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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
of
CREEKSIDE VILLAGE
SECTION ONE-A

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS of **CREEKSIDE VILLAGE SECTION ONE-A**, made and entered into as of the 24 day of February 2004, by and between **GENE DUNN CONSTRUCTION COMPANY OF NEW BERN, INC.**, and **ALL PROSPECTIVE PURCHASERS OR OWNERS** of Lots 301 through 336, inclusive, shown and depicted on the Plat entitled, "**CREEKSIDE VILLAGE SECTION ONE-A**", recorded in Plat Cabinet G, Slide 84CDE, in the Craven County Registry, and any other lots which are hereafter annexed into the subdivision.

WITNESSETH:

WHEREAS, Branch Banking and Trust Company has a security interest in the lands hereinafter described and as set forth in those two Deeds of Trust recorded in Bok 1991 at Page 509 and Book 2109 at Page 763 of the Craven County Registry; and,

WHEREAS, Branch Banking and Trust Company has been requested to join in this Declaration of Covenants to show their consent thereto; and,

WHEREAS, Branch Banking and Trust Company has agreed so to do solely for the purpose of agreeing to the imposition of these restrictive and protective covenants; and,

WHEREAS, **GENE DUNN CONSTRUCTION COMPANY OF NEW BERN, INC.** (hereinafter called Declarant) is the owner of the Lots and Common Areas lying and being situate in Craven County, North Carolina, and being more particularly described herein, and in order to create uniformity in the Development, Declarant has imposed the covenants herein set forth on the property more particularly described as follows:

Lots:

Lots 301 through 336 as shown on the plat of **CREEKSIDE VILLAGE SECTION ONE-A**, recorded in Plat Cabinet G Slide 184, of the Craven County Registry.

C D E

Common Area:

The tract shown and depicted as "Common Area" on the Plat of **CREEKSIDE VILLAGE SECTION ONE-A**, recorded in Plat Cabinet G, Slide 184 CDE, of the Craven County Registry.

WHEREAS, Declarant desires to develop a single family residential community and intend by the recordation of this Declaration to impose rules, regulations, restrictions, covenants, conditions, reservations, exceptions, and easements contained herein (hereinafter sometimes called Restrictions) on the land depicted on the aforesaid map and any other land which is hereafter annexed into the subdivision to the end that the Lots and Common Areas defined herein shall be held subject to said Restrictions.

NOW, THEREFORE, the Declarant does hereby declare that the Restrictions contained herein shall run with the property defined herein as Lots; shall be a burden on and a benefit to such property; shall be binding on all parties having or acquiring any right, title or interest in the property or any part thereof; and, shall inure to the benefit of each Owner of any part thereof.

A. Definitions

As used herein,

- (1) "Articles" means the Articles of Incorporation of **CREEKSIDE VILLAGE HOMEOWNERS ASSOCIATION, INC.**, and any amendments thereto.
- (2) "Bylaws" means the Bylaws of **CREEKSIDE VILLAGE HOMEOWNERS ASSOCIATION, INC.** and any amendments thereto.
- (3) "Common Areas" means all real property (including the improvements thereto) and interest in real property now owned or hereafter acquired by the Corporation for the common use and enjoyment of the Owners. The Common Areas to be conveyed by Declarant to and owned by the Corporation are those tracts depicted as "Common Area" consisting of 5.24 acres, more or less, on the plat of **CREEKSIDE VILLAGE SECTION ONE-A**. The Common Areas are subject to those easements set forth in this instrument, including, but not limited to, Article I hereof.
- (4) "Corporation" means **CREEKSIDE VILLAGE HOMEOWNERS ASSOCIATION, INC.**, its successors and assigns.
- (5) "Declarant" means **GENE DUNN CONSTRUCTION COMPANY OF NEW BERN, INC.**, and any other person or entity who acquires title to six or more lots.
- (6) "Dwelling" means a structure located on a Lot built in accordance with the requirements of Article L hereof and "stick built" on the lot.
- (7) "Lot" means a separately numbered tract of land shown on the aforesaid plat and, any

other separately numbered tract of land which is annexed into the Subdivision upon which a Dwelling is to be built. At the present time, the Lots are numbered 301 through 336 inclusive. "Lot" shall not include any portion of the Common Areas as defined herein.

- (8) "Owner" means the record Owner, whether one or more persons, of fee simple title to any lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- (9) "Person" or "persons" means any individual, group of individuals, corporation, partnership or any other entity, including any combination thereof.
- (10) "Subdivision" means all of the property defined herein as Lots and Common Areas and such additions or annexations of property hereafter brought within the jurisdiction of the Corporation. No property other than that in the **CREEKSIDE VILLAGE** area as described may be annexed into the subdivision.
- (11) "Board of Directors" means the Board of Directors of **CREEKSIDE VILLAGE HOMEOWNERS ASSOCIATION, Inc.**
- (12) "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements of **CREEKSIDE VILLAGE SECTION ONE-A.**
- (13) "Committee" means the **CREEKSIDE VILLAGE SECTION ONE-A,** Architectural Control Committee constituted and having the powers as provided in Article J hereof.

B. Membership

- (1) A Corporation named "**CREEKSIDE VILLAGE HOMEOWNERS ASSOCIATION, INC.**" has been or will be formed at the direction of the Declarant pursuant to the rules and requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina as an association of the Owners of Lots. Its purposes are to own, manage, maintain, and operate the Common Areas and facilities located upon the Common Areas; to enforce the Restrictions contained herein; and, to make and enforce rules and regulations governing the Owners' use and occupation of Lots.
- (2) Each Owner of each Lot within the Subdivision shall be a member of the Corporation. The Declaration, by this Declaration, and the Owners of individual Lots by their acceptance of individual deeds thereto, covenant and agree with respect to the Corporation: (a) That for so long as each is an Owner of a Lot within the Subdivision, each will perform all acts necessary to remain in good and current standing as a member of the Corporation; and, (b) that any unpaid assessment, whether general or special, levied by the Corporation in accordance with these restrictions, the Articles or the Bylaws shall be a lien upon the Lot upon which such assessment was levied and shall be the personal obligation of the person who was the Owner of the Lot at the time the assessment fell due.
- (3) Each membership in the Corporation shall relate to and have a unity of interest with an individual Lot which may not be separated from ownership of said Lot. The

books and all supporting documentation, the Declaration, the Articles, the Bylaws, and all amendments thereto shall be available for examination by all Lot Owners, and their lenders or their lenders' Agents during normal business hours at the principal office of the Corporation.

(4) The Corporation shall have two classes of members:

Class A - Class A members(s) shall be all Owners, with the exception of any Owners who qualify as Class B members, and they shall be entitled to one vote for each Lot owned; provided, however, when more than one Person holds an interest in any Lot, all such Persons shall be members; however, the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote or any fraction of a vote be cast with respect to any Lot.

Class B - Class B member(s) shall be the Declarant. Class B members shall be entitled to four votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(A) On December 31, 2009; or

(B) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; provided, however, that in the event additional land is annexed into the Subdivision without the consent of Class A members pursuant to the development of such additional property by the Declarant and before the date in subparagraph (A) above, Class B membership shall be reinstated until 2011, or until the total votes in the Class A membership equal or exceed the total votes in the reinstated Class B membership.

C. Management and Administration

The management and administration of the affairs of the Common Areas of the Subdivision shall be the sole right and responsibility of the Corporation. The management shall be carried out in accordance with the terms and conditions of these Restrictions, the Articles and the Bylaws of the Corporation. Provided, however, any contract entered into by the Corporation prior to the termination of the Class B membership must contain a provision allowing the Corporation to terminate the contract without cause and without penalty or extra charge, at any time after the termination of the Class B membership upon 30 days advance notice.

D. Community Expenses

The Community Expenses of the Subdivision include:

(1) All amounts expended by the Corporation in operating, administering, managing,

repairing, replacing and improving the Common Areas of the Subdivision; all amounts expended by the Corporation in insuring the Common Areas of the Subdivision; all amounts expended by the Corporation in legal, engineering, or architectural fees; and, all similar fees which may be incurred by the Corporation from time to time in performing the functions delegated to the Corporation by these Restrictions.

- (2) All amounts expended by the Corporation in carrying out any duty or discretion as may be required or allowed by these Restrictions, the Articles or the Bylaws.
- (3) All amounts declared to be Community Expenses in the Bylaws or in these Restrictions.
- (4) All taxes and special assessments which may be levied from time to time by any governmental authority upon then Common Areas in the Subdivision.
- (5) Expenses for the maintenance, repair and replacement of berm and fence and plantings on the property line adjacent to Airport Road.

E. Annual General Assessments

- (1) The Declarant, for each Lot owned, hereby covenants and each Owner of any Lot, by acceptance of a deed for same (whether or not it shall be so expressed in such deed), is deemed to covenant and agrees to pay to the Corporation annual general assessments or charges as hereinafter provided. The annual general assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the provisions of Paragraph 7 of the Article, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.
- (2) Until December 31, 2007, the annual general assessment shall be \$50.00 per year, payable on or before January 1 of each year.
 - (a) From and after December 31, 2008, the annual general assessment may be increased each year not more than twenty-five percent (25%) above the assessment for the previous year without any vote of the membership.
 - (b) From and after December 31, 2009, the annual general assessment may be increased by an amount greater than twenty-five per cent (25%) of the assessment for the previous year provided the proposed increase is approved by a vote of two-thirds (2/3) of each class of members who are voting in person or by a proxy, at a meeting duly called for this purpose.
- (3) The Board of Directors may fix the annual general assessments which come due after December 31, 2010, at an amount not in excess of the ceiling

- established herein.
- (4) Once the annual general assessment has been set, notice of the annual general assessment shall be given to all Lot Owners. It is provided, however, that no Owner is relieved from the obligation to pay the assessment because of failure to give such notice. After the initial notice of the assessment, no bills for such assessment will be forwarded to any Owner but such assessment thereafter shall become due and payable as provided by the Board of Director.
- (5) As provided in the Bylaws and subject to the restrictions and limitations provided herein, the Board of Directors shall establish an Annual Budget in advance for each fiscal year. Such budget shall project all expenses for the forthcoming fiscal year which may be required for the proper operation, management and maintenance of the Corporation and the Common Areas, including a reasonable allowance for contingencies and reserves. The budget shall take into account any projected or anticipated income. The Board of Directors shall keep separate, in accordance with paragraph (f) hereof, items relating to the daily operation, management and maintenance of the Corporation and Common Areas from items relating to capital improvements. Upon adoption of such Annual budget by the Board of Directors, copies of said Budget shall be delivered to each Owner and the assessment for said year shall be established, subject to the restrictions and limitations provided herein, based upon such budget; however, the non-delivery of a copy of said Budget to each Owner shall not affect the liability of any Owner for such assessment. The annual Budget shall be divided by the number of Lots subject to the annual general assessments at the time of the annual meeting of the members and the quotient shall be the annual general assessment per Lot for the succeeding fiscal year. In determining the number of Lots subject to the annual general assessments, any Lot which is owned by a Class B member shall only be considered one-fourth (1/4) of a Lot.
- (6) The Board of Directors, in establishing the Annual Budget for operation, management and maintenance of the Corporation and Common Areas, shall designate therein a sum to be collected and maintained as a reserve fund for the periodic maintenance, repair and replacement of capital improvements to the Common Areas, which capital improvement and replacement fund (Capital Improvement Fund) shall be for the purpose of enabling the Corporation to maintain, repair or replace structural elements and mechanical equipment constituting a part of the Common Areas, as well as tree planting and removal and the replacement of personal property which may constitute a portion of the Common Area as held for the joint use and benefit of the Owners. The amount to be allocated to the Capital Improvement Fund may be established by said Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for repair, maintenance and replacement of capital improvements to the Common Areas. The amount collected for the Capital Improvement Fund shall be maintained in a separate

account by the Corporation and such monies shall be used only for periodic maintenance, repair and replacement of Capital Improvements to the Common Areas. The Capital Improvement Fund shall be maintained out of the annual general assessments. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors, be expended for daily operation, management and maintenance of the Corporation and Common Areas.

- (7) All monies collected by the Corporation shall be treated as the separate property of the Corporation and such monies may be applied by the Corporation to the payment of any expense of operating and managing the Corporation, or the property undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles and the Bylaws, except that monies placed in the Capital Improvement Fund shall be used only for the specified purposes of said fund. As monies for any assessment are paid into the Corporation by any Owner, the same may be commingled with monies paid to the Corporation by the owner Owners. Although all funds, including other assets of the Corporation, and any increments thereto or profits derived therefrom or from the leasing or use of Common Areas, shall be held for the benefit of the members of the Corporation, no member of the Corporation shall have the right of assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When the Owner of a Lot shall cease to be a member of the Corporation by reason of his divestment of ownership of such Lot, by whatever means, the Corporation shall not be required to account to such Owner for any share of the fund or assets of the Corporation, including any monies which Owner may have paid to the Corporation, as all monies which any Owner has paid to the Corporation shall be and constitute an asset of the Corporation which may be used in the operation and management of the Corporation.
- (3) Written notice of any meeting called for the purpose of taking any action authorized under Paragraph (2)(b) shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixth (60) days following the preceding meeting.
- (4) Annual and special assessments shall, except as otherwise provided herein, be fixed at a uniform rate for all Lots. However, for so long as there is a Class B member of the Corporation, the Lots owned by the Class B member shall be liable for and the Class B member shall pay on each Lot as an annual general assessment only twenty percent (20%) of the amount of the annual general assessment then being levied by the Corporation on each Lot. This reduction in the amount of annual general

assessments due on Lots owned by the Class B member shall terminate as to a particular Lot upon the Lot being conveyed by the Class B member by deed, lease or rental agreement (excluding mortgage or deed of trust) to any person other than Declarant; further, this reduction in the amount of annual general assessments due by the Class B member shall cease upon the termination of Class B membership as herein provided.

- (5) The annual general assessments provided for herein shall commence as to all Lots on January 1 of the year following the conveyance of the Common Areas to the Corporation. The annual general assessments shall be payable annually on or before January 1 of each year. The payment of any assessment or installment thereof shall be in default if such assessment or installment is for such payment. When in default, the delinquent assessment shall bear interest at the rate of ten percent (10%) per annum until such delinquent assessment and all interest due thereon has been paid in full.
- (6) The annual general assessments levied by the Corporation shall be used exclusively to improve, maintain and repair the Common Areas, to pay the expenses of the Corporation, to pay the cost of tree planting and removal, to pay the cost of mowing and lighting the Common Areas, to pay the cost of any insurance the health, safety and welfare of the members. Taxes, hazard insurance, and maintenance on Dwellings and Lots shall not be a purpose of said assessment; but rather, shall be an individual cost to be borne by each Lot Owner.
- (7) The Corporation shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Corporation setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Corporation as to the status of assessments on a Lot is binding upon the Corporation as of the date of its issuance.
- (8) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in the lien therefor, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

F. Special Assessments

Special assessments may be levied against Lots for such reasons as are provided in these Restrictions, the Articles or the Bylaw, and on such terms as provided by the directors and the members. Upon a two-thirds (2/3) vote of the Directors and a two-thirds (2/3) vote of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, the Corporation may levy and impose special assessments. A special assessment shall not exceed 100% of the then current assessment of each lot. The purposes for which special assessments may be levied include, but are not limited to, providing funds to pay Community Expense which exceed the

general assessment fund then on hand to pay same (specifically including the cost of any construction, reconstruction or repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto) and providing a contingency fund for capital improvements and extraordinary expenses. Furthermore, special assessments may be assessed against specific Lots. Special Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and subject to the provisions of Paragraph 8 of Article E, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorneys' fees, shall be the personal obligation of the person who was the owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent special assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot. Written notice of any meeting of the members called for the purpose of levying and imposing special assessments shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

G. Lien for Assessments

Any general or special assessment, if not paid within thirty (30) days after the date of such assessment is due, together with interest at the rate of ten percent (10%) per annum, costs of collection, court costs, and reasonable attorneys fees shall constitute a lien against the Lot upon which such assessment is levied. The Corporation may record notice of the same in the Office of the Clerk of Superior Court of Craven County or file a suit to collect such delinquent assessments and charges. The Corporation may file Notice of Lis Pendens, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein.

H. Compliance With This Declaration, The Articles and the Bylaws of the Corporation

In the case of failure of a Lot Owner to comply with the terms and provisions contained in these Restrictions, the Articles or the Bylaws of the Corporation, the following relief shall be available:

- (1) An aggrieved Lot Owner or Owners within the Subdivision or any Lot Owner on behalf of all the Lot Owners within the Subdivision shall have the right to bring an action and recover sums due, damages, injunctive relief, and/or such other and further relief as may be just and appropriate.

- (2) If the violation is the nonpayment of any general or special assessment, the Corporation shall have the right to suspend the offending Owner's voting rights for any period during which an assessment against the Lot remains unpaid.
- (3) The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.
- (4) The failure of the Corporation or any Person to enforce any restriction contained in these Restrictions, the Articles or the Bylaws shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character.

**I. Property Rights of Lot Owners, Cross-Easements,
and Exceptions and Reservations by Declarant**

- (1) Every Owner of a Lot within the Subdivision as an appurtenance to such Lot shall have a perpetual easement over and upon the Common Areas within the Subdivision for each and every purpose or use to which such Common Areas were intended as determined by their type, or for which such Common Areas generally are used. Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Subdivision, whether or not specifically included in a deed thereto, subject to the following provisions:
 - (A) The Corporation shall have the right to make reasonable rules and regulations respecting the use of same.
 - (B) The Corporation may make reasonable rules respecting parking on the streets of the Subdivision.
 - (C) The Corporation shall have the right to dedicate or transfer fee simple title to all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, sale, or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.
 - (D) The Corporation shall have the right to mortgage, pledge, deed in trust, hypothecate, sell, or convey all or any part of the Common Areas; provided, however, no such action may occur until an instrument agreeing to such action signed by two-thirds (2/3) of each class of members has been recorded.
- (2) The Corporation hereinafter may grant easements for utility purposes for the benefit of the Subdivision and the Lots now or hereafter located therein, over, under, along and through any Common Areas located within the Subdivision.
- (3) Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.
- (4) Easements for the installation and maintenance of utilities and drainage facilities are as shown on the recorded plat. Those easements are reserved by Declarant for the

purposes of benefitting this subdivision and its other property in the area. Except as otherwise provided herein, no structure, planting, or other material shall be placed or permitted to remain within these easements which may interfere with the installation and maintenance of utilities, which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Declarant specifically reserves the right to grant any public utility, municipality or other property owner similar nonexclusive easement rights in said utility and drainage easements shown on the aforesaid plat and reserved herein.

- (5) The Declarant reserves the right to subject the Lots in the Subdivision to a contract with the City of New Bern Utility Department or any other public utility or municipality for electricity and lighting to the Lot, including the installation of underground electric cables, which contract may require and initial payment and/or continuing monthly payments to the City of New Bern Utility Department or any other municipality or public utility by the Owner of each Lot. Such expense, including both initial and continuing monthly payments, shall be an individual cost to be borne by each individual Lot Owner and is not covered by the general assessments.
- (6) The Declarant reserves the right to subject the Lots in the Subdivision to a contract with the City of New Bern Utility Department or any other public utility or municipality for street lights for the Common Areas which contract may require and initial payment and/or continuing monthly payments to the City of New Bern Utility Department or any other public utility or municipality. Such expense is included in the general assessments.
- (7) Additional residential property and Common Areas may be annexed into the Subdivision and the Corporation with the consent of two-thirds (2/3) of each class of members. Annexation of additional property shall be accomplished by recording a Declaration of Annexation describing the property annexed and incorporating the provisions of this Declaration by reference. The additional land shall be deemed annexed to the Subdivision and under the jurisdiction of the Corporation on the date of the recordation of the Declaration of Annexation. The Declaration of Annexation shall be duly executed by the Declarant.
- (8) As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Areas, and amendment of this Declaration.
- (9) Each Owner of any Lot within the Subdivision, as an appurtenance to such Lot, have and is hereby conveyed a perpetual, nonexclusive right of way and easement for the purposes of ingress, egress and regress to and from said Lot over, through and across the streets and roads shown on the Subdivision plat and/or described herein.
- (10) The Owner of each Lot, by acceptance of a deed thereto, and the Corporation by acceptance of a deed for the Common Areas, grants to the Declarant, its successors and assigns, and Declarant hereby reserves perpetual nonexclusive general access and

utility easements located over, along and through the streets and roads, utility lines, water lines and sewage lines presently existing, shown on the aforesaid plat or hereafter constructed. Such easements are nonexclusive and are for the purposes of providing utilities, water and sewage service and ingress, egress, regress and access to such additional areas as may be later developed and subdivided by Declarant, whether or not such area is annexed into this Subdivision. In its sole, unfettered discretion, Declarant may grant similar nonexclusive easement rights to various parties as it deems necessary and proper.

- (11) The Common Areas shall remain common areas in perpetuity, and no action of the Corporation shall eliminate any portion of the Common Areas unless such action is specifically authorized in writing by the City of New Bern.

J. Architectural Control and Architectural Restrictions

- (1) The Architectural Control Committee ("Committee") shall be comprised of four (4) persons. Any natural person may serve as a member of the Committee. Until December 31, 2009, Declarant shall have the right to appoint and remove the four (4) Committee members with or without cause. After such date, the Board of Directors of Corporation shall have the right to appoint and remove members of the Committee with or without cause.
- (2) Except as provided in Paragraph 7 of this Article J, before any structure, fence, building, wall or addition to any of same shall be commenced, erected, or maintained upon any Lot and before any alteration (including painting) of the exterior portion of any structure located upon any Lot in the Subdivision shall be commenced (except as shall be undertaken by the Corporation itself), the party desiring to make such changes or erections shall submit and have approved by the Committee (hereinafter called "Committee"), plans and specifications detailing the changes and erections. The plans and specifications must show the structure, kind, shape, height, materials, color and locations of the change or erection. Two (2) complete sets of Committee Applications Forms, final plans, and specifications for any and all proposed improvements, shall be (1) hand delivered to the Committee, or (2) mailed certified or registered mail with return receipt requested to the Committee. The Committee shall approve or disapprove such plans within forty (40) days of receipt thereof. One set of plans and specifications and details with the approval or disapproval of the Committee shall be returned to the party submitting them and the other copy shall be retained by the Committee for its permanent files. Until December 31, 2006, the address of the Committee is 507 Jimmies Creek Drive, New Bern, NC 28562. After such date, the address is the address of the Corporation.
- (3) The Committee shall make its decision approving or disapproving the plans by taking into consideration the nature of the Subdivision, the aesthetics of the proposed changes or alterations, the harmony of the proposed change or erection with the architectural style of neighboring buildings, color schemes, durability of construction,

relative costs, and protection of the investment of the Owners of other Lots in the Subdivision. Submission of incomplete or inaccurate plans and specifications may result in disapproval. The decisions of the Committee shall be final and not subject to appeal or review.

- (4) If the Committee fails either to approve or disapprove any plans so submitted within forty (40) days of their submissions, the plans will be deemed approved. If a court action challenging the lack of approval is not brought before a certificate of occupancy has been issued by the City of New Bern for the improvement, the plans will be deemed approved.
- (5) Neither the Committee nor any agent of the Declarant shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions nor any structural or other defect in any work done according to such plans and specifications.
- (6) The requirements of this Article shall not constitute a lien or encumbrance on any Lot on which construction is complete, and any subsequent purchaser thereof for value without notice thereof is in no way affected by the failure of his predecessors in title to comply with the terms hereof.
- (7) The provisions of this Article shall not apply to original construction on a Lot by Declarant and no such approval shall be required for original construction by Declarant.
- (8) The initial members of the Committee shall be Robert E. Dunn, Robert E. Dunn, Jr., Jeffrey Dunn and Mary Manning.

K. Insurance

- (1) The corporation shall purchase and maintain at all times a comprehensive general liability insurance policy covering all Common Areas, public ways and any other areas that are under its supervision. The liability insurance shall insure against liability to the public or to other lot owners, their tenants, guests or invitees, relating in any way to the ownership, operation, maintenance and/or use of the Common Areas and any part thereof, and any other areas under the Corporation's supervision including public ways, if the Corporation supervises any such public ways. Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of a Lot Owner because of the negligent acts of the Corporation or other Lot Owners. Limits of liability shall be at least One Million Dollars (\$1,000,000.00) covering all claims for personal injury and/or property damage arising out of a single occurrence. Coverage under this policy shall include legal liability arising out of losses related to employment contracts of the Corporation. The policy shall require the insurer to notify, in writing, the Corporation at least ten (10) days before the insurer cancels or substantially changes the coverage.
- (2) It is the responsibility of each Owner to purchase and maintain hazard insurance on such Owner's Dwelling, personal property, fixtures and appliances. Each owner shall

be responsible for purchasing and maintaining any desired liability insurance covering his Lot and Dwelling.

L. Restrictions on Use and Occupancy

- (1) The division of Lots is permissible provided that the number of Lots in the Subdivision is not increased (i.e., portions of lots are combined with other lots or other portions of lots to form a new Lot). Any such Lot which has been formed with portions of one or more Lots shall be considered a Lot as defined herein notwithstanding the fact that said Lot actually consists of portions of more than one original Lot. Drainage and utility easements not actually in use shall be moved to the perimeter lot lines of the reconfigured Lot. No Lot shall be used except for single family residential purposes. No building shall be located on any Lot except a Dwelling as defined herein and such other outbuildings as may be normal and customary accessories for a single family residential dwelling, including a private garage, and located within the building lines for said Lot as shown on the recorded plat. Any changes in lot lines shall be approved by the City of New Bern.
- (2) Every residential Dwelling constructed on a Lot shall contain at least fifteen hundred (1500) square feet of heated area. In addition, if such Dwelling consists of a one and one-half (1 ½) story Dwelling, such Dwelling shall have not less than eight hundred (800) heated square feet on the first floor. Any two (2) story dwelling shall contain not less than eight hundred (800) heated square feet on the first floor.
- (3) Any appurtenant structure, other than fences, shall be located behind The Principle Residence or Dwelling and shall be of like materials, construction methods, and techniques, as the principal residential dwelling. Fences and appurtenance structures are allowable only if in the opinion of the Committee, they are necessary for the enjoyment of the property as defined under single family residential uses. These appurtenant structures shall not be allowed if they are made of metal, tin, aluminum, or any pre-manufactures materials.
- (4) Any fence erected on any lot must have the prior approval of the Property Control Committee as hereinafter specified. No fence shall be erected along the front line of any lot any closer to the street than the front of the house. However, a fence shall be allowed parallel to the sideline of a lot fronting on a street but extending no closer to the street fronting the house than the front of the house. In the event that the lot is a corner lot or the sideline of the lot is adjacent to a street, no fence shall be erected outside of the building set back line along the side lot line adjacent to the street. Any fences erected shall not be more than 6 feet high. Notwithstanding anything to the contrary herein contained, no chain link fences shall be erected or allowed to remain on any lot within the subdivision. Furthermore, notwithstanding anything to the contrary herein contained, Declarant shall be allowed to erect a temporary wooden fence at any place on any lot being used as a temporary model home; however, at such time as said lot ceases to be used for a model home, any fence erected by

- Declarant which does not conform to the requirements of this paragraph shall be removed. On all plank fencing the rails are to be installed on the side of the fence away from the public view.
- (5) Without the prior written consent of the Committee, nothing shall be done or kept in any Dwelling or on any Lot which will increase the rate of insurance applicable to other buildings in the subdivision. No Owner shall permit any thing to be done or kept in his Dwelling or on his Lot which will result in the cancellation of insurance on his Dwelling or of that of any of this neighbors. No waste may occur in the Common Areas.
 - (6) Owners and occupants of Dwellings, without the prior written consent of the Committee, shall not place or store any item on the exterior of a Dwelling.
 - (7) All motor vehicles of any type kept within the Subdivision shall have current registration and inspection certificates. Only automobiles, pick-up trucks or vans of a size of three-quarter ton or smaller and motorcycles shall be allowed to remain overnight on the Lots. No tract, trailer or tractor-trailer may be kept within the Subdivision. It is provided, however, that during construction and development, construction trucks, tractors and equipment may be kept within the Subdivision by the Developer or his designees.
 - (8) No signs of any kind shall be displayed to the public view on any Lot except signs used by the Declarant or its agents to advertise the property during the construction and sales period or one sign not more than six (6) square feet advertising the property for sale or rent.
 - (9) No trash, ashes, garbage, or other refuse shall be dumped or stored or accumulated on the exterior of any Dwelling.
 - (10) All outdoor receptacles located on a lot for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible to the occupants of other Lots.
 - (11) No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
 - (12) No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any Dwelling except that dogs, cats, or other household pets may be kept or maintained provided they are not kept or maintained for commercial purposes. Animals or pets shall not run at large. (Such pets shall be reasonable in size and there shall be no more than two dogs maintained by any lot owner.)
 - (13) The provisions of this Article are subject to the condition that for so long as the Declarant retains any Lot or any portion of the property in the Subdivision, whether shown and delineated on the aforesaid plat or later annexed into the Subdivision, which has not been sold, leased, rented, or otherwise conveyed, the Declarant is hereby expressly permitted to maintain signs on the Common Areas.
 - (14) No outside radio or television antennas, satellite dishes, or towers of any kind, shall be erected on any Lot or Dwelling unless and until permission for same has been granted by the Committee. No radio station or shortwave operator of any kind shall

- operate from any Lot or Dwelling without the prior written consent of the Committee.
- (15) All plumbing fixtures, dishwashers, toilets, or sewage disposal systems shall be connected to a sewage system approved by the appropriate governmental authority and the Declarant. No outside toilet shall be constructed or permitted on any Lot after completion of the principal residential dwelling. Portable toilets shall be allowed during the construction period.
 - (16) No temporary house, manufactured mobile home, trailer, camper, tent, garage or other outbuilding shall be placed on or erected on a Lot. Provided, however, the Committee may grant permission for a temporary structure for storage of materials during the construction period and the Declarant may maintain construction and/or sales trailers during the development period. No such temporary structure or appurtenant structure as may be approved shall be used at any time as a dwelling.
 - (17) Once construction of improvements is started on any Lot, improvements must be substantially completed in accordance with the plans and specifications as approved by the Committee within a reasonable time after commencement.
 - (18) No residence shall be occupied until the same has been substantially completed and a Certificate of Occupancy has been issued by the appropriate governmental authority.
 - (19) All structures constructed or placed on any Lot shall be built of substantially new materials and no used structure or materials shall be moved, relocated, or placed on any such Lot.
 - (20) Fuel storage tanks shall be buried below the surface of the ground or located behind the Principal Residence or Dwelling.
 - (21) No structure erected upon any Lot may be used as a model exhibit or model home unless prior written consent to do so has been obtained from the Committee. Provided, however, that notwithstanding any other provisions of this Declaration, Declarant may maintain model homes and sales offices in the Subdivision as long as Declarant owns a Lot within the area described in Article A(10).
 - (22) No outside burning of garbage or refuse shall be permitted.
 - (23) No Lot shall be accessed by motor vehicle except from the front lot line of the Lot as determined by the front of the dwelling located upon said Lot.
 - (24) Each front lawn of the dwelling shall have grass sod.
 - (25) The following covenants are intended to ensure compliance with state stormwater management permit number SW7030915 as issued by the Division of Water Quality. These covenants may not be changed or deleted without the consent of the State.
 - (26) No more than 3500 square feet of any lot shall be covered by structures or impervious materials. Impervious materials include asphalt, gravel, concrete, brick, stone, slate or similar material but do not include wood decking or the water surface of swimming pools.
 - (27) Swales shall not be filled in, piped, or altered except as necessary to provide crossings.
 - (28) Built-upon area in excess of the permitted amount requires a state stormwater

- management permit modification prior to construction.
- (29) All permitted runoff from outparcels or future development shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted.
- (30) The City of New Bern, in approving the subdivision, **CREEKSIDE VILLAGE**, has required certain plantings to be completed on each lot, therefore, each lot is conveyed subject to the requirements for landscaping by the City of New Bern and access shall be afforded to each lot in order that compliance with this requirement may be met.

M. Waiver

No provisions contained in these Restrictions, the Articles or the Bylaws, shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any person as to the same or similar future violation, no matter how often the failure to enforce is repeated.

N. Variances

The Committee in its discretion may allow reasonable variances and adjustments of these Restrictions in order to alleviate the practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit of the intent of this document to create a Subdivision of Lots owned in fee by various persons with each such Owner having an easement upon areas owned by the Corporation. No variance or adjustment will be permitted if such would be materially detrimental or injurious to the welfare of the other property and improvements in the Subdivision as determined by the Committee. All variances shall be approved by the City of New Bern.

To be effective, a variance hereunder shall be recorded in the Office of the Register of Deeds of Craven County; shall be executed on behalf of the Committee; and, shall refer specifically to this Declaration.

O. Duration, Amendment and Termination

- (1) The covenants and restrictions contained in the Declaration shall run with and bind the land until December 31, 2024. The Declarant herein reserves the right to amend these declarations and restrictions until December 31, 2024. After that date, these Declarations and Restrictions may be amended in full or in part prior only by an instrument signed by not less than two-thirds (2/3) of each class of members. No amendment shall alter any obligation to pay ad valorem taxes on the Common Areas or assessments for street lighting as herein provided, or affect any lien for the payment of same. Further, no such amendment shall affect the rights of Declarants unless such party executes the amendment.

- (2) Invalidation of any one of these covenants or Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
- (3) Notwithstanding any other provision of this document, Declarant may amend this instrument without the joinder or consent of any other person or entity if such amendment is required by any governmental agency for governmental approval.

P. Common Areas: Private

- (1) Every Common Area and any facility thereon is private. Neither the Declarant's execution nor recording of the plat nor any other act of the Declarant with respect to the property is or is intended to be or shall be construed as a dedication to the public of any of said parks, recreational facilities or amenities other than as reflected herein. An easement for the use and enjoyment of each of the areas designated as Common Areas is reserved by the Declarant, its successors and assigns, for the benefit and use of their remaining property as described above and an easement for the use of such areas may be granted to the owners of such remaining property.
- (2) All Common Areas shall be owned by the Corporation and shall be acquired by the Corporation free and clear of all liens and encumbrances except pro rate ad valorem real property taxes for the year of conveyance, rights and easements reserved herein, and drainage and utility easements and mineral reservations as established in the chain of title.

Q. Remedies

Enforcement of these restrictions and conditions shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or condition, either to restrain violation thereof or to recover damages therefor. Injunction shall not issue to compel the removal of or moving of any completed residence for violation of side setback or front setback restrictions, the sole remedy of any offended person being a suit for damages.

R. Applicability

These Restrictions shall apply only to the Lots specified herein or hereinafter annexed into the Subdivision. No other property is restricted.

S. Captions

The captions preceding the various Articles of these Restrictions are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Restrictions. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine, and the neuter to include the masculine and feminine.

T. Notice

All notices provided for or permitted pursuant to these Restrictions shall be in writing and, except as is herein expressly otherwise provided, notice shall be deemed sufficient and service thereof completed upon hand delivery or receipt, refusal or non-delivery of same when mailed postage prepaid to the party to or upon whom notice is being given or served at the address of such party last reflected on the records of the Corporation.

U. Liberal Construction

The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a Subdivision of fee simple ownership of Lots and buildings governed and controlled by rules, regulations, restriction, covenants, conditions, reservations and easements administered by an Owners' association with each Owner entitled to and burdened with the rights and easements equivalent to those of other owners. In the case of conflict between this Declaration, the Articles or the Bylaws, this Declaration shall control the Articles and the Bylaws, and the Articles shall control the Bylaws.

IN WITNESS WHEREOF, each of the parties has caused this instrument to be properly executed and sealed after proper authority having been given, this the day and year first above written.

(CORPORATE SEAL)

BRANCH BANKING AND TRUST COMPANY,
Beneficiary

By: [Signature]
Vice President

(CORPORATE SEAL)

BB&T COLLATERAL SERVICE CORPORATION,
Trustee

By: [Signature]
Vice President

(CORPORATE SEAL)

**GENE DUNN CONSTRUCTION COMPANY
OF NEW BERN, INC.**

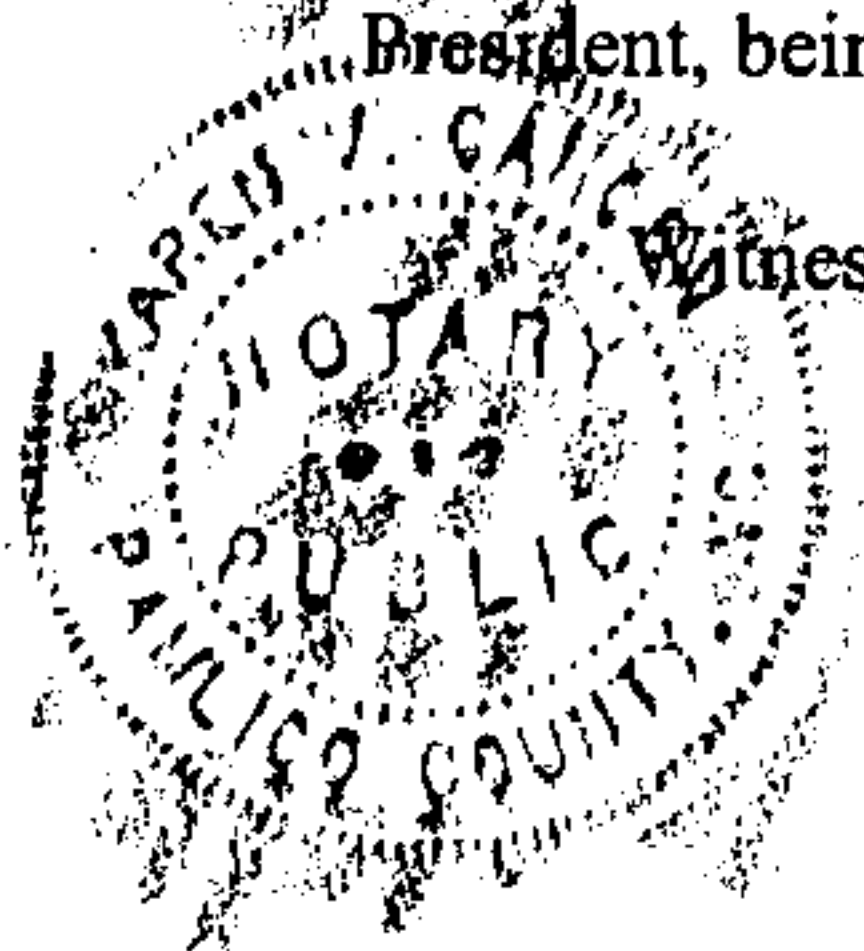
By: [Signature]
President

NORTH CAROLINA
CRAVEN COUNTY

I, Karen V. Cahoon, a Notary Public, certify that William D. Green personally came before me this day and acknowledged that he is Vice President of **BRANCH BANKING AND TRUST COMPANY**, a corporation, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 24 day of Feb, 2004.

Karen V. Cahoon
Notary Public
My commission expires: 4.9.05

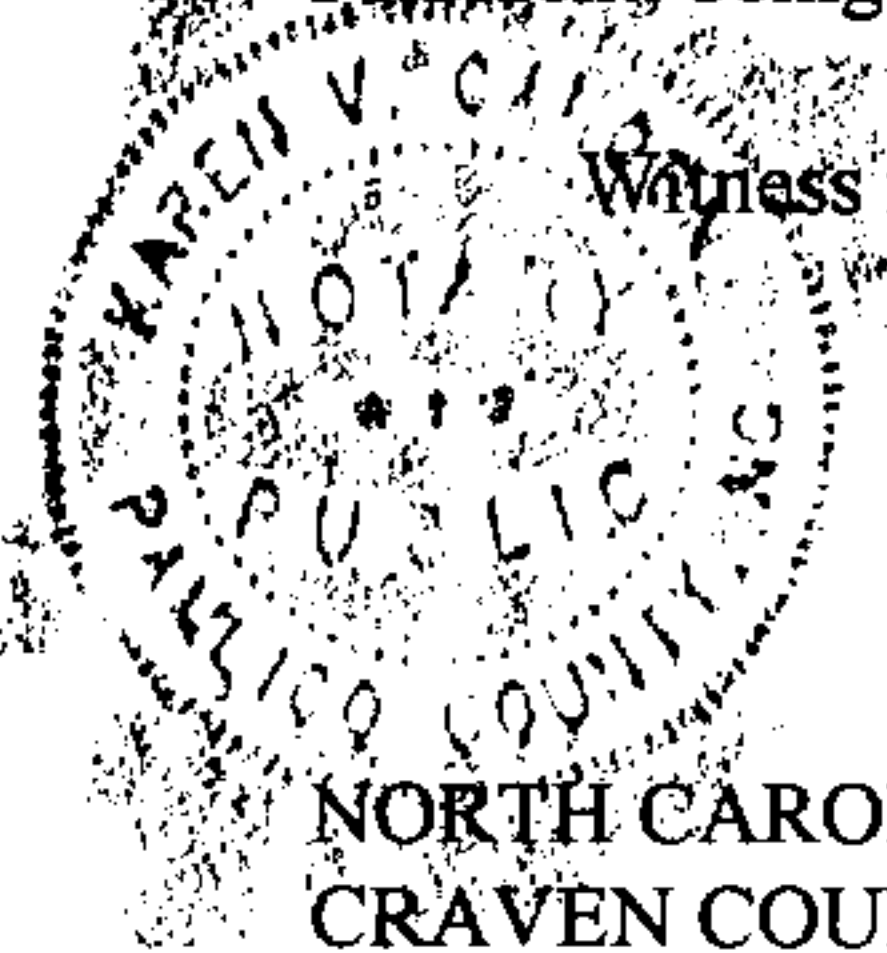


NORTH CAROLINA
CRAVEN COUNTY

I, Karen V. Cahoon, a Notary Public, certify that David M. Stroud personally came before me this day and acknowledged that he is SR Vice President of **BB&T COLLATERAL SERVICE CORPORATION**, a corporation, and that he, as SR Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 24 day of Feb, 2004.

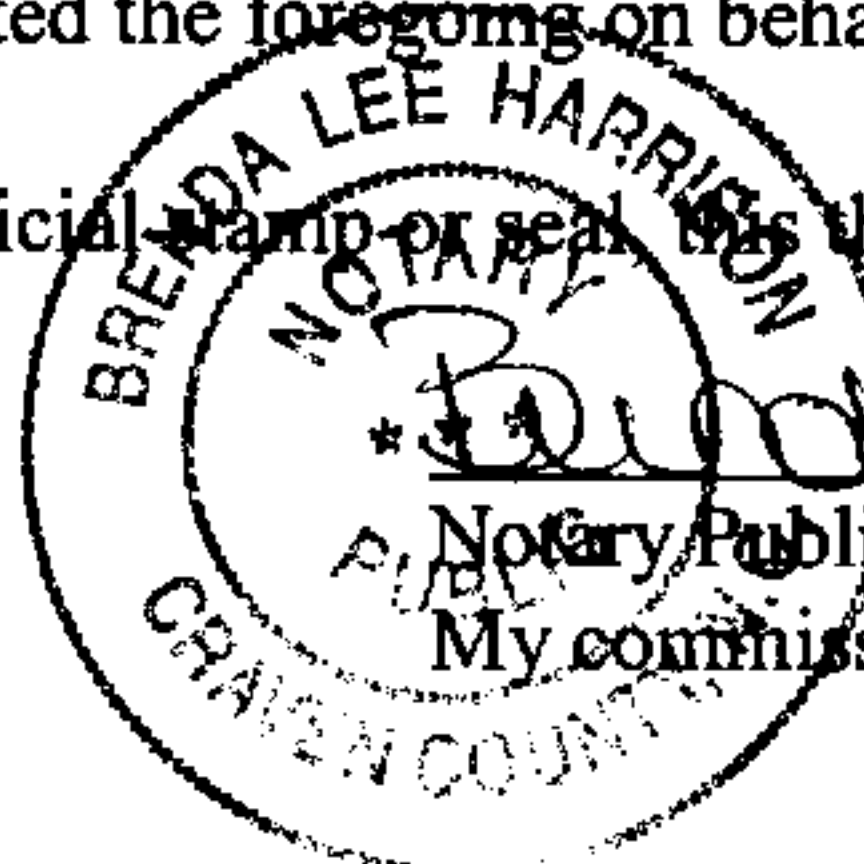
Karen V. Cahoon
Notary Public
My commission expires: 4.9.05



NORTH CAROLINA
CRAVEN COUNTY

I, Brenda Lee Harrison, a Notary Public, certify that Robert E. Dunn personally came before me this day and acknowledged that he is President of **GENE DUNN CONSTRUCTION COMPANY OF NEW BERN, INC.**, a corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 24th day of February, 2004.



Brenda Lee Harrison
Notary Public
My commission expires: 5-26-07

NORTH CAROLINA
CRAVEN COUNTY

Date 02/25/2004 Time 10:53:03 22 of 22 Pgs
No: 2004-00091406

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The certificates of the foregoing Notaries are certified to be correct. This instrument was presented for registration this day and hour, and duly recorded in the Office of the Register of Deeds of Craven County, NC, in Book 2151, Page 456.

This 25 day of February, 2004, at 10:53 o'clock A m.

Becky Thompson By Michele L. Cook
Register of Deeds Asst./Deputy Register of Deeds