



Prepared by: Aycock & Butler, PLLC
Return to: Aycock & Butler, PLLC

NORTH CAROLINA
DARE COUNTY

DECLARATION OF PROTECTIVE COVENANTS

THIS DECLARATION is made and entered into this the 21st day of April, 2008, by Aberdaron Ventures, Inc., a North Carolina corporation, being hereinafter referred to as the "Declarant" within this document.

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property known generally as "Hickory Ridge" Subdivision (Phases 1 and 2), located in the town of Kitty Hawk, Atlantic Township, Dare County, North Carolina, and more particularly described on Exhibit "A" which is attached hereto and incorporated herein by reference;

AND WHEREAS, the Declarant intends to convey said lots in the subdivision described on the plat referred to in "Exhibit A", by deed, deeds of trust, or other instruments to various persons, firms and/or corporations, subject to certain protective restrictions, reservations and covenants in order to insure the beneficial development of said subdivision as a residential subdivision and to prevent any such use thereof as might tend to diminish the value or enjoyment thereof, and it is the purpose of this Declaration to declare and make known the covenants, conditions and restrictions which shall apply to the lands subject to this Declaration.

NOW, THEREFORE, Declarant hereby declares and makes known that the following restrictions, reservations and covenants are hereby imposed upon the said subdivision which shall run with the land in the subdivision and shall be binding upon Declarant, its agents, heirs and assigns, and upon all parties and persons claiming by, through or under them.

1. Residential Use. All lots subject to this Declaration shall be used exclusively for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) single-family residence and appurtenances thereto, which shall be erected in conformity and compliance with the architectural guidelines set forth in subsequent paragraphs of this Declaration. No business or business activity may be carried on upon the property at any time, provided, however, that nothing herein shall preclude the Declarant, its agents, assigns, affiliates and employees from using all or part of the land or buildings owned by them for the purpose of carrying on business directly related to the development, sales and/or management of the subdivision by the Declarant.
2. Subdivision of Lots. No lot shall be subdivided, or its boundary lines changed, except with the prior written consent of the Declarant, however, it shall be permissible to combine two or more adjacent lots, which have a common ownership, into one tract of land for purposes of building a dwelling which would be authorized on such lots



individually. In the event of such a combination the setback requirements relating to the common boundary between the lots will not prohibit building upon that boundary so long as setback requirements relating to the outside border of that tract are met. This provision does not reduce or remove any other restriction which may exist as a result of this Declaration.

3. Architectural Review of Plans. No building, fences or other structure shall be erected, placed, moved onto, maintained or in any way altered on any lot within the subdivision until the proposed building plans, elevations, specifications, exterior color or finish, plot plans (showing proposed location and elevation of such building structure, drives and parking areas) have been submitted in duplicate to Declarant in writing together with an application fee of \$250.00, and such submittals have been approved by Declarant or its successors as evidenced by an approved copy of the elevation plans left in the permanent possession of the Declarant. The Declarant or its successor or designee may refuse to approve plans, locations or specifications upon any ground, including purely aesthetic considerations, which in the sole discretion of the Declarant shall seem sufficient. In the event that the foregoing submittals are not approved, there shall be a fee of \$50.00 paid with any resubmittals. Declarant shall have the authority to determine the location of any structure upon the lot and such location shall be in Declarant or its successor's sole discretion. No alterations in the exterior appearance of any building or other structure shall be made without like approval by Declarant or its successor. The minimum square footage shall be 2000 square feet of fully enclosed and heated floor area devoted to living purposes. Declarant shall have the authority to adopt Architectural Guidelines containing such additional requirements or changing the foregoing requirements, as Declarant may deem appropriate.
4. Natural Terrain. Property owners shall maximize the use of natural watershed terrains, for wastewater management. In addition, no hardwood tree (specifically excluding pine or gum trees) shall be removed, trimmed, damaged or otherwise altered, without the express written approval of Declarant or its successor.
5. Maintenance of Buildings. All buildings, structures and their appurtenances shall be maintained in a suitable state of repair; in the event of destruction or casualty, premises are to be cleared and debris removed within sixty days from the date of such casualty. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt condition of buildings and other structures or grounds on said owner's lot which shall tend substantially to decrease the beauty of the neighborhood and of the subdivision as a whole. Upon the failure of an owner to comply with this requirement, the Declarant reserves the right at its option, within three weeks after written notice has been mailed to such lot owner's last known address, to clean such property up or remove same if such property has been destroyed by fire or other disaster and Declarant's expense in so doing shall constitute a lien upon such owner's lot and improvements thereof, enforceable in the same manner as other liens described hereafter in the sections of this Declaration dealing with liens and assessments.
6. Maintenance During Construction. During construction of improvements on the lots within the subdivision, the lot owner or builder shall maintain facilities for or arrange for a portable toilet on the premises. During construction, the owner or builder shall maintain a trash or rubbish bin of a type and size sufficient to avoid trash or debris from spreading from the building site and shall cause such area to be maintained and cleaned periodically, both during and at the end of construction.
7. Completion of Construction. Construction of improvements on any lot must be substantially completed in accordance with the plans and specifications therefore within twelve (12) months of commencement.
8. Temporary Buildings. No trailer, mobile home, camper, tent, or temporary house, temporary garage, or other temporary out building shall be placed on any lot for the



purpose of use as a residence or for storage, except such temporary structures as may be ordinarily necessary for the storage of materials during construction. Notwithstanding the foregoing, Declarant or its successor shall have the right to require the removal of any trailer that may be permitted by this paragraph if, in the sole discretion of the Declarant or its successor, such trailer is of a size, color, or is otherwise out of character for the development or objectionable to Declarant or its successor for any reason.

9. Signs. There shall be no signs, billboards or advertising structures of any nature whatsoever placed on any lots and lands, except that one sign per lot, according to approval granted by the Declarant or the architectural review committee of the property owners association, shall be allowed for identification of the property owner and signs and notices of the property for rent or sale provided such sign shall be no larger than six square feet in size. Notwithstanding, Declarant may erect signs of such type, size, number or nature that it desires, to advertise and market the property which is subject to these covenants.
10. Animals. No animals, horses, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets, may be kept in a reasonable manner, provided they are not kept, bred or maintained for any commercial purpose, and provided, further, that such pets do constitute a danger or nuisance to other property owners or to the subdivision.
11. Easements. The Declarant reserves a perpetual, assignable and releasable easement and right-of-way on, in, over, and under the front five (5) feet of each lot for the purpose of drainage and the construction, installation and maintenance of utilities.
12. Roads. The lot owners shall be responsible for the maintenance and repair of the roads as shown on the plat of the subdivision until such time as maintenance may be assumed by the municipality or other governmental entity.
13. Occupancy. No residence erected upon any lot shall be occupied in any manner prior to completion of construction and connection of permanent utilities.
14. Water and Sewage. All wells and septic tanks installed on the property shall be in accordance with the rules and regulations of the North Carolina Department of Health and the Dare County Health Department or the successor agency to such agencies or departments and shall be located on such lands in positions approved by such departments. No outside toilets will be permitted under any circumstances; except temporary toilets used during construction.
15. Setbacks. No building shall be located or constructed closer to any lot line than the designated setback shown on the plat of the subdivision for each lot, or if no setback is designated, then no closer than the setbacks adopted for residential dwellings by the municipality or other appropriate governing authority.
16. Offensive or Illegal Activity. No noxious, offensive or illegal trade or activity shall be carried on upon any lot nor shall anything be done on any lot that shall be or become an unreasonable annoyance or nuisance to other lot owners, or the subdivision.
17. Variances and Modifications. As long as it owns five percent (5%) or more of the lots in the subdivision, Declarant reserves the right to include in any declaration, contract or deed thereafter made or entered into, such modifications and additions to these protective covenants, which will, in the sole opinion of Declarant, raise the standards, enhance the desirability of the subdivision as a residential area, or alleviate hardships. Declarant, (or the property owners association, after Declarant has given control to such association, acting through its appropriate boards or committee), may allow reasonable variances and adjustments of these covenants in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with



the intent and purposes hereof and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the subdivision.

18. Violations. If the owners or occupants of any lot, or all of them, or their successors and assigns, shall violate any of the covenants and restrictions herein, it shall be the right of the Declarant herein, or its successors and assigns, or any lot owner in the subdivision, to institute proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction for the purpose of preventing him or them from so doing, or to recover damages for such violation, or both. In addition, it shall be the right of the Declarant herein, or its successors and assigns, after notice and opportunity to be heard, to impose reasonable fines for reasonable periods for violations of any of the covenants and restrictions herein.
19. Severance. The failure of Declarant or any of such party entitled to enforce any protective covenant contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or effect its enforcement. Any provision of this declaration shall be deemed severable from the other provisions and in the event that any provision or portion of a provision or condition set forth within this declaration shall be deemed unenforceable, void, or unlawful, such a decision shall not effect the remainder of the covenants and conditions set forth within this declaration.
20. Continuation and Terminations. The foregoing conditions, reservations, declarations, covenants and easements shall run with the lands and be binding upon all purchasers of land or lots covered by these restrictions, and upon all persons or entities claiming under them through the 31st day of December, 2037, after which time the same shall be extended for successive periods of ten (10) years each, unless an instrument signed by 75% of the then owners of the lots subject thereto has been recorded, agreeing to change the restrictions and covenants in whole or in part. For the purpose of such vote, the owners will be entitled to one (1) vote per lot regardless of the number of persons or entities owning any one lot.
21. Rules. Declarant reserves the right to promulgate rules as to the use of the common areas and amenities in the subdivision, if any. At such time as the administration and upkeep of such properties shall become the responsibility of the property owners association as described hereinafter, the rule making authorities shall then pass to the property owners association.
22. Property Owners Association. At such time as seventy five percent (75%) of the lots within the subdivision are owned by persons or firms other than the Declarant herein, or at such time prior to such date as Declarant may desire, the process of approval described in previous paragraphs shall become the authority and responsibility of the owners association described in this declaration (or its designated architectural review committee), if it is at that time existing as an active entity or organization; and, until the owners association is so activated, and the authority is granted to the association by Declarant, the authority as described herein shall remain with the Declarant or the designee of the Declarant. Upon the transfer of the Declarant's rights and duties set forth in this Declaration to the association, the association shall have all of the rights, powers and duties of Declarant as set forth in this Declaration.

Each lot owner shall automatically become a member of the property owners association. It is acknowledged that the association shall consist of the owners of all lots within the subdivision and that each lot shall be entitled to equal voice or vote in the affairs of the association. The association shall have the right to assess the owners of the lots within the subdivision for prorata shares of various costs, based upon the number of lots within the subdivision. Such costs will include the costs of maintenance of common properties, the streets and water lines within the subdivision and other common expenses in the sole discretion of the owners association. The



association shall maintain the sign advertising and identifying the subdivision if it desires, the common garbage can disposal site if required by any governmental entity, the gate for the subdivision, and any other common facilities which may be erected on the property. Any delay on the part of the Declarant herein, or by the owners of lots within the subdivision or additional sections of the subdivision, to formally organize the owners association or to exercise rights belonging to such association or to otherwise cause such association to function as a legal entity, shall not invalidate or effect the right to form the association. Until such time as the association shall be formally incorporated under the laws of the State of North Carolina, it shall exist as an unincorporated association. Until such time as Declarant transfers its interest in the common areas to the association, the Declarant and its successors and assigns shall act on behalf of the association. The name of the association shall be Hickory Ridge Owners Association, Inc. or such other name as may clearly designate the nature and existence of the organization.

23. Dues and Assessments. In order to provide for payment of dues and assessments for the association referred to hereinabove and in order to provide a means of collecting funds for the common expenses within the terms of this Declaration, each lot within the subdivision shall be subject to the obligation for the payment of dues and assessments according to the terms of this Declaration. The association shall have the right to place a claim of lien against any of the lots within the subdivision to collect unpaid dues or assessments and to maintain a civil action for collection of such sums. The following paragraphs set forth the guidelines, rules and regulations for the purpose of allocating such assessments and dues and the collection thereof.

Section 1. Creation of the lien and personal obligation of assessments. Each subsequent owner other than the Declarant, by acceptance of a conveyance of a lot within the subdivision, whether or not it shall be expressed in any such deed or conveyance, regardless of the method of conveyance and regardless of whether such subsequent owner is a direct purchaser from the Declarant or a successor, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, 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 such interest thereon and cost of collection thereof as hereinafter provided, in Section 9 of these provisions, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

Section 2. The assessments levied by the association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the subdivision and the property owners, and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the common properties and of the homes situated upon the lots within the subdivision, including but not limited to, the payment of taxes and insurance on common properties, and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof. Specifically included within these purposes shall be the extension of such maintenance, services and similar matters to additional properties and subdivisions which are included within the Declarant's plan of development and subjected to these covenants at a later date.

Section 3. The annual, assessment shall be \$100.00 per lot. The board of directors of the association may, after consideration of current



maintenance costs and future needs of the association, fix the actual assessment for any year at a lesser amount or greater amount, from time to time.

Section 4. In addition to the annual assessments authorized by Section 3 hereof, the association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital item or improvement upon the common properties, provided any such assessment shall have the assent of three-fifths ($3/5$) of the votes of all voting members who are voting in person or by proxy at the meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Subject to the limitation of Section 3 hereof, and for the periods therein specified, the association may change the maximum and basis of the assessments fixed by Section 3 hereof, prospectively for any such period provided that any such changes shall have the assent of three-fifths ($3/5$) of the votes of the voting members who are voting in person or by proxy at the meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 6. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows: At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half ($1/2$) of the required quorum at the preceding meeting, provided that no such meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. The annual assessments provided for herein shall commence on a date to be determined by Declarant and shall continue on the same date and in each successive year. No adjustment or prorations of assessments shall be made by the association. For purposes of levying the assessment, assessments shall be considered to be paid in advance and shall be levied against any property which is subject to the declaration or any supplemental declaration. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. The board of directors of the association shall prepare a roster of the properties and assessments applicable thereto at least thirty (30) days in advance of such assessment due date. Such assessment roster shall be open to inspection by any owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The association shall, upon demand at any time, furnish to any owner liable for said assessment a certificate in writing signed by an officer of the association, setting forth whether the assessment has been paid. Such statement shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. If an assessment is not paid on the date when due (being the date specified in Section 7), then such assessment shall become delinquent and shall, together with interest thereon and costs of collection



thereof, including attorney's fees, as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representative and assigns. The personal obligation of the then owner to pay such assessment, however, shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the due date, a penalty fee not to exceed \$5.00 shall be added thereto and from that date interest at the then legal rate as established by law may be added to the delinquent balance and penalty and the association may bring an action at law against the owner personally obligated to pay the same or to foreclosure the lien against the property. There shall be added to such assessment, delinquent fee and interest, the cost of preparing and filing a complaint in such action and in the event that judgment is obtained, such judgment shall include interest on the total amount as above provided and reasonable attorney's fees to be fixed by the court together with the costs of the action. The Declarant or association shall establish a registered office where determination may be made of the amount of any unpaid fees and charges hereunder and the failure to do so within ten (10) years from the date of this instrument shall terminate the obligation, if any, of the purchaser for value of a lot in said subdivision from being encumbered by such delinquent fee.

Section 10. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve any property owner from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. The following property subject to this declaration shall be exempt from the assessments, charges and liens created herein: (a) all property to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all common properties referred to in the declaration or set forth on the plat of the subdivision referred to above or acquired in the future; (c) all properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption; (d) lots owned by Declarant. Except as provided in this paragraph, no property or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

24. Additional Properties. Declarant reserves the right to add additional properties to these covenants at any time in the future. Upon the addition of such properties, any streets or common areas in the additional area shall be dedicated to the use of the existing property owners, the expense of such additional streets and common areas, if any, shall be added to the expenses associated with the existing properties and the total expenses associated with the existing properties and the additional properties shall be prorated equally between all property owners of the existing property and the additional property.

25. Assignability of Rights and Liabilities. Declarant herein shall have the right to sell, lease, transfer, assign, license and in any manner alienate or dispose of any rights, interests and liabilities retained, accruing or reserved to it hereunder. Following any such disposition, Declarant shall not in any way be liable or responsible to any party



with regard to any right, interest or liability or any claim or claims arising out of same in any manner.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed and its name and in the capacity as set forth below, this the 21st day of April, 2008.

Aberdaron Ventures, Inc.

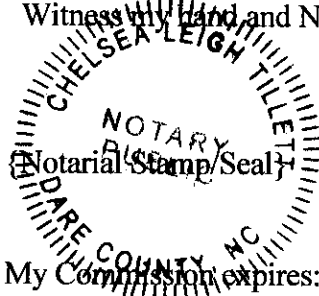
By:

Kimberly P. Minton
KIMBERLY P. MINTON, President

**STATE OF NORTH CAROLINA
COUNTY OF DARE**

I, Chelsea Leigh Tillett, a Notary Public in and for the aforesaid State and County, do hereby certify that KIMBERLY P. MINTON personally appeared before me this day and acknowledged that she is President of Aberdaron Ventures, Inc., a North Carolina Corporation, and that by authority duly given and as the act of the corporation, she signed the foregoing instrument in its name by its President.

Witness my hand and Notarial seal this the 21st day of April, 2008.



Chelsea Leigh Tillett
NOTARY PUBLIC

Unofficial



Exhibit "A"

Tract One:

Lots 1 through 6 of the subdivision known as Hickory Ridge- Phase 1, as shown on a map or plat thereof made by Seaboard Surveying & Planning, Inc. dated January 14, 2008, and duly filed in Plat Cabinet H, Slide 92, Public Registry of Dare County, North Carolina.

Tract Two:

Lots 7 through 19 of the subdivision known as Hickory Ridge- Phase 2, as shown on a map or plat thereof made by Seaboard Surveying & Planning, Inc. dated January 14, 2008, and duly filed in Plat Cabinet H, Slide 95, Public Registry of Dare County, North Carolina.

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