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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF CYPRESS ISLAND, PHASE I  
A PLANNED UNIT DEVELOPMENT

THIS DECLARATION, made this 30th day of September, 1997,  
by CYPRESS GREEN, INC., a North Carolina corporation, hereinafter  
referred to as the "Developer":

100114

WITNESSETH:

WHEREAS, the Developer is developing certain real estate  
located in New Hanover County, North Carolina, which is more  
particularly described as follows:

See Exhibit "A" attached hereto and incorporated.

WHEREAS, the Developer desires to impose the following uniform  
covenants, conditions and restrictions upon said real estate and  
the future phases, if any, brought within the development of  
Cypress Island;

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

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ARTICLE I

DEFINITIONS

RECORDED & VERIFIED  
MARY SUE OOTS ✓  
REGISTER OF DEEDS  
NEW HANOVER CO. NC

Section 1. "ASSOCIATION" shall mean and refer to the CYPRESS  
ISLAND HOA, INC., a non-profit North Carolina corporation, its  
successors and assigns.

Section 2. "Common Area" shall mean and refer to all real  
property owned or acquired by the Association for the common use  
and enjoyment of the Owners, together with any common area  
designated on each map recorded for Cypress Island. Common area  
may be conveyed to the Association as additional phases are added  
to Cypress Island or otherwise. Common area shall not include any  
property acquired by the Association as a result of foreclosure or

deed in lieu of foreclosure of an Owner's property for nonpayment of assessments, taxes or any security interest against the property or acquired in any other way, unless the Association elects to retain such property and use it as common area. The upkeep and maintenance of the private roads located within Cypress Island, to include all phases, shall be the responsibility of the homeowners association.

Section 3. "Declarant" or "Developer" shall mean and refer to CYPRESS GREEN, INC., a North Carolina corporation, its successors and assigns.

Section 4. "Development" shall mean and refer to the whole of the planned residential development to be known as Cypress Island which shall consist of all the real property, which has been subdivided into lots shown on maps of Cypress Island referred to hereinabove, the common elements, plus the improvements to the common elements, as described hereinabove; plus any additional phases which may be made a part of this development at a later time with the express stipulation that any additional phase be contiguous to the herein described planned development, and said additional phase be for residential (i.e. single family, townhouse, condominium, residential lot) purposes only and developed in a manner not inconsistent in value to the herein described development.

Section 5. "Lot" and/or "Unit" shall mean and refer to any of the numbered units or lots, whether a lot, townhouse or condominium on each map of property within Cypress Island as is recorded in the New Hanover County Registry, with the exception of the common areas.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, Townhouse or Condominium which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Properties" shall mean and refer to that certain real property hereinabove described, and such phases or additions thereto as may hereafter be brought within the jurisdiction of the

Association by Declarant. It is contemplated by Declarant that Cypress Island may have more than one phase, in which event separate maps may be recorded to reflect the various stages of development of this project both in the initial phase and any subsequent phases.

ARTICLE II

PROPERTY RIGHTS

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

- A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area;
- B. The right of the Association to limit the number of guests of members;
- C. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot, Townhouse or Condominium remains unpaid; and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;
- D. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. Except for the grant or conveyance of a standard utility easement in order to obtain utility service to the common area, no such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded, provided, however, that the Association has the authority to dedicate the streets to the public. With respect to a standard utility easement permitting utility service to the common area, the Board of Directors may authorize the officers to execute such a grant or conveyance of the standard utility easements to the utility company without a vote of the membership of the association;
- E. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;

Section 2. DELEGATION OF USE: Any Owner may delegate, in accordance with the By-Laws but subject to the provisions of this document, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

HOMESOWNERS ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Cypress Island Homeowners Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot, Townhouse or Condominium which is subject to assessment. Each owner has the duty to comply with and obey these Articles, the Bylaws of the Association and the Rules and Regulations of the Association.

Section 2. Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with the Declaration and By-Laws; PROVIDED, HOWEVER, that all of the powers and duties of the Board of Directors may be exercised by the Declarant until such time as 90% of the undeveloped property in adjoining sections owned by Declarant have been sold and conveyed by the Declarant to purchasers or until June 30, 2004, whichever occurs first. Management and control may be transferred to the lot owners at any time, by the Declarant, at Declarant's discretion, but in all events, no later than 120 days after the happening of the earlier of the above events.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT: 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 the Association:

- A. Annual assessments or charges; and
- B. Special assessments for capital improvements, exterior maintenance and insurance in connection with common area property, such assessments to be established and collected as hereinafter provided; and a pro rata share of ad valorem taxes levied against the common area.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the

personal obligation of the persons who were the Owner of such property at the time when the installment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them; provided, however, such assessment shall always be a lien upon the land until paid, and no sale shall extinguish such assessment, except a foreclosure sale mentioned below in Section 11 of this Article IV.

It is expressly provided, however, that in consideration of the Declarant's prior construction of the amenities and improvements on the real estate which is to constitute the common area in this planned unit development, that the Declarant/Developer shall be exempt from and shall not have to pay assessments on any lots owned by it within this development or any subsequent phases.

Section 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 in the properties, for the improvements and maintenance of the common area, and to obtain and pay for insurance where authorized or required by this document, the corporate charter, the Bylaws, Action of the Board of Directors or members of the association.

Section 3. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in annual installments or to divide the annual assessment and have it paid in periodic installments throughout the year. 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 and for what period.

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 part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. SPECIAL ASSESSMENTS FOR INSURANCE: As an additional annual assessment, the Association shall levy against the owners equally an amount sufficient to pay the annual cost of all public liability and common area insurance premiums for the Association and its members, officers, Directors and employees. The Board of Directors (or its designee) shall, on behalf of the Association, as its common expense and at all times, keep the common property insured against loss or damage by fire or other hazards normally insured against at 100% of replacement costs and other risks including public liability insurance, in such terms and in such amounts as may be reasonably necessary from time to time to protect the common property on behalf of the Association. As a part of the annual assessments the Association shall also obtain and pay for such insurance policies and bonds that the Directors of the Association deem necessary or advisable including, but not limited to, officers' and Directors' liability coverage, fidelity bonds, casualty or hazard insurance or any other insurance for the Directors and officers of the Association or otherwise.

Section 6. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER ARTICLE IV FOR MEMBERSHIP: Written notice of any meeting called for the purpose of taking an action authorized under Article IV for the membership 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 the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at

the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. UNIFORM RATE OF ASSESSMENT: Both annual and special assessments must be fixed at a uniform rate for all Lots, Townhouses and Condominiums and may be collected on a monthly, annual or other basis as the Homeowners Association determines, save special assessments levied against any lot for casualty insurance as above required. Owners of townhomes and condominiums shall pay a separate, but uniform rate in addition to master homeowners association dues.

Section 8. EFFECT OF NON-PAYMENT OF ASSESSMENTS-REMEDIES OF THE ASSOCIATION: Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of fourteen percent (14%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

Section 9. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION: Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of three (3) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing government 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, Townhouses and Condominiums in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot, Townhouse or Condominium of the then Owner, his heirs, devisees, personal representatives and assigns, and the

taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

Section 10. SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage upon the property. Sale or transfer of any Lot, Townhouse or Condominium shall not effect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure of a deed of trust or mortgage, a deed in lieu of foreclosure, or any other proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot, Townhouse or Condominium from liability or any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V

#### USE RESTRICTIONS

Section 1. All lots within the development shall be used for single family residential purposes only, except for those lots owned by the Homeowners Association and used for the amenities package or otherwise held as common area. It is contemplated by the Developer/Declarant that it will develop future phases and nothing in these restrictions shall act to preclude Developer/Declarant from doing so with the express stipulation that any additional phase be contiguous to the herein described planned development, and said additional phase be for residential (i.e. single family, townhouse, condominium, residential lot) purposes only and developed in a manner not inconsistent in value to the herein described development.

Section 2. No building, fence, wall or other structure shall be commenced or erected or maintained upon any Lot nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, color, materials and location of the same, including any requirements for landscaping, sod or seed, shall have been submitted to and approved in writing as to the harmony of external

design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural review committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. All residences shall have landscaping (approved by the architectural review committee) in place within thirty (30) days of the issuance of a certificate of occupancy. Declarant, or its designee, is to be the Architectural Control Committee until all Lots in all phases are sold.

Without limiting the authority of the architectural review committee as set forth above, the following specific restrictions shall apply to each lot notwithstanding the failure of the board of Directors or the architectural review committee to act within thirty (30) days after plans or specifications have been submitted to it:

A. No single family residence smaller than 1,200 heated square feet, when measured by exterior surface, which square footage shall be exclusive of porches, steps, walks, garages, carports, storage areas, etc., shall be constructed or located in said subdivision. No structure shall be erected, altered, placed or permitted to remain in said subdivision exceeding two and one-half (2 1/2) stories in height above ground level, and one or more small accessory buildings (which may include a detached private garage but not garage apartments), provided, that such buildings are not used for any activity normally conducted as a business, and provided further that any such buildings shall be constructed of similar materials and design as the main structure upon such lot. No accessory buildings shall be constructed prior to the construction of the main building on any lot. All homes must be built on a crawl space, or on pilings. There shall be no residence built on a slab.

B. No concrete block, concrete brick, asbestos siding, stucco or cinder block shall be used for the exterior of any residence constructed on any lot nor shall composition tar paper exterior be permitted, it being intended that only conventional frame, wood siding or brick exteriors may be constructed on the lots subject to these covenants. All

residences must have a minimum double wide concrete driveway.

C. The allowable built-upon area per unit shall be limited to 3,200 square feet inclusive of right-of-way structures, pavement, walkways, or patios of brick, stone, or slate, not including wood decking.

Section 3. No house trailer, mobile home, tent, motorhome, shack or temporary structure of any nature shall be used at any time as a residence.

Section 4. 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 five (5) square feet in area may be used to advertise a complete dwelling for sale or a dwelling under construction. No "For Sale" signs are allowed on any vacant property. This covenant shall not apply to signs erected by the Declarant/Developer.

Section 5. No fence, wall, or hedge in excess of six (6) 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 upon said lot. All fences shall be wood and shall be stained in a color to match the house. No brick, stucco, chain link or wire fence shall be allowed.

Section 6. No animals, livestock, pigs or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed.

Section 7. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within the main dwelling house, within any accessory building, within a screened area, or buried underground. Satellite dishes and other large antennae are prohibited. However, a lot owner may install a satellite dish suitable for what is commonly known as "Direct T.V.". Said dish shall be no larger than 20" in diameter

and its location must be approved in writing by Declarant or Board of Directors.

Section 8. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, or unkept conditions of buildings or grounds on such lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

Section 9. 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 neighborhood. There shall not be maintained any plants or animals, or device or thing 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. No yard sales or garage sales shall be allowed on any lot in said Subdivision. In addition, no boat, motor boat, dune buggies, campers, motor homes, trailers, recreational vehicles, automobiles on cinder blocks, tractor-trailer trucks or cabs or similar type vehicles to any of the foregoing items shall be permitted to remain on any lot at any time, unless by consent of the Homeowners Association.

Section 10. No lot may be subdivided, or its boundary lines changed except with the prior written consent of the developer. However, the developer 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 suitable and fit as a building site, said steps to include but not be limited to, the relocation of easements, walkways, and right of ways to conform to the new boundaries of the replatted lots.

Section 11. Each lot owner shall provide receptacles for garbage and all cans, carts and bags must be kept in a screened area, accessory building or other storage facility, and not visible from the street, except on garbage pick-up days.

Section 12. (a) 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 the construction on his lot. Upon a lot owner's failure to collect and dispose of such trash within thirty (30) days after receipt of a written notice from the Homeowners Association, the Homeowners Association may collect and dispose of such rubbish and trash at the lot owner's expense. Any expense incurred by the Homeowner's Association pursuant to this paragraph shall constitute an assessment of the Homeowner's Association against said lot owners and the lot involved in the clean up, and said assessment shall be enforceable pursuant to the provisions of Article IV hereinabove, expressly including the right of the Homeowners Association to create a lien upon the lot to enforce collection of said assessment.

(b) The exterior of any structure under construction on any lot must be completed with six (6) months after the beginning of construction, acts of God notwithstanding.

(c) In addition, no large trees or natural foliage may be removed from a lot without the prior written approval of the developer.

Section 13. Water and sewer to all lots will be provided by private utility service. Shallow wells for the purpose of watering lawns and not for human use, may be permitted in accordance with applicable regulations. Any such well and pump house must be located no closer to the front lot line than the front of the residence constructed on said lot. Such well, pump, irrigation system shall be maintained by the lot owner in sound working order at all times.

Section 14. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown and designated on the plat of the said property. The developer shall have no responsibility for maintaining drainage easements in connection with any lots sold. All maintenance within said easements shall be the responsibility of the purchaser of a lot,

his heirs, successors and assigns. 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 easements 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.

Section 15. No residential unit may be leased except in accordance with rules and regulations promulgated by the Association. Any lease or rental (written or oral) on any residence or townhouse for a rental or lease period less than twelve (12) consecutive months is prohibited.

Section 16. Invalidation of any one of these covenants by judgments or court order shall in no way effect any of the other covenants herein, which shall remain in full force and effect.

Section 17. If the parties thereto, or any of them or their heirs and assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person or person, owning any real property situated in said Telfair Summit to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, and either to prevent him or them from so doing or to recover damages or other dues for such violations.

Section 18. All covenants, restrictions and affirmative obligations set forth in these Restrictions shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of the developer, for a period of twenty-five (25) years from the date hereof after which time all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the owners of a majority of the lots (not including mortgagees or trustees under deeds of trust) substantially affected by such changes in covenants, has been recorded, agreeing to change said covenants in whole or in part.

ARTICLE VI

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. It is contemplated by the Declarant, for itself and its successors and assigns, that additional contiguous land may be annexed as additional part of this development without the assent of the members, provided, however, the development of the additional lands described in this Section shall be in accordance with the same general scheme and subject to the same covenants, conditions and restrictions set forth hereunder, except as those that may be hereafter amended. Notwithstanding anything herein to the contrary, this Article VI shall not be subject to amendment by the Homeowners Association or lot owners, unless the Declarant as developer consents thereto, in writing.

ARTICLE VII

AMENDMENTS

At any time prior to December 31, 2004, these Restrictions may be amended by the developer at its discretion, but not to impair the property value of the lot owners. Thereafter, these restrictions may be amended by vote of the owners of two-thirds (2/3) of the members of the Homeowners Association, provided, however, no amendment shall be made to the last paragraph of Article IV Section 1 without unanimous consent of the Homeowners Association and the Declarant/Developer and provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements as herein provided, or affect any lien for the payment thereof established herein. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed and sealed this 30th day of September, 1997.

CYPRESS GREEN, INC.

By: [Signature] (SEAL)  
President

ATTEST:

[Signature]  
Secretary  


