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STATE OF NORTH CAROLINA
COUNTY OF DARE

**FIFTH AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
SANDERLING PHASES 1, 2, 2A, 2B, 3 AND 4
LOTS 1 THROUGH AND INCLUDING 131**

This Fifth Amendment to Declaration of Covenants, Conditions and Restrictions, is made and entered into on this 29 day of November, 2006, 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 of Sanderling 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 supplemented by First Supplement to Declaration of Covenants, Conditions and Restrictions, dated July 11, 1978 and recorded in Book 264, Page 661, in the Office of the Register of Deeds of Dare County, North Carolina, and as supplemented by Second Supplement to Declaration of Covenants, Conditions and Restrictions, dated August 9, 1978 and recorded in Book 266, Page 90, 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, and as supplemented by Third Supplement to Declaration of Covenants, Conditions and Restrictions, dated June 22, 1979, and recorded in Book 281, Page 228, in the Office of the Register of Deeds of Dare County, North Carolina, and as supplemented by Fourth Supplement to Declaration of Covenants, Conditions and Restrictions, dated May 2, 1979 and recorded in Book 281, Page 234, in the Office of the Register of Deeds of Dare County, North Carolina, and as amended by Third Amendment to Declaration of Covenants, Conditions and Restrictions, dated October 6, 2001 and recorded in Book 1417, Page 491, in the Office of the Register of Deeds of Dare County, North Carolina (as corrected by Correction to Third Amendment filed in Book 1471, Page 480, Dare County Registry), and as supplemented by Fifth Supplement to Declaration of Covenants, Conditions and Restrictions, dated October 8, 2003, and recorded in Book 1525, Page 308, in the Office of the Register of Deeds of Dare County, North Carolina, and as amended by Fourth Amendment to Declaration of Covenants, Conditions and Restrictions, dated August 23, 2005 and recorded in Book 1649, Page 246, 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, by virtue of the Third Amendment to Declaration of Covenants, Conditions and Restrictions, dated October 6, 2001 and recorded in Book 1417, Page 491, in the Office of the Register of Deeds of Dare County, North Carolina (as corrected by Correction to Third Amendment filed in Book 1471, Page 480, Dare County Registry), the Association elected to make the provisions of Chapter 47F, the North Carolina Planned Community Act, applicable to Sanderling Phases 1, 2, 2A, 3 and 4 (the Association subsequently added Lot 68A, Phase 2B to the Planned Community by virtue of the Fifth Supplement to Declaration of Covenants, Conditions and Restrictions, dated October 8, 2003, and recorded in Book 1525, Page 308, in the Office of the Register of Deeds of Dare County, North Carolina); and

WHEREAS, due to the Association's election to make the provisions of the North Carolina Planned Community Act applicable to Sanderling, and pursuant to Sections 47F-1-102(d) and 47F-2-117 of the North Carolina General Statutes, the provisions of Article 9 of the Declaration, relating to amendments to the Declaration, were replaced in their entirety by the provisions of Section 47F-2-117 of the North Carolina General Statutes; and

WHEREAS, the Annual Meeting of the Members of the Association (being the Owners of Lots constituting the Properties) was held, after due notice and with a quorum present, on October 7, 2006, and at such meeting more than sixty-seven percent (67%) of the Members consented to the amendments to the Declaration hereinafter set forth, as required by Section 47F-2-117 of the North Carolina General Statutes.

NOW, THEREFORE, in accordance with the provisions of Section 47F-2-117 of the North Carolina General Statutes, the Association does hereby make the following amendments to the Declaration:



Section 1. A new Article Ten shall be added to the Declaration which shall provide as follows:

ARTICLE TEN

ENFORCEMENT OF DECLARATION, BYLAWS,
RULES AND REGULATIONS

Section 1. Enforcement. The failure of an Owner, members of the Owner's household, the Owner's guests, licensees or invitees to comply with a provision of this Declaration or a provision in the Bylaws, Articles of Incorporation or Rules and Regulations of the Association shall provide the Association with the right to assess penalties, bring legal action at law or in equity, including but not limited to an action for injunctive relief, damages, or a combination thereof against the Owner. All costs and expenses incurred by the Association in terminating or resolving any such violation, inclusive of attorneys' fees (whether or not litigation is instituted) and court costs, shall be the responsibility of the Owner who is determined by the Association to be in violation. Collection of such attorneys' fees, costs and damages may be enforced by any method described in this Declaration providing for the collection of periodic assessments, or by a civil action to collect the debt.

Section 2. No Waiver of Rights. The failure of the Association, the Executive Board or of a member or Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration, Bylaws, Articles of Incorporation or Rules and Regulations of the Association, shall not constitute a waiver of the right of the Association, the Executive Board or any member or Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Executive Board or any member or Owner pursuant to any term, provision, covenant or condition of this Declaration, Bylaws, Articles of Incorporation or Rules and Regulations of the Association shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by this Declaration, Bylaws, Articles of Incorporation or Rules and Regulations of the Association, at law or in equity.



Section 2. All of the provisions contained in this Amendment shall encumber all of the Properties or Planned Community. Wherever a provision of this Amendment conflicts with specific provisions of the Declaration or the Planned Community Act (if the Planned Community Act permits such variation), the provisions of this Amendment shall prevail. Except as herein modified, the provisions and covenants of the Declaration, as amended by the Planned Community Act and by other recorded amendments, shall remain unchanged and continue in full force and effect as therein provided.

IN WITNESS WHEREOF, the Association has caused this Fifth Amendment to Declaration of Covenants, Conditions and Restrictions to be executed by its duly authorized President.

SANDERLING HOMES ASSOCIATION, INC.

BY: Robert J. Judson
President

STATE OF North Carolina
COUNTY/CITY OF Dare

I, Erica M. Hansen, a Notary Public of the County or City of Dare, and State aforesaid, certify that Robert J. Judson personally came before me this day and acknowledged that she is President of SANDERLING HOMES ASSOCIATION, INC., a North Carolina Nonprofit Corporation, and that 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, 2006.

Erica M. Hansen
Signature of Notary Public

Erica M. Hansen
Typed or printed name of Notary Public

