

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by Cherry Branch, Ltd., hereinafter referred to as "Declarant".

WITNESSETH

WHEREAS, Declarant is the owner of certain property in Cherry Branch Subdivision, County of Craven, State of North Carolina, which is more particularly described as :

**Cherry Branch South, Section Two**, as the same is shown on a plat thereof recorded in Plat Cabinet F, Slide 173-A, Office of the Register of Deeds of Craven County, North Carolina.

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

**ARTICLE I**

**DEFINITIONS**

Section 1. "Association" shall mean and refer to Cherry Branch Home Owners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Cherry Branch Drive, Maritime Court, Dolphin Lane, and the Recreation Area as designated on a map of Cherry Branch, Section I as recorded in the Office of the Register of Deeds of Craven County, North Carolina in Plat Cabinet D, Slide 698-702; Sea Horse Drive as designated on a map of Cherry Branch Section II recorded in Plat Cabinet E, Slide 72 and 73, Office of the Register of Deeds of Craven County; and Man-of-War, War Admiral Drive, Seattle Slew Drive, Sea Bisquit Drive as designated on a map of White Horse Run at Cherry Branch, Section I as recorded in the Office of the Register of Deeds of Craven County, North Carolina in Plat Cabinet E, Slide 120 and Seven Seas Drive and Dory Court and Common Area as designated on a map of Cherry Branch West, Section I as recorded in the Office of the Register of Deeds of Craven County, North Carolina in Plat Cabinet E, Slide 259-263, Sailaway Court and Caravel Court as designated on a map of Cherry Branch West, Phase Two as recorded in the Office of the Register of Deeds of Craven County, North Carolina in Plat Cabinet F, Slide 110C, and Lawrence Boulevard, Angela Drive and Borgo Court as designated on a map of Cherry Branch South, Section One as recorded in the Office of the Register of Deeds of Craven County, North Carolina in Plat Cabinet F, Slide 164E, Borgo Court as designated on a map of Cherry Branch South, Section Two as

recorded in the Office of the Register of Deeds of Craven County, North Carolina in Plat Cabinet F, Slide 173-A. The above named streets are dedicated to the owners of Cherry Branch, Section I and Section II, White Horse Run at Cherry Branch, Section I, Cherry Branch West, Section I, Cherry Branch West, Section II, Cherry Branch South, Section One, and Cherry Branch South, Section Two by plat filing in the Register of Deeds of Craven County with reservation of the right in Declarant to grant easements of ingress, regress and egress over the streets to subsequent purchasers and grantees in adjoining phases, and adjacent property notwithstanding the transference of the streets to Cherry Branch Homeowner's Association, Inc.

Section 5. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Cherry Branch, Ltd., its successors and assigns if such successors or assigns should acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains

unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless agreed to by two thirds (2/3) of each class of members voting on the same at a duly called meeting for that purpose, and a certificate signed by the secretary of the meeting is recorded indicating the approval.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members.

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The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on May 1, 1999.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest,

costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum annual assessment shall be One hundred dollars (\$100.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an 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 any Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two thirds (2/3) 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 4. Special Assessments for Capital Improvements. In addition to the annual assessments 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, reconstruction, repair or replacement of capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum from Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 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%) or as otherwise set forth in the bylaws 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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and

special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessment: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the date due at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his



Lot.

Section 9. Subordination of the Lien to Mortgages. 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 mortgage foreclosure 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 assessment thereafter becoming due or from the lien thereof.

#### ARTICLE V

#### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location and land use consistent with these covenants, in relation to surrounding structures and topography by Cherry Branch, Ltd. or Board of Directors of the Association during the first year, or by the Board of Directors or an architectural committee composed of three (3) or more representatives appointed by the Board after the first year. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and

specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Plans shall be submitted to 805 East Main Street, Havelock, North Carolina 28532, Attention: Donald G. Lawrence or designee.

**ARTICLE VI**

**USE RESTRICTIONS**

Section 1. Lot. The "lot" as used herein shall mean the parcels as depicted on the above-mentioned map.

Section 2. Building Type; Dwelling. The word "dwelling" as used herein shall mean one (1) detached building designed for use as a single family residence. No concrete blocks on exterior walls, except decorative screen blocks, shall be used above foundation elevation unless the same are covered with brick veneer, stone, or stucco.

Section 3. Land Use. Each Lot shall be used for residential purposes only. Not more than one (1) dwelling may be erected or permitted or remain on a Lot. No wrecked or junked motor vehicle or vehicle without current license plates or truck larger than one (1) ton shall be permitted to remain on a Lot or street. No activity shall be permitted on any Lot which amounts to a nuisance to the other Lot Owners, or interferes with their reasonable enjoyment of their property. No Lot may be used for storage without a house being located thereon. All materials stored on a Lot and clothes lines and satellite discs shall be located in the rear yard and screened from view by natural vegetation or wood

privacy fencing. Declarant or his designee reserves the right for a period of ten (10) years to conduct sales from model homes within this Section.

Section 4. Mobile Homes and Manufactured Housing. No mobile home, modular home, metal storage shed, or manufactured housing may be placed or permitted to remain on a Lot.

Section 5. Combination of Lots. One (1) Owner of two (2) or more adjoining Lots or one (1) Owner of one (1) Lot and one half (1/2) of one (1) adjoining Lot or both of the adjoining Lots, may construct a residential dwelling thereon upon and across the dividing line of such adjoining Lots, or Lot and adjoining one half (1/2) Lot or adjoining two (2) adjoining half Lots so owned by one (1) Owner so long as such residential dwelling shall not be nearer than ten (10) feet to such Owner's side Lot line, and so long as any outbuildings shall not be nearer than ten (10) feet from such Owner's side Lot line or ten (10) feet from the rear Lot line, but thereafter, no additional residential dwelling may be built thereon. In the event of such recombination or combination, any easements reserved along the interior Lot lines which have been recombined and deleted, shall be withdrawn and shall not constitute an encumbrance on such Lot and shall be reserved only along the perimeter boundary lines of the total Lots or portions thereof so owned by the one (1) Owner.

Section 6. Dwelling Size. Any dwelling erected upon any lot shall contain not less than 1200 square feet of enclosed floor heated area. Any dwelling, once started, shall be substantially

completed within nine (9) months.

Section 7. Setback Requirements.

(a) No dwelling shall be erected or permitted to remain on any Lot nearer to any street than the setback line as shown on the recorded plat.

(b) No dwelling or other permissible structure shall be erected or permitted to remain nearer than ten (10) feet to any side or rear Lot line.

(c) Hardship variances may be granted from time to time by the architectural control committee in their sole discretion.

Section 8. Animals. No animals shall be permitted to remain on any Lot other than dogs, cats, or other small household pets, always in reasonable numbers, and subject to reasonable rules and regulations as may be promulgated from time to time by the Homeowner's Association. No Pit Bulls, Rottweilers or Doberman Pinschers shall be allowed. There shall be no hunting of wildlife in the Subdivision.

Section 9. Drainage and Utility Easements. The party of the first part reserves to itself, its successors and assigns, a ten (10) foot drainage and utility easement along all rear Lot lines, all side lot lines, and front Lot lines of the numbered Lots and further, easements are reserved as shown on the plat of Cherry Branch South Subdivision, Section Two. Driveways shall be permitted across front and side Lot line easements.

Section 10. Maintenance and Repair of Property. The

exterior of any building located on a Lot shall be maintained, repaired and kept in a neat and clean condition.

Section 11. Access. No numbered Lot may be used for ingress, egress, regress or access to adjoining land not part of this Subdivision.

Section 12. Stormwater Rules. Pursuant to North Carolina Division of Environmental Management Regulations, the allowable built upon area per lot shall not exceed 5000 square feet, inclusive of right of way, structures, pavement, walkways or patios of brick, stone, or slate, not including wood decking. It shall be the responsibility of the owner of each lot to maintain the drainage area located within the boundary of his lot. The owner shall keep the drainage area, including any swale or ditch located therein, free and clear of any and all obstructions or conditions which may adversely impact upon the drainage area, specifically, the owner shall keep such area properly mowed and shall not cause or allow such area to be piped or filled in, excepting that the installation of driveways shall be allowed. This covenants shall be binding on all parties and persons claiming under them, shall run with the land, and the provisions herein may be enforced by the State of North Carolina; therefore, this covenant cannot be changed or deleted without consent of the State of North Carolina.

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**ARTICLE VII**

**STAGED DEVELOPMENTS**

Additional land within the area described in Deed Book 1111,

Page 646 of the land records of Craven County may be annexed by the Declarant without the consent of members.

### ARTICLE VIII

#### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, 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. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Reasonable attorney's fees shall be recovered by the prevailing party for the enforcement of these covenants.

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

Section 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 during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be


recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two thirds (2/3) of each class of members, however, the adjacent Property described in Deed Book 1111, Page 646 Office of the Register of Deeds of Craven County may be annexed without the consent of the members by the Declarant who hereby reserves said rights, provided any area annexed shall contribute pro-rata to Common Area maintenance.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions, except as otherwise provided herein.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 25th day of October, 1994.

CHERRY BRANCH, LTD.

  
(SEAL)  
DONALD G. LAWRENCE, GENERAL PARTNER

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