

**BK 4620 PG 479 - 497**

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STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

DECLARATION OF RESTRICTIVE  
AND PROTECTIVE COVENANTS FOR  
SHADOW CREEK ESTATES  
SUBDIVISION

THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE  
COVENANTS, hereinafter "Declaration," made this the 24th day of, May, 2017,  
by McNeill and Associates, Inc., hereinafter called "Declarant",

**WITNESSETH:**

THAT WHEREAS, the Declarant is the owner of the real property  
described in Article I of this Declaration and is desirous of subjecting said real  
property to the protective covenants hereinafter set forth, each and all of which is  
and are for the benefit of such property and for each owner thereof, and shall

Submitted electronically by "MICHAEL LINCOLN P.A."  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Onslow County Register of Deeds.

and are for the benefit of such property and for each owner thereof, and shall inure to the benefit of and pass and run with said property, and each and every lot or parcel thereof, and shall apply to and bind all owners and any heirs, assigns and successors in interest.

AND WHEREAS, this Declaration of Restrictive and Protective Covenants is subject to all of the Sections of Chapter 47F, entitled "Management of Planned Community" of the North Carolina General Statutes.

NOW THEREFORE, the Declarant hereby declares that the real property in and referred to in Article I hereof is and shall be held, transferred, sold and conveyed subject to the protective covenants set forth below.

#### **ARTICLE I**

SUBJECT PROPERTY. The real property which is, and shall be held, transferred, sold and conveyed subject to the protective covenants set forth in the Articles of this Declaration is located in the County of Onslow, State of North Carolina and is more particularly described as follows:

**SEE SCHEDULE "A" ATTACHED HERETO AND INCORPORATED HEREIN  
AS IF FULLY SET OUT.**

#### **ARTICLE II**

The Association shall, at all times pertinent hereto, be called "SHADOW CREEK ESTATES OWNERS ASSOCIATION, INC." hereinafter the "Association", and has been formed to operate pursuant to the mandates of

Chapter 47F of the North Carolina General Statutes and shall be governed pursuant to N.C.G.S. §47F-3-102. The Bylaws will be drafted the Association has been incorporated and a copy of said Bylaws shall be provided to each future lot purchaser.

### **ARTICLE III**

PURPOSES. No lot or lots shall be put to any use other than for residential purposes, except that any lot which is owned by Declarant may be used by the Declarant for a street, roadway or common area.

### **ARTICLE IV**

LAND USE AND BUILDING TYPE. No building shall be used except for residential purposes. No structure shall be erected, placed, altered, or permitted to remain on any such lot other than single family dwelling not to exceed two and one-half stories in height. A private garage which may contain living quarters for occupancy by domestic servants of the lot occupant only, and such other outbuildings as may be reasonably appurtenant to the dwelling, provided that the same are constructed in line with general architectural design and construction standards used as the dwelling itself. This covenant shall not be construed as prohibiting the use of a new single family dwelling as a model home for sales purposes. Each lot owner shall maintain his or her lot up to the boundary of any bordering street or adjacent lot including any ditches or culverts and shall be responsible for any damage done to any water pipes or utility lines.

## ARTICLE V

DWELLING QUALITY AND SIZE. There shall be not less than 1,400 square feet for any dwelling. All homes shall consist of stick built, brick or stone, and no mobile homes or other manufactured homes are permitted in this Subdivision. Once formed, a majority of the Board of Directors of the Association shall approve any plans and specifications for construction or renovation of homes. The Board may appoint a three (3) person Architectural Control Committee to approve plans and specifications. Prior to the above, the Declarant shall approve plans and specifications.

## ARTICLE VI

BUILDING LOCATION. No building shall be located on any corner lot nearer to the front line or any side street line than as shown on the recorded plat. No building shall be located with respect to interior side lot lines so as to be nearer than 8 feet to either such line. No dwelling shall be located on any interior lot nearer to the front lot line than as shown on the recorded plat nor nearer than 15 feet from the rear lot line, and no garage or other permitted access or building shall be located nearer than 15 feet from the rear lot line. The front setback for any structure shall be no less than 25 feet from the front lot line. No dwelling shall be located on any corner lot nearer than 25 feet from the side lot line. For the purposes of this covenant, eaves, steps, open porches, and carports shall not be considered as part of a building provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. An error of not more than 10 percent in the location of a building on the lot

with respect to the minimum set back lines shall not be considered a violation of these Covenants. Each lot owner shall pay a Parks and Recreation fee of \$353.84, or more being subject to change, to the Town of Swansboro when obtaining a building permit either through the lot owner or any designated agent of lot owner.

#### **ARTICLE VII**

NUISANCES. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

#### **ARTICLE VIII**

EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear ten feet of each lot within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through 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.

The Declarant reserves for itself, its successors and assigns, an easement and right at any time in the future to grant a right of way under, over and along the side, rear and front property lines of each and every lot in the subdivision described herein, for the installation and maintenance of poles, lines, conduits,

pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, drainage or other utilities including water and sewer services.

#### **ARTICLE IX**

LIVESTOCK AND POULTRY. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other pre-approved by the Board household pets may be kept provided that they are not kept, bred or maintained for commercial purposes. Any and all pets shall not be allowed on the premises unless same are under the direct control of the owner at all times and are not creating a nuisance to the other owners within the property.

#### **ARTICLE X**

BUILDING PLANS AND SPECIFICATIONS. As aforesaid, no dwelling, other building or accessory building shall be erected upon any lot unless the plans and specifications thereof unless approved in writing by Declarant, the Board of Directors or the Architectural Committee, if applicable.

#### **ARTICLE XI**

ERECTION OF FENCES AND TREES. No fences over six (6) feet in height shall be constructed between the front of the primary dwelling and the back lot line. No fence shall be erected between the front of the primary dwelling and the street right of way unless such fence shall be of any ornamental nature. Brick, metal and split-rail shall be deemed to meet the requirements of this restriction. No chain link fences are permitted.

The initial Lot Owner, or agent, obtaining a building permit shall plant one understory tree for every fifty (50) feet of road frontage whether the frontage be on the side of the lot or front of the Lot or both. This provision shall not apply to Lot Owners who do not obtain a building permit while owning said Lot.

## **ARTICLE XII**

GARBAGE AND REFUSE DISPOSAL. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and approved by the Town of Swansboro.

## **ARTICLE XIII**

SIGHT DISTANCE AT INTERSECTION. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply upon any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such

intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

#### **ARTICLE XIV**

TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be allowed. No trailer, mobile home, camper or line vehicles shall be parked on any lot at any time for any purpose nor shall any vehicle be allowed to remain on any lot at any time for any purposes unless it is parked behind the main dwelling structure or placed inside the carport or garage.

#### **ARTICLE XV**

DRAINAGE. All driveways shall be installed and sized in accordance with the Town of Swansboro and N. C. State Highway recommendations in place at the time of installation. Each lot owner shall mow and maintain his property to the edge of the paved road and to his borders.

#### **ARTICLE XVI**

##### ASSESSMENTS FOR COMMON EXPENSES:

- (a) Except as otherwise provided in the Declaration, the initial common expense assessment shall be determined per lot per year at a later date.
- (b) Declarant shall pay all common expenses. After any assessment has been made by the Association, assessments thereafter shall be made at least annually.
- (c) All common expenses shall be assessed against all the lots in accordance with the allocations set forth in the Declaration. Any

past-due common expense assessment or installment thereof bears interest at the rate established by the Association not exceeding eighteen percent (18%) per year.

- (d) The Declarant is hereby exempt from paying any assessments, so long as it or its successor Declarant owns said lot. Once said lot is transferred, the new owner will be responsible for paying assessments from that time forward.

## **ARTICLE XVII**

### LIEN FOR SUMS DUE THE ASSOCIATION; ENFORCEMENT:

- (a) Any assessment attributable to a lot which remains unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of Onslow County in the manner provided in this section. Once filed, a claim of lien secures all sums due the Association through the date filed and any sums due to the Association thereafter. Unless the declaration provides otherwise, fees, charges, late charges, and other charges imposed pursuant to G. S. 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 are subject to the claim of lien under this section as well as any other sums due and payable to the Association under the Declaration, the provisions of Chapter 47F, or as the result of an arbitration, mediation, or judicial decision.
- (b) The Association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the owner's address of record with the Association and if different, to the address for the lot owner shown on the county tax records for the lot. If the lot owner is a corporation or limited liability company, the statement shall also be sent by first-class

mail to the mailing address of the registered agent for the corporation or limited liability company. Notwithstanding anything to the contrary in Chapter 47F, the Association is not required to mail a statement to an address known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address.

- (c) A claim of lien shall set forth the name and address of the Association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. A claim of lien may also appoint a trustee to conduct a foreclosure, as provided in subsection (e) of this section. The first page of the claim of lien shall contain the following statement in print that is boldface, capital letters, and no smaller than the largest print used elsewhere in the document:

**“THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW.”**

The person signing the claim of lien on behalf of the Association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owners, which service shall be attempted in accordance with G. S. 1A-1, Rule 4(j), for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the Association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both the following (i) G.S.1A-1, Rule 4(J)(1)c, d, or e and (ii) by mailing a copy of the lien by regular first-class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on

the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the Association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G. S. 1A-1, Rule 4 (j)(9). Notwithstanding anything to the contrary In this Chapter, the Association is not required to mail a claim of lien to an address which is known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is not United States postal address. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the filing of the claim of lien in the office of the clerk of superior court.

- (d) The Association shall be entitled to recover the reasonable attorneys' fees and costs it incurs in connection with collection of any sums due. A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the Association's intent to seek payment of attorneys' fees, costs, and expenses. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees, costs or expenses. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance and shall provide the name and telephone number of the representative.
- (e) The Association, acting through the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes if the assessment remains unpaid for 90 days or

more. The Association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific lot.

## ARTICLE XVIII

DECLARATION LIMITS ON ATTORNEYS' FEES: Except as provided in G. S. 47F-3-116, in an action to enforce provisions of the Articles of Incorporation, the Declaration, Bylaws, or duly adopted rules or regulations, the court may award reasonable attorneys' fees to the prevailing party if recovery of attorneys' fees is allowed in the Declaration.

## ARTICLE XIX

UPKEEP OF PLANNED COMMUNITY; RESPONSIBILITY AND ASSESSMENTS FOR DAMAGES:

- (a) Except as otherwise provided in the Declaration, G. S. 47F-3-113(h) or subsection (b) of this section, the Association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of maintenance, repair, or replacement except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in G. S. 47F-3-115(c)(1). Except as otherwise provided in the Declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon. Each lot owner shall afford to the association and when necessary to another lot owner access through the lot owner's lot or the limited common

