywine Bay, as aforesaid, and the high water mark of Bogue Sound, and being bounded on the east by a southerly extension of the east line of Lot 1, Pine Bluff and on the west by a southerly extension of the west line of Lot 7, Pine Bluff.