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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR LOTS 82, 83, 84, 100, 101 AND 102 OF SECTION III - MADISON  
PLACE AT MASONBORO WOODS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 29th day of April, 2003, by MAURICE S. EMMART, JR., Trustee, hereinafter referred to as "Declarant".

**STATEMENT OF PURPOSE**

Declarant is the Trustee of certain property in New Hanover County, North Carolina, which is more particularly described on that map recorded in Map Book 43 at Page 386 in the New Hanover County, North Carolina, Register of Deeds, reference to which is hereby made. Declarant desires to create thereon an exclusive residential community of townhouse residences to be named MADISON PLACE AT MASONBORO WOODS, SECTION III, Lots 82, 83, 84, 100, 101 and 102 ("MADISON PLACE").

Declarant desires to insure the attractiveness of MADISON PLACE and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within MADISON PLACE and to provide for the maintenance and upkeep of certain areas, including all common areas serving MADISON PLACE. To this end the Declarant desires to subject the real property described herein, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

Declarant further desires to create a homeowners association to which will be delegated and assigned the powers of owning, maintaining and administering the common areas in MADISON PLACE, maintaining certain other areas, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created.

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restrictions, does declare that all of the property described herein, and such additions thereto as may be hereafter made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in

this Declaration which shall run with the real property and be binding on all parties owning any right, title or interest in said real property 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" or "MPOA" shall mean and refer to MADISON PLACE OWNERS ASSOCIATION, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Board" or "Board of Directors" shall mean and refer to the Declarant or, upon Declarant's surrendering authority to the Association, the elected Board of Directors of the Association.

Section 3. "Common Area" shall mean all real and personal property (including the improvements thereto) owned by or to be owned by the Association for the common use and enjoyment of the Owners or such property that serves all lots or benefits all lots. The Common Area to be owned by the Association is all of the area not denominated as a numbered lot for residential purposes on the map(s) of Madison Place, all sections. In addition, for purposes of repair, replacement and maintenance, the fences around each lot shall be the responsibility of the Madison Place Owners Association.

Section 4. "Declarant" shall mean and refer to Maurice S. Emmart, Jr. and also shall mean and refer to any person, firm or corporation which shall also be designated as a "Declarant" by Maurice S. Emmart, Jr.

Section 5. "Development" shall mean and refer to MADISON PLACE, a townhouse residential development proposed to be developed on the Properties by the Declarant.

Section 6. "Lot" or "Unit" shall mean and refer to any numbered plot or parcel of land, with delineated boundary lines, for sale to the public appearing on the Maps with the exception of the Common Area.

Section 7. "Map" or "Maps" shall mean and refer to the map(s) of Madison Place, all sections, as recorded in the New Hanover County, North Carolina, Register of Deeds referred to hereinabove and the maps of any additions to the Properties which may be recorded by Declarant in the New Hanover County, North Carolina, Public Registry hereafter, including all revisions thereto.

Section 8. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot including the Declarant if it owns any Lot(s) and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Properties" shall mean and refer to the "Existing Property" described in Article II, Section 1 hereof, and such additions thereto as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

Section 11. "MPOA" shall mean and refer to Madison Place Owners Association, a non-profit corporation of which all owners of lots in Madison Place shall be members and pay dues and assessments to same.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF MADISON PLACE HOMEOWNERS ASSOCIATION

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association, is located in New Hanover County, North Carolina, and is more particularly described on the Maps.

Section 2. Additions to Existing Property.

(a) Additional land which is contiguous to the Existing Property or any land previously added to the Existing Property may be brought within the scheme of this Declaration and the jurisdiction of the Association by Declarant, in future stages of development, without the consent of the Association or its Members.

(b) The additions authorized under subsection (a) above shall be made by filing Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the additional properties in the New Hanover County, North Carolina, Public Registry which shall extend the scheme of this Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein, including, but not limited to, assessments as herein determined.

## ARTICLE III

### PROPERTY RIGHTS

Section 1. Ownership of Common Areas. Declarant may, from time to time, convey Common Areas to the Association which the Association shall accept delivery thereof. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Areas (not including streets and roads that are shown or denominated as "Public") shall remain private property for the use and enjoyment of the members and shall not be considered as dedicated to the use and enjoyment of the public unless so indicated.

Section 2. Owner's Rights to Use and Enjoy Common Areas. Each Owner shall have the right to use and benefit from the Common

Area which shall be appurtenant to and shall pass with the title to his Lot, subject to the following:

(a) the right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Area to insure the safety and rights of all Owners;

(b) the right of the Association to suspend the voting rights in the Association and right to use the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid; and

(c) the right of the Declarant or the Association to grant utility, drainage and other easements of the type and for the purposes set forth in Articles VII across the Common Areas.

Section 3. Owner's Easements for Ingress and Egress. Every Lot shall be conveyed with a perpetual, non-exclusive right to use any roadway which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot.

Section 4. Maintenance of Yard Area. Each owner shall be responsible for the maintenance of the yard area contained within the fences on such owner's property and shall also be responsible for the maintenance, repair and replacement of the sprinkler system installed by the Declarant in the front yard of each lot.

#### ARTICLE IV

##### MEMBERSHIP, VOTING RIGHTS AND CONTROL OF THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. In addition, every owner of a lot shall also be a dues paying member of Madison Place Owners Association and shall be entitled to the use of all amenities owned or operated by MPOA.

Section 2. Classes of Lots. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. The Declarant shall be entitled to three (3) votes for each Class B Lot owned by it.

Section 3. Amendment. Notwithstanding the provisions of Section 2 above, so long as Declarant owns any Lot, the By-Laws of the Association may not be amended without the written consent of the Declarant, or his assigns.

Section 4. The Association shall be governed by a Board of Directors in accordance with the By-Laws. Notwithstanding the provisions of Section 2 above, the Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events occurs:

- (1) Declarant no longer owns any Lot, or
- (2) Declarant surrenders in writing the authority to appoint and remove members of the Board of Directors and officers of the Association.

Section 5. The Association formed pursuant to this Declaration shall become responsible for the stormwater management of the properties at such time as the Declarant/Developer turns over control of said Association to the owners or buyers of lots. At such time the Association shall sign such documentation as may be required by the State of North Carolina Department of Environmental and Natural Resources, Division of Water Quality, including but not limited to a stormwater management permit application, a Curb Outlet System Supplement, Permit Name/Ownership Change Form. In addition, the Association shall enter into any other agreements or documentation required by the State of North Carolina or any agency or department thereunder as well as any agency or department of the County of New Hanover. Any person or entity purchasing a lot in this subdivision shall be subject to and shall be deemed to have agreed to comply with and cooperate with the requirements herein.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges and special assessments for capital improvements, maintenance or repairs established and collected as hereinafter provided. Any such assessment or charge, plus any late charge or penalty established by Declarant or the Board together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Until the Declarant or the Board determines otherwise, the penalty for a violation shall be \$50.00 per day per violation. Each such assessment or charge, together with any penalty or late charge, interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

The Declarant may, but is not obligated to, pay assessments on Lots not yet sold by Declarant to an Owner.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used as follows:

(a) to maintain all common areas including any private roads and streets, pool and clubhouse and any retention ponds serving or benefitting the Properties, including but not limited to any retention pond serving the Properties but located in Greenbriar South or Masonboro Woods.

(b) to maintain any drainage easements in the Common Areas;

(c) to maintain all amenities in an operating and orderly condition, including any landscaping;

(d) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage;

(e) to pay any and all ad valorem taxes levied against the Common Areas and any property owned by the Association;

(f) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the By-Laws;

(g) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the By-Laws; and

(h) to accumulate and subsequently maintain such contingency reserves in order to fund unanticipated expenses of the Association as may be deemed necessary by the Board of Directors.

(i) to maintain front yard area of each lot from the fence to the road or street right of way.

(j) to repair and replace, maintain and insure all fences erected by the Developer or Declarant.

Section 3. Annual Assessment. The Declarant shall determine the amount of the annual assessment until such time as the Class A Lot votes outnumber the Class B Lot votes, whereupon, the Board of Directors of the Association shall determine the amount of annual assessments.

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 concerning the Common Area. The amount of any such assessment shall be determined in the same way as the annual assessment.

Section 5. Assessment Rate. Both annual and special assessments must be fixed at a uniform rate for all Lots.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 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 such meeting the presence of Members or of proxies entitled to cast sixty-six and two-thirds percent (66 2/3%) of all of the membership shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all of Owner(s)' Lots on a date determined by the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The amount of the annual assessment against each Lot shall be determined at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due date(s) shall be established by the Declarant or 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 due date at the rate of twelve percent (12%) per annum. This rate of interest may be changed from time to time by the Board of Directors of the Association. In addition to such interest charge, the delinquent Owner shall also pay such late charge(s) as may have been theretofore established by the Board of Directors of the Association to defray the costs arising because of late payment and any attorney fees and court costs incurred by the Association. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot, and interest, late payment charge, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment.

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 or deed of trust on a Lot or any mortgage or deed of trust to the Declarant. 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; provided, however, that the Board of Directors may in its sole discretion, determine such unpaid assessments to be an annual or a special assessment, as applicable, collectable pro rata from

all Owners including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the annual assessment to be in excess of the maximum permitted under Section 3. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

Section 10. Each purchaser of a lot shall pay at the time of the closing of the purchase an initial capital contribution.

## ARTICLE VI

### USE PROVISIONS AND RESTRICTIONS

Section 1. Declarant's Rights. The Declarant reserves the right to change, alter, or redesignate: roads, utility and drainage facilities, plus such other present and proposed amenities or facilities as may, in the sole judgement of the Declarant be necessary or desirable or as may be required by governmental agency or body. In addition, Declarant reserves for himself and MPOA an easement for repair, replacement and maintenance of the fencing located on each lot. The responsibility for such fencing shall be borne by MPOA.

Section 2. Changes. Without the prior written consent of the Declarant, no changes or deviations in the exterior appearance of any building or structure, or in the grade, elevation, or physical characteristics of any lot shall be made.

Section 3. Subdividing: No lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant. However, the Declarant hereby expressly reserves to himself, his successors or assigns, the right to replat any two (2) or more lots shown on the plat of any subdivision in order to create a modified building lot or lots, and to take such steps as are reasonably necessary to make such replatted lot suitable and fit as a building site, said steps to include but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted lots.

Section 4. The maximum built-upon area per lot (for all sections) is 3200 square feet, inclusive of that portion of the right-of-way between the lot line and the edge of pavement, structures, pavement, walkways of brick, stone or slate, but not including open wood decking or the water surface of swimming pools. The covenants pertaining to stormwater regulations may not be changed or deleted without concurrence of the State. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the State. All runoff on the lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading to the lot to drain toward the street or grading perimeter swales and directing them into the pond or street. Lots that naturally drain into the system are not required to provide these measures.

i. The covenants pertaining to stormwater regulations may not be changed or deleted without concurrence of the State.



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ii. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the State.

iii. All runoff on the lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading to the lot to drain toward the street or grading perimeter swales and directing them into the pond or street. Lots that naturally drain into the system are not required to provide these measures.

Section 5. Driveway and Mailbox Locations: The Declarant in conjunction with the United States Post Office will determine design and location of all mailboxes.

Section 6. Clotheslines or Drying Yards: Clotheslines or drying yards shall be located as not to be visible from the street serving the premises.

Section 7. Preservation of Well-kept Buildings and Grounds: Each lot owner shall prevent the development of any unclean, unsightly or unkempt conditions of any buildings or grounds on his lot which would tend to substantially decrease the beauty of any of the property or diminish or destroy the enjoyment of other lots by the owners thereof. This restriction includes, but is not limited to, a prohibition against storage on any lot of anything unclean, unsightly or unkempt. Each owner shall maintain the sprinkler system installed by the Declarant and shall keep their front yard watered.

Section 8. Reconstruction. Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must with reasonable promptness be rebuilt or all debris from such destruction removed and the Lot restored to the condition it was in prior to commencement of construction of such building. Any such reconstruction must be commenced within six (6) months from the date of such destruction. All debris must be removed and the Lot restored to its prior condition within three (3) months of such destruction.

Section 9. Mobile Homes and Temporary Structures: No mobile home or other structure of a temporary character shall be placed or stored upon any lot or common easement area at any time, provided, however, that this prohibition shall not apply to structures on any lot used by the Declarant during the construction of a residence. No manufactured or prefabricated homes shall be allowed or permitted.

Section 10. Vegetable Gardens: Vegetable gardens may be maintained by owners of lots in the subdivision provided said gardens are located to the rear of the dwelling and located on the lot within the fenced area so as not to be generally visible from adjoining lots or common easement areas.

Section 11. Exterior Antennae and Aerials: Exterior radio and television aerials and/or TV satellite dishes for reception of

commercial broadcasts shall not be permitted in the Subdivision; and no other aeriels (for example, without limitation, amateur short wave or ship to shore) shall be permitted in the Subdivision without prior permission of the Declarant, or assigns, as to design, appearance and location. Declarant recognizes and acknowledges that to the extent the provisions of this paragraph are in conflict eith FCC guidelines, said FCC guidelines shall control.

Section 12. Signs: No sign of any type, character or use shall be displayed upon any part of the property or any lot whatsoever.

Section 13. Interval Ownership. No Owner may lease, deed, sell, convey, or otherwise transfer his Lot under any time-sharing or interval ownership arrangement.

Section 14. Hazardous Activities. Nothing shall be done or kept on any Lot or in the Common Area which shall increase the rate of insurance on the Common Area or any other Lot without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept on his Lot or in the Common Area which would result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law.

Section 15. No noxious or offensive activity shall be carried on or maintained on any lot or part of any lot, nor shall any use be made of any portion of said property which may be or may become an annoyance or nuisance to the neighborhood. No domesticated farm animals or fowls shall be kept on the property. In the event yards are not properly maintained, they shall be cleaned up at the owner's expense. Unsightly inoperative junk cars and like eyesores shall not be maintained on the property and shall be towed at the owner's expense.

Section 16. Property owners shall neither maintain nor permit any type of motor vehicle or other machinery that produces excessively loud noises on his lot or on any of the streets in MADISON PLACE, all sections.

Section 17. Parking shall occur only in garages or paved driveway areas. Only temporary parking shall be allowed in and on the streets. The Declarant, or assigns, shall have the sole discretion to determine if there has been a violation of this restriction.

Section 18. All owners shall have the right to use pool and clubhouse located in Masonboro Woods.

Section 19. No boat, trailer, recreational vehicle or yard art shall be allowed, located or parked on the properties or any lot.

## ARTICLE VII

### COMMON AREAS AND COMMON EASEMENTS

Section 1. Easements Reserved by Declarant. Declarant reserves easements for the installation and maintenance of water lines, telephone and electric power lines, cable television lines, sanitary sewer and storm drainage facilities, pumping and lift stations, drainage ditches and for other utility installations over the Properties as provided in Article III, Section 2(c) of this Declaration. Each Owner, by his acceptance of a deed, acknowledges such reservation and the right of Declarant to transfer such easements to the Association or to such utility companies as Declarant may choose. The easements reserved by the Declarant include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development.

Declarant further reserves the right to locate wells, pumping stations, lift stations and tanks within any Common Areas or any residential Lot designated for such use on any Map or upon any Lot adjacent to such designated Lot with the permission of the Owner of such adjacent Lot.

Within any such easement, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewerage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. Declarant or the Association shall have the right to remove any structure planting or other obstruction within any such easement area. In addition, the Declarant and the Association shall have the continuing right and easement to maintain all sewer and water lines located on the Lots, including the right to go into dwellings and disturb the structure and floors thereof in order to maintain those lines located within or under said dwelling.

Section 2. The Declarant reserves for itself and the Association an easement for repair, replacement and maintenance purposes over and across each and every lot and all common areas.

Section 3. Use of Common Area: The Common Area shall not be used in any manner except as shall be approved or specifically permitted by the Association. The Association shall, in its sole discretion, retain the right to establish rules and regulations for the use and enjoyment of all such property.

## ARTICLE VIII

### INSURANCE

Each Owner shall secure and maintain in full force and effect at such Owner's expense, one or more insurance policies insuring Owner's Lot and the improvements thereon for the full replacement value thereof against loss or damage from all hazards and risks normally covered by a standard "Extended Coverage" insurance policy, including fire and lightning, vandalism and malicious mischief.

## ARTICLE IX

## RIGHTS OF MORTGAGEES

Section 1. Approval of Owners and Holders of First Deeds of Trust. Unless at least sixty-six and two-thirds percent (66 2/3%) of the owners and holders of first deeds of trust on Lots located within the Property then subject to the full application of this Declaration, have given their prior written approval, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association (the granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) by act or omission change, waive or abandon any plan of regulation, or enforcement thereof pertaining to the architectural design or the exterior appearance of residences located on Lots, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the subdivision;

(d) fail to maintain fire and extended coverage insurance on insurable improvements in the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(e) use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged improvements.

Section 2. Books and Records. Any owner and holder of a first deed of trust on any Lot will have the right to examine the books and records of the Association during any reasonable business hours.

Section 3. Payment of Taxes and Insurance Premiums. The owners and holders of first deeds of trust on Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be owed immediate reimbursement therefor from the Association.

## ARTICLE X

### CONDEMNATION

Section 1. Partial Taking Without Direct Effect on Lots. If part of the properties shall be taken or condemned by any authority having the power of eminent domain, such that no Lot is taken, all compensation and damages for and on account of the taking of the Common Area, exclusive of compensation for consequential damages to

certain affected Lots, shall be paid to the Board of Directors of the Association in trust for all Owners and their mortgagees according to the loss or damages to their respective interests in such Common Area. The Association, acting through the Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Area, without limitation on the right of the Owners to represent their own interests. Such proceeds shall be used to restore the Common Area with the excess, if any, paid to the Owners pro rata. Nothing herein is to prevent Owners whose Lots are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots, or personal improvements therein, exclusive of damages relating to Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between affected Owners and the Board of Directors as their interest may appear by arbitration in accordance with the rules of the American Arbitration Association.

Section 2. Partial or Total Taking Directly Affecting Lots. If part or all of the Properties shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Association shall have the right to act on behalf of the Owners with respect to Common Area as provided in Section 1 of this Article and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots. All compensation and damages for and on account of the taking of any one or more of the Lots, or personal improvements therein, shall be paid to the Owners of the affected Lots and their mortgagees, as their interests may appear.

Section 3. Notice to Mortgagee. A notice of any eminent domain or condemnation proceeding shall be sent to holders of all first mortgages.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1. Entry: The Committee reserves for itself, its successors and assigns, and its agents the right to enter upon any residential lot at such lot owner's expense, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, or for the purpose of building or repairing any land contour or other earthwork, which in the opinion of the Committee detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed a trespass. The Committee and its agents may likewise enter upon any lot to remove any trash which has collected without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Committee to undertake any of the foregoing.

Section 2. 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.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land until January 1, 2024 after which they shall be automatically extended for successive periods of ten (10) years unless terminated by a vote of at least seventy-five percent (75%) of the owners with each lot having one vote. This Declaration (except as set forth to the contrary in Article IV, Section 3) may be amended by an instrument signed by the Owners of not less than sixty-six and two-thirds percent (66 2/3%) of the Lots or as set forth in Article XI, Section 7 below.

Section 5. Additions to Covenants. The Declarant may include in any contract or deed hereafter made, any additional covenants and restrictions that are not inconsistent with and which do not lower the standards of the covenants and restrictions set forth herein.

Section 6. Assignment or Development Rights: If the Declarant shall transfer or assign the development of such subdivision or if it shall be succeeded by another in the development of such subdivisions, then such transferee, assignee, or successor shall be vested with the several rights, powers, privileges or authorities given said Declarant by any part or paragraph hereof. The foregoing provisions of this paragraph shall be automatic, but the Declarant may execute such instrument as it shall desire to evidence the vesting of the several rights, powers, privileges, and authorities in such transferee, assignee or successor. In the event the Declarant contemplates or is in the process of dissolution, merger or consolidation, the Declarant may transfer and assign to such person, firm or corporation as it shall select any and all rights, powers, privileges and authorities given the Declarant by any part or paragraph hereof, whether or not the Declarant shall also transfer or assign the development of such subdivision or be succeeded in the development of such subdivision. In the event that at any time hereafter there shall be no person, firm, or corporation entitled to exercise the rights, powers, privileges and authorities given said Declarant under the provisions hereof, such rights, powers, privileges and authorities shall be vested in and exercised by the Board of Directors to be elected or appointed by owners of a majority of the lots of said land. In such event, said Board shall then have the same rights, powers, privileges and authorities as are given to the Declarant by any part or paragraph hereof. Nothing herein shall be constructed as conferring any rights, powers, privileges, and authorities in said Board except in the event aforesaid.

Section 7. Modifications by Declarant: The Declarant specifically reserves the right to amend any part or all of the restrictions, covenants, and conditions herein set out by filing in the Office of the Register of Deeds of New Hanover County a declaration of amended restrictive covenants. Such amendments, modifications, or additions to the restrictive covenants contained in this Declaration shall be made applicable to the conveyance of Lots made subsequent to the recording of such declaration of amended restrictive covenants and shall not materially impair the value of any owners lot or real property. Declarant may amend or modify the covenants, conditions and restrictions without the joinder and consent of any party or lot owner until December 31, 2013, after which date the approval of the owners of at least two-thirds (2/3) of the lots shall be necessary to make amendments or modifications.

Section 8. Remedies Against Violations: The covenants and restrictions herein shall be deemed to be covenants running with the land. If any person claiming under the Declarant shall violate or attempt to violate any of such restrictions or covenants, it shall be lawful for the Declarant, or any person or persons owning any residential lot on said land: (A) to prosecute proceedings at law for the recovery of damages against the person or persons so violating or attempting to violate any such covenant or restriction, or (B) to maintain a proceeding in equity against the person or persons so violating or attempting to violate any such covenant or restrictions for the purpose of preventing such violation, provided however, that the remedies in this paragraph contained shall be construed as cumulative of all other remedies now or hereafter provided by law. Without limiting the foregoing provisions of this paragraph enforcement of these covenants and restrictions shall be made by the MADISON PLACE OWNERS ASSOCIATION, of which every record owner of a fee or undivided fee interest in any lot shall be a member. Invalidation of any provision of the covenants and restrictions set forth herein by judgement or court order shall not affect or modify any of the covenants and restrictions which shall remain in full force and effect.

Section 9. All Lots Subject to Covenants: The Declarant hereby covenants and agrees that every contract of sale or deed made by the Declarant wherein is described any residential lot of said land shall include or be subject to, by reference or otherwise, each and every covenant and restriction herein written, or the substance thereof, and, subject to the reservations herein, the Declarant shall conform with and abide by the foregoing covenants as to all of said Land.

Section 10. Regulations: Reasonable regulations governing the use of the Common Area and external appearance of all structures erected on the Lots may be made and amended from time to time by the Board of Directors of the Association; provided, however, that all such regulations and amendments thereto shall be approved by at least majority vote of the Owners before the same shall become effective. Copies of such regulations and amendments thereto shall be furnished to each Member by the Association upon request.

Section 11. The Declarant reserves the right to subject the real property in this subdivision to a contract with Carolina Power & Light Company for the installation of street lighting, which requires a continuing monthly payment to Carolina Power & Light Company by each residential customer. In addition, the Declarant reserves an easement in favor of the Declarant and MPOA to cross all lots for the purpose of repairing, replacing and maintaining the fences around each lot.

IN WITNESS WHEREOF, the Declarant has hereunto affixed his hand and seal as of the day and year first above written.

Maurice S. Emmart Jr., (SEAL)  
MAURICE S. EMMART, JR., TRUSTEE

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, CHERYL C. FOREMAN, a Notary Public of the County of PENDER and State aforesaid, do hereby certify that MAURICE S. EMMART, JR., as Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official stamp or seal, this the 29<sup>th</sup> day of APRIL, 2003.

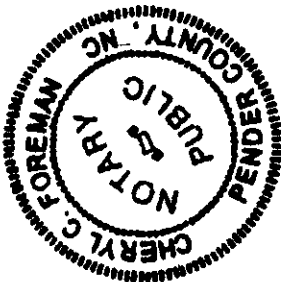
Cheryl C. Foreman  
Notary Public

My Commission Expires:

Sept. 11, 2005

(AFFIX NOTARIAL SEAL)

/MADISON3  
RESTRICT







REBECCA T. CHRISTIAN  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

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Filed For Registration: 04/29/2003 03:36:34 PM  
Book: RE 3763 Page. 159-175  
Document No.: 2003025370  
DECL 17 PGS \$59.00  
Recorder: JACQUELINE NELSON

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State of North Carolina, County of New Hanover

The foregoing certificate of CHERYL C FOREMAN Notary is certified to be correct. This 29TH of April 2003

REBECCA T. CHRISTIAN REGISTER OF DEEDS

By:   
Deputy/Assistant Register of Deeds

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YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.  
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

**\*2003025370\***

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