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RECORDED AND VERIFIED  
REBECCA P. TUCKER  
REGISTER OF DEEDS  
NEW HANOVER CO. NC

Nov 11 4 23 PM '83

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVERDECLARATION OF  
ARTICLES OF COVENANTS  
CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this the 9<sup>th</sup> day of November, 1983 by Realistic Developers, Incorporated, a North Carolina corporation, with its principal place of business being located in the County of New Hanover, State of North Carolina, hereinafter referred to as "THE COMPANY";

KNOW ALL MEN BY THESE PRESENTS:

52 THAT, WHEREAS, THE COMPANY is the fee simple owner of that tract of real property located in Federal Point Township, New Hanover County, North Carolina, and being described as follows:

Beginning at an iron pipe in the Eastern right of way line of US High #421 (160.0 feet R/W) that is 50.0 feet from the center line of the Northbound lane of said highway and South 18 degrees 05 minutes 30 seconds West 1376.70 feet from a concrete monument at the point of intersection of said eastern right of way line of US Highway #421 with the center line of S. R. #1527, as measured along said eastern right of way line; running thence from said point of beginning South 86 degrees 51 minutes 00 seconds East 1503.30 feet to an iron pipe; thence South 87 degrees 28 minutes 30 seconds East 899.49 feet to a stake at the low water mark on the west side of Myrtle Grove Sound, the dividing corner between the now or former Mitchell land and the former Freeman land; thence running southwardly along the low water mark line of the western side of Myrtle Grove Sound to an old axle at the low water mark of Myrtle Grove Sound, said axle being at the southeastern corner of Tract #2 of the R. B. Freeman Division as found in Book of Lands and Dowers A, Page 550, (and is located South 28 degrees 28 minutes 30 seconds West 532.44 feet; thence South 10 degrees 46 minutes 10 seconds East 466.01 feet, along a work line, from the aforescribed stake at the low water mark on the west side of Myrtle Grove Sound at the dividing corner between the now or former Mitchell land and the former Freeman land); running thence from said axle North 86 degrees 35 minutes 40 seconds West 1070.14 feet to a concrete monument; thence North 86 degrees 38 minutes 40 seconds West 1456.44 feet to an iron pipe in the Eastern Right of Way line of US High #421; thence along the Eastern Right of Way line of said highway North 18 degrees 07 minutes 40 seconds East 359.37 feet to an iron pipe; thence South 86 degrees 31 minutes 00 seconds West 436.46 feet to an iron pipe; thence North 11 degrees 49 minutes 00 Seconds West 109.7 feet to an iron pipe; thence North 86 degrees 25 minutes 00 Seconds West 424.0 feet to an iron pipe in the Eastern right of way line of US Highway #421; thence along said eastern right of way line North 18 degrees 13 minutes 30 seconds East 471.45 feet to the point of beginning; containing 49.08 acres, more or less and being the lands described in those deeds recorded in Book 1195, Page 526; Book 1199, Page 1868; Book 1183, Page 257; Book 1184, Page 892; Book 1184, Page 899; and Book 1188, Page 1165, New Hanover County Registry.

And from this tract the Company has designated the following for development as "Phase 1 of DOLPHIN BAY", and being more particularly described as:

All of Dolphin Bay, Section 1 (Revised), as the same is shown on a map thereof recorded in Map Book 22, Page 50, in the Office of the Register of Deeds of New Hanover County, North Carolina, reference to which is hereby made for a more particular description of Dolphin Bay, Section 1 (Revised).

WHEREAS, THE COMPANY desires to establish certain restrictions, covenants, conditions and easements with respect to the hereinabove described "Phase 1" tract of the development known as Dolphin Bay, Section 1 (Revised) for the purposes of

Drawn by,  
RETURNED TO

A.L. Egerton

protecting the value and desirability of said property for attractive residential purposes only, to prevent the impairments of the attractiveness of the property, to maintain the desired tone of the community and to thereby secure to each lot owner the full benefits and enjoyment of his property with no greater restriction upon the free and undisturbed use of his lot than is necessary to insure the same advantages to other lot owners, said restrictions, covenants, conditions and easements to run with said properties and which shall be binding on all persons and entities, including the Company, having any right, title, or interest in the hereinabove described "Phase I" of the development of Dolphin Bay, being the real properties in Dolphin Bay, Section 1 (Revised) or any portions thereof, their grantees, heirs, devisees, successors and assigns, and which shall inure to the benefit of each owner thereof;

NOW, THEREFORE, the undersigned does hereby covenant, agree and declare to and with all persons, firms or corporations now owning or hereafter acquiring any property in Dolphin Bay, Section 1 (Revised), that all the lots in said subdivision as shown on a map recorded in Map Book 22 Page 50, of the New Hanover County Registry, are hereby made subject to the following, and shall henceforth be held, sold and conveyed subject to the following ARTICLES OF COVENANTS, CONDITIONS AND RESTRICTIONS:

#### ARTICLE I

##### DEFINITIONS:

For the purposes of these Articles the following definitions shall apply:

A. ASSOCIATION: Shall mean and refer to The Dolphin Bay Home Owners Association, Inc., a nonprofit North Carolina corporation, the Articles of Incorporation for which are recorded in Book 1238 at Page 503 in the Office of the Register of Deeds of New Hanover County, North Carolina, the provisions of said Articles of Incorporation being incorporated herein by reference.

B. MEMBER: Shall mean and refer to each and every person and entity who or which holds a membership with voting rights in said Association.

C. LOT: Shall mean and refer to any one of those forty-four (44) parcels of real property which have been subdivided from the hereinabove described real property known as Dolphin Bay, Section 1 (Revised), and which are intended for single family residential purposes only, as set forth hereinbelow, and which are designated on the map of Dolphin Bay, Section 1 (Revised) hereinabove referenced by the numbers 1 through 44, inclusive, subject, however, to the special restrictions, conditions and covenants applicable to lot 5 as stated in Article II, Paragraph A, and Article III, Paragraph A, hereinbelow.

D. PROPERTY: Shall mean and refer to all of that real property described hereinabove, and known collectively Dolphin Bay, Section 1 (Revised) as shown upon the map thereof referred to hereinabove, as well as such additions thereto as may hereafter be brought within the jurisdiction of the Association through the development of the additional phases, if any, of the Dolphin Bay Development, as may be subdivided and platted in the future as subsequent phases of Dolphin Bay.

E. OWNER: Shall mean and refer to the owner or holder (by purchase, devise, inheritance, decree or otherwise) whether one or more persons or entities, of a fee simple title to or interest in any platted lot, including The Company, and contract sellers, but excluding those having such interest merely as security for

the performance of an obligation or the payment of an indebtedness.

F. COMMON AREAS: Shall mean and refer to any and all property, whether real or personal, which is owned by the Association for the common use and enjoyment of the owners, as well as any and all property, whether real or personal, whether owned by the Association or not, which the owners have a mutual or common right or privilege to use and enjoy as provided by these Articles as well as any amendment hereto.

ARTICLE II

USE RESTRICTIONS:

The following use restrictions shall apply to lots:

A. All lots shall be single family residential lots, and shall be used for single family residential purposes only. Provided, inasmuch as the Company has heretofore constructed a double unit duplex on Lot 5, in which one part is currently a private residence and the other part is the office of the Company, this restriction shall not apply to Lot 5 within Dolphin Bay, Section 1 (Revised). Provided, further, that upon the sale of said Lot No. 5 by the Company, the said lot shall be subject to these restrictions, declarations and covenants as if this exception had not been made, though any future owner thereof may elect to maintain said structure as a double unit duplex for residential purposes only.

B. No business, trade, vocation or occupation shall be permitted to be conducted at or pursued from any office, formal or informal, on any lot. However, this restriction shall not restrain The Company in any way from pursuing its rightful business of developing, marketing and selling any and all lots.

C. No trailer, tent or other structure of a temporary character shall be placed or stored upon any lot at any time nor shall such be used as a residence at any time; provided, however, that this prohibition shall not apply to shelters used by contractors during the construction of a single family residential dwelling, it being clearly understood that such temporary shelters may not be used, at any time, as a residence or permitted to remain on any lot after the completion of said construction.

D. Prior the occupancy of a single family residence on any lot, proper and suitable provision shall be made for the disposal of sewage by means of a tie-on to the Dolphin Bay Sewerage Disposal System constructed by the Company, and provided that such tie-on must first be approved by the appropriate state and/or county health authorities. Each lot owner shall have the responsibility of providing water to his lot by means of a well.

E. 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 the neighborhood as a whole or the specific area. This restriction includes, but is not limited to, the prohibition of the storage on any lot of anything unclean, unsightly or unkempt.

F. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to THE COMPANY or any owners. There shall not be maintained any plants or animals, or device or anything of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof.

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G. No animals, other than domesticated pet dogs, cats and birds, may be kept or housed on any lot or any structure thereon. It is understood that the control of such pets is the responsibility of the owner, and all such pets shall be kept inside or within an approved fenced area or upon a leash when outside.

H. No advertising signs or billboards shall be erected on any lot or displayed to the public on any lot subject to these restrictions except that one sign of not more than six square feet in area may be used to advertise a completed dwelling for sale. No "For Sale" signs are allowed on any vacant lots. This covenant shall not apply to signs erected by the Company used to identify and advertise the subdivision as a whole, by a contractor for an item of work being performed on a given lot, or by a homeowner for the purposes of identifying the homeowner as the resident on said lot. Said identification sign shall not exceed in size a total of 2 square feet.

I. No lot may be subdivided, or its boundary lines changed, except with the prior written consent of the Company. However, the Company hereby expressly reserves to itself, its successors and assigns, the right to replat any two (2) or more lots in order to create a modified building lot or lots; and, to take such steps as are reasonably necessary to make such replatted lot or lots suitable and fit as a building site or sites, said steps to include, but not be limited to, the relocation of easements, walkways and rights of way to conform to the new boundaries of the said replatted lots.

1. Construction activity on a lot shall be confined within the boundaries of said lot. Each lot owner shall have the obligation to collect and dispose of all rubbish and trash resulting from construction on his lot. All requests for approval of plans and construction of any house on any lot as hereinafter provided shall be accompanied by a \$100.00 deposit against clean-up to be held in escrow by the Company or the Architectural Control Committee. Upon completion of construction and the completion of clean-up, the \$100.00 deposit shall be returned to the depositor thereof. Upon a lot owner's failure to collect and dispose of such trash within thirty days after receipt of a written notice from the Company or the Architectural Control Committee, the company or Architectural Control Committee may collect and dispose of such rubbish and trash and deduct the cost thereof from the clean-up deposit.

ii. The exterior of any structure under construction on any lot must be completed within six months after the beginning of construction, acts of God notwithstanding.

### ARTICLE III

#### DESIGN AND ARCHITECTURAL CONTROL:

The following design and architectural control restrictions shall apply for all lots:

A. No structure shall be erected, altered, placed or permitted to remain on any lot other than a detached single family dwelling not to exceed two and one-half stories in height, above floor or piling level; except, however, waterfront lots as may be developed in other phases of Dolphin Bay shall not have structures exceeding two stories above floor or piling level. Provided, however, the duplex currently constructed on Lot 5 of Dolphin Bay, Section 1 (Revised) may be maintained as two units by a future owner or owners, so long as the structure is used for residential purposes only after sale by the Company.

B. Small accessory buildings (which may include a detached garage, but not garage apartments) are allowed, provided such

buildings are not used for any activity normally conducted as a business, or a residence, and provided further that any such buildings shall be constructed of similar materials and design as the main structure upon said lot. No accessory buildings as defined above shall be constructed prior to the construction of the main building on any lot, and none shall be constructed without the prior approval by the Company or the Architectural Control Committee.

C. No single family dwelling design or plan will be approved by the Company or the Architectural Control Committee unless the proposed dwelling will have the minimum required square footage of "enclosed dwelling areas". No dwelling smaller than 1,250 square feet for one story structures, nor smaller than 1,000 square feet on the first level of structures in excess of one story shall be allowed on any lot. Said measurements shall be by exterior finish, which said square footage shall be exclusive of porches, steps, walks, garages, carports, storage areas and the like.

D. Any structure erected on the lots shall be of wood frame, brick or stucco exteriors and the design, as well as the materials used, as stated hereinafter, shall be subject to the prior written approval of the Company or the Architectural Control Committee. No concrete block, concrete brick, asbestos siding, cinderblock or aluminium siding shall be used for the exterior of any residence constructed on any lot nor shall composition tar paper exterior dwellings be permitted.

E. Since the establishment of standard inflexible building setback lines for location of houses on lots tends to force construction directly to the side of other homes with detrimental effects on privacy, view preservation of important trees and other vegetation, ecological and related considerations, no specific setbacks lines are established by these restrictions, as long as said structures meet the minimum setback and sideline limitations established from time to time by the New Hanover County Board of Commissioners. In order to assure, however, that the foregoing considerations are given maximum effect, the Company or the Architectural Control Committee reserves the right to control and approve absolutely the site and location of any house or dwelling or any structure upon any lot, subject to the limitations herein set forth.

F. No trees of any size exceeding five (5) inches in diameter measure one (1) foot above the ground, may be removed from any lot without the prior written approval of The Company or the Architectural Control Committee, said approval to be based upon a site plan, landscaping plan, or planting plan submitted to the Company or the Architectural Control Committee by the lot owner or his agent.

G. Architectural Control Committee:

i. The Company, in conjunction with The Dolphin Bay Home Owners Association, shall create and establish an Architectural Control Committee for the purpose of reviewing and approving any and all proposed buildings and improvements as to conformity and harmony of external design and consistency with plans of existing residences or other buildings and site locations.

ii. In addition to its duties of review and approval of external harmony and design, the Architectural Control Committee shall monitor the compliance with all use restrictions, design and architectural control provisions and conditions and other restrictions, including (but not by way of limitation) prohibited activity, building setbacks, minimum floor areas, natural growth preservation and utility easements, and all improvements. The

Architectural Control Committee shall report such violations as may come to its attention to the Company or the Home Owners Association for appropriate actions of enforcement.

iii. The Architectural Control Committee shall be composed of a minimum of three representatives, appointed by the Company with the advice of the Board of Directors of the Home Owners Association, and as soon as is practical, the Committee shall include at least one permanent resident of the Dolphin Bay Development. Until such time as the Architectural Control Committee has been established, the Company shall perform the functions as outlined above and elsewhere herein; The Architectural Control Committee shall be created by the Company in conjunction with the Board of Directors of the Home Owners Association as soon as is reasonably practical, at which time the Architectural Control Committee shall undertake the performance of the duties outlined above. Where the terms "The Company or The Architectural Control Committee" has been used, this term shall be construed to mean that only one of the two entities will perform the duties and function, and when the Architectural Control Committee is established, that Committee will perform the duties and functions as outlined above. Upon the appointment and organization of the Architectural Control Committee, the Committee shall adopt such administrative procedures as will insure the submission, review and approval of any and all buildings and/or improvements constructed.

H. No fence, wall or hedge in excess of five feet in height shall be erected or permitted on any lot. No fence, wall or hedge, or any portion of a fence erected shall be closer to the front line of any lot than the rear corner of any dwelling erected on said lot. All fences shall be of wood, and no wire or chain fence of any nature shall be permitted.

I. No buildings, fence, wall or other structure shall be erected, placed or altered on any lot until the proposed building plans, specifications, exterior finish, site plan showing location of each building or structure, general grading and landscaping plan and construction schedule shall have been approved in writing by the Company or the Architectural Control Committee. Refusal or approval of any such plans, location or specifications may be based by the approving authority on any ground, including purely aesthetic and environmental considerations that in the sole and uncontrolled discretion of the approving authority shall deem sufficient. Failure of the Architectural Control Committee to issue a written approval or denial for properly submitted plans within twenty days after submission shall be construed as an approval of said plans. The proposed building plans shall include the specifications, finishes, materials, site and grading plan (showing the proposed location of such buildings or structures, drives, parking areas, fences, walls, mail receptacles, and any proposed alterations to the grade, elevation or physical characteristics of the site) and said building plans shall include the construction schedule.

J. Each lot owner shall provide receptacles for garbage in a screened area on his lot not generally visible from any street or road or other lots, or shall provide underground garbage receptacles for similar facilities. Garbage receptacles shall not be visible from the street, except on garbage pick-up days.

K. No fuel tanks or similar storage facilities may be exposed to view on any lot. Any such facility must be installed only within the main residential dwelling, within an accessory building, within a screen area, or buried under ground.

L. Each lot owner shall provide adequate space on his lot for off street parking for not less than two passenger automobiles prior to the occupancy of any single family dwelling

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constructed on said lot. Said parking areas and driveways thereto shall be in accordance with reasonable standards and shall be constructed of asphalt, crushed stone or crushed shells, or any other material approved by the Company or the Architectural Control Committee as provided above. To maintain proper traffic control, curb side parking is not allowed. In addition, all boats not in slips must be stored in carports or driveways.

## ARTICLE IV.

## EASEMENTS AND PROPERTY RIGHTS:

A. The Company, by these presents, hereby establishes, grants, gives and conveys to each and every future owner of a lot in Dolphin Bay, Section I (Revised) and to each and every future owner of lots created under future phases of development of Dolphin Bay, if any, an easement of ingress, egress and regress over and across all of the private roads and streets of Dolphin Bay, Section I (Revised) as shown on a map thereof, and as have already been constructed on the ground on the overall tract owned by the Company, referred to hereinabove; provided however, that the obligation to maintain said private roads and streets, including, but not limited to, the repaving, repair and regrading thereof, shall be the mutual responsibility of the owners, including the Company so long as it is the owner of platted lots of record, acting by and through the Association. The cost of said maintenance shall henceforth be a common expense of the Association, and each member thereof shall be assessed his prorata share of the annual cost hereof as part of his annual assessment, as stated hereinbelow. It is the intent of The Company that this grant of easement be deemed hereinafter as an appurtenance to each and every lot within Dolphin Bay, and any conveyance or transfer of the title to any lot in Dolphin Bay shall be deemed to include this easement, whether expressly stated therein or not. THE COMPANY EXPRESSLY RESERVES UNTO ITSELF, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, POWER AND PRIVILEGE TO GRANT AN EASEMENT OF INGRESS, EGRESS AND REGRESS OVER AND ACROSS THE PRIVATE ROADS AND STREETS OF DOLPHIN BAY TO OTHER OWNERS OF REAL PROPERTY LOCATED TO THE NORTH AND SOUTH OF THE DOLPHIN BAY DEVELOPMENT, UPON SUCH TERMS AND CONDITIONS AS THE COMPANY ALONE DEEMS NECESSARY.

B. The Company, by these presents, hereby further establishes, grants, gives, and conveys to each and every future owner of a lot in Dolphin Bay, Section I (Revised) and to each and every future owner of a platted lot in future phases of Dolphin Bay, if any, an easement of access, use and enjoyment to and of the swimming pool, the swimming pool area, and the adjacent club house and area, including the parking area adjacent to the swimming pool and club house area and, by these presents, The Company hereby establishes, grants, gives and conveys to each and every future owner of a lot in Dolphin Bay, Section I (Revised) and to each and ever future owner of a platted lot of additional phases of Dolphin Bay, if any, an easement of access, use and enjoyment of the fishing pier and gazebo constructed on a portion of the overall tract owned by the Company and extending therefrom over and across the waters of Myrtle Grove Sound which border the tract owned by the Company, and, additionally, this grant further extends to an easement of access, use and enjoyment of the boat basin pier facility which the Company has had or is having had constructed upon a portion of the Company's overall tract adjacent to Myrtle Grove Sound and extending therefrom over and across the waters of Myrtle Grove Sound which border the overall tract of the Company; PROVIDED, HOWEVER, the enjoyment and use of said areas, being the swimming pool area and the adjacent club house area, the adjacent parking area, the fishing pier and gazebo area shall be subject to the provision that all owners of lots share equally in the cost of maintaining the easement area and the improvement thereto, said cost of

maintenance to be borne by the lot owners through the annual assessments paid to the Home Owners Association; and, provided, further, that those lot owners within Dolphin Bay, present and future phases, if any, who shall purchase from the Company an individual boat slip within the docking facility as an appurtenance to their lot, shall be assessed an annual fee for the maintenance of said dock area as an additional annual assessment payable to the Home Owners Association, being an additional sum equal to the same sum as is assessed to lot owners not owning an individual boat slip within the dock area, payable over and above the amount required as the general assessment payable by each lot owner.

The easement hereby granted shall be for the following purposes and no others:

a. for ingress, egress and regress to the swimming pool area, club house area and adjacent parking area, the fishing pier and gazebo and docking area, referred to hereinabove, and across pathways, if any from the roads constructed in the overall development of Dolphin Bay;

b. for continually maintaining, repairing and replacing the marl, crushed stone or shell or asphalt drive and parking area with said easement;

c. for continually maintaining thereon, repairing and replacing the private pier and gazebo area structures, referred to hereinabove, the swimming pool area, the club house area and the parking area;

d. for continually maintaining, repairing and replacing the docking facility as presently installed (this provision is applicable to those lot owners who shall also purchase a boat slip within the dock);

e. for future dredging of said areas of Myrtle Grove Sound for the purpose of maintaining the dock as may be necessary (this provision is applicable to those lot owners who shall also purchase a boat slip within the dock);

f. for the docking of boats, privately owned by the owners, along said docking facility within one of the slips of said docking facility, each owners slip to be designated by the Company by a number corresponding to the number of the lot owned by each owner which said slip number shall be affixed to the slip along said private docking facility to be used by the owner thereof (this provision is applicable to those lot owners who shall also purchase a boat slip within the dock);

The Company does hereby agree and therefor declare that :

i. the easements granted hereinabove shall not be severable from the ownership of the lot to which it is an appurtenance; and, the Company shall not hereafter give, grant or convey this easement to any other person or entity not owning a lot within Dolphin Bay, Section I (Revised) or future lot owners who purchase lots within future phases of the Dolphin Bay Development, if any, within the overall tract of Dolphin Bay as described hereinabove; it being the expressed intent of the Company that this easement is given, granted and established for the sole and exclusive use and enjoyment of the owners of the residential lots of Dolphin Bay and no others; and, further, that the Company, as any other owner, so long as it shall own lots within the Dolphin Bay development, be entitled to the use and enjoyment of the easement area;

ii. the privilege to enjoy said easement may not be delegated by any owner to anyone other than members of his family, his guests or tenants of his lot;



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iii. the cost of maintaining, repairing and replacing all of the improvements upon said easement, plus the costs of all utility services provided the easement area, as well as the local ad valorem taxes levied upon the easement area, shall be borne by all of the owners as members of the Association, and shall be paid by the Association. All said costs henceforth shall be a common expense of the Association; and each member thereof will be assessed his prorata share thereof as part of his annual assessment; provided, however, the additional assessment as described above pertaining to the owners of boat slips shall be payable to the Association for the maintenance, utility services, ad valorem property taxes, and future dredging, if any, payable by the "boat slip owners" to the Association in accordance with the formula described above.

C. Every owner shall have a right and easement of enjoyment in and to any and all other common areas which are owned or leased by the Association for the enjoyment of the owners; this right and easement of enjoyment shall be appurtenant to and shall pass with the title to every lot.

#### ARTICLE V.

##### THE ASSOCIATION:

A. Membership and Voting Rights: The qualifications for membership in the Association, the manner of admission to membership in the Association, the manner of termination of such membership, and the voting rights of the members of the Association shall be as set forth in Article VII of the Articles of Incorporation of the Association which are recorded in Book 1238 at Page 503 in the Office of the Register of Deeds of New Hanover County, North Carolina, the provisions of said Article VII being incorporated herein by reference.

B. Assessments, Liability, Lien and Enforcement: The Association has heretofore been given the authority to administer the operation and management of the common areas of the property, it being recognized that the delegation of such duties to one entity is in the best interests of the owners of all residential lots in Dolphin Bay, Section I (Revised) and future sections, if any. To properly administer the operation and management of the common areas, the Association will incur, for the mutual benefit of all the owners of residential lots, costs and expenses sometimes herein referred to as "common expenses". To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make, levy and collect assessments against the members of the Association and their residential lots. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation of, the management of, and for capital improvements to the common areas, which for the purposes of these Articles shall be deemed to include, but not be limited to, the private streets and roads of Dolphin Bay and all of the improvements made to the easement areas described above for swimming pool area, club house area, adjacent parking area, fishing pier and gazebo area, docking facility area and pathways thereto, the following shall be operative and binding upon the owners of all residential lots:

B.(1) Creation of the Lien and Personal Obligation of Assessments:

The Company, for each lot owned within the property, and each owner for 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 the Association:

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1. annual assessments or charges, and
  - ii. special assessments for capital improvements or special assessments as established by the Board of Directors of the Association, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with the interest, costs and reasonable attorney's fees, if any, shall be a charge on the lots and shall be a continual lien upon each lot against which they are levied. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person or entity who is the owner of such lot at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to any successor in title unless expressly assumed by him.

PROVIDED, The Company shall be exempt from the payment of the yearly assessment fee for any unsold lots which are platted of record in the Office of the Register of Deeds of New Hanover County, during the period three years after the date that such lots are platted of record as lots in sections of Dolphin Bay. This provision shall apply to Dolphin Bay, Section I (Revised) and to future sections, if any, as may be platted in the Office of the Register of Deeds of New Hanover County. Upon the expiration of three years from the date of the recordation of said plat or plats, the obligation of the Company to pay the pro-rata share of the annual assessment of that year remaining shall be due, and accrual of the obligation to pay assessments to the Association shall not begin until that date.

B.(2) Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the property and in particular for the maintenance, repair and replacement of any and all improvements made to the easements and common area above provided, the maintenance of all private roads and streets of the property, as have been mapped or constructed within the overall tract of Dolphin Bay, as well as the acquisition and maintenance of any and all other common areas of the property, including but not limited to, the cost of repairs, repaving, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payments of taxes assessed against the easement areas and common areas, utility services and the procurement and maintenance of insurance as may be deemed necessary by the Board of Directors. The annual assessment charged to the owners of boat slips shall be collected as hereinabove provided and maintained by the Association for the purpose of maintenance, repairing, making replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes, utility services and the procurement of insurance as may be deemed necessary for the docking facility.

B.(3) Initial and Maximum Annual Assessment: The initial assessment payable to the Association shall be prorated and paid at the time of closing of the purchase of a lot, so that all payments thereafter shall be due on January 1 of that year. However, no assessment will be collected for the calendar year 1983. The initial assessment payable to the Dolphin Bay Home Owners Association is to be \$150.00 per annum, and the maximum annual assessment for each calendar year thereafter shall be established by the Board of Directors of the Association and may be increased by the Board of Directors for any calendar year without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year.

The maximum annual assessment for any calendar

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year may be increased without limit by a vote of two-thirds of the members who are voting in person or by proxy at a meeting called for this purpose.

Excess amounts collected through assessments for any particular calendar year shall be carried over to the next budget year, and said sums carried over shall be considered by the Board of Directors of the Association in formulating the budget for the approaching year and arriving at the assessments required of the lot owners for the approaching year.

B.(4) Special Assessments for Capital Improvements: In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair, replacement or repaving of a capital improvement to the private roads and streets of the property, the easement areas described above, or any other common area of the property, including fixtures and personal property related thereto, provided that any such assessments shall have the assent of two-thirds of the vote of the members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed to the uniform rate for all lots and may be collected on a schedule determined by the vote of the members at said meeting. Provided, however, special assessments required for capital improvements to the docking facility shall not be assessed to those lot owners in the development who do not own a boat slip within the docking facility.

B.(5) Notice and Quorum for any action authorized under Sections B(3) and B(4): Written notice of any meeting called for the purpose of taking any action authorized under B(3) and B(4) shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of the 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 of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

B.(6) Books and Records: The Books and Records of the Association will be kept in such a manner that it is possible to determine and ascertain such sums as are expended by the Association for the development, improvement, maintenance and up keep of all common area facilities of the Association.

B.(7) Date and Commencement of Annual Assessments; Due Dates: The annual assessments provided for herein shall be collected on an annual basis and shall commence as to all lots on the first day of January, 1984, and thereafter as to owners other than The Company, on the first day of the each calendar year following the conveyance of a lot to any such owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year, subsequent to January 1, 1984. At least thirty days in advance of each annual assessment, the Board of Directors shall fix the amount of the annual assessment to every owner subject thereto. 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. The provisions of B.(1) shall be applicable to payment of assessments by the Company.

B.(8) Effect of Nonpayment of Assessments; Remedies of the Association: Any assessment not paid within thirty (30) days

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after the due date shall bear interest from the due date at the rate of ten percent (10%) 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, and interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of any of the common areas or abandonment of his lot.

B.(9) Effect of Default in Payment of Ad Valorem Taxes or Assessments for Public Improvements by the Association: Upon default by the Association in the payment to any governmental authority entitled thereto of any ad valorem taxes levied against any of the common areas owned by the Association or assessments for public improvements to the common areas, which default shall continue for a period of six months, each owner of a lot in the Development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of lots in the Development. If such sum is not paid by the owner within thirty days following the receipt of notice of the amount due, then said sum shall become a continuing lien on the lot of the then owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may bring either an action at law or may elect to foreclose the lien against the lot of the owner.

B.(10) Subordination of Lien to Mortgages: The lien provided for herein shall be subordinated to the lien of any mortgage, mortgages, deed of trust, or deeds of trust. The sale or transfer of any lot shall not affect the assessment lien or liens provided for in the preceding sections. However, the sale or transfer of any lot which is subject to any mortgage or deed of trust pursuant to a foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer. No such sale or transfer shall release such lot from liability for any assessments thereafter becoming due or from the lien thereof. But the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust, or deeds of trust.

#### ARTICLE VI

##### THE COMPANY'S RIGHTS:

A. The Company reserves unto itself a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric and telephone poles, wire, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone, television and cable facilities, gas, sewer, water or other public conveniences or utilities on, in or over the rear ten (10) feet of each lot, the front ten (10) feet of each lot and the ten (10) feet along one side of each lot and such other areas as are shown on the map of the property referred to hereinabove. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary in the opinion of the Company to provide an economical and safe utility installation.

The Company shall have no responsibility for maintaining drainage easements in connection with any lots sold. All maintenance shall be the responsibility of the purchaser of a lot, his heirs, successors and assigns, within said easements for drainage. No structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may

change the direction of flow of drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

B. The Company reserves the right to subject the property to easements and contracts with electric, telephone, cable television, and other utilities for the installation of underground cables, wires, pipes, or other necessary conduits for utilities, any of which may require an initial payment and continuing monthly payments for the use thereof by the owners of single family residences within the property.

#### ARTICLE VII

##### ANNEXATION OF ADDITIONAL PROPERTIES:

A. Except as provided in Paragraph B below, the annexation of additional properties to Dolphin Bay shall require the assent of two thirds of the members of the Association at a meeting duly called for the consideration of such matter, written notice of which shall be sent to all members not less than thirty days nor more than sixty days in advance of the meeting.

B. If the Company, its successors or assigns, shall develop further phases within the overall tract of Dolphin Bay currently owned by the Company, such additional phases shall be annexed to Dolphin Bay and be encompassed within and subject to this Declaration of Articles of Covenants, Conditions and Restrictions without the assent of the membership of the Association, and the development of the additional phases described in this section shall be in accordance with the same general scheme of development as Dolphin Bay, Section I (Revised).

#### ARTICLE VIII.

##### GENERAL PROVISIONS:

A. All covenants, conditions, restrictions and affirmative obligations set forth in these Articles shall run with the property and all portions thereof, and be binding on all parties having any right, title or interest in the property, or any portion thereof, their heirs, devisees, successors and assigns, and shall inure to the benefit of the same, for a term of ten years from the date these Articles are recorded in the New Hanover County Registry, after which time these Articles shall be automatically extended for successive periods of ten years, unless ninety percent (90%) of the then owners agree to revoke the same. These Articles may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the owners and recorded in the New Hanover County Registry, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the owners and recorded in the New Hanover County Registry.

PROVIDED, however, at any time prior to June 15, 1985 these Articles may be amended by the Company at its discretion but not to impair the value of any property of the lot owners. Future amendments by the Company may concern, but not be limited to, the clarification of and giving of future descriptions to the common areas of the development once they have been constructed or platted of record.

B. The invalidation of any one of the covenants, conditions or restrictions contained in these Articles by any court, agency or legislature shall in no way affect any of the other covenants, conditions or restrictions contained in these Articles and they shall remain in full force and effect.

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C. Nothing in these Articles, nor in the recording of any plat or deed pursuant hereto, shall dedicate (or be deemed to dedicate) to public use any of the property.

D. The Association, The Company, and any owner, shall have the right to enforce, by any proceeding at law or in equity, all of the conditions, covenants and restrictions of these Articles, and any and all liens hereinafter imposed pursuant to the provisions of these Articles. (The term "any owner" shall not be deemed to be a trustee or mortgagee under a deed of trust on the property) Failure by the Association, The Company, or any owner to enforce any of the above shall in no event be deemed a waiver of the right to do so thereafter. In addition to the foregoing the Company shall have the right, whenever there shall have been built on any lot any structure which is in violation of these Articles, to enter upon said lot where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty days written notice of such violation the same shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass.

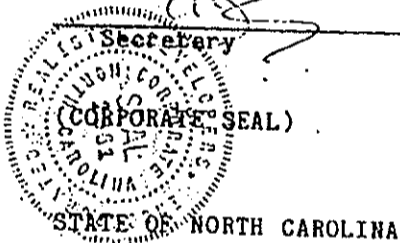
E. Additional residential property and common areas may be annexed to the property as provided in Article VII hereinabove.

IN WITNESS WHEREOF, THE COMPANY has caused this Declaration to be signed in its corporate name by its President and attested by its Secretary and sealed with its corporate seal, all the day and year first above written.

REALISTIC DEVELOPERS, INCORPORATED

BY [Signature]  
President

ATTEST:



COUNTY OF NEW HANOVER

I, Susan M. Apcer, a Notary Public in and for the state and county aforesaid do hereby certify that Paul G. H. Lai personally appeared before me this day and acknowledged that he is the Secretary of Realistic Developers, Inc., a North Carolina corporation, and that by authority duly given and as the act of the Corporation the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary.

Witness my hand and notarial seal, this 9th day of November, 1983.



[Signature]  
Notary Public

My Commission Expires:  
MY COMMISSION EXPIRES  
APRIL 21, 1988

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JOINDER AND CONSENT OF BENEFICIARY/MORTGAGEE

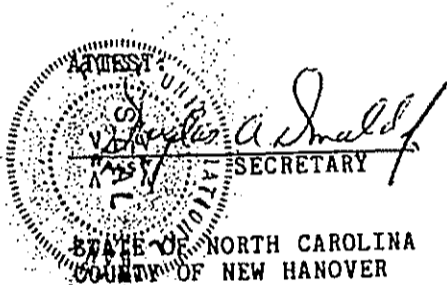
FIRST UNION NATIONAL BANK, and ROBERT W. HELMS, as Trustee, join in the Execution of this Declaration for the sole purpose of subjecting and submitting, and they, and each of them, do hereby submit and subject, the property described therein and any and all interests that they or either of them has, and may have, by virtue of that Deed of Trust recorded in Book 1222 at Page 1023 of the New Hanover County Registry to this Declaration of Articles of Covenants, Conditions and Restrictions, and to the By-Laws, Rules and Regulations and other documents related to and promulgated by The Dolphin Bay Homeowners Association, Inc., as the same be and may be amended or supplemented from time to time.

IN WITNESS WHEREOF, ROBERT W. HELMS, as Trustee has hereunto set set his hand and seal, and FIRST UNION NATIONAL BANK, has caused this Joinder and Consent to be executed by its duly authorized officers and its corporate seal to be affixed hereto, this the 10<sup>th</sup> day of November, 1983.

Robert W. Helms (Seal)  
Robert W. Helms, Trustee

FIRST UNION NATIONAL BANK

BY Robert W. Helms  
VICE PRES



I, Sandea P. Harris, a Notary Public in and for the state and county aforesaid do hereby certify that Robert W. Helms, in his capacity 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 notarial seal, this the 10 day of Nov, 1983.  
Sandea P. Harris  
Notary Public  
My Commission Expires Apr 30, 1987

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Sandea P. Harris, a Notary Public in and for the state and county aforesaid do hereby certify that Douglas A. Donald, Jr personally appeared before this day and acknowledged that he is the ASST Secretary of First Union National Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its VICE President, sealed with its corporate seal and attested by himself as its ASST Secretary.

Witness my hand and notarial seal this the 10 day of Nov, 1983.  
Sandea P. Harris  
Notary Public  
My Commission Expires: Apr 30, 1987

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STATE OF NORTH CAROLINA, New Hanover County  
The Foregoing Certificate(s) of SUSAN M. Green and Sandra P. Harris, Notaries Public

This 11th day of November A.D., 19 83

(is/are) certified to be correct.

Rebecca P. Tucker, Register of Deeds

By Linda P. Abster,  
Deputy

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