

Prepared by and return to Robert B. Hobbs, Jr., Attorney  
Hornthal, Riley, Ellis & Maland, LLP  
Post Office Box 310  
Nags Head, North Carolina 27959

STATE OF NORTH CAROLINA  
COUNTY OF DARE



**THIRD AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
SANDERLING PHASES 1, 2 AND 2A**

This Third Amendment to Declaration of Covenants, Conditions and Restrictions, is made and entered into on this 6<sup>th</sup> day of October, 2001, by SANDERLING HOMES ASSOCIATION, INC., a North Carolina nonprofit corporation (hereinafter referred to as the "Association").

**WITNESSETH:**

WHEREAS, the Association is the entity charged with the powers of maintaining and administering the Community Properties and facilities and with administrating and enforcing the covenants, conditions and restrictions of, and collecting and disbursing the assessments and charges created by, the Declaration of Covenants, Conditions and Restrictions dated July 26, 1977, and recorded in Book 248, Page 661, in the Office of the Register of Deeds of Dare County, North Carolina, as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions, dated October 27, 1977, and recorded in Book 253, Page 281, in the Office of the Register of Deeds of Dare County, North Carolina, and as amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions, dated April 23, 1979, and recorded in Book 279, Page 84, in the Office of the Register of Deeds of Dare County, North Carolina (all of said documents being hereinafter referred to collectively as the "Declaration"); and

WHEREAS, the Annual Meeting of the Members of the Association (being the Owners of Lots constituting the Properties) was held, after due notice, on October 6, 2001, and at such meeting more than two-thirds of the Members consented to the amendments to the Declaration hereinafter set forth.

NOW, THEREFORE, in accordance with the provisions of Article Nine of the Declaration, the Association does hereby make the following amendments to the Declaration:

Section 1. The North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes, as amended from time to time (the "Act"), shall be applicable in its entirety to the Community and The Properties. If any provision or procedure of the Declaration or Bylaws, as amended, is in conflict or inconsistent with any provision or procedure of the Act, the provision or procedure of the Act shall control, except for the following provisions or procedures, in which Section



47F-1-104 of the Act allows for the Act to be varied by the Declaration or Bylaws:

- (a) Declaration Article Seven, Sections 1 through 11, Covenant For Payment of Assessments: Sections 47F-3-114, 47F-3-115 and 47F-3-116 of the Act differ from Article Seven of the Declaration in a number of respects, including but not limited to the treatment of surplus funds and pro-rata assessments. The Declaration shall modify the Act in this regard, but all other provisions of Sections 47F-3-114, 47F-3-115 and 47F-3-116 of the Act which are not inconsistent shall be effective.
- (b) Bylaws Article V, Section 4 of the Bylaws, Mergers and Consolidation: Section 47F-2-118 of the Act, Termination of a planned community and Section 47F-2-121 of the Act, Mergers or consolidation of planned communities, require 80% assent of the Owners to merge or terminate the community. Article V, Section 4 of the Bylaws requires a two-thirds ( $\frac{2}{3}$ ) assent of the Owners. The Bylaws shall modify the Act in this regard, but all other provisions of Sections 47F-2-118 and Section 47F-2-121 of the Act which are not inconsistent shall be effective.
- (c) Bylaws Article VI, Section 6; Special Meetings: Section 47F-3-108 of the Act, Meetings, specifies that 10% of the Owners or any lower percentage specified in the Bylaws may call a special meeting. Article VI of the Bylaws states not less than 25% of the Owners may call a special meeting. The Bylaws shall modify the Act in this regard, but all other provisions of Section 47F-3-108 of the Act which are not inconsistent shall be effective.
- (d) Bylaws Article VI, Section 7; Notice of Meetings: Section 47F-3-108 of the Act, Meetings, provides that notice of meetings shall be mailed not less than 10 days nor more than 60 before the meeting, while the Bylaws provides that the notice shall be mailed at least 10 but no more than 20 days before the meeting. The Bylaws shall modify the Act in this regard, but all other provisions of Section 47F-3-108 of the Act which are not inconsistent shall be effective.
- (e) Bylaws Article VI, Section 11; Quorum: Section 47F-3-103(c) of the Act waives the requirement for a quorum at a meeting for ratification of the budget. The Bylaws do not contain this exception to the quorum requirement. Section 47F-3-109(a) of the Act specifies that 10% of the votes constitutes a quorum unless otherwise stated in the Bylaws. The Bylaws provide a quorum to be a majority of the members, present or by proxy. The Bylaws shall modify the Act as to both of these matters, but all other provisions of Sections 47F-3-103 and 47F-3-109 of the Act which are not inconsistent shall be effective.
- (f) Bylaws Article VII, Section 10; Quorum of Board of Directors: Section 47F-3-109(b) of the Act specifies that if 50% of those directors present at the beginning of the meeting are entitled to vote, a quorum is deemed present unless a larger



percentage is specified by the Bylaws. The Bylaws state that the directors present constitute a quorum and a majority vote shall constitute a decision of the board. The Bylaws shall modify the Act in this regard, but all other provisions of Section 47F-3-109 of the Act which are not inconsistent shall be effective.

Section 2. Any provision or procedure of the Declaration or Bylaws, as amended, which is not inconsistent with and not in conflict with a provision or procedure in the Act, shall continue to remain in full force and effect.

IN WITNESS WHEREOF, the Association has caused this Third Amendment to Declaration of Covenants, Conditions and Restrictions to be executed by its duly authorized President, after (1) notice of such amendment having been given to all Owners and holders of first mortgages or deeds of trust, (2) the affirmative vote of at least two-thirds of the Owners (Members of the Association) and (3) the approval (as indicated by the attached consents) of at least fifty-one percent of the holders of first mortgages or deeds of trust against the Properties, in accordance with Article Nine of the Declaration.

SANDERLING HOMES ASSOCIATION, INC.

BY: Woodrow J Mac Donald  
President

STATE OF Virginia  
COUNTY/CITY OF Chesterfield

I, Sean A Smith, a Notary Public of the County or City of Richmond, and State aforesaid, certify that Woodrow J Mac Donald personally came before me this day and acknowledged that (he)(~~she~~) is President of SANDERLING HOMES ASSOCIATION, INC., a North Carolina Nonprofit Corporation, and that (he)(~~she~~), as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this 21 day of November, 2001.

Sean A Smith  
Notary Public

My commission expires: September 30, 2002

(AFFIX NOTARY SEAL)





NORTH CAROLINA  
DARE COUNTY

The foregoing or annexed certificate(s) of Sean A. Smith a Notary Public  
of Commonwealth of VA is/are certified to be correct.

This 7<sup>TH</sup> day of March, 2002.

**BARBARA M. GRAY**

Register of Deeds

BY: Andrew Y. Tullett  
Deputy/Assistant  
Register of Deeds

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ATTACHMENT TO THIRD AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF SANDERLING  
PHASES 1, 2 AND 2A (the "Declaration")

The undersigned holder of one or more first mortgages or deeds of trust encumbering the Lots subject to the covenants, terms, conditions and obligations of the Declaration, does affirmatively consent to the Third Amendment to the Declaration attached hereto.

FIRST HORIZON HOME LOANS

BY:

  
Russell Wofford

Print Title: Assistant Vice President



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PHH SERVICES

BY: 

Print Title: Karen Ziegler  
Vice President



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CHASE MANHATTAN MORTGAGE

BY: *Tamara H. A212, AUP*

Print Title: Tamara H. A212, AUP





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BRANCH BANKING AND TRUST COMPANY

BY: Debra B. McManus

Print Title: Vice President





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FIRST UNION NATIONAL BANK

BY: J.P. Byrum

Print Title: Asst. V.P.



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THE EAST CAROLINA BANK

BY: 

Print Title: MATTHEW J. BYRNE VICEPRESIDENT



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COOPERATIVE BANK FOR SAVINGS, FSB

BY: 

Print Title: VICE PRESIDENT



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WACHOVIA BANK, N.A.

BY: 

Print Title: Vice President



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FIRST-CITIZENS BANK

BY: *Dorlan C. Kennedy*

Print Title: SENIOR VICE PRESIDENT



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BANK OF KENTUCKY

BY: Crystal A Carter - Rhodes

Print Title: Supervisor



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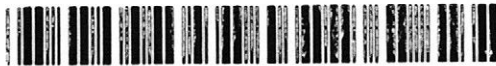
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PRINCIPAL MORTGAGE

BY: Melissa Volker

Print Title: Research Associate

9-4-2001  
Okay to sign.  
Lynne Elliott



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BANK OF AMERICA, N.A.

BY:   
Drew Wright  
Print Title: Vice President





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1ST NATIONWIDE MORTGAGE

BY: Janet L. Mills

Print Title: Vice President