

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

AGREEMENT TO RATIFY AMENDMENTS AND AMEND DECLARATION OF
COVENANTS AND RESTRICTIONS
FOR BRANDYWINE BAY DEVELOPMENT
(SECTIONS I & II)

This Agreement is made for purposes of reference the 16th day of March, 2009, by and between the undersigned Owners of Lots within that area of the Brandywine Bay development known generally as "Sections I and II" which Lots are shown on the maps described on Exhibit A attached hereto and are subject to the "Declaration of Covenants and Restrictions - Brandywine Bay Development..." dated January 21, 1980 recorded in Book 435, Page 362 Carteret County Registry, as amended. Brandywine Owners Association, Inc., (the "Association") a North Carolina non-profit corporation established in accordance with the provisions of the above referenced declaration, joins in the execution of this Agreement.

STATEMENT OF EXPLANATION

By a document titled "Declaration of Covenants and Restrictions - Brandywine Bay Development..." dated January 21, 1980 recorded in Book 435, Page 362 Carteret County Registry (the "Original Declaration" herein) and amended, or purported to have been amended, by documents identified on Exhibit B, the Lots within the maps described on Exhibit A, which are the Lots located in that area of the Brandywine Bay Development known as "Sections I and II," were, or purportedly were, made subject to the terms and conditions of the Original Declaration. Questions have subsequently arisen as to the validity or enforceability of certain of the amendments described on Exhibit B.

To insure that restrictions and covenants applicable in Sections I and II are enforceable, the Board of Directors of the Association has reviewed all of the declarations and amendments applicable or purporting to be applicable in those sections. At the conclusion of this review the Board has determined that the document captioned "Amendment to Declaration of Covenants and Restrictions Brandywine Bay Development" dated February 22, 1984 recorded in Book 494, Page 345, Carteret County Registry, likely is not enforceable in Section I.¹ Additionally the Board has determined that an instrument captioned "Amendment to

¹ This results from this purported amendment being "adopted" by a vote of the membership rather than by the owners of the affected properties signing and recording an agreement to change the covenants as is required in the Original Declaration.

Declaration of Covenants and Restrictions of Brandywine Bay, Section I and Section II" dated June 1, 1987 and recorded in Book 584, Page 481, Carteret County Registry is applicable to those Lots in the Brandywine Development known as "Section II" but likely is not valid as to the Section I Lots. ²

Notwithstanding the potential invalidity of these "amendments," properties within Section I, have generally been development and maintained in accordance with the provisions provided in said purported 1984 and 1987 amendments. Additionally, these purported amendments give the Owners of Lots in Sections I and II the right to appeal decisions of the Architectural Control Committee to the Association's Board of Directors, a right which most owners would view to be beneficial and appropriate.

The undersigned are a majority of the owners of the Lots within that area of the Brandywine Bay development known generally as "Sections I and II" which Lots are shown on the maps described on Exhibit A. The undersigned owners of the said Lots choose to enter this Agreement for the purpose of consolidating, ratifying, and adopting the provisions of amendment dated February 22, 1984 recorded in Book 494, Page 345, Carteret County Registry, and the amendment dated June 1,

² The original declaration for the Section II Lots recorded in Book 478, Page 484 provided for amendment of such declaration by a vote of the affected Lots rather than by a written and recorded agreement as was required by the Original Declaration for the Section I Lots.

1987 and recorded in Book 584, Page 481, and clarifying and amending said "amendments," to insure that all of the Lots in Sections I and II are subject to restrictions and covenants the undersigned owners and Association determine to be in the interests of the orderly development, redevelopment, possession, use and enjoyment of the Section I and II Lots.

As used in this Agreement the "Declaration of Covenants and Restrictions – Brandywine Bay Development ..." dated January 21, 1980 recorded in Book 435, Page 362 Carteret County Registry as amended, or purported to have been amended, by amendments recorded in Book 440, Page 213; Book 447, Page 118; Book 454, Page 83; Book 463, Page 154; Book 466, Page 260 and in Book UO 12, Page 266; Book 478, Page 484; Book 494, Page 345; Book 501, Page 467; and in Book 584, Page 481, all of the Carteret County Registry are collectively referred to as the "Sections I and II Declaration."

Additionally, while the Sections I and II Declaration has provided a basic framework for the development and use of properties within Sections I and II of Brandywine Bay, the Association and the undersigned Owners have identified additional covenants and restrictions that will give Lot Owners a clear understanding of their joint responsibilities in the Brandywine community, and such restrictions are included herein either by way of clarification of previous text in amendments or purported amendments or by including new text herein.³

³ Further, the Association administers various restrictions and covenants in the various areas of the Brandywine Bay Development, including but not being limited to areas of the development known as "The Honours" and Oak Drive

By signing below, it is the intent of each Owner to enter an agreement to change the provisions of the Original Declaration as provided herein.

AMENDMENT TO DECLARATION

NOW, THEREFORE, the undersigned Owners, being a majority of the owners of property to which the Sections I and II Declaration applies, agree that the provisions of said Sections I and II Declaration are changed and amended as follows. *(The specific references below to articles, section numbers, and paragraphs are to those contained in the "Original Declaration" as identified above.)*

1. Article II, Section 1, paragraph C, shall be deleted in its entirety, and there shall be substituted in its stead the following:

"Building" shall mean any structure built for the support, shelter, protection, screening, or enclosure of person, animals, chattels, or property of any kind. The term "building" shall be construed as if followed by the words "or parts thereof" including porches, decks, carports, garages, sheds, roof extensions, and overhangs and other projections. Any extensions or additions to an existing building shall be considered a part of the pre-existing building, and the building materials utilized are to be identical to or aesthetically compatible with the pre-existing structure or building.

Extension. The Board of the Association is requesting that the Owners in The Honours approve the same or similar provisions in this Agreement as amendments to the Honours declaration of covenants and restrictions in order to promote more consistency between the restrictions and covenants applicable in The Honours and those applicable in Sections I and II. The Board will determine from the owners in Oak Drive Extension whether a majority in that area favors amending the restrictions and covenants applicable therein to conform to the amendments provided in this Agreement and if so, an amendment as to the Oak Drive Extension Lots will be prepared, executed and recorded.

2. Article II, Section 1, paragraph D shall be amended by inserting a new sentence at the end as follows: Twelve (12) months shall be considered adequate time to complete construction of building once construction has begun.

3. Article IV, Section i, shall be deleted in its entirety, and there shall be substituted in its stead the following:

All lots designated "residential, single family" shall be restricted as to the use for residential, single family dwellings. No building shall be erected or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one-half stories in height including a private garage for not more than two automobiles, or carport for not more than two automobiles.

As to all lots purchased from the Declarant prior to March 6, 1984, the minimum space requires for residences on such Lots shall be as follows:

(a) All homes built on lots with any portion of said lot boundaries being joint boundaries with any golf course property shall contain a minimum of 1500 square feet of heated space;

(b) All other homes shall contain a minimum of 1400 square feet of heated space with the exception of homes in Section I, Map I-A, which shall be 1450 square feet.

For all lots purchased from Declarant or otherwise transferred from Declarant on or after March 6, 1984, homes on said lots shall contain a minimum of 1650 square feet of heated space.

All two-story houses built after March 6, 1984 shall contain a minimum of 1050 square feet of heated space on either the first or second floor in addition to the minimum total space requirements stated hereinabove.

Other than expressly permitted by this Article IV, Section i, no other building shall be permitted on any lot, except that one doghouse may be constructed on any lot and one pumphouse not to exceed 4' x 4' in size, the style and materials to be approved by the

Architectural Control Committee. This prohibition includes, but is not limited to utility buildings, storage buildings, or other so called outbuildings.

Notwithstanding the above, swimming pools constructed primarily below grade shall be permitted if a determination is made by the Architectural Control Committee that the location of the swimming pool is compatible with surrounding properties, and upon a determination that the swimming pool can be drained properly, without detriment to surrounding properties or to any drainage easement or waterway.

4. Article IV, Section iii, shall be deleted in its entirety, and there shall be substituted in its stead the following:

No property owner shall construct, or allow to be constructed, planted or installed on his lot any fence, barricade, or wall of any material, including shrubbery or vegetation, without the consent of the Architectural Control Committee applying the standards set out in Article V of these Covenants. In no event shall the Architectural Control Committee approve the erection or planting of such if the same exceeds five feet in height, except along the rear lines on McCabe Road, in which case the maximum height from general ground level permissible shall be eight feet.

5. Article IV, Section iv shall be amended by adding the following sentence at the end of the section: Any permitted "for sale" or "for rent" signs shall be removed immediately after execution of a binding sales or rental contract for the applicable lot.

6. Article IV, Section vii, shall be deleted in its entirety, and in its place shall be substituted the following:

TRAILER. No mobile home or house type trailer shall be permitted on any lot within the subdivision, except that a trailer may be utilized as a construction office in conjunction with, and during the period of construction of any building on a lot within the subdivision.

7. Article IV, Section viii, shall be deleted in its entirety, and in its place is substituted the following:

No animals other than cats or dogs or other generally accepted household pets shall be allowed on the properties. No owner shall be permitted to leave unattended outside the confines of his lot any household pet unless secured by leash.

8. Article IV, Section x shall be deleted in its entirety, and in its place shall be substituted the following:

All tanks such as propane, fuel or others shall be buried underground, with the exception of portable tanks, which shall be allowed in a place approved by the Architectural Control Committee.

9. Article IV, shall be further amended by including an additional Section xi, which shall read as follows:

xi. MOBILE VEHICLES AND BUILDINGS. These covenants shall not be interpreted to allow inclusion on any Lot of a temporary building, including but not limited to, any tent or any other non permanent structure. In addition, no motor home including recreational vehicle ("RV"), camper trailer, utility trailer, boat trailer, or boat, personal watercraft (PWC), jet ski, or all terrain vehicle (ATV) shall be allowed on any Lot for a period of time exceeding one successive week; in addition at least one week must elapse between the removal of any such device, and the relocation on the Lot for an additional one week of such device.

10. Article IV shall be further amended by including an additional Section xii which shall read as follows:

Section xii. Recreational Equipment

Recreational equipment, including but not limited to basketball goals, swing sets, sandboxes and tennis backboards, will be allowed on lots when approved by the Architectural Control Committee.

11. Article V, Section i shall be amended by inserting the following additional paragraph following the existing text:

All complaints pertaining to, or violations of, these covenants, whether regarding buildings, building

additions, fences, shrubbery, general appearance, or otherwise, shall be reported promptly to the chairman of the Architectural Control Committee.

12. Article V shall be amended by including an additional Section vi at the conclusion of the existing text:

vi. APPEAL. Any property owner submitting plans, as required by these covenants, to the Architectural Control Committee, shall be entitled to appeal to the Board of Directors of the Association any adverse ruling. In order to avail himself of this right of appeal, the aggrieved party must notify the Board of Directors, in writing, requesting a hearing, said notification to be given to the Board of Directors within seven days after his receipt of written notification of the adverse decision. The Association shall schedule the hearing within 14 days after receipt of said notice, shall give to the aggrieved property owner written notice of the date of said hearing, and shall give the property owner the right to appear and personally state his case. The decision of the Board of Directors of the Association shall be controlling in all such matters, and all owners hereby agree to be bound by such decision.

13. Article VI, Section i - UTILITIES shall be deleted in its entirety and a new Section i substituted as follows:

Water: Declarant covenants that either public or private water system(s) will be available to owners/purchasers of property in the Sections to which these covenants, or amendments thereto, apply and that such system(s) shall be sufficient to serve all lots and tracts. All users of said system(s) shall pay rates for the use of such water system(s) established by proper authorities for the use of such water system(s). Individual wells are prohibited except as used for swimming pools, landscape maintenance or air temperature control. Waste water from cooling and/or heating systems shall not be discharged into the sanitary waste treatment system(s).

Sewage Disposal: Declarant covenants that either public or private sewer system(s) shall be available to owners/purchasers of certain lots in the Sections

to which these covenants or amendments thereto apply, said lots being designated as follows:

SECTION I, Map I-A (Map Book 18, Page 13)

Public or private sewer services shall not be provided to these lots. Individual sanitary waste treatment facilities are permitted on all lots.

SECTION I, Map Book 1-B (Map Book 18, Page 94)

Public or private sewer services shall be provided to Lot Numbers 23, 30, 31 and 32. No individual sanitary waste treatment facilities are allowed on the foregoing lots. Individual sanitary waste treatment facilities are permitted on all other lots.

SECTION I, Revised Map 2 (Map Book 17, Page 43)

Public or private sewer services are provided to these lots. Individual sanitary waste treatment facilities are not permitted on any lots.

SECTION I, Map 3 (Map Book 17, Page 83)

Public or private sewer services shall be provided to Lot Numbers 6 through 12 in Block E and Lot Numbers 6, 7, 20, 21, 22, 23, 41 and 42 in Block G. No individual sanitary waste treatment facilities are allowed on the foregoing lots; individual sanitary waste treatment facilities are permitted on all other lots.

Section I, Map 4 (Map Book 18, Page 80)

Public or private sewer services shall not be provided to these lots. Individual sanitary waste treatment facilities are permitted on all lots.

SECTION II, Map One-A and Map 1-B (Map Book 20, Page 2 and Map Book 21, page 38 respectively)

Public or private sewer services shall be provided to only those lots in Section II, Maps One-A and 1-B as are not approved for individual sanitary waste treatment facilities by the appropriate governmental authority, at such time as the necessary permits are applied for. Individual sanitary waste treatment facilities are permitted on all lots subject to governmental approval. All lots to which sewer services are provided shall require tank and pump at owners' expense in order to hook onto the low-pressure pump system.

All users of such sewer systems shall pay rates for the use of said sewer systems as are established by the proper authorities.

14. The foregoing provisions are restatements, consolidations and clarifications of those two amendments, or purported amendments, to the Original Declaration such amendments being dated February 22, 1984 recorded in Book 494, Page 345 and dated June 1, 1987 and recorded in Book 584, Page 481, Carteret County Registry, which are ratified, clarified and adopted in this Agreement. But additionally the undersigned agree to amend, and do hereby amend, Article IV the Original Declaration to include a new Section xiii to be applicable to all Lots in Sections I and II as shown on the maps described on Exhibit A, as follows:

Section xiii. Prohibition of Nuisance.

No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon, nor allowed to exist thereon, which may become an annoyance or nuisance to the neighborhood.

The restatements, clarifications, ratification and amendments approved herein shall be effective upon the recording of this Agreement at the Carteret County Registry. Except as amended, the provisions of the Sections I and II Declaration, shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have signed this instrument.

BRANDYWINE OWNERS' ASSOCIATION, INC.

(corporate seal)

By: _____
President

Attest:

Secretary

State of North Carolina

County of Carteret

I, _____, a Notary Public, certify that _____ personally came before me this day and acknowledged that she is Secretary of Brandywine Owners Association, Inc. a North Carolina non-profit 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 herself as Secretary.

Witness my hand and official seal this ____ day of _____, 2009.

Notary Public

My Commission Expires:

Exhibit A

Maps of the Brandywine Bay Development

Containing the Lots in Sections I and II

(All recorded in the Carteret County Registry)

Section I, Map Two, Brandywine Bay Development, Map Book 16, Page 82

Section I, Map Two, Brandywine Bay Development, Revised Map, Map Book 17, Page 43

Section I, Map 3, Brandywine Bay Development, Map Book 17, Page 83

Section I, Map One-A, Brandywine Bay Development, Map Book 18, Page 13

Section I, Map Four, Brandywine Bay Development, Map Book 18, Page 80

Section I, Map One-B, Brandywine Bay Development, Map Book 18, Page 94

Section II, Map One-A, Brandywine Bay Development, Map Book 20, Page 2

Section II, Map I-B, Brandywine Bay Development, Map Book 21, Page 38

Exhibit B

Amendments to Brandywine Bay Declaration of

Covenants and Restrictions

(Sections I and II)

Amendment dated June 26, 1980 recorded in Book 440, Page 213
re-recorded in Book 440, Page 392

Amendment dated December 12, 1980, recorded in Book 447, Page 118

Amendment dated June 24, 1981 recorded in Book 454, Page 83

Amendment dated March 3, 1982 recorded in Book 463, Page 154

Amendment dated May 28, 1982 recorded in Book 466, Page 260 and in Book UO 12, Page 266

Amendment dated February 22, 1984 recorded in Book 494, Page 345

Amendment dated June 1, 1987 recorded in Book 584, Page 481

Note: Lots in Section II were brought under the jurisdiction of the Association by declarations/amendments dated March 31, 1983 recorded in Book 478, Page 484 and dated July 17, 1984 recorded in Book 501, Page 467, but these declarations/amendments contained certain additional restrictions and covenants, or variations thereof, than those applicable to the Section I Lots. By amendment dated June 1, 1987 recorded in Book 584, Page 481, the Section II Lots were submitted to the Original Declaration and the provisions of the declarations/amendments dated March 31, 1983 recorded in Book 478, Page 484 and dated July 17, 1984 recorded in Book 501, Page 467 were rescinded and invalidated as to the Section II Lots. The Agreement to which this Exhibit is attached, ratifies and adopts such action to the extent a question, if any, exists as to the effect of the amendment dated June 1, 1987 recorded in Book 584, Page 481.