

BK 3356

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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

THIRD AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS,  
HEADWATER COVE TOWNHOMES  
AND  
PROTECTIVE COVENANTS FOR  
HEADWATER COVE ESTATES

KNOW ALL MEN BY THESE PRESENTS THAT

GTC PROPERTIES, LLC, a North Carolina limited liability company (hereinafter called "Declarant"), heretofore executed a Declaration of Covenants, Conditions and Restrictions, Headwater Cove at Bradley Creek, Phase I, and caused the same to be recorded in the New Hanover County Registry ("NHCR"), in Book 2227 at Page 0032, and an Amendment to the same recorded in Book 2383 at Page 855, NHCR and a Second Amendment (herein the "Second Amendment") thereto recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_, NHCR (all collectively herein referred to as the "Declaration"); and

WHEREAS, the development as originally designed and approved contemplated the construction of 34 Townhomes, but after the construction of the first 19 units the Declarant decided to change the scheme of development to develop 13 single family lots on the remaining undeveloped property instead of 15 townhomes, thereby reducing the total number of units to be developed from 34 to 32; and

WHEREAS, pursuant to Article X, Section 14 of the Declaration, the Declarant has the absolute right to re-subdivide and replat two or more lots without the assent or vote of the owners of lots, but the unit owners of Headwater Cove Townhomes were informed and the revised plan was submitted to and unanimously approved by the members of Headwater Cove Homeowners Association (the "Association") at its annual meeting held in Wilmington, NC on June 26, 2001, upon proper notice as

required by law and by the By-laws of the Association, with the owners of 32 out of 34 units being present or represented by proxy, and voting; and

**WHEREAS**, the 15 townhome units to be deleted from the development are Units 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, 5E, 5F, 6A, 6B, 6C, and 6D as shown on the plat of Headwater Cove Townhomes recorded in Map Book 37 at Page 126, NHCR, and the 13 single family lots to replace the deleted units will be designated as Lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 (the "Single Family Lots") on a plat thereof to be entitled "Headwater Cove Estates" recorded or to be recorded in the New Hanover County Registry; and

**WHEREAS**, the changes in the design and structure of the subdivision will require changes in the Declaration to accommodate both townhomes and single family lot owners as members of the Association and to recognize and distinguish between their separate needs and requirements; and

**WHEREAS**, the Declarant desires to amend the Declaration to incorporate the modifications necessary to distinguish between the townhomes and the single-family lots and to establish separate restrictions where appropriate for the single family lots, all of which are for the mutual benefit of Declarant and succeeding property owners.

**NOW, THEREFORE**, the Declarant does hereby amend the Declaration and declares that all of the Single Family Lots described above shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions set forth in the Declaration, as previously amended, and as further amended herein, and subject to those special restrictions hereinafter set forth which shall apply only to Headwater Cove Estates, all of which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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**THIRD AMENDMENT TO**  
**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS**  
**HEADWATER COVE AT BRADLEY CREEK**  
**(NOW HEADWATER COVE TOWNHOMES)**

1. **ARTICLE I, SECTION 1** is hereby changed to read as follows:

"SECTION 1. **Association** shall mean and refer to **HEADWATER COVE AT BRADLEY CREEK HOA, Inc.** a North Carolina non-profit corporation, its successors and assigns, the owners association organized for the mutual benefit and protection of the Properties. All property owners of lots in **HEADWATER COVE TOWNHOMES** and **HEADWATER COVE ESTATES** shall be members of the Association, which membership shall be appurtenant to and may not be separated from the ownership of any lot in the subdivision."

2. **ARTICLE I, SECTION 5** is hereby changed to read as follows:

"SECTION 5. **Common Area** shall mean and refer to all real property and facilities now or hereafter owned by the Association for the common use and enjoyment of the Owners, including, without limitation, all streets within the Property and all areas designated as "Open Space" or "Common Area" upon any recorded subdivision plat of the Properties or hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the Owners of the Properties. However, Declarant reserves the right without the consent of the Association to alter and amend the recorded Map to amend, delete or relocate Common Areas and facilities as Declarant, in its sole discretion, deems appropriate.

2. **ARTICLE VII. COVENANTS FOR ASSESSMENTS.** is hereby amended to add a new section between **SECTION 3** and **SECTION 4** to be designated as **SECTION 3A** to read as follows:

"SECTION 3A. **Different Rates of Assessments for Townhomes and Single-Family Lots.** The Association shall have the right to establish different rates of assessments for Townhomes and single-family lots commensurate with the different responsibilities of the Association with respect to the common expenses required for each".

3. **ARTICLE VII. SECTION 6. Insurance.** hereby amended to add a new section after **SECTION 6** and before **SECTION 7** to be designated as **SECTION 6A** to read as follows:

"SECTION 6A. **Applicability of Insurance Assessments.** The Owners of the single-family lots in Headwater Cove Estates shall be responsible for insuring all improvements on their individual lots, which policies shall be issued in their

individual names. Single-Family Lot owners shall not be required to contribute to the assessments for insurance on the townhouses required by the provisions of SECTIONS 5 and 6 above but shall be responsible for their fair share of the premiums for liability insurance on the common areas and any Officers and Directors liability insurance premiums, the Association may require.

4. ARTICLE IX. PARTY WALLS shall not apply to the single-family lots in Headwater Cove Estates

4. There is hereby added to the Declaration a new article to be inserted after ARTICLE XIV, as follows:

#### ARTICLE XV

##### PROTECTIVE COVENANTS HEADWATER COVE ESTATES

The following special PROTECTIVE COVENANTS shall apply only to Headwater Cove Estates:

**SECTION 1. Building Set Back Restrictions.** Since the establishment of standard inflexible building setback lines in location of homes on Lots tends to force construction of homes directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related concerns, no specific setback lines are established by these covenants. In order to assure, however, that the foregoing considerations are given maximum effect, the Declarant reserves the right to select the precise site location of each house or other structure on each Lot in its sole discretion and to arrange the same in such manner and for such reasons as the Declarant deems sufficient, provided, however, the Declarant shall make such determination so as to insure that the development of the Lots subject to these PROTECTIVE COVENANTS is consistent with the provisions set forth herein. The placement of homes is meant to create a sense of spaciousness and to avoid monotony. For such purposes it is the Declarant's intent that setback lines may be staggered where appropriate. In any event, no house shall be erected closer to the front Lot line or nearer to any side Lot line than the minimum distances established by applicable governmental ordinances.

**SECTION 2. Parking Rights and Restrictions.** Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles and other vehicles owned or controlled by such Owner, members of the Owner's family, guests or domestic employees of the Owner and tenants, and Owners (including family members and tenants) of the Lots covenant and agree not to park their automobiles, trucks, boats, trailers or other vehicles on the streets or Common Elements located on the Property. No trucks or other commercial vehicles greater than 3/4 ton and no

boats or trailers shall be stored, housed or parked on the Property except within an enclosed garage.

**SECTION 3. Maintenance by Owners.** Each Lot owner shall be responsible for the maintenance repair and upkeep of all improvements on his individual lot. To the extent that it is in conflict with this paragraph, ARTICLE VIII, SECTION 3 of the Declaration shall not apply to the Single-Family Lots and is hereby amended accordingly. If, in the opinion of the Association, any Owner shall fail to maintain any dwelling owned by him in a manner which is reasonably neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the sole opinion of the Association, the Association in its discretion, by the affirmative vote of two-thirds (2/3) of the members of the Board of Directors, and following ten (10) days written notice to the Owner(s), may enter upon and make or cause to be made repairs to such improvements and perform such maintenance on the lot as the removal of trash. The Association shall have an easement onto and over each lot for the purpose of accomplishing the foregoing. The reasonable cost incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such cost, shall be added to and become a part of the assessment to which such Lot is subject.

**SECTION 4. Reservation for CP&L.** The Declarant reserves the right to subject the Property to a contract with Carolina Power & Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or continuing monthly payment to Carolina Power & Light Company by the Owner of each Lot, or by the Association on behalf of the Lot Owners as a common expense.

**SECTION 5. Emergencies.** Every Lot and home shall be subject to an easement for entry by the Association or emergency personnel, including, without limitation, all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties for the purpose of correcting, repairing or alleviating any emergency condition which arises upon any Lot and/or Common Elements, and/or home and which endangers any building or portion of the Common Elements.

**SECTION 10. Conflict.** In the event of any irreconcilable conflict between this ARTICLE and any other ARTICLE applicable to the Single-Family Lots, the provisions of this ARTICLE shall control. In the event of any irreconcilable conflict between this ARTICLE and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

The foregoing amendments shall run with the real property and be binding on all parties, their heirs, successors and assigns, having any right, title or interest in any lots in Headwater Cove Townhomes (formerly Headwater Cove at Bradley Creek, Phase I), and Headwater Cove Estates, or any part thereof, and shall

inure to the benefit of each owner thereof.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to Declaration to be duly executed by its members who have set their hands and seals all as of the day and year first above written.

GTC PROPERTIES, LLC

By: James T. Cooke (SEAL)  
Member

By: Charles N. Garrett, Jr. (SEAL)  
Member

By: D. Webster Trask (SEAL)  
Member

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Betty Jean Humbles, a Notary Public of the aforesaid County and State, hereby certify that James T. Cooke, Charles N. Garrett, Jr., and D. Webster Trask, being all of the Members of GTC PROPERTIES, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and as the act and deed of said limited liability company.

Witness my hand and notarial seal, this the 9th day of July, 2002.

Betty Jean Humbles  
Notary Public

My Commission Expires:  
7/15/07

