

STATE OF NORTH CAROLINA

FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
BARNES BLUFF SUBDIVISION

COUNTY OF BRUNSWICK

This First Amendment to the Declaration of Covenants Conditions and Restrictions for Barnes Bluff Subdivision, made the 1st day of April, 2002, by BARNES BLUFF ASSOCIATES, L.L.C., a North Carolina Limited Liability Company, hereinafter referred to as "Developer";

W I T N E S S E T H :

Whereas, Developer is the owner of certain real property in Brunswick County, North Carolina, known as Barnes Bluff Subdivision, which is shown on certain maps thereof recorded in the Office of the Register of Deeds of Brunswick County, North Carolina, in Map Cabinet 20 Pages 77 and 78, and Map Cabinet 20 Page 277 to which maps reference is hereby made for a more particular description (the "Subdivision"); and

Whereas, Developer did, by that document entitled "*Declaration of Covenants Conditions and Restrictions Barnes Bluff Subdivision*" (the "Declaration"), same being dated September 23, 1998, and recorded in Book 1259 at Page 1017 of the Brunswick County Registry, declare that the subdivision described above shall be held, sold and conveyed subject to the certain easements, restrictions, covenants, and conditions, which were and are for the purpose of protecting the value and desirability of, and which shall and do continue to run with the land and be binding on all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof; and

Whereas, Developer has determined that it is in the best interests of the subdivision and all present and future owners of lots therein to amend the said Declaration, all as is herein set forth.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND OTHER VALUABLE CONSIDERATIONS, DEVELOPER DOES HEREBY AMEND THE *DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS BARNES BLUFF SUBDIVISION* AS FOLLOWS:

TO ARTICLE I. DEFINITIONS add the following:

Section 15. Master Association shall mean and refer to "South Harbour Master Property Owners Association, Inc." and/or "South Harbour Master POA, Inc.", of which Barnes Bluff HOA, Inc. shall be a member.

ARTICLE VI. ASSESSMENTS shall be amended as follows:

Sections 1. Through Section 9., inclusive, shall be amended to read as follows:

"Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed for the Owner's Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association, and, through the

Association to the Master Association, Annual and Special Assessments, (collectively the "Assessments").

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The Assessments levied by the Association may be used for any or all of the following purposes--operation, maintenance and improvement of the Common Property and any drainage or utility easements within the Subdivision; landscaping and/or fencing of easements reserved over Lots; enforcing this Declaration; paying taxes and any insurance premiums on or for the Common Property and any drainage or utility easements within the Subdivision, legal and accounting fees and governmental charges; establishing working capital; and in addition, doing any other things necessary or desirable to further the above purposes. It is expressly understood that assessments levied by the Association or the Master Association may also be used for paying a prorated share of the costs of the maintenance and improvement of all private and/or non-state maintained roads which provide access to the subdivision.

Section 3. Annual Assessments. Annual Assessments shall be in an amount to be fixed from year to year by the Board which may establish different rates from year to year as it may deem necessary for the purposes set forth in Section 2 above. The amount of the Annual Assessment against each Lot for any given year shall be fixed prior to January 1 of such year; provided, however, that the first Annual Assessment shall be set prior to the conveyance of the first Lot to an Owner and written notice to the Owners to be subjected thereto shall be delivered to the Owners at or prior to the closing of their Lots. Written notice of each Annual Assessment thereafter shall be sent to every Owner subject thereto. The due date shall be established by the Board and the Board shall have the authority to allow the assessments to be paid in pro rata installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased each year not more than five percent (5%) above the Annual Assessment for the previous year without a vote of the Members.

B. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased above five percent (5%) only by a vote of the Owners of two-thirds (2/3rds) of the Lots, voting in person or by proxy at a meeting duly called for such purpose.

C. The Board may increase the amount of the Annual Assessment to Four Hundred Fifty Dollars (\$450.00) per Lot notwithstanding the provisions of subparagraphs A and B above, and thereafter the limitations set forth in said subsections shall apply to an annual increase.

Section 4. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year equally against the Lots, a Special Assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property or any drainage or utility easement in the Subdivision, whether owned by the Association or not, including fixtures and personal property related thereto, provided that any such assessment shall be approved by vote of the Owners of two-thirds (2/3rds) of the Lots voting in person or by proxy at a meeting duly called for such purpose. Further, the Association may assess its members to pay for assessments levied upon the Association by the Master Association.

Section 5. Notice and Quorum For Any Action Required to be Approved by the Members Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Section 3 and 4 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 Owners or of proxies entitled to cast the votes for sixty percent (60%) of all of the Lots shall constitute a quorum. If a quorum is not present at such meeting, the meeting may be adjourned for lack of a quorum, until a date specified in the motion to adjourn for lack of a quorum, on which date a second meeting shall be held. The required quorum at such second meeting shall be one-half (1/2) of the required quorum at the first meeting. No such second meeting shall be held more than sixty (60) days following the first meeting.

Section 6. Uniform Rate of Assessment. The Assessments must be fixed at the same amount for each Lot and may be collected on a monthly basis. Provided, however, in the event that maintenance, repair or replacement of any part of the Common Property is caused through the willful, or negligent act of an Owner, his family, guests or invitees, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the Assessment to which such Owner's Lot is subject.

Section 7. Commencement of Assessments.

Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from the Developer. If such date assessments commence is not on January 1, the assessment for the Lot for such first year shall prorated. The Developer shall not be required to pay Assessments, except as may be required by law to do so.

Section 8. Effect of Nonpayment of Assessments And Remedies Of The Association. Any Assessment, whether it be levied by the Association or the Master Association, not paid within thirty (30) days after the due date shall bear interest from the due date of the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Property or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted.

Section 9. Subordination Of The Lien To Mortgage.

The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, 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."

Add the following as Section 10.

"Section 10. Action by Master Association. All Owners acknowledge and agree that the Master Association may, in its sole discretion, levy assessments, both regular as well as special assessments for such lawful purposes as may be deemed necessary by the Board of Directors of the said Master Association. Any such assessments shall have the same force and legal effect, and may be enforced in the same manner, as any assessment levied by the Barnes Bluff HOA, Inc."

ARTICLE VII. ARCHITECTURAL CONTROL/CONSTRUCTION shall be amended as follows:

Section 9. Driveways., shall be amended to read as follows:

"Section 9. Driveways. Driveways are to be constructed in accordance with the standards of the North Carolina Department of Transportation and, further, shall be constructed of such materials as are approved in writing for that specific driveway by the Developer and/or the Architectural Control Committee."

Section 11. Sodding and Irrigation of Front Lawns. shall be amended to read as follows:

"Section 11. Sodding and Irrigation. All front and side lawns on Lots on which a residence exists shall be sodded from the site of the residence all the way to the paved surface of all of the roads providing either pedestrian and/or vehicular access to the dwelling. All lawns of residences situate on corner lots shall be sodded to the paved surface on the front and sides of said lots. Further, all said lawns shall be adequately watered by an underground-pipe irrigation system."

Add as Section 13, the following:

"Section 13. Drainage easement maintenance; vegetative conveyances. All drainage easements, and/or any portion thereof which is located on any portion of any lot within the subdivision shall be preserved, protected, and maintained by the owner of said lot. Further, the filling in or piping of any vegetative conveyances (ditches, swales, etc.) within or used by the subdivision, except for average driveway crossings, is strictly prohibited."

ARTICLE X. GENERAL PROVISIONS is amended as follows:

Section 2. Enforcement of Storm Water Runoff Regulations. is amended to read as follows:

"Section 2. Enforcement Of Storm Water Runoff Regulations. The State of North Carolina is hereby made a beneficiary of this Declaration to the extent necessary to enforce its storm water runoff regulations as the same may be amended from time to time. The Built Upon Area for each Lot shall be the amount of square feet as is shown on Attachment "A" which is attached hereto and made a part hereof, unless and until the State of North Carolina shall revise its storm water runoff regulations to permit a greater Built Upon Area for such Lot or Lots. For purposes of this section, the allowable "Built Upon Area" shall include that portion of the right-of-way between the front lot line and the edge of the pavement, structures, pavement, walkways of brick, stone, or slate, but shall not include wood or synthetic material decking. Any Owner may, in accordance with applicable government regulations, borrow from another Owner any Built Upon Area which is not being utilized by the other Owner, without the approval of any Owner(s) not involved in such transaction, the Developer, or the Association.

Any covenants pertaining to stormwater regulations may not be changed or deleted without the concurrence of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources. Lots within the Area of Environmental Concern (AEC) of Coastal Area Management (CAMA) may have the built-upon area reduced to CAMA jurisdiction within the AEC.

Section 5. Amendment of Declaration. is amended to read as follows:

"Section 5. Amendment of Declaration. Except as provided elsewhere herein, the covenants and restrictions of this Declaration may be amended only by an instrument duly recorded in the Office of the Register of Deeds of Brunswick County executed by the duly authorized officers of the Association upon the vote of the Owners of not less than three fourths (3/4ths) of the Lots. In no event may this Declaration be amended so as to deprive the

Developer of any rights herein granted or reserved unto Developer, unless the Developer consents to such amendment in writing.

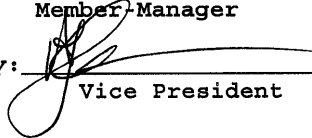
Section 10. Lot Maintenance. is amended to read as follows:

"Section 10. Lot Maintenance. In the event that any Owner shall fail or refuse to keep his Lot free from weeds, underbrush, refuse piles, unsightly growth or objects, or shall fail to keep his front and/or side lawns sodded and irrigated in accordance with Section 11, Article VIII, or fail to comply with the provisions of Section 13 above or any other provision hereof, then, after thirty (30) days notice from the Architectural Control Committee or the Association, the Association or its designee may enter upon the Lot and remove such weeds, underbrush refuse piles, unsightly growth or objects, or cause such lawn to be sodded and irrigated, at the expense of the Owner. Such entrance shall not be deemed a trespass, and in the event of such removal or correction a lien shall arise and be created in favor of the Association for the full amount of the cost thereof, including collection costs, and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable by court proceedings as provided by law for enforcement of liens."

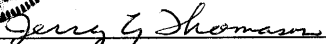
Except as is amended hereby, the Declaration of Covenants Conditions and Restrictions Barnes Bluff Subdivision recorded in Book 1259 at Page 1017 of the Brunswick County Registry is hereby ratified, confirmed, re-declared, and re-adopted.

IN WITNESS WHEREOF, BARNES BLUFF ASSOCIATES, L.L.C., the Developer herein, has caused this First Amendment to the Declaration of Covenants Conditions and Restrictions Barnes Bluff Subdivision to be executed in its name by its duly authorized Member-Managers, the day and year first above written.

BARNES BLUFF ASSOCIATES, L.L.C.,
By: Wilmington Holding Corp.
Member-Manager

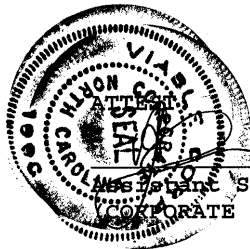
By: 
Vice President



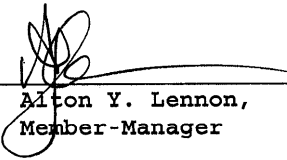

Assistant Secretary
(CORPORATE SEAL)

By: VIABLE CORP., Member-Manager

By: 
President



Assistant Secretary
(CORPORATE SEAL)


(Seal)
Alton Y. Lennon,
Member-Manager

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that JERRY V. THOMASON personally came before me this day and acknowledged that he (or she) is the Assistant Secretary of Wilmington Holding Corp., a North Carolina corporation, which corporation is a Member-Manager of BARNES BLUFF ASSOCIATES, L.L.C., a North Carolina Limited Liability Company, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by herself as its Assistant Secretary, on behalf of and as the act and deed of the said BARNES BLUFF ASSOCIATES, L.L.C.

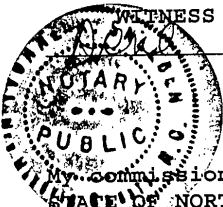


WITNESS my hand and official stamp or seal, this 1 day of _____, 2002.

Yvonne R Sneed
Notary Public

My commission expires: 11-12-2006
STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that Alton Y. Lennon personally came before me this day and acknowledged that he (or she) is the Assistant Secretary of Viable Corp., a North Carolina corporation, which corporation is a Member-Manager of BARNES BLUFF ASSOCIATES, L.L.C., a North Carolina Limited Liability Company, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Assistant Secretary, on behalf of and as the act and deed of the said BARNES BLUFF ASSOCIATES, L.L.C.



WITNESS my hand and official stamp or seal, this 1 day of _____, 2002.

Yvonne R Sneed
Notary Public

My commission expires: 11-12-2006
STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that ALTON Y. LENNON, personally came before me this day and acknowledged that he is a Member-Manager of BARNES BLUFF ASSOCIATES, L.L.C., a North Carolina Limited Liability Company, and that the said ALTON Y. LENNON, executed the foregoing instrument on behalf of and as the act and deed of the said BARNES BLUFF ASSOCIATES, L.L.C.



WITNESS my hand and official stamp or seal, this 1 day of April, 2002.

Yvonne R Sneed
Notary Public

My commission expires: 11-12-2006
STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of YVONNE R SNEEDEN

Notary(ies) Public is (are) Certified to be Correct.
This Instrument was filed for Registration on this 21st Day of May 2004
in the Book and page shown on the First Page hereof.

Robert J. Robinson
ROBERT J. ROBINSON, Register of Deeds

ATTACHMENT "A" BUILT-UPON SCHEDULE
BARNES BLUFF SUBDIVISION

LOT #	ACRES	MAXIMUM FT TO BE BUILT UPON
1	0.46	5754
2	0.46	5754
3	0.46	5754
4	0.47	5754
5	0.48	5754
6	0.53	5804
7	0.47	5754
8	0.51	8000
9	0.46	5754
10	0.54	5877
11	0.46	6212
12	0.46	5754
13	0.46	5754
14	0.46	5754
15	0.46	5754
16	0.46	5754
17	0.57	6205
18	0.58	6243
19	9.59	6357
20	0.93	8875
21	1.21	10000
22	0.58	6253
23	0.54	5920
24	0.53	5771
25	0.55	5978
26	0.39	5754
27	0.49	5754
28	0.52	5754
29	1.21	10000
30	1.99	10000
31	2.06	10000
32	2.15	10000
COMMON	0.87	8301

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