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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**TURTLEWOOD AT SOUTHPORT**

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This Declaration of Covenants, Conditions and Restrictions is made this 28 day of February, 2005, by Turtlewood Development, LLC, a North Carolina limited liability company (together with its successors and assigns hereinafter referred to as "Declarant");

Declarant is the owner of the real property described in Exhibit A attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property within the Properties and hereby submits such real estate, including all improvements, easements, rights and appurtenances thereunto belonging to the provisions of Chapter 47F of the General Statutes of North Carolina, known as the North Carolina Planned Community Act. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or may hereafter be subjected to this Declaration.

Declarant hereby declares that all of the Properties described in Exhibit A and any additional property as may by amendment be added to and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "*Area of Common Responsibility*" means the Common Area, together with other areas, if any, that become the responsibility of the Association. The office of any property manager employed by or contracting with the Association and located on the Properties, and any public or private rights-of-way within the Properties may be part of the Area of Common Responsibility. The Area of Common Responsibility will include without limitation the gazebo walkway, entrance gazebo, marsh gazebo, entrance features and landscape screening buffer located within the property described in Exhibit A, even prior to the time when any such areas are conveyed to the Association as Common Area.

Section 2. "*Articles of Incorporation*" or "*Articles*" means the Articles of Incorporation of Turtlewood at Southport Owners Association, Inc., as filed with the Secretary of State of the State of North Carolina.

Section 3. "*Association*" means Turtlewood at Southport Owners Association, Inc., a North Carolina nonprofit corporation, and its successors and assigns. The "*Board of Directors*" or "*Board*" shall be the elected body having its normal meaning under North Carolina law.

Section 4. "*By-Laws*" means the By-Laws of Turtlewood at Southport Owners Association, Inc., as they may be amended from time to time.

Section 5. "*Common Area*" means all real and personal property (including easements) which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of the Owners. At the time of the conveyance of a Lot to an Owner, the Declarant intends to make available the common amenities on the Properties, if any, as they are built, and, at the time of completed development, the entire Properties, excluding the Lots and dedicated streets, if any, shall be conveyed without cost or charge to the Association. Upon such conveyance(s), such areas shall become Common Areas.

Section 6. "*Common Expenses*" means the actual and estimated expenses incurred by the Association for the general benefit of all Owners, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws and the Articles of Incorporation of the Association.

Section 7. "*Community-Wide Standard*" means the standard of conduct, appearance, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee.

Section 8. "*Declarant*" means Turtlewood Development, LLC, a North Carolina limited liability company, or its successors, successors-in-title or assigns who take title to any portion of the Properties for the purpose of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 9. "*Declaration*" means this Declaration of Covenants, Conditions and Restrictions for Turtlewood at Southport, as the same may be amended and supplemented from time to time.

Section 10. "*Development Period*" means the period commencing on the date on which this Declaration is recorded in the Brunswick County Register of Deeds and terminating on the earlier to occur of (i) when Declarant no longer owns a Lot within the Properties; (ii) when, in its discretion, Declarant so determines; or (iii) the occurrence of the date ten (10) years from the date of recording the Declaration, renewable for an additional ten (10) year period with the consent of a majority of Lot Owners other than the Declarant.

Section 11. "*General Assessment*" means assessments levied against all of the Lots to fund Common Expenses.

Section 12. "*Lot*" means a portion of the Properties intended for development, use and occupancy as a residence for a single family. For the purposes of this Declaration, a Lot shall

come into existence when a plat subdividing the property which includes the Lot is recorded in the Brunswick County, North Carolina land records.

Section 13. "*Member*" means a Person entitled to membership in the Association, as provided herein.

Section 14. "*Mortgage*" means a mortgage, a deed of trust or other form of security deed.

Section 15. "*Mortgagee*" means a beneficiary or holder of a Mortgage.

Section 16. "*Mortgagor*" means one or more Persons who give a Mortgage.

Section 17. "*Owner*" means one or more Persons who hold the record title to any Lot which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the Owner if the contract so provides.

Section 18. "*Person*" means a natural person, a corporation, a partnership, trustee, or other legal entity.

Section 19. "*Planned Community Act*" shall mean and refer to the North Carolina Planned Community Act, currently codified as Chapter 47F of the North Carolina General Statutes, as the same may be amended from time to time.

Section 20. "*Properties*" means the real property described in Exhibit A attached hereto and shall further refer to such additional property as may hereafter be annexed by Subsequent Amendment to this Declaration or which is owned by the Association.

Section 21. "*Special Assessment*" means assessments levied in accordance with Article X, Section 3 of this Declaration.

Section 22. "*Subsequent Amendment*" means an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Amendment to the provisions of this Declaration.

## ARTICLE II PROPERTY RIGHTS

Every Owner shall have a right and easement of enjoyment in and to the Common Area subject to this Declaration and to any restrictions or limitations contained in any deed or amendment to this Declaration conveying to the Association or subjecting to this Declaration such property. Any Owner may delegate his or her right of enjoyment to the members of his or

her family, tenants, and social invitees subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot shall be deemed to have delegated all such rights to the Lot's lessee.

Access to the Area of Common Responsibility is strictly subject to the rules and procedures of the Association.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS; BOARD CONTROL

Section 1. *Membership.* Every Owner, as defined in Article I, shall be deemed to have a membership in the Association. No Owner, whether one or more persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse.

Section 2. *Voting.* The Association shall have two (2) classes of membership, Class "A" and Class "B," as follows:

(a) *Class "A".* Class "A" Members shall be all Owners with the exception of the Class "B" Members, if any.

Class "A" members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 hereof; there shall be only one (1) vote per Lot.

In any situation where a Member is entitled personally to exercise the vote for his Lot, and when more than one person or entity holds the interest in any Lot required for membership, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one person or entity seeks to exercise it.

Any Owner of Lots which are leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

(b) *Class "B."* The Class "B" Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale, and who is designated as such in a recorded instrument executed by Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in this Declaration and the By-Laws. The Class "B" membership shall terminate and become converted to Class "A" membership upon the expiration of the Development Period. From and after the expiration of the Development Period, the Class "B" Member shall be deemed to be a Class "A" Member

entitled to one (1) vote for each Lot in which it holds the interest required for membership under Section 1 hereof.

Section 3. *Board Control.* The Directors of the Association shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant so long as the Class "B" membership exists, unless the Declarant shall earlier surrender this right to select Directors.

#### ARTICLE IV MAINTENANCE

Section 1. *Association's Responsibility.* The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon such areas. The Association shall make the determination as to when maintenance, repair, replacement and care shall be done, and its determination shall be binding. Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of Areas of Common Responsibility shall be Common Expenses to be allocated among all Lots as part of the General Assessment.

The Association may maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Section 2. *Owner's Responsibility.* All maintenance of a Lot and all structures, parking areas, and other improvements within a Lot shall be the sole responsibility of the Owner thereof who shall perform such maintenance in a manner consistent with the Community-Wide Standard of the Properties, this Declaration and the Community Development Code-Land Use Standards promulgated by the Architectural Review Committee (in accordance with Article XI); provided, further, if this work is not properly performed by the Owner, the Association may perform it and make Special Assessments against the Owner(s) who have not properly performed such work; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

Section 3. *Maintenance of Gazebos, Walkway and Landscape Screening.* There is contemplated to be two gazebos located within the Properties (along with a walkway accessing one or more of the gazebos). Landscape screening may also be constructed along the rear of certain Lots within easement areas established therefore pursuant to the plat(s) for the Properties. To the extent such items are constructed, Declarant intends to convey them to the Association as Common Area, or, in the case of the landscape screening, maintain same as part of the Area of Common Responsibility. Prior to such conveyance such areas and/or facilities, once built, shall be considered as part of the Area of Common Responsibility and shall be maintained by the Association.

ARTICLE V  
INSURANCE AND CASUALTY LOSSES

Section 1. *Insurance.* The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements within the Area of Common Responsibility. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Area of Common Responsibility and protecting the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The amount of such insurance shall be determined by the Board from time to time, although if reasonably available the public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respects death, bodily injury and property damage, a One Million Dollar (\$1,000,000.00) limit per occurrence and a Three Hundred Thousand Dollar (\$300,000.00) minimum property damage limit.

The policies may contain a reasonable deductible, and with respect to the casualty insurance the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair or payment in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss or obligation bears to the total.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses of the Association, and the costs of insurance coverage obtained by the Association for the Area of Common Responsibility shall be included in the General Assessment, as defined in Article I, and as more particularly described in Article X, Section 1.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, which shall serve as trustee for the respective benefited parties. Such insurance shall be governed by the provisions hereinafter set forth (to the extent such provisions are reasonably available or affordable in the discretion of the Board of Directors of the Association):

- (a) All policies shall be written with a company licensed to do business in North Carolina which holds a Best's rating of A- or better, or, if not available, the most nearly equivalent rating.

(b) All casualty policies on the Area of Common Responsibility shall be for the benefit of the Association, and all liability policies on the Area of Common Responsibility shall protect the Association, the Members and the Owners.

(c) Exclusive authority to adjust losses under policies in force obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Brunswick County, North Carolina, area.

(f) The Association's Board of Directors shall make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair, and reconstruct, instead of paying cash;

(iii) that no policy may be cancelled, invalidated or suspended on account of any one or more individual Owners;

(iv) that no policy may be cancelled, invalidated or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification or nonrenewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance if and to the extent necessary, and a

fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

**Section 2. *Individual Insurance.*** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on his Lot(s) and structures constructed thereon. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising or contained on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the Owner determines not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction.

**Section 3. *Disbursement of Proceeds.*** Proceeds of insurance policies shall be disbursed as follows: If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds or such portion thereof as may be required for such purpose shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Area of Common Responsibility or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

**Section 4. *Damage and Destruction.***

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Area of Common Responsibility shall be repaired or reconstructed unless the Members representing at least eighty percent (80%) of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made

available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Area of Common Responsibility shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association in a neat and attractive condition.

Section 5. *Repair and Reconstruction.* If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for General Assessments under Article X, Section 1. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

#### ARTICLE VI NO PARTITION

Except as permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Properties or any part thereof seek such judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

#### ARTICLE VII CONDEMNATION

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of all Owners) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any portion of the Properties, and Members representing at least seventy-five percent (75%) of the total Class "A" vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in

respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

## ARTICLE VIII ANNEXATION OF ADDITIONAL PROPERTY

Section 1. *Annexation.* Notwithstanding anything herein to the contrary, during the Development Period, Declarant shall have the right to annex additional Lots or Common Areas into the Properties by filing a supplement to this Declaration in the Brunswick County Public Registry together with an amendment to the plat (if applicable). Such additional Lots or Common Areas need not be contiguous to the Property. Declarant may also convey to the Association additional real estate, improved or unimproved, located within the Properties, which, upon conveyance or dedication to the Association, shall be accepted by the Association and shall thereafter be maintained by the Association at its expense for the benefit of all its Members. Declarant shall have the right to assign all or a portion of any rights or easements reserved herein by a written assignment thereof, recorded in the Brunswick County Public Registry.

Without limiting the foregoing, and notwithstanding anything herein to the contrary, during the Development Period, Declarant may convey to the Association additional real estate located within the properties described in Exhibits B (the "Natural Area") which, upon conveyance or dedication to the Association, shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members. Alternatively, in the event Declarant elects not to convey such Natural Area to the Association, Declarant reserves the right to transfer such Natural Area to a land conservancy or similar organization for purposes of maintaining such real property as a protected natural area.

Section 2. *Amendment.* During the Development Period, this Article shall not be amended without the written consent of Declarant.

## ARTICLE IX RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. *Common Area.* The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Area of Common Responsibility and all improvements thereof (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.

Section 2. *Personal Property and Real Property for Common Use.* The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and

intangible personal property and real property. The Board, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

**Section 3. *Rules and Regulations.*** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use the Common Areas and Areas of Common Responsibility except as necessary for ingress and egress to and from a Lot. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association. In addition, the Association may, through the Board, by contract or other agreement, enforce county and city ordinances.

**Section 4. *Implied Rights.*** Subject to the rights of Declarant set forth herein, the Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws or pursuant to the Planned Community Act and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it in the foregoing or reasonably necessary to effectuate any such right or privilege.

**Section 5. *Governmental Interests.*** Without objection, the Association shall permit the Declarant to designate sites within the Properties for fire, police, water, or sewer facilities.

## ARTICLE X ASSESSMENTS

**Section 1. *Creation of Assessments.*** There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors, to be commenced at the time and in the manner set forth in this Article X, Section 5. There shall be two (2) types of assessments: General Assessments to fund Common Expenses for the benefit of all Members of the Association and Special Assessments as described in Section 3 below.

Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these assessments. All such assessments, together with interest not to exceed the lesser of eighteen percent (18%) per annum or the highest rate allowed by North Carolina law computed from the date the delinquency first occurs, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. After notice and hearing, the Board may temporarily suspend the vote of a Member who is in default in payment of any assessment and the right of such Member to use the Common Areas and Areas of Common Responsibility except as necessary for ingress and egress to and from such Member's Lot.

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 such Lot at the

time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance to the extent expressly assumed, except no first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall upon demand at any time furnish to an Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of such assessment to the Association therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Fifty Dollars (\$50.00) for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual assessment for delinquents. Unless the Board otherwise provides, the General Assessments shall be paid in monthly installments due and payable on the first day of each calendar month.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Areas, or abandonment of the Lot. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association or, from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

The Association is specifically authorized to enter into subsidy contracts, or contracts for the "in kind" contribution of services or materials or a combination of services and materials, with Declarant for the payment of some portion of the Common Expenses.

**Section 2. *General Assessments.*** General Assessments shall be levied equally on all Members to pay the Common Expenses. Common Expenses shall include, but shall not be limited to, the costs of maintaining and repairing and operating the Areas of Common Responsibility, the costs of operating the Association, the costs of obtaining insurance, capital contributions for a reserve fund for repair and replacement of improvements and other costs and expenses provided for in the Declaration, the By-Laws or otherwise determined by the Board to be expenses that benefit the Members generally. It shall be the duty of the Board, within thirty (30) days after adoption of any proposed budget covering the estimated costs of the Common Expenses during the coming year, to provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall cause a copy of the budget and the amount of the assessments to be levied against each Lot for the following year to be delivered to each Owner at least ten (10) but not more than sixty (60) days prior to the meeting. The budget

and the assessments shall become effective unless disapproved at the meeting by a vote of Members or their alternates representing at least a majority of the total Class "A" votes in the Association and the Class "B" Member, if such exists.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 3. *Special Assessments.* In addition to the General Assessments, the Association may levy a Special Assessment or Special Assessments from time to time; provided, however, such Special Assessment shall have the vote or written consent of Members representing fifty-one percent (51%) of the Class "A" votes in the Association and of the Class "B" Member, if such exists.

The Association may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provisions of the Declaration, the Articles, the By-Laws, the Community-Wide Standard or the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing. Special Assessments under this paragraph shall apply only to the particular Member and Lot and shall be payable in such manner as the Board determines, including without limitation in a single lump sum.

Section 4. *Lien for Assessments.* Upon recording of a notice of lien, there shall exist a perfected lien for unpaid assessments (both General Assessments and Special Assessments) on the respective Lot prior and superior to all other liens, except (a) all taxes, bonds, assessments, and other levies which by law would be superior thereto and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) No right to vote shall be exercised on its behalf; (b) no assessment shall be assessed or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 5. *Date of Commencement of Annual Assessments.* The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the date of conveyance by Declarant (and the first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year); provided, however, that for any fiscal year of the Association when Declarant owns Lots, Declarant may annually elect either of the

following alternatives as a method of paying in full a portion of the expenses of the Association attributable to such Lots:

- (a) pay the assessments set forth in Section 1 for an Owner with respect to each Lot owned by Declarant prior to its sale, or
- (b) pay to the Association in the form of a subsidy the difference between the amount received in assessments from all Owners other than Declarant and the amount of the actual expenditures required to operate the Association for the year plus budgeted contributions to capital reserves.

Section 6. *Subordination of the Lien to First Mortgages.* The lien of assessments, including interest, late charges (subject to the limitations of North Carolina law), and costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage 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 lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record obtains title, neither it nor its successors and assigns shall be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid assessments shall be deemed to be Common Expenses collectible from all of the Lots, including such acquirer, its successors and assigns.

Section 7. *Capitalization of Association.* Upon acquisition of record title to a Lot by the first purchaser thereof other than the Declarant or an Owner who purchases solely for the purpose of constructing a dwelling thereon for resale, a contribution shall be made by or on behalf of the Owner to the capital of the Association in amount equal to two (2) monthly installments of the annual General Assessment for that year levied upon the Lots as determined by the Board. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and the expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws. Such contribution shall not be considered as or credited as an advance payment of General Assessments with respect to the Lot.

Section 8. *Exempt Property.* Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of General Assessments and Special Assessments:

- (a) all Common Area;
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, and public parks; and

(c) all property owned by non-profit organizations and restricted for use as private schools or churches; provided, however, the availability of the exemption for such non-profit organizations is contingent upon prior approval by the Board of Directors.

## ARTICLE XI ARCHITECTURAL STANDARDS

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Architectural Review Committee established in Section 1 of this Article XI. During the Development Period, this Article may not be amended without the Declarant's written consent.

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements hereof have been fully met, and until the approval of the Architectural Review Committee has been obtained.

Section 1. *Architectural Review Committee.* The Architectural Review Committee (ARC) shall have exclusive jurisdiction over all original construction on any portion of the Properties and any modifications, additions or alterations made on or to existing Lots. The ARC shall prepare and, on behalf of the Board of Directors, shall promulgate design and development guidelines and application and review procedures, all as part of the Community Development Code and Land Use Standards ("CDC-LUS"). The guidelines and procedures shall be those of the Association, and the ARC shall have sole and full authority to prepare and to amend the CDC-LUS. Amendments to the CDC-LUS shall not constitute an amendment to this Declaration and shall not require approval of any Members. The ARC shall make the CDC-LUS available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and such Owners, builders and developers shall conduct their operations strictly in accordance therewith. Until the expiration of the Development Period, the Declarant retains the right to appoint all members of the ARC, which shall consist (during the period when Declarant appoints all members) of at least one (1), but no more than three (3), persons, who shall not be required to be Owners, Members or members of the Board. There shall be no surrender of this right prior to that time, except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board of Directors shall thereafter constitute the ARC and shall be vested with all of the powers of the ARC set out in this Declaration.

With respect to modifications, additions or alterations made on or to existing Lots, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the ARC for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to

remodel the interior of improvements constructed on his Lot, or to paint the interior of improvements constructed on his Lot any color desired.

Section 2. *No Waiver of Future Approvals.* The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additional submitted for approval or consent.

Section 3. *Variance.* The ARC may authorize variances from compliance with any of the provisions of the CDC-LUS when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, but only in accordance with its duly adopted rules and regulations. No variance shall (i) be effective unless in writing, (ii) be contrary to the restrictions set forth in the body of this Declaration, or (iii) estop the ARC from denying a variance in other circumstances.

## ARTICLE XII USE RESTRICTIONS

The Properties shall be used only for residential, recreational, and related purposes as may more particularly be set forth in this Declaration. The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of Lots and the Areas of Common Responsibility, in addition to those contained herein, and to impose reasonable user fees for recreational facilities that are Areas of Common Responsibility. Such regulations and use restrictions adopted by the Board of Directors shall be binding upon all Owners and occupants until and unless overruled, cancelled or modified by the Board of Directors or by the Members in a regular or special meeting of the Association by Members representing a majority of the total Class "A" votes in the Association and by the vote of the Class "B" Member, so long as such membership shall exist. Use restrictions set out in this Declaration may not be modified except in the manner provided in Article XIII, Section 2 of this Declaration.

Section 1. *Signs.* No sign of any kind shall be erected by an Owner within the Properties without the written consent of the Board of Directors. The Board of Directors or Declarant shall have the right to erect signs.

Section 2. *Parking and Garages.* Vehicles shall be parked only in garages or in the driveways serving Lots or appropriate spaces or designated areas in which parking may or may not be assigned and then subject to such reasonable rules and regulations as the Board of Directors may adopt. All commercial vehicles, tractors, mobile homes, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers must be parked entirely within a garage unless otherwise permitted by the Board. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein

after the alteration is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed.

**Section 3. *Occupants Bound.*** All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Lot.

**Section 4. *Animals and Pets.*** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets; provided, however, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of the other Lots or the owner of any property located adjacent to the Properties may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Lot be confined on a leash held by a responsible Person. Dogs shall be walked only in those areas designated by the Association.

**Section 5. *Nuisance.*** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of the surrounding property. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Properties.

**Section 6. *Unsightly or Unkempt Conditions.*** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties.

**Section 7. *Antennas.*** To the extent permitted by law, no exterior antennas, satellite dishes, or other apparatus for the transmission of television, radio, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties including any Lot, without the prior written consent of the Board or its designee.

**Section 8. *Clotheslines, Garbage Cans, Tanks, Woodpiles, Etc.*** No clotheslines will be permitted. All garbage cans, above-ground tanks, woodpiles, and other similar items shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon and all garbage cans must be secured.

Section 9. *Subdivision of Lot.* No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots prior to conveyance of such Lot or Lots by Declarant (and if Declarant combines separate lots into a single lot, that lot shall for purposes of this Declaration thereafter constitute a single Lot. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

Section 10. *Guns.* The use of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

Section 11. *Pools.* No above-ground pools shall be erected, constructed, or installed on any Lot.

Section 12. *Irrigation.* No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals or other waterways within the Properties shall be installed, constructed or operated within the Properties unless prior written approval has been received from the ARC or Declarant. All sprinkler and irrigation systems shall be subject to approval in accordance with Article XI of this Declaration.

Section 13. *Tents, Trailers, and Temporary Structures.* Owners and occupants (other than Declarant during the Development Period) shall not place upon a Lot or any part of the Properties any tent or trailer or any structure of a temporary nature, such as a tent, shack, or utility shed.

Section 14. *Drainage.* Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserved a perpetual easement across the Properties for the purpose of altering drainage and water flow.

Section 15. *Tree Removal.* No trees shall be removed, except for (a) diseased or dead trees; and (b) trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article XI of this Declaration.

Section 16. *Site Distance at Intersections.* All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

Section 17. *Utility Lines.* No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction.

Section 18. *Air Conditioning Units.* Except as may be permitted by the Board or its designee, no window air conditioning units may be installed in any Lot.

Section 19. *Lighting.* Except for seasonal Christmas decorative lights, all exterior lights must be approved in accordance with Article XI of this Declaration.

Section 20. *Artificial Vegetation, Exterior Sculpture, and Similar Items.* No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article XI of this Declaration.

Section 21. *Energy Conservation Equipment.* No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ARC pursuant to Article XI hereof.

Section 22. *Water Bodies.* The marsh and creek area, if any, within the Properties shall be an aesthetic amenity only, and no other use thereof, including, without limitation, fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted except in strict accordance with rules and regulations adopted by the Association from time to time. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of such areas within the Properties.

Section 23. *Gazebos.* The gazebos and any other recreational areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 24. *Business Use.* No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Lot shall not be

considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties.

Section 25. *Fences.* No fences, hedges or walls shall be erected or maintained upon the Properties except as approved by the ARC.

### ARTICLE XIII GENERAL PROVISIONS

Section 1. *Term.* The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, unless terminated as provided herein or pursuant to the Planned Community Act.

Section 2. *Amendment.* During the Development Period the Declarant may amend this Declaration without the consent or approval of any other Member. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five (75%) percent of the total votes of the Association. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the public records of Brunswick County, North Carolina.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 3. *Indemnification.* The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgement, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. *Delegation of Use.* Any Owner may delegate, in accordance with the By-Laws of the Association, his or her right of enjoyment of the Common Area and facilities to the members of his or her family, tenants, and social invitees.

Section 5. *Easements of Encroachment.* There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between said adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

Section 6. *Easements for Utilities.* Declarant hereby reserves for itself and its designees (which may include, without limitation, the City of Southport and/or County of Brunswick and any utility provider) blanket easements upon, across, over, and under all of the Common Area and to the extent shown on any plat over the Lots for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, walkway, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of any Properties.

Without limiting the generality of the foregoing, there are hereby reserved for the City of Southport and/or County of Brunswick, North Carolina, easements across all Lots on the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Properties, except as may be approved by the Association's Board of Directors or as provided in the development and sale by Declarant. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on said Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

Section 7. *Severability.* Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 8. *Right of Entry.* The Association shall have the right, but shall not be obligated, to enter into any portion of the Properties for maintenance, emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to cure any condition which may increase the possibility of fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 9. *Perpetuities.* If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 10. *Litigation.* After termination of the Class "B" membership, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Board of Directors. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by a majority of the Members and the Class "B" Member (so long as the Class "B" membership exists).

#### ARTICLE XIV MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws notwithstanding any other provisions contained therein; provided, however, voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Declaration or the By-Laws for specific actions.

Section 1. *Notices of Action.* An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Lot address), therefore becoming an "eligible holder," will be entitled to timely written notice of:

- (a) any proposed termination of the Association;
- (b) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(c) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days, or any default in the performance by such owner of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days;

(d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(e) any proposed action which would require the consent of eligible holders, as required in Sections 2 and 3 of this Article.

**Section 2. *Special FHLMC Provision.*** So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing Section of this Article. Unless two-thirds (2/3rds) of the first mortgagees or Members representing two-thirds (2/3rds) of the total vote in the Association give their consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection);

(d) fail to maintain fire and extended coverage insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such properties.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration or By-Laws for any of the actions set out in this Article.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue

premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for the Common Area, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. *No Priority.* No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 4. *Notice to Association.* Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 5. *Amendments by Board.* Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such change.

#### ARTICLE XV DECLARANT'S RIGHTS

Declarant reserves the right to maintain sales and management offices, model units, construction trailers, storage or staging areas, and advertising signs upon Lots or the Common Areas and upon Lots owned by it until the expiration of the Development Period and to exercise all other "Special Declarant Rights" as defined in the Planned Community Act. Without limiting the foregoing, and notwithstanding anything herein to the contrary, during the Development Period, Declarant shall have the right to annex additional Lots or Common Areas into the Properties by filing a supplement to this Declaration in the Brunswick Public Registry together with an amendment to the plat (if applicable). Such additional Lots or Common Areas need not be contiguous to the Property. Declarant shall have the right to assign all or a portion of any rights or easements reserved herein by a written assignment thereof, recorded in the Brunswick Public Registry.

So long as Declarant continues to have rights under the preceding paragraph, no person or entity shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

ARTICLE XVI  
CONSERVATION AREA RESTRICTIONS

The Department of the Army Corps of Engineers has issued a permit, Action ID Number 200400641 for the development of the Properties. As mitigation for wetland impacts authorized by that permit, the Declarant, as developer of the Properties, is required to prohibit the development within certain conservation areas as shown on the plat prepared by Thomas W. Morgan, L-2518, Brunswick Surveying, Inc., 1027 Sabbath Home Rd., Supply, NC 28462, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference. Accordingly, all conservation areas shown and delineated on the aforescribed plat(s) shall be left in their natural state and no building or site improvement shall be permitted within the conservation areas. Prohibited activities within the conservation areas include, but are not limited to, construction or replacement of roads, walkways, buildings, signs, or structures of any kind; filling, grading excavating, leveling, or other activities that may alter the drainage patterns on the property; cutting, mowing, destroying, removing or damaging vegetation, disposal or storage of any debris, trash, garbage, or other waste material. Nor shall any action be taken by the permittee that will adversely impact the wetlands or other waters on conservation property, except as specifically authorized by the aforescribed permit.

The conservation property shall not be conveyed to any third party without ten days' prior written notification to the Department of The Army Corps of Engineers, Wilmington District, Regulatory Section in writing, which writing shall reference the permit action ID number 200400641.

Any sale, lease or other conveyance of the conservation property shall include restriction on use of the property described hereinabove. Such restrictions shall include language providing for third party enforcement rights in favor of the Department of the Army Corps of Engineers.

Those provisions shall not be modified or amended without the express permission of the Department of the Army Corps of Engineers.

The covenant set forth in this Article XVI is intended to ensure continued compliance with the mitigation condition of the Clean Water Act Authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District Action ID 200400641 and therefore may be enforced by the United States of America.

**[Signature page follows.]**

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 24 day of February, 2005.

TURTLEWOOD DEVELOPMENT, LLC,  
a North Carolina limited liability company

Warren Byers Watkins, III  
By: \_\_\_\_\_ (SEAL)  
Warren Byers Watkins, III Manager

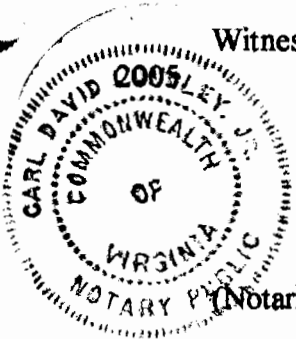
COUNTY OF Prince William

STATE OF Virginia

TO WIT:

I, Carl David Longley, Jr. a notary public in and for the State and County aforesaid, do hereby certify that WARREN BYERS WATKINS, III Manager of TURTLEWOOD DEVELOPMENT, LLC, a North Carolina limited liability company, personally appeared before me and acknowledged the due execution of the foregoing instrument as the act and deed of the company.

Witness my hand and official stamp or seal, this the 24<sup>th</sup> day of FEBRUARY,



(Notarial Seal)

Carl David Longley, Jr.  
Notary Public

My commission expires: 8/31/08

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

CARL DAVID LONGLEY JR

The Foregoing (or annexed) Certificate(s) of \_\_\_\_\_

Notary(ies) Public is (are) Certified to be Correct. \_\_\_\_\_ 28th Day of \_\_\_\_\_ February, 2005  
This Instrument was filed for Registration on this \_\_\_\_\_ Day of \_\_\_\_\_, 2005  
in the Book and page shown on the First Page hereof.

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

**EXHIBIT A**

**Property Initially Submitted**

The tie line commences at an existing nail in the centerline intersection of Ferry Road and Moore Street (SR 1528), thence N 20-10-10 E, 1536.75 ft with the centerline of Moore Street to a nail. Said nail is in the centerline of Moore Street and the centerline of Price's Creek. Thence N 75-05-55 W, 50.35 ft to the right of way of Moore Street and the centerline of Price's Creek, the point of Beginning. Thence eight calls with the centerline of Price's Creek:

- 1 N 75-05-55 W 65.65
- 2 N 81-02-36 W 279.41
- 3 N 88-04-56 W 224.13
- 4 N 87-26-34 W 257.76
- 5 S 88-13-43 W 145.57
- 6 N 83-35-32 W 155.50
- 7 N 70-34-43 W 522.07
- 8 N 71-50-58 W 286.17, to the eastern right of way of Leonard Street. Thence

three calls with the eastern right of way of Leonard Street:

- 1 N 21-53-21 E 273.60
- 2 N 21-11-57 E 472.34
- 3 N 18-32-38 E 463.96 to an existing rebar at corner of Archer Daniels Midland

Corporation (map Cabinet 19, page 256). Thence S 72-29-55 E 1896.20 with the boundary of Archer Daniels Midland Corporation to an existing rebar in the right of way of Moore Street.

Thence two calls with the right of way of Moore Street:

- 1 S 20-31-06 W 594.60
- 2 S 20-27-56 W 469.33 to the point of beginning and containing 49.50 acres.

All bearings are referenced to Deed Book 260, Page 374; all distances are horizontal ground distance.

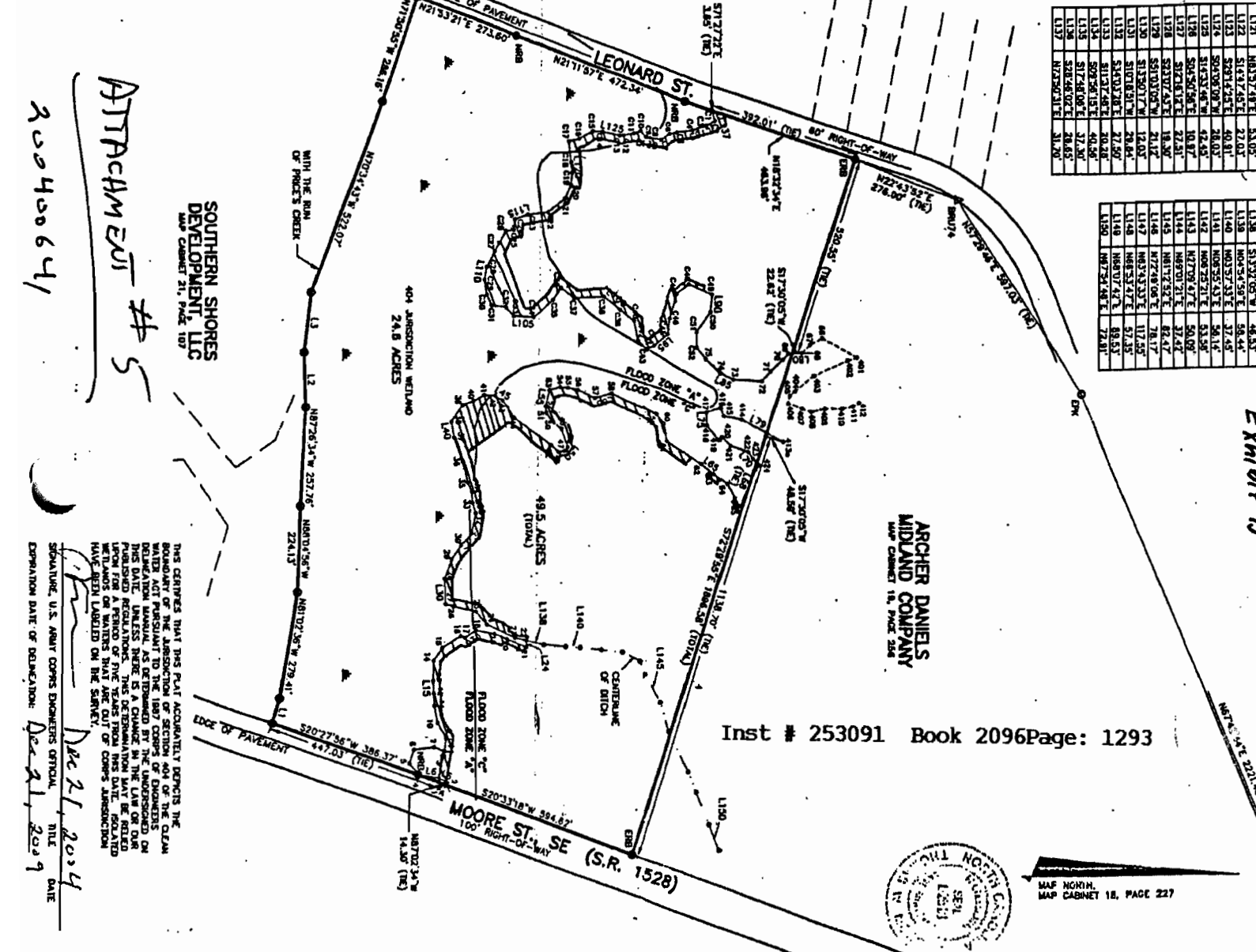
EXHIBIT B  
Conservation Area

1.01	S201°31'02"W	130.67'	130.67'
1.02	S201°31'02"W	130.67'	130.67'
1.03	S201°31'02"W	130.67'	130.67'
1.04	S201°31'02"W	130.67'	130.67'
1.05	S201°31'02"W	130.67'	130.67'
1.06	S201°31'02"W	130.67'	130.67'
1.07	S201°31'02"W	130.67'	130.67'
1.08	S201°31'02"W	130.67'	130.67'
1.09	S201°31'02"W	130.67'	130.67'
1.10	S201°31'02"W	130.67'	130.67'
1.11	S201°31'02"W	130.67'	130.67'
1.12	S201°31'02"W	130.67'	130.67'
1.13	S201°31'02"W	130.67'	130.67'
1.14	S201°31'02"W	130.67'	130.67'
1.15	S201°31'02"W	130.67'	130.67'
1.16	S201°31'02"W	130.67'	130.67'
1.17	S201°31'02"W	130.67'	130.67'
1.18	S201°31'02"W	130.67'	130.67'
1.19	S201°31'02"W	130.67'	130.67'
1.20	S201°31'02"W	130.67'	130.67'

1.21	N032°24'48"E	53.05'	53.05'
1.22	S10°24'45"E	27.02'	27.02'
1.23	S201°31'02"W	43.54'	43.54'
1.24	S201°31'02"W	110.57'	110.57'
1.25	S201°31'02"W	41.27'	41.27'
1.26	S201°31'02"W	42.45'	42.45'
1.27	S201°31'02"W	10.87'	10.87'
1.28	S201°31'02"W	46.83'	46.83'
1.29	S201°31'02"W	118.20'	118.20'
1.30	S201°31'02"W	22.20'	22.20'
1.31	S10°24'45"E	21.83'	21.83'
1.32	S10°24'45"E	48.48'	48.48'
1.33	S201°31'02"W	32.17'	32.17'
1.34	S201°31'02"W	10.42'	10.42'
1.35	S201°31'02"W	34.46'	34.46'
1.36	S201°31'02"W	22.31'	22.31'
1.37	S201°31'02"W	22.31'	22.31'
1.38	S201°31'02"W	22.31'	22.31'
1.39	S201°31'02"W	22.31'	22.31'
1.40	S201°31'02"W	22.31'	22.31'
1.41	S201°31'02"W	22.31'	22.31'
1.42	S201°31'02"W	22.31'	22.31'
1.43	S201°31'02"W	22.31'	22.31'
1.44	S201°31'02"W	22.31'	22.31'
1.45	S201°31'02"W	22.31'	22.31'
1.46	S201°31'02"W	22.31'	22.31'
1.47	S201°31'02"W	22.31'	22.31'
1.48	S201°31'02"W	22.31'	22.31'
1.49	S201°31'02"W	22.31'	22.31'
1.50	S201°31'02"W	22.31'	22.31'

1.51	S132°05'37"W	46.53'	46.53'
1.52	N02°54'59"E	36.44'	36.44'
1.53	N02°54'59"E	32.45'	32.45'
1.54	N02°54'59"E	36.14'	36.14'
1.55	N02°54'59"E	33.58'	33.58'
1.56	N02°54'59"E	50.09'	50.09'
1.57	N02°54'59"E	32.42'	32.42'
1.58	N02°54'59"E	82.47'	82.47'
1.59	N02°54'59"E	117.55'	117.55'
1.60	N02°54'59"E	89.53'	89.53'
1.61	N02°54'59"E	72.81'	72.81'

UPLAND BUFFER  
 NOT TO SCALE.  
 E FOLDER FOR  
 20400641  
 Survey



ATTACHMENT # 5  
 20400641

SOUTHERN SHORES DEVELOPMENT, LLC  
 MAP CABINET 21, PAGE 107

ARCHER DANIELS MIDLAND COMPANY  
 MAP CABINET 18, PAGE 248

Inst # 253091 Book 2096 Page: 1293

MAP NORTH, MAP CABINET 18, PAGE 227

NOT TO SCALE

SCALE: 1" = 200'

TOWNSHIP: SALTHALLE FIELD BOOK: 504-002

NOTES:

- PART OF THE PLATTED TRACT APPEARS TO BE IN FLOOD HAZARD ZONE "X" BASED ON FEMA 100008 DRAID 12-18-83. SEE PLAT.
- OWNER: HARBOR DAVIS DEVELOPMENT CORPORATION.
- PLAT OF 404 BOUNDARY LOOP FOR SOUTHWEST DEVELOPMENT COMPANY
- MAD FROM A PORTION OF DEED BOOK 1140, PAGE 126A, (MAP CABINET 18, PAGE 227), BRUNSWICK COUNTY REGISTERED PHYSICAL EVIDENCE.

BRUNSWICK SURVEYING, INC  
 Thomas W. Morgan  
 Professional Land Surveyor  
 North Carolina and South Carolina  
 1027 Seaboard Home Rd., SE  
 Supply, North Carolina 28442 (910) 842-0302

LEGEND:

- EXISTING HIGH PINE (FOUNDED)
- EXISTING REBAR (FOUNDED)
- NEW REBAR (SET)
- CALCULATED POINT (NOT SET)
- WETLAND FLAG
- CALCULATED POINT ON CENTERLINE OF DITCH
- EXISTING CONCRETE MACHONKAT (FOUNDED)
- EXISTING CONCRETE MACHONKAT (FOUNDED)
- WETLANDS

STATE OF NORTH CAROLINA  
 COUNTY OF JOHN CRAWFORD  
 ARCHER DANIELS MIDLAND COMPANY  
 HARBOR DAVIS DEVELOPMENT CORPORATION

NOTICE: COUNTY THAT THIS PLAT AND BOUNDARY LOOP ARE SUBJECT TO THE ACTING SURVEYOR'S REVIEW AND APPROVAL. THE SURVEYOR'S REVIEW IS LIMITED TO THE TECHNICAL ASPECTS OF THE PLAT AND BOUNDARY LOOP. THE SURVEYOR DOES NOT GUARANTEE THE ACCURACY OF THE INFORMATION PROVIDED HEREON. THE SURVEYOR'S REVIEW IS LIMITED TO THE TECHNICAL ASPECTS OF THE PLAT AND BOUNDARY LOOP. THE SURVEYOR DOES NOT GUARANTEE THE ACCURACY OF THE INFORMATION PROVIDED HEREON.

Brunswick County—Register of Deeds  
Robert J. Robinson  
Inst #276800 Book 2186Page 809  
07/11/2005 09:00:13am Rec# 239260

RET William Mason  
TOTAL 23 REV. \_\_\_\_\_ TC# 38  
REC# \_\_\_\_\_ CK AMT 23 CK# 1044  
CASH \_\_\_\_\_ REF \_\_\_\_\_ BY W

Prepared by and after recording return to:

Moore & Van Allen (JHC)  
430 Davis Drive, Suite 500  
Morrisville, North Carolina 27560

**SECOND AMENDMENT  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TURTLEWOOD AT SOUTHPORT**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TURTLEWOOD AT SOUTHPORT (this "Amendment") is made this 16<sup>th</sup> day of June, 2005, by TURTLEWOOD DEVELOPMENT, LLC, a North Carolina limited liability company (together with its successors and assigns hereinafter referred to as "Declarant").

**BACKGROUND**

Declarant caused the Declaration of Covenants, Conditions and Restrictions for Turtlewood at Southport to be recorded in the Office of the Register of Deeds, Brunswick County, North Carolina at Book 2096, Page 1263, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Turtlewood at Southport recorded in the Office of the Register of Deeds, Brunswick County, North Carolina at Book 2110, Page 235 (collectively, the "Declaration"), pursuant to which certain real property situated in Brunswick County, North Carolina described therein was subjected to the covenants, conditions and restrictions contained in the Declaration. Unless otherwise defined in this Amendment, capitalized terms used herein shall have the meaning given in the Declaration.

Declarant has the right to amend the Declaration pursuant to the provisions of Article XIII, Section 2 thereof.

Upon the request of the North Carolina Environmental Management Commission, Declarant desires to amend the Declaration to include certain provisions regarding the ownership, responsibility, operation and management of the Disposal System (as defined below) for the Properties.

### AMENDMENT

Now, therefore, Declarant hereby amends the Declaration as follows:

1. The Declaration is hereby amended by adding the following Article XVII to the Declaration:

#### ARTICLE XVII

#### DISPOSAL SYSTEM COVENANTS

Notwithstanding any other provision of this Declaration or the By-Laws to the contrary, in order to satisfy the permit requirements of the North Carolina Environmental Management Commission (the "Commission"), the covenants set forth in this Article XVII shall apply with respect to the privately-owned portions of the wastewater collection system with pumps, wastewater treatment works, and/or disposal facilities constructed currently or in the future for the provision of sanitary sewage disposal to serve the Properties, including, without limitation, the grinder pumps for lots 33 through 50 inclusive, the corresponding valve crocks on such lots and the two (2) inch force main located in front of such lots for the provision of sanitary sewage disposal to serve lots 33 through 50 within the Properties (all of the foregoing systems, works and/or facilities hereinafter, collectively, the "Disposal System"), and any conflict or apparent conflict with any other provision of this Declaration or the By-Laws shall be resolved in favor of the provisions of this Article XVII.

Section 1. *Disposal System Part of Area of Common Responsibility.* The Disposal System and appurtenances thereto shall be part of the Area of Common Responsibility. The Disposal System shall be properly maintained and operated in conformity with law and the provisions of the permit for construction, operation, repair and maintenance of the system and facilities.

As part of the Area of Common Responsibility, the Disposal System shall have the highest priority for expenditures by the Association, except for Federal, State and local taxes and insurance.

Section 2. *Common Expenses, Separate Fund.* As part of the Area of Common Responsibility, all costs for maintenance for the Disposal System shall be Common Expenses. In addition, in order to assure that there shall be funds readily available to repair, maintain or construct the Disposal System, beyond the

routine operation and maintenance expenses, a fund shall be created out of the Common Expenses. Such fund shall be separate from the routine maintenance funds allocated for the facility and shall be part of the yearly budget.

Section 3. *Special Assessments.* In the event the Common Expenses and separate fund created under Section 2, above, are inadequate for the construction, repair and maintenance of the Disposal System, then such expenses shall be paid for by Special Assessment. Such Special Assessments can be made at any time, and from time to time, as necessary and without limitation or restriction on the amount of each such Special Assessment.

In addition, the Association may, from time to time, levy Special Assessments upon the Owners of lots 33 through 50, inclusive, for the purpose of creating a reserve fund for the costs of construction, maintenance and repairs to the grinder pumps for lots 33 through 50, inclusive, the corresponding valve crocks on such lots and the two (2) inch force main located in front of such lots.

Section 4. *No Amendment without Commission Consent.* The terms and provisions of this Article XVII may not be altered or amended in any respect without first obtaining the written approval of the Commission.

2. The Declaration is hereby amended by deleting Article XI, Section 4 in its entirety and replacing it with the following:

Section 4. *Sewage Pump Standards.* In addition to the provisions of the CDC-LUS, the City of Southport requires the following:

Due to site and topographic considerations, the City of Southport has allowed the use of individual sewage pumping duplex stations for Lots 33 through 50, inclusive, as shown on the Plat recorded in Book 32, Page 8 of the Brunswick County Registry. The duplex pump includes two pumps – one for back up in the case that the first pump fails. Each individual pump will be installed and paid for by the lot owner or lot owner's builder at the time of home construction and shall be part of the Disposal System for the Properties pursuant to the provisions of Article XVII, below, and the maintenance thereof shall be paid for as a Common Expense of the Area of Common Responsibility. The City of Southport has approved Pump Station Model 2014 with Control Panel Model 260-1, as manufactured by Environmental One Corporation. No other model may be used without the written permission of the City of Southport.

3. Except as hereby specifically amended, modified or supplemented, the Declaration is hereby confirmed and ratified in all respects and shall remain in full force and effect according to its terms, as modified by this Amendment.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Amendment on the date first set forth above.

TURTLEWOOD DEVELOPMENT, LLC,  
a North Carolina limited liability company

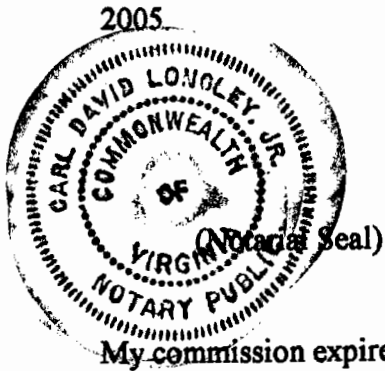
[Signature]  
By: \_\_\_\_\_ (SEAL)  
Warren B. Watkins, III Manager

COUNTY OF Prince William  
STATE OF VERGINIA

TO WIT:

I, Carl David Longley, Jr., a notary public in and for the State and County aforesaid, do hereby certify that WARREN B. WATKINS, III Manager of TURTLEWOOD DEVELOPMENT, LLC, a North Carolina limited liability company, personally appeared before me and acknowledged the due execution of the foregoing instrument as the act and deed of the company.

Witness my hand and official stamp or seal, this the 16<sup>th</sup> day of June, 2005.



[Signature]  
Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

CARL DAVID LONGLEY JR

The Foregoing (or annexed) Certificate(s) of \_\_\_\_\_

Notary(ies) Public is (are) Certified to be Correct. \_\_\_\_\_ 11th Day of \_\_\_\_\_ July 2005  
This Instrument was filed for Registration on this \_\_\_\_\_  
in the Book and page shown on the First Page hereof.

[Signature]  
ROBERT J. ROBINSON, Register of Deeds