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# DECLARATION OF PROTECTIVE COVENANTS

## FOR CAROLINA COLOURS

*Carolina Creek  
119 Middle Street  
New Bern NC 28560*

CAROLINA COLOURS INDEX  
PROTECTIVE COVENANTS

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STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

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FOR CAROLINA COLOURS

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THIS DECLARATION OF PROTECTIVE COVENANTS FOR CAROLINA COLOURS is dated for reference only this \_\_\_\_\_ day of January, 2005, and is made by CAROLINA CREEK LLC, a North Carolina Limited Liability Company.

OVERVIEW

Carolina Creek LLC has procured the rights to acquire, in increments, approximately 1750 acres of real property located in the City of New Bern, Craven County, North Carolina. Carolina Creek LLC has caused a master plan for the development of this real estate to be prepared, and plans and intends to develop the real estate generally in accordance with this master plan, as it may be modified from time to time, into a community named Carolina Colours. As planned, Carolina Colours will ultimately include approximately 2,000 homes, a golf course, a community center featuring tennis and swimming, and non-residential components (including retail, recreational, professional and other commercial uses) deemed by Carolina Creek LLC to be compatible with the primarily residential nature of the community.

In order to maintain the desirability and value of all of the properties within Carolina Colours, and to administer its Common Elements, Carolina Creek LLC has chartered a North Carolina non profit corporation, named Carolina Colours Association, Inc. Carolina Colours Association, Inc. and Carolina Creek LLC shall be responsible for carrying out their respective duties and obligations for the enhancement of Carolina Colours, as more fully set out in this Declaration.

It is the desire and intention of Carolina Creek LLC, for its benefit and for the benefit of the owner of each Lot within Carolina Colours, and with the objective of preserving the value of each such Lot, to restrict the utilization of and improvements within Carolina Colours in accordance with the guidelines established within this Declaration. Therefore, Carolina Creek LLC hereby reserves the right to subject all properties within Carolina Colours, in whole or in part, to the terms, provisions and conditions of this Declaration.

DEFINITIONS

As used within this Declaration, the following terms shall have the definitions herein set out:

1. "Act" shall mean the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes, as amended from time to time.

2. "Allocated Interest" means the Common Expense Liability and votes in the Association allocated to each Lot.

3. "Annexed Property" means that real estate described in paragraph 1 hereinafter, which is made subject to this Declaration, and such other real estate as may be made subject to this Declaration by amendment hereto in the future.

4. "Association" means Carolina Colours Association, Inc., a North Carolina non-profit corporation.

5. "Commercial Property" means those parcels of real property described as Parcel 2 on that plat recorded in Plat Cabinet H, Pages 1A through 1E, and as Parcels 4, 4A and 4B as shown on that plat recorded in Plat Cabinet H, Slide 1F, both as recorded in the Craven County Registry.

6. "Committee" shall mean the Improvement Review Committee established by the Association.

7. "Common Elements" means any real estate made subject to this Declaration owned or leased by the Association, or any other real estate designated as Common Elements by Declarant, and all improvements thereon.

8. "Common Expenses" means expenditures by or financial liabilities of the Association, together with any allocations to reserves.

9. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot as described in this Declaration, the Act or otherwise by law.

10. "Declarant" means Carolina Creek LLC or its successors and assigns as to any Special Declarant Rights.

11. "Declaration" means this Declaration of Protective Covenants for Carolina Colours as this instrument may be amended from time to time.

12. "Executive Board" means the Board of Directors of the Association.

13. "Limited Common Element" means a portion of the Common Elements allocated by the Declaration or by operation of law for the exclusive use of one or more but fewer than all of the Lots.

14. "Lot" means a physical portion of Carolina Colours designated for separate ownership or occupancy by a Lot Owner, shown as a numbered lot on a plat of real estate made subject to the Declaration, recorded in the Craven County Registry. "Lot" shall

also mean, as the context requires, each Structure intended for occupancy as a residence located within a neighborhood designated by Declarant for multi-family use, wherein more than one such residential Structure is constructed on a single Lot.

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15. "Lot Owner" means Declarant or other Person owning a Lot, but does not include a Person having an interest in a Lot solely as security or an obligation.

16. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

17. "Property" means all of that property other than Parcels 1 and 6, as shown on those plats recorded in Plat Cabinet H, Slides 1A through 1E, Craven County Registry.

18. "Purchaser" means any Person, other than a Declarant, or a Person in the business of selling real estate for the purchasers own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than

a. a leasehold interest (including renewal options) of less than twenty (20) years, or

b. as security for an obligation.

19. "Residential Property" means all of the Property, other than the Commercial Property.

20. "Special Declarant Rights" means all rights reserved to Declarant by this Declaration, and shall specifically include all Special Declarant Rights described in North Carolina General Statutes Section 47F-A-103(28).

21. "Structure" shall mean any permanent or temporary improvement to real estate other than trees, shrubbery and landscaping, the placement of which upon a Lot may affect the appearance of the Lot or any adjacent Lot or property including, by way of illustration and not limitation, any building, garage, porch, deck, shed, greenhouse, bath house, coop, cage, patio, swimming pool, antenna, fence, sign, curbing, paving, wall, roadway, walkway, pole or light. "Structure" shall also mean (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across real estate, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across real estate, and (ii) any change in the grade of any Lot (or any part thereof) of more than six (6) inches from that existing at the time of purchase of said Lot by a Lot Owner.

22. "Telecommunications Provider" shall <sup>Book 2267 Page 277</sup> be designated to provide or to cause the provision of telecommunication services to members of the Association, including, but not limited to, multi channel video services, voice services, data services and security services over fiber optic infrastructure. Until otherwise designated by Declarant the Telecommunications Provider shall be Capitol Infrastructure, LLC., its successors and assigns.

Furthermore, all terms defined in the Act and not specifically set-out herein shall have the meaning set forth in the Act.

### COVENANTS, EASEMENTS AND RESTRICTIONS

#### ARTICLE ONE

##### Subject Property

1. Encumbered Property. The real estate described on Exhibit A attached hereto is hereby made subject to the terms, provisions and conditions of this Declaration, effective as of the date of recordation of this Declaration. None of the rest of the Property is hereby made subject to this Declaration, and Declarant shall have no obligation to make any additional portions of the Property subject to this Declaration, but as more fully set out in Article Two hereinafter, reserves the right to do so.

#### ARTICLE TWO

##### Future Annexation

2. Additional Annexation. Declarant reserves the right to subject additional real estate to the terms, provisions and conditions of this Declaration, without necessity of joinder of any party. Such additional real estate may be, but need not be, within the Property. Real estate may be annexed and made subject hereto by one annexation, or by any number of sequential annexations. Additional real estate shall be deemed annexed and made subject hereto when Declarant executes and records in the Craven County Registry a specific amendment to this Declaration, referring therein to this Declaration, and describing in such amendment specific real estate which is being annexed by said amendment. No notice of such amendment, or the recordation thereof, shall be required to be given to any third party by Declarant. This absolute right of annexation shall expire upon the expiration of all Special Declarant Rights; thereafter, annexation will require consent of the Executive Board of the Association.

Nothing contained herein shall prohibit or restrict the conveyance of any real estate, including any portion of the Property, by Declarant to a third party intending to subdivide, develop, construct improvements upon, or otherwise alter or make

improvements to the real estate so transferred, in any instrument of conveying Lots therein to Purchasers. Declarant shall specifically have the right to assign to the party acquiring any such tract the Special Declarant Right to annex the real estate so acquired by amendment to this Declaration.

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Specific use and building restrictions as to real estate annexed shall be specified in each annexation instrument. Use and building restrictions contained in this Declaration (other than those in Exhibit B) shall be applicable to all real estate made subject to this Declaration unless specifically modified by an annexation amendment. Additional use and building restrictions applicable to the real estate described in Article One of this Declaration are set out on Exhibit B hereto.

### ARTICLE THREE

#### Master Association

3. Master Association. For purposes of the Act, the Association shall be deemed a Master Association. Notwithstanding the creation of other associations that may perform additional or supplemental functions to those performed by the Association, the formation of which are specifically allowed, all Residential Property that becomes Annexed Property shall be bound by the terms, provisions and conditions of this Declaration, as amended from time to time, and, to the extent not altered by said amendment, the terms, provisions and conditions of this Declaration shall be fully applicable to such Annexed Property.

### ARTICLE FOUR

#### Commercial Property

4. Commercial Property. Nothing contained in this Declaration shall be deemed to make any development on the Commercial Property subject to the provisions hereto, but nothing contained herein shall restrict or prohibit any portion of the Commercial Property from being used for residential purposes, and, if so used, from being made subject to this Declaration by annexation. The Declarant is granted the right and authority to, and shall, require the Person or Persons acquiring the Commercial Property to obligate themselves, and their successors and assigns, to make contributions to the Association to assist the Association in fulfilling its maintenance obligations regarding Common Elements that enhance the use or value of said Commercial Property. Said owners of the Commercial Property may be designated "Associate Members" of the Association, and may be granted limited use rights to certain Common Elements for themselves and their tenants, guests, and invitees as deemed appropriate by the Declarant or the Association.

## ARTICLE FIVE

Building and Site Restrictions

5.1 General Building and Site Restrictions. The following building and site restrictions shall be applicable to all Lots and other real estate made subject to this Declaration unless specifically altered by Declarant as to a particular described Lot or real estate annexed hereto, with said annexation document specifying the specific restriction or restrictions not applicable to the real estate so annexed.

a. No detached garage or other structure designed to cover a car or contain materials shall be permitted unless architecturally compatible with the primary residence on the Lot to which it is appurtenant. No such Structure will be constructed prior to the construction of the primary residence on the Lot to which it is appurtenant. No more than one such garage or outbuilding shall be allowed per Lot.

b. No more than one residential Structure shall be allowed per Lot.

c. All residential Structures must be constructed in accordance with standards for single family homes included in the North Carolina Uniform Residential Building Code, notwithstanding whether or not such homes are constructed in whole or in part on site. No home may be moved on to any Lot if such home has previously been occupied and used elsewhere. No mobile home (homes built in accordance with manufactured home standards imposed by the Federal Construction and Safety Standards Act) or other Structure designed for transportation on attached axles and wheels shall be located on any Lot.

d. No satellite receiving dish, radio antenna or other similar device shall be allowed on any Lot unless allowance of such is required by law, in which event the device shall comply with standards adopted by the Association.

e. No boat, boat trailer, other trailer, camper, recreational vehicle, utility vehicle or truck (to the extent that a truck is rated as a one ton truck or larger) shall be allowed to remain on any street right-of-way or on any Lot or on any Common Element (unless specifically designated for such use by the Association) overnight unless it is enclosed within a garage that has been constructed in accordance with the provisions of this Declaration, or is parked on any area owned by Declarant or the Association designated specifically for such purpose. Notwithstanding this provision, the Association may issue temporary permits for parking, not to exceed in duration three consecutive days, or two weeks in any calendar year.

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f. No permanent or temporary clotheslines will be permitted on any Lot unless totally within the interior of the primary residence on said Lot.

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g. The number, type and location of trash receptacles and trash receptacle enclosures allowed on any Lot shall be established by the Association.

h. The type and location of all mailboxes on every Lot shall be established by the Association.

i. All dwelling connections for utilities, including but not limited to water, sewer, electricity, gas, telephone and television shall be run underground from the proper connecting point to the dwelling Structure and any appurtenant garage or building.

j. No Structure shall be owned or utilized as a time share, interval ownership or use share form or function of ownership.

k. Construction of any residence on exposed stilts or pilings is prohibited.

l. Every dwelling and appurtenant garage, if any, must be accessed from the adjacent street by a paved driveway, or from an alley designed for such access. Driveways shall be constructed of concrete at least four inches thick, brick or fixed stone aggregate. There shall be no "runner" type of construction permitted whereby a tract or runner is poured for each wheel of a vehicle. Driveways of brick shall be supported on a foundation of select fill material at least four inches thick.

m. One detached building appurtenant to the primary dwelling (for example a garage or garden house) may be constructed on each Lot, but only if approved by the Committee upon a finding that the appearance of such building, including its building materials, is compatible with the appearance of the primary dwelling house.

n. No motor vehicle that is junked, partially wrecked, fails to display a current license plate, fails to display a current North Carolina inspection sticker, or is non-operative, shall be placed or allowed to remain on a Lot unless within an enclosed garage.

o. No lawn or garden equipment shall be parked or stored on a Lot overnight except in an enclosed Structure otherwise permitted.

p. Dismantling or repair of motor vehicles or boats is not permitted unless repairs can be and are completed within one (24) hour period.

q. No stripped, partially wrecked or junked motor vehicle or boat, or parts thereof, shall be permitted to be parked or kept on a Lot.

r. No unlicensed motorcycles, dirt bike, or alternate terrain vehicle ("ATV") shall be operated on the streets or Common Elements of Carolina Colours.

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s. All fuel storage tanks and LP gas tanks shall be buried, screened or concealed in such a fashion that they are not visible from any adjacent Lot or any street.

t. No air conditioner that protrudes through a wall of a Structure shall be installed on the side of such Structure facing a street. No window air conditioners shall be permitted.

u. No temporary Structure, tent, shack or other building shall be allowed to remain on a Lot for a period greater than 48 hours (excluding such items used by contractors in the normal course of construction).

v. Any building Structure on any Lot which is destroyed in whole or in part by fire or other casualty must either be rebuilt or removed and the Lot restored to a sightly condition with reasonable promptness. In no event shall any debris or remains of such destruction remain on any Lot longer than two months.

w. No activity, active or passive, that is reasonably considered a nuisance by the Association shall be allowed. This prohibition includes any activity within any Structure, on any Lot or on any street or Common Element that is reasonably considered a nuisance by the Association. The Association is specifically authorized by this Declaration to adopt rules regarding conduct on Lots and on Common Elements; however, the Association may find any conduct or use of a Lot or Common Element to be a nuisance notwithstanding the fact that such conduct is not specifically prohibited by this Declaration or by an adopted rule. A Lot Owner shall be specifically responsible for the conduct of their guests and invitees. A Lot Owner shall be given written notice of any violation of this nuisance restriction. The procedures as contained in the Act for fines and suspension of privileges shall be applicable to any violation of this rule, but the Association may impose a fine not to exceed \$150.00 for each day of any activity that is deemed, after hearing held in accordance with the Act, to have been a nuisance, even though the nuisances are no longer continuing, unless in fact the activity complained of was terminated immediately upon request by the Association to the Lot Owner.

x. Rentals of Living Units shall be allowed, but the minimum term of any rental may be limited. Any such limitation as to the property made subject by this instrument to this Declaration is as set out on Exhibit B hereto. Any such limitation as to Annexed Property shall be set out in the instrument of annexation.

y. There will be installed on each Lot, or the adjoining right of way, an electrical service box. No above grass level landscaping and no Structure shall be place within 12 feet of the

side open doors thereof, and within 3 feet of its sides.

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z. Clear and unimpeded access shall be maintained around all fire hydrants. No Owner shall plant or install any vegetation or structure that might reasonably interfere with the use of any such hydrant.

5.2 Sign Restrictions. No signs shall be allowed on any Lot, including, without limitation, "for sale" or "for rent" signs, unless specifically authorized by operation of law, or by this paragraph 5.2 of the Declaration. The only permitted signs are as follows:

a. one sign per Lot, no greater than six square feet in size, specifying the general contractor actually constructing a primary residential Structure on a Lot. Such sign must be constructed at a size, and to the specifications and styles, from time to time established by the Association, and must be located in a place on the Lot specified by the Committee in accordance with Association established policy. Such sign must be removed upon issuance of a Certificate of Occupancy for the residence being constructed on the Lot;

b. one sign per Lot (or per permitted residential Structure in multi-family neighborhoods, as specified in an amendment to this Declaration) identifying the Lot upon which such sign is placed only by the name of the owner and a street number. Such sign must be constructed at a size, and to specifications and styles, from time to time established by the Association, and must be located in a place on the Lot specified by the Committee, which may be on the Association approved mail box;

c. one project sign for any patio home, duplex or multi family neighborhood, which sign shall not exceed in size fifty (50) square feet, and which shall specify only the name of the neighborhood, its developer, and the name and location of the selling agent;

d. one neighborhood identification sign, not to exceed fifty (50) square feet in size, for each primary entrance to a neighborhood within Carolina Colours named by Declarant;

e. street or directional signs erected by Declarant, the Association or the City of New Bern;

f. any sign erected by any governmental agency; and

g. identification and informational signs constructed by Declarant, the purpose of which are to assist Declarant in identifying the community and the location of Lots, sale's offices, amenities, sale models or other uses within Carolina Colours.

5.3 Fencing. No fences are allowed unless approved by the Committee, in accordance with guidelines adopted by the Association. Fences are subject to the complete jurisdiction of the Association, as determined by the Committee, including their location, style, materials and height. As used herein, fences shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility, and specifically include fences around swimming pools and dog runs. Absent a showing of need by the Lot Owner, and a finding by the Committee of lack of adverse impact on any adjoining Lot or property, no fence shall be allowed along any property line. Fences shall not be allowed within any building setback area adjacent to a golf course or a water body. The Committee shall only approve the construction of a fence upon a determination that the fence is aesthetically pleasing; does not distract from the reasonable value of any Lot or other property, does not unreasonably impede the view of any water course or other attractive feature from any other Lot or Common Element, and is in compliance with Association adopted fence guidelines. Chain link fences on residential Lots are not allowed, nor are dog runs utilizing chain link type fencing.

5.4 Waterfront Property Restrictions.

a. The State of North Carolina has adopted environmental regulations that restrict vegetative removal or thinning in areas adjacent to Brices Creek, and certain other designated water courses within Carolina Colours. There shall be denoted as "Riparian Buffer" on each recorded plat of any Lot restricted by a Riparian Buffer the approximate location of the restricted area, which restricted area generally extends fifty (50) feet from each bank of said water course. Every Lot Owner shall comply at all times with all laws and rules of the State of North Carolina, and shall perform no clearing or thinning activities within the Riparian Buffer except to the extent such clearing or thinning activities are allowed by the State of North Carolina. Furthermore, there shall be no Structure constructed within said restricted area, including within the water course, without issuance of a permit by the State of North Carolina, if required, and without approval by the Committee, in accordance with standards adopted by the Association from time to time. Until such time as standards are adopted no such Structures shall be allowed.

b. As to water courses and bodies of water not within a Riparian Buffer as described in paragraph 5.4(a), no patios, decks, overlooks or the utilization of other riparian rights by construction of improvements or structures (including bulkheads) shall be allowed thereon or adjacent thereto unless approved by the Committee, in accordance with standards adopted by the Association. Until such time as such standards are adopted, no such Structures shall be allowed.

c. No boating, swimming, fishing or other recreational use of any water course or any body of water shall be allowed, other than within Brices Creek, except as the same may be specifically allowed by the Association, in accordance with standards adopted by the Association. Any use of such water courses or bodies of water, with or without the permission of the Association, shall be at the sole risk of the party utilizing such water, it being specifically understood that neither the Declarant nor the Association shall provide life guards or other security or safety measures in regard to such utilization.

5.5 Lot Mowing. The Owner of every improved Lot shall maintain the Lot in good and sightly condition, including regular mowing of all grassed areas. The Association shall mow all unimproved Lots a maximum of four times each year, and shall charge a reasonable fee to the Owner of such Lot for each mowing. Said fee shall be due and payable when billed, which may be in advance, and unless paid on or before the due date, which shall be not later than the due date of the next regular assessment, shall be collected as though it is an unpaid regular assessment, with the availability of all remedies, including the collection or interest and attorney fees, available for non-payment of an assessment.

## ARTICLE SIX

### Owners Association.

6.1 Creation. A property owner's association named Carolina Colours Association, Inc. (hereinafter "Association") has or will be created by Declarant. Every Lot Owner within the Residential Property made subject to this Declaration, including Declarant, shall be a member of the Association. Each new Lot Owner automatically becomes a member of the Association upon acquisition of his Lot. Upon disposition of said Lot such Owner's membership automatically terminates and the membership interest is transferred to the new owner of said Lot. Mortgage holders or other equitable holders of rights shall not be members of the Association.

6.2 Voting Rights. All members of the Association, including Declarant, shall have one vote for each Lot owned.

6.3 Executive Board. The Association shall be governed by an Executive Board of Directors. As long as Declarant has the right to appoint the members of the Executive Board, the Executive Board shall consist of at least three members. Declarant's appointees need not be members of the Association. Upon the expiration of Declarant's right to appoint the members of the Executive Board, the Executive Board will thereafter be selected in accordance with the Bylaws of the Association. All power and authority of the Association is exercisable by the Executive Board.

6.4 Bylaws. The Bylaws of the Association may be amended as set forth therein. In the event any provision of the Bylaws is

inconsistent with the provisions of this Declaration of this Declaration shall control.

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6.5 Duties of the Association. The Association shall have the responsibility for operating, maintaining, and replacing all Common Elements, and enforcing this Declaration, and all rules and regulations adopted hereunder. The Association shall be responsible for adopting rules and regulations governing utilization of such Common Elements (subject to the limitations contained herein). To the extent deeded or otherwise transferred by written instrument to the Association, the Association shall be obligated to accept ownership of all Common Elements designated on any recorded subdivision plat of any portion of the Property made subject to the terms and provisions of this Declaration.

6.6 Powers of the Association. The Association, by action of the Executive Board, on behalf of the Association, shall have the following powers as well as all powers contained in Section 47F-3-102 of the Act and otherwise set-out in this Declaration or the By-laws of the Association:

- a. Adopt and amend rules and regulations;
- b. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from Lot Owners;
- c. Hire and discharge managing agents and other employees, agents and independent contractors;
- d. Institute, defend or intervene in litigation or administrative proceedings on matters affecting Carolina Colours;
- e. Make contracts and incur liabilities on behalf of the Association;
- f. Regulate the use, maintenance, repair, replacement, and modification of Common Elements;
- g. Cause additional improvements to be made as a part of the Common Elements;
- h. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to Section 47F-3-112 of the Act;
- i. Grant easements, leases, licenses, and concessions through or over the Common Elements;
- j. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements other than the Limited Common Elements and for services provided to Lot Owners;

k. Impose reasonable charges for late payments of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Lots) during any period that Common Expense Liability due and owing to the Association remain unpaid for a period of 30 days or longer;

l. After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to lots) for reasonable periods for violations of the Declaration, By-laws, and rules and regulations of the Association;

m. Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the Declaration or statements of unpaid assessments;

n. Provide for the indemnification of and maintain liability insurance for its officers, its Executive Board and its directors, its employees, and its agents;

o. Assign its right to future income, including the right to receive Common Expense assessments;

p. Exercise all other powers that may be exercised in North Carolina by legal entities of the same type as the Association; and

q. Exercise any other powers necessary and proper for the governance and operation of the Association, including, without limitation, all powers specified in this Declaration.

6.7 Additional Powers of the Association. In addition to the powers incorporated from the Act above, the Association, by action of the Executive Board on behalf of the Association, shall also have the following powers:

a. Enforce any provision of this Declaration and any amendment or supplement hereto;

b. Undertake any activity that is reasonable and necessary for the maintenance and operation of the Property specifically made subject to this Declaration;

c. Acquire and operate all improvements and facilities located on any Common Element;

d. Adopt and enforce rules and regulations for the use of the Common Elements and all improvements and facilities thereon, to include the conduct of Owners and their families and guests within Carolina Colours;

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- e. Maintain and improve landscaping in the Common Elements;
- f. Insure facilities and personalty;
- g. Secure liability insurance for the Association, its Executive Board and officers;
- h. Expend Association funds on any activity that is reasonable and necessary or convenient for the operation of the Association or the enjoyment of Carolina Colours by Owners whether or not that activity is specifically set forth in this Declaration;
- i. Assess the Lots and the Owners of Lots for the cost and expenses of operating the Association and fulfilling its duties and responsibilities. The amount of such assessment will be determined pursuant to the formulas set forth in this Declaration and any amendment or supplement hereto;
- j. Suspend the voting rights of any Lot Owner and suspend the rights of the Owner, his family and guests, from use of any Common Elements and facilities thereon (except as may be necessary to obtain ingress and egress to the Owner's Lot) if such member of the Association fails to timely pay any assessment or fine; and
- k. Employ the services of an engineer, attorney, accountant or other professional.

## ARTICLE SEVEN

### Covenant for Assessments

7.1 Assessments. Each Owner of every Lot, by the acceptance of title thereto, shall be deemed to covenant and agree to pay to the Association assessments as required by this Declaration and the Act. The purpose of the assessments will be to defray the Common Expenses of the Association to include, but not be limited to, the operation, maintenance, repair, replacement and improvement of Common Elements and improvements thereon; for capital improvements to Common Elements; for administration of the Association; for provision of telecommunication services; for enforcement of this Declaration; and to provide funds to pay any Common Expenses incurred by the Association. These assessments are to be fixed, established and collected from time to time as hereinafter provided. The assessments may be classified as follows:

a. A Standard Assessment will be assessed against each Lot subjected to this Declaration. The Standard Assessment will be made on an annual, calendar year basis but will be payable quarterly, unless otherwise determined by the Executive Board, with payments due on January 1, April 1, July 1, and October 1. The Standard Assessment will be equal for all Lots that are unimproved, and, beginning in 2007, shall be three times said amount for all Lots that are improved. In 2005 and 2006, the Standard Assessment for

all Lots that are improved shall be two times the amount charged  
 Lots that are unimproved. A Lot shall be deemed improved upon  
 issuance of a certificate of occupancy for it, but increased dues  
 based on the improvements shall not be due until the first day of  
 the following quarter. Dues for the Standard Assessment for the 2005  
 calendar year shall be \$220 per Lot for unimproved Lots and \$440 per  
 year for improved Lots. The Standard Assessment for all subsequent  
 years will be determined by the Executive Board in an amount  
 necessary to pay all Common Expenses and to maintain reserves as  
 determined appropriate by the Executive Board.

b. In addition to the Standard Assessment described above, all Lots, other than Lots with frontage on the Carolina Colours Golf Course, will be assessed \$5.00 per month, and all Lots with frontage on the Carolina Colours Golf Course will be assessed \$10.00 per month. These Golf Course Assessments will be due and payable on the same schedule as Standard Assessments. The Golf Course Assessments will commence no earlier than January of 2007, on a date determined by Declarant after commencement of construction of the Carolina Colours Golf Course, and will be paid to the owner of the Carolina Colours Golf Course for use in maintaining the Golf Course. The Golf Course Assessment shall be increased by the Association, upon request of the owner of the Golf Course, no more than \$1.00 per Lot every three years, but in no event shall the assessment ever increase to more than \$8.00 per Lot and \$13.00 per Lot, respectively, per month. This Golf Course Assessment may not be reduced without consent of the Declarant. This Golf Course Assessment is made to help insure the quality of the maintenance of the Carolina Colours Golf Course, because the existence of the Golf Course, and its maintenance in good and sightly condition, enhances the value and marketability of all Lots within Carolina Colours.

c. A Special Assessment may be levied by the Executive Board from time to time to provide revenues for budget short-falls that arise from unforeseen circumstances or otherwise, or to provide revenues for capital improvements, or for other purposes authorized by the Act. Special Assessments will be payable as directed by the Executive Board.

d. A Limited Common Area Assessment may be levied by the Executive Board to fund any expense associated with Limited Common Elements, to be collected from those Lot Owners allocated use rights to such Limited Common Elements. Such expenses shall be allocated equally to all Lot Owners subject to such assessment unless a different method of allocation is specified in an annexation instrument. Said assessment shall be due and payable at times established by the Association.

e. Initial assessments for each new Lot annexed shall be assessed and due and payable upon the earlier to occur of i) the first day of the second quarter following recordation of the plat creating such Lot, or ii) the date of conveyance of said Lot to a third party. Notwithstanding this provision, Declarant may delay the

effective date of assessment for any Lot sold to a purchaser or developer intending to construct for resale on such Lot a primary residential Structure, if such delay is granted by Declarant in writing prior to the date assessments would otherwise be due and payable. Once dues and assessments are due and payable, Declarant may not then grant a delay in the date dues and assessments are payable. In the event of such a delayed date for assessment, the assessment shall be levied at the earlier to occur of the following:

- i. The due date specified in the annexation instrument;
- ii. The date such Lot is re-conveyed to a third party Purchaser; or
- iii. Two years from recordation of the subdivision plat creating said Lot.

f. Cash reserves for the replacement of Common Elements shall be maintained by the Association, but only as required by this Declaration. It is the intent of this Declaration and shall be the policy of the Association to equitably balance the fact that the primary beneficiaries of replaced Common Element components are the Owners at the time of such replacement, and that such Owners should therefore bear a greater portion of the cost (just as homeowners bear the cost of replacement of their home elements without contribution from previous owners) with the fact that all Owners should contribute to some degree to replace components of Common Elements that they utilize while a member of the Association. The policy of the Association as to cash reserves shall therefore be as follows:

- i. No reserves shall be collected until a Common Element is conveyed to the Association, at which time its major components (see subparagraph ii) shall each be assigned a remaining useful life based upon guidelines acceptable to the Internal Revenue Service.

- ii. No reserves shall be maintained for any component that had an initial cost of less than five thousand dollars, the cost of replacement of such component being deemed a repair or maintenance cost.

- iii. Where reserves are required to be collected, reserves shall not be collected on a straight line basis. Rather, the amount of reserves collected shall be computed on a basis where on an equally graduated scale, over the remaining useful life of the component, the amount collected in the last year of the useful life shall be four times the amount collected in the first year of the useful life.

- iv. Reserves, when collected, shall be maintained in a reserve account by the Association. Expenditures may be made from such reserve account only to repair or replace the component for which such reserve is maintained, unless it is determined by the

Executive Board that there are likely to be excess funds assigned as a reserve to a component, in which case such excess funds may be transferred to the reserve for another component, or may be utilized for repair or maintenance of any component. Reserves should be used for repairs only if such repairs are likely to increase the useful life of the repaired asset.

v. Reserves shall be maintained in an interest bearing account, and interest earned shall be allocated to any reserve account determined appropriate by the Executive Board. It is generally anticipated that reserve collections shall be based upon the initial cost of a component, and that interest earned will compensate for inflation, but should the Executive Board believe that there has been extraordinary inflation in the cost of replacement of an asset, the amount of the needed reserve collected (not the ratio of collection) may be increased by the Executive Board for the component subject to such inflated replacement cost.

vi. Notwithstanding the reserve requirements contained in this Declaration, the Executive Board may determine not to maintain a reserve for a particular component if it reasonably finds that the component will require periodic maintenance which will indefinitely extend its useful life.

g. Declarant shall pay all operating deficits of the Association as long as Declarant maintains the right to appoint the Executive Board of the Association.

h. Multiple Lots may be combined into a single building Lot by recordation of a revised plat of such Lots, or by other recorded documentation restricting said Lots to use for a single residence, and as of the first day of the year following such recordation, for purposes of assessment, the combined Lots shall be considered one Lot.

## 7.2 Lien and Personal Obligation.

a. All assessments levied by the Association, and any installment thereof, if unpaid for a period of thirty (30) days after the due date, shall constitute a lien on the Lot against which such assessments are made when filed of record in the office of the Clerk of Superior Court of Craven County in the manner provided therefore by Article 8 of Chapter 44 of the General Statutes of North Carolina (or any replacement article). The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina with the Association being deemed as holding the power of sale.

b. The lien under this section is prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien

in the office of the clerk of superior court, and for real estate taxes and other governmental assessments and charges against the Lot. This subsection does not affect the priority of mechanic's or materialmen's liens.

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c. Where the holder of a first mortgage or first deed of trust of record, or any other Purchaser of a Lot, obtains title as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Lot Owners including such purchaser, its heirs, successors, and assigns. However, the Lot Owner is liable for assessments, or installments thereof, that become due and payable after acquisition of title.

d. Each assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, in addition to constituting a lien when thirty days delinquent, shall also be the personal obligation of the Lot Owner at the time the assessment, or installment thereof, was due. In addition to foreclosure of its lien, the Association may also institute suit against the Lot Owner for collection of the delinquent assessment. The personal obligation for assessments which are delinquent at the time of transfer of a Lot shall not pass to the transferee of said Lot unless said delinquent assessments are expressly assumed by the transferee.

e. The remedies set forth herein are cumulative and shall be in addition to any other remedies provided to the Association by law.

f. If it is necessary for the Association to enforce any lien, or to pursue a civil action to recover unpaid assessments, the Association shall be entitled to recover its actual reasonable attorneys fees, court costs, and any other expenses in connection therewith.

g. As used in this Declaration the term "assessment," if more than 30 days delinquent, is deemed to include interest thereon at the rate of twelve percent (12%) per annum, the Association's actual reasonable attorneys fees incurred in collecting the delinquent assessment(s), and other costs of collection incurred by the Association.

## ARTICLE EIGHT

### Improvement Review

8.1 Improvement Review Committee. There shall be established as a committee of the Association an Improvement Review Committee. The Committee will be the Declarant until such time as the Declarant

transfers improvement review and control to the Association by written instrument. Following transfer, there shall be at least three (3) members on the Committee and there shall be a maximum of seven (7) members, the number determined from time to time by the Executive Board.

8.2 Approval Required. No construction, reconstruction, remodeling, alteration or addition of or to any Structure, building, fence, wall, driveway, or walkway, or improvement of any kind or nature that will be visible from streets, Common Elements or adjacent Lots shall be constructed without the prior written approval of the Committee as to appearance, location, and specification, unless made exempt by a specific provision of this Declaration. Any Structure constructed by or on behalf of the Declarant or the Association shall be exempt, as shall any Structure constructed by any Person having been granted exemption in writing by Declarant because of their status as a developer assigned development rights to one or more developmental sections of Carolina Colours.

8.3 Plan Submittal. Prior to commencing construction of any Structure on any Lot, a plot plan and plans for the Structure, including specifications of materials to be used, must be submitted in duplicate for review and approval by the Committee. The site plan must be prepared by a registered surveyor or engineer, and must be to a scale determined from time to time by the Committee as its standard scale. The location of all existing and proposed Structures shall be shown on the plans along with calculations of roof areas, drives and any other impervious surfaces in order to verify compliance with the stormwater regulations applicable to Carolina Colours. There shall be further provided to the Committee sufficient building elevations and landscape plans, professionally drawn, including a statement of exterior building materials and proposed exterior colors, to allow the Committee to appropriately and accurately evaluate what is proposed for construction on the Lot.

8.4 Committee Procedures. The Committee shall approve the plans as submitted, if all required information is submitted, and the following affirmative findings are made by the Committee:

a. that the improvements sought to be constructed will not have material negative economic impact on any other Lot or Common Element within Carolina Colours;

b. that all specific building standards and other conditions contained within this Declaration as amended or supplemented, and as elaborated upon in Design Guidelines adopted by the Committee, have been met;

c. that the improvements are economically and aesthetically compatible with anticipated, proposed or constructed improvements on other Lots and Common Elements within its Carolina Colours neighborhood,;

d. that the improvements will be situated on the Lot within the applicable setbacks as shown on any recorded plat of the Lot or as established in this Declaration, as amended (unless properly varied); and

e. that the impervious surface limitation coverage proposed on the Lot is consistent with the requirements of the State of North Carolina.

The discretion given to the Committee shall be utilized in an effort to ensure that all Structures within Carolina Colours are compatible with others within its named neighborhood and do not pose undue burdens on other Owners. It is not the intent of this Declaration to impose a singular or specific architectural style within Carolina Colours, or to prohibit different price ranges within the community, but rather to insure a pleasing appearance throughout the community. The Committee may not impose any requirement that violates any construction code or other law or ordinance. The Committee shall be the sole arbiter of the plans and specifications for improvements (subject to the right of appeal set out in paragraph 8.9 of this Declaration), but in making economic and aesthetic decisions, the Committee shall endeavor to consider general community standards, not the individual style and taste of the particular Committee members.

8.5 Procedure. The Committee shall have thirty (30) days to approve or disapprove submitted plans and specifications after receipt thereof containing all required information. The Committee may extend the approval period by an additional thirty (30) days by giving written notice to the applicant. Failure to respond within the time period provided shall constitute approval by the Committee by default. The time for response shall be automatically extended during the time the Committee awaits requested information that was required to have been included with the initial submission, but which was omitted.

8.6 Documentation. One set of plans, denoted as approved (or approved with specified conditions) shall be retained by the Committee and the other shall be returned to the applicant. The Committee shall be obligated to specify in writing the particular grounds upon which denial of any application is founded.

8.7 Delegation. The Committee, with the approval of the Executive Board, may delegate its responsibilities in defined categories of review (such as, but not limited to, changes during construction to already approved plans) to a subcommittee, designated Committee member or staff member, and may create from among its staff and/or members subcommittees to perform certain or all of its review tasks, and may also employ professional assistance in carrying out its duties and responsibilities.

8.8 Design Guidelines. Design guidelines shall be promulgated by the Association for the benefit of Owners and their design and building professionals. Such guidelines may be promulgated by the Committee, but must be approved by the Executive Board. All Owners are encouraged to request a copy of the design guidelines prior to commencement of design of any improvement of their Lot, and to provide the design guidelines to their design and building professionals.

8.9 Right of Appeal. Any Owner disagreeing with the finding of the Committee may appeal the decision to the Executive Board of the Association by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of notice of denial (or notice of imposition of conditions unacceptable to said Owner). The Executive Board shall then review the plans, giving the Chairman of the Committee the opportunity to present to the Executive Board specific reasons why the plans were denied, in the presence of the Owner or his agent, and the Owner or his agent may present information challenging the findings of the Committee. The decision of the Committee shall only be overridden by an affirmative vote of eighty percent (80%) of the entire membership of Board of Directors of the Association. This provision shall not be applicable until such time as Declarant has relinquished control of the Committee to the Association.

8.10 Notices. All notices required to be given herein shall be given in writing, hand-delivered or mailed postage prepaid, return receipt requested.

8.11 Review fee. Every Owner other than Declarant shall be charged a review fee for every submittal to the Committee. The Executive Board shall determine from time to time the amount of the fee. Until otherwise determined, the review fee shall be two hundred dollars for a submittal for new home construction, and twenty-five dollars for any other submittal. As long as Declarant is performing the functions of the Committee, it, or its delegated review agent, may retain 75% of said fee, the remaining balance to be retained by the Association as a reserve for future Committee expenses. Notwithstanding this provision, the amount of review fee charged to any Person assigned by Declarant development rights to a designated pod or parcel of land within the Property shall be the sum of two hundred dollars for the first prototype of any residential structure to be built, and twenty five dollars for each substantially identical structure to be built within the same pod or parcel.

## ARTICLE NINE

### Easements and Reservations

9.1 Common Elements. Declarant covenants that it will convey the Common Elements to the Association, and the Association shall be required to accept from Declarant the Common Elements, with such

improvements as may be constructed thereon at the time of such conveyance. Upon such conveyance, the Association shall maintain all Common Elements, including all open spaces. All members of the Association shall have a non-exclusive right and easement of use and enjoyment in and to such Common Elements, which right shall be appurtenant to and pass with the title to every Lot, subject to the right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed upon by the Association, in accordance with procedures required by the Act. Furthermore, the right of use and enjoyment of such Common Elements, other than the right of ingress and egress to each Lot, may be suspended or revoked in accordance with the provisions of this Declaration and the Act, upon failure of any Lot Owner to abide by the provisions of this Declaration, including, without limitation, the failure to pay assessments, and the failure to comply with use rules. Nothing contained herein shall prohibit the Association from imposing charges for use of particular Common Elements, in order to help defray the cost of use of such Elements, as long as all costs are uniformly applied to all members of the Association making utilization of such Common Elements.

9.2 Reservation of Rights. Declarant hereby reserves the right to utilize all streets, roads, utility easements, drainage easements and Common Elements for purposes of ingress and egress to properties owned by Declarant, or for purposes of providing access to other contiguous properties which Declarant has an option or contract to acquire. This right is assignable by Declarant to successors in interest to any of the Property. Declarant may utilize all easements for purposes of complying with its obligations contained within this Declaration, or for otherwise making improvements to or benefiting any Annexed Property.

9.3 Utility Easements. All public utilities are hereby granted a non-specific easement to utilize any properties within any dedicated street right-of-way within any Annexed Property, subject to the procurement of the right to utilize such easement from the City of New Bern, compliance with all laws, regulations and restrictions regarding conflicts of uses within said easements, and subject to the Telecommunications Easement described in paragraph 9.5. Such rights of way may also be utilized by the Telecommunications Provider.

9.4 Drainage Easements. There is hereby reserved a drainage easement on all Lots. Said drainage easement shall be parallel to each rear Lot line, and extend ten feet into each Lot on the rear, and shall be parallel to each side Lot line, and shall extend five feet into each Lot from each side Lot line. Additional or greater drainage easements may be established by Declarant by recorded easement or recorded plat. All such easements may be utilized by Declarant in any manner deemed appropriate by Declarant to assist with stormwater management within Carolina Colours. No Owner shall make utilization of any such easement in a way that would impede or

restrict utilization of said easement for its intended purposes. To the extent any drainage easement is not utilized by Declarant or the Association for underground conveyance, the Owner of the subject to said easement shall be responsible for maintaining said easement in a good and sightly condition. To the extent such an easement is utilized for above ground water management purposes, the Owner of such Lot made subject to such easement shall remove any impediment to the free flow of water from such easement. To the extent that Declarant or the Association utilizes any drainage easement by burying drainage pipe or other water conveyance facilities, the Association shall maintain such pipe or facilities installed by or on its behalf, unless the same are maintained by the City of New Bern.

9.5 Telecommunications Easement. There is hereby reserved for the benefit of the Telecommunications Provider an exclusive private easement parallel to all street rights-of-way within all Annexed Property, along all perimeter boundaries of the Property, and along all Lot lines within the Annexed Property, extending five feet into each Lot or Common Element, and otherwise as set out on Exhibit C attached hereto. Declarant further reserves the right to establish from time to time additional telecommunication easements within Carolina Colours as necessary to allow the Telecommunications Provider to provide services to all Lots and Common Elements to be served thereby. Each Lot and Common Element is further burdened with an exclusive, private easement to allow the Telecommunications Provider to install fiber optic service lines and any necessary appurtenant equipment from the private easement reserved within this paragraph to each Structure that is to be provided service by the providers designated by the Telecommunications Provider. The Association acknowledges the Telecommunications Easement set forth herein and its applicability to Common Elements now existing and which may be established from time to time.

9.6 Golf Course Easement. Upon construction of the Carolina Colours Golf Course, the owner of the golf course and its guests and invites shall have, and are hereby granted, an easement extending 20 feet around the perimeter of all golf course property, which easement shall be for the purposes of maintenance of, and access to and from, the golf course, by its owner and its owners, employees, guests and invitees. The owner of the golf course shall expressly have the right to remove trees from said easement if necessary to improve the quality of the course, and to post thereon signs, including, but not limited to, out of bounds signs.

9.7 Watercourse Easement. There is hereby reserved for the benefit of Declarant and the Association an easement adjacent to the edge of all water bodies, which easement shall extend 10 feet above the high water mark of all such water bodies, for the purpose of ingress and egress to such water body, and for the purpose of maintenance of such water body.

9.8 Additional Reservations. Declarant may establish other and additional rights-of-way, easements or reservations on any recorded plat of any Lots or Common Elements within Carolina Colours, or within any instrument of annexation.

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9.9 Maintenance Responsibility. The Owner of each Lot shall maintain in good and sightly condition the appearance of all easement areas that extend from his or her Lot to the paved portion of any adjoining street, and to the water line of any adjacent body of water.

## ARTICLE TEN

### Setbacks

10. Setbacks. Setbacks for Structures on Lots may be established by the recorded plat or the annexation instruments whereby Lots are depicted or made subject to this Declaration. Notwithstanding the existence or non-existence of such setbacks, the Committee has full right and authority to establish setbacks for all Structures on any Lot, which setbacks may be greater, but shall not be less than, those shown on any recorded plat or in any annexation instrument. However, the Committee may, by unanimous vote, upon good cause shown, vary any setback established by any recorded plat or by annexation instrument. In no event, however, shall the Committee have the right or ability to vary any setback established by any governmental agency.

## ARTICLE ELEVEN

### Telecommunication Services

11. Telecommunications Contract. It is in the best interest of a majority of the Lot Owners for there to be extended, without cost to said Lot Owner, fiber optic infrastructure within Carolina Colours, and to each primary residential Structure within Carolina Colours. Declarant has further determined, by "bundling" multi channel video services and data services, that such services can be provided to the members of the Association at a lesser cost than such services can be purchased by each Lot Owner individually. Declarant and the Association have therefore entered into a contract for telecommunications services to be provided to its members, and the Association shall be responsible for fulfilling its obligations under such contract. By procuring ownership of a Lot, the Lot Owner hereby agrees to accept such telecommunications services, and to reimburse to the Association its cost of procuring such telecommunication services, as are determined from time to time by the Association to be advantageous to the majority of Lot Owners within the Association. The particular services to be provided to the Lots described on Exhibit A attached hereto is set out in Exhibit B attached hereto. The Association is obligated to make payment for such bundled services as set out on Exhibit B, and each Lot Owner shall be obligated and required to pay to the Association,

on a monthly basis, the amount specified on Exhibit B attached hereto, as said amount may be modified by the Association from time to time. Said sums shall be due and payable regardless of whether or not the Lot Owner accepts the services provided. No charge will be made prior to first occupancy of a Structure on a Lot. Each Lot Owner shall be required to utilize the voice and security service providers designated by the Association and allowed utilization of the fiber optic system, if the Owner elects to have hard wired telephone or security services. The cost of such non-bundled services shall be paid directly by the Lot Owner to the providers of such services.

The particular services to be provided shall be set out in each instrument whereby property is annexed. The cost for identical services provided shall be equal for all Owners within Carolina Colours; Declarant and Association may determine to bundle different levels of services to different neighborhoods within Carolina Colours, and in such an event, the amount reimbursed to the Association may vary from neighborhood to neighborhood. The Association and each Lot Owner acknowledge that provision of telecommunication services shall be subject to usage policies and minimum equipment requirements of the service providers designated by the Telecommunications Provider.

To the extent that any Lot Owner procures additional services not described on Exhibit B, or in any annexation instrument, the Lot Owner shall be personally responsible for paying for such services, directly to the seller of such services, and the Association shall have no obligation to collect for any such supplemental services.

For payments required under this Article, the Association shall have full right and authority to collect from said Lot Owner such charges, as though such charge were an assessment, and all of the provisions of paragraph 7.2 of this Declaration shall be fully applicable to the collection of any such charge.

Notwithstanding this or any other provision of this Declaration, any amendment to this Declaration which alters the terms relating to the provision of telecommunications facilities and services, the assessments related thereto, or the Telecommunications Easement must have the prior approval of the Telecommunications Provider. The Telecommunications Provider shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to telecommunications facilities and services, the assessments related thereto, its contract with the Association, or the Telecommunications Easement.

## ARTICLE TWELVE

### Amenities

12.1 Disclaimer. Except as specifically required by this Declaration, by an annexation instrument or by a purchase contract

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for acquisition of a Lot, Declarant shall have  
construct any amenity, or to dedicate any Common

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No obligation to  
Element  
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12.2 Golf Course. Should the Carolina Colours Golf Course be constructed by Declarant or its assigns within the Property, as planned by Declarant, said golf course and its related facilities, including its pro shop, shall not be Common Elements. Declarant shall determine the form of ownership of said golf course, and the identity of its owner. Subject to capacity limitations, however, all Lot Owners shall have the right to procure, for consideration, the right of access to said golf course, or the right of procuring membership in the golf course ownership entity, on a priority basis over those not Lot Owners. It is expressly understood and agreed utilization of the golf course will require payment by a Lot Owner in excess of any payment for acquisition of a Lot within Carolina Colours.

12.3 Community Center. Should Declarant construct a building or buildings within the Property designated as a community center, said community center shall be a Common Element, shall be operated and maintained by the Association, and all members of the Association shall have rights of utilization thereto. To the extent that a golf pro shop or management facility is included therein, it is expressly understood and agreed that the Association shall allow utilization of a designated portion of such facility by the golf course owner, which may or may not be Declarant, for reasonable rental or reimbursement of expenses as determined by Declarant at the time of the construction and utilization of such facilities, and as set out in the instrument annexing such properties as Common Elements.

12.4 Other Amenities. Declarant reserves the right to dedicate as Common Elements other real estate within any Annexed Property, and to make improvements to such Common Elements, all of which shall be conveyed to, and maintained by, the Association, and all of which shall be available for utilization by all members of the Association. Rules and regulations for utilization of all Common Elements may be adopted from time to time by the Association.

## ARTICLE THIRTEEN

### Permits

13.1 Permit Compliance. In order to develop Carolina Colours, Declarant or its assigns shall procure, or shall have procured on its behalf, permits from the City of New Bern, the State of North Carolina and the United States. Declarant, Association and all Lot Owners, as well as any and all other Persons benefited by said permits, shall at all times use due diligence and good faith to comply with all conditions imposed by such Permits. Should at any time any of such parties be determined to be in non-compliance with any permit, said Person shall immediately use good faith and due diligence to take action to come into compliance with the conditions

imposed by said permit. From time to time, as Common Elements are constructed and deeded to the Association, or as Declarant completes development within neighborhoods within Carolina Colours, Declarant shall request of the permitting agency that permits issued to it, or on its behalf, be transferred and assigned to the Association, or to other Persons benefited thereby. Declarant shall, prior to any such requested transfer, bring all properties into compliance with any conditions imposed by said permits. The proposed transferee shall, to the extent allowed by law, accept the transfer and assignment of said permits, agree to be bound by all of the provisions and conditions contained therein, and shall execute any documents of assignment or acceptance required by the permitting agency.

13.2 Stormwater Permits. In addition to other permits issued, the State of North Carolina will from time to time issue stormwater management permits to or on behalf of Declarant. The stormwater permits, which are issued and enforced by the North Carolina Department of Environmental Health and Natural Resources ("DEHNR"), will impose requirements on Lots, including a limitation on the impervious surface allowed on each Lot. Specific restrictions imposed upon any particular Lot, any Common Element, or on any other parcels of land within the Property, shall be specifically set out in Exhibit C attached hereto, and in each instrument of annexation. All Lot Owners and all Persons owning land made subject thereto shall fully comply with all of the terms, provisions and conditions of any such issued permits.

The definition of impervious surfaces for purposes of interpretation of stormwater permits is determined from time to time by DEHNR, but generally include the utilization of any surface area that has a substantial impact on the ability of such surface to percolate rainwater, and includes areas under roof, driveways, walkways and other hardened surfaces, including designated parking areas, but does not generally include wood decking. Impervious surfaces also generally include that portion of a driveway or entranceway leading from a public street to a Lot, including that portion thereof on the adjacent public right-of-way.

Stormwater regulations prohibit filling in or piping of any vegetated conveyances (ditches, swells, etc.) associated with development of the Property, with the exception of average driveway crossings, unless otherwise specifically authorized by such permit. Therefore, no Lot Owner or other Person owning land subject to any stormwater permit shall fill or pipe any vegetated conveyance, unless expressly authorized by permit issued by the State of North Carolina, and approved by the Committee.

13.3 Enforcement. The State of North Carolina is hereby given specific authority to enforce this Declaration, and all conditions imposed by any permit issued by it, to the extent necessary to cause compliance with the impervious surface limitations or other conditions imposed by the State of North Carolina as set out in any stormwater permit issued by the State of North Carolina. The

remedies available to the State of North Carolina include, without limitation, the remedy of specific performance. None of the impervious surface limitations imposed by permit may be altered without the prior approval of the State of North Carolina.

13.4 Limitations on Further Permitting. In order to procure permits for the development of Carolina Colours, agencies may impose limitations on the further issuance of permits to Lot Owners, or the owners of other of the Properties from time to time. By accepting ownership of a Lot, or other land within the Property made subject to this Declaration, said Owner agrees, to the extent required by any agency, to forego the opportunity to be issued individual permits for utilization of water bodies, wetlands or stream buffer zones.

13.5 Binding Effect. All permits issued shall be binding upon the heirs, successors and assigns of the Owner of the land burdened thereby, regardless of whether any permits have been formally assigned or transferred to such Owner.

#### ARTICLE FOURTEEN

##### Amendments

14.1 By Declarant. Declarant may amend this Declaration, and any instrument of annexation, at any time, as required by governmental agency to bring any portion of the Property into compliance with any permit condition. Declarant may further amend this Declaration, and any instrument of annexation, as to any requirement imposed upon any Lot, prior to the time such Lot is conveyed to a third party.

14.2 By Owners. This Declaration may be amended at any time by vote of Lot Owners (including Declarant) holding ownership of 70% or more of the Lots which have been made subject to this Declaration. However, no such amendment shall be valid without consent of Declarant as long as Declarant owns any Lot, or any portion of the Property which is subject to annexation hereunder.

14.3 Form of Amendment. An amendment to this Declaration, if made by Declarant, shall be effective upon its recordation in the Office of the Register of Deeds of Craven County, North Carolina, and shall be executed only by Declarant, without need of joinder of any other Person. An amendment adopted by vote of the Owners shall be effective upon recordation in the Office of the Register of Deeds of Craven County. Said instrument shall be effective if executed by the Association on behalf of the Lot Owners, without joinder of any Owner, but such instrument shall recite that it was adopted by vote of 70% or more of all Lot Owners. The Association shall retain for a minimum of five years after the recordation of any such amendment records appropriate to allow verification of the vote approving such amendment. Any amendment requiring joinder of Declarant must be

executed by Declarant, as well as the Association, in order to be effective.

#### ARTICLE FIFTEEN

##### Sales and Marketing

In order to maintain the value of the Property and all Lots, the Association is hereby expressly granted the rights, powers and authorities expressly set out within this Article, which rights, powers and authorities are supplemental to those set out in Article Six of this Declaration.

15.1 Marketing. The Association is specifically granted the right to expend monies for the purpose of marketing Carolina Colours, and is specifically given the right to assess Lot Owners for such purpose, either as a Standard Assessment or a Special Assessment.

15.2 Marketing Fee. The Association is specifically authorized to adopt a transfer fee upon the sale of any Lot. Said fee shall be in an amount determined by the Association, which amount shall not exceed the amount payable by the seller of real estate as a real estate transfer tax under the laws of the State of North Carolina. Said fee, if imposed, shall be due and payable upon the transfer of any Lot by any seller other than Declarant or a builder or developer designated as exempt from the payment of such fee by Declarant. The fee shall be due and payable by the purchaser of any Lot upon acquisition of ownership of said Lot from Declarant or an exempt builder or developer, and failure to make such payment shall be deemed a violation of this Declaration, and, to the maximum extent allowed by law, any purchaser becoming a Lot Owner failing to pay such fee shall be denied utilization of the Common Elements, and such fee may be collected in the manner of a lien upon non-payment of an assessment. Should such fee be instituted by the Association, it shall become effective on a date specified in an amendment to this Declaration recorded in the Office of the Register of Deeds of Craven County, and any change in the amount to be collected shall be likewise set out in such an amendment. All monies collected upon imposition of this fee shall be utilized solely to assist in the marketing of Carolina Colours.

#### ARTICLE SIXTEEN

##### Off Property Common Element

16. Remote Common Elements. Declarant reserves the right to procure real property, and to improve such real property, and to designate said real property, and the improvements thereon, as Common Elements, no matter whether located within the Property, or outside the boundaries of the Property. Such improvements may be deeded or leased to the Association, as Common Elements, and if such are deeded or leased to the Association, the Association shall

accept such properties, improved or unimproved, as Common Elements, and shall maintain the same in good condition for the benefit of its members.

#### ARTICLE SEVENTEEN

##### Carolina Colours Builders

17. Builders. Declarant is specifically authorized to designate and define a limited number of licensed North Carolina construction contractors authorized to construct primary residential structures within Carolina Colours, and to determine and impose the criteria for construction contractors to qualify for such designation. Declarant may further limit the number of such qualified construction contractors. The purpose of this authorization is to enhance the likelihood that a good quality of construction will be maintained within Carolina Colours, and that construction sites will be maintained in a clean and sightly condition. A construction contractor designated as approved for residential construction within Carolina Colours shall have its privileges to construct revoked upon a finding by Declarant that said construction contractor is not building an acceptable quality residential structure, is not successful in maintaining good customer relations, or is failing to maintain its construction sites in a clean and sightly condition. Declarant shall maintain at all times a list of approved construction contractors, which shall be made available upon request to any Lot Owner or prospective Lot Owner, and each Lot Owner by accepting title to a Lot agrees to utilize only an approved construction contractor. The Association shall also have the right of designation reserved herein to Declarant following transfer to the Lot Owners of the right to select the directors of the Executive Board.

#### ARTICLE EIGHTEEN

##### Special Declarant Rights

18.1 Incorporation by Reference. All rights of Declarant specified elsewhere within this Declaration shall be considered Special Declarant Rights, as defined in the Act, and Declarant specifically reserves all Special Declarant Rights set out in the Act.

18.2 Additional Special Declarant Rights. In addition to the Special Declarant Rights set out in the preceding paragraph, Declarant specifically reserves the following rights:

(a) to appoint the members of the Executive Board until the earliest to occur of the following:

(i) transfer of said right by written instrument to the Lot Owners, by notice given to the Association;

(ii) the first day of the year following a time in which Declarant owns none of the Property; or

(iii) January 1, 2020.

(b) to complete improvements on Common Elements before or after transfer of the Common Elements to the Association;

(c) to maintain sales offices, management offices, and models;

(d) to construct and maintain identification, directional or advertising signs;

(e) to use easements through the Common Elements for the purpose of making improvements to any of the Property;

(f) to appoint or remove any officer or member of the Executive Board during the period in which it has the right to appoint such members; and

(g) to utilize any Common Element for the purpose of assisting in the sale of any of the Property.

18.3 Termination. No Special Declarant Right shall expire, except as set out in paragraph 18(a), but any or all may be terminated by written agreement between Declarant and the Association.

## ARTICLE NINETEEN

### General Provisions

19.1 Enforcement. The Declarant, the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

19.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other of the provisions, all of which shall remain in full force and effect.

19.3 Right of Entry. Violation or breach of any provision herein contained shall give Declarant or the Association, to the extent that any of them may have a right of enforcement thereof, their respective agents, legal representatives, heirs, successors and assigns, in addition to all other remedies, the right (but not the obligation), after five (5) days notice to the Owner of the Lot, to apply to a court of competent jurisdiction for an order granting the

Declarant or the Association the right to enter upon the Lot or the land as to which such violation or breach exists, and to abate and remove, at the expense of the Owner thereof, any Structure or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof; and the entering parties shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal, except that if any agent of Declarant or the Association shall be responsible for actually committing a trespass by behavior going beyond the intent of the authority conferred by this paragraph, in such event neither Declarant nor the Association shall be responsible for the unauthorized acts of such agent(s). Nothing herein contained shall be deemed to affect or limit the rights of Lot Owners, when entitled to do so, to enforce this Declaration by appropriate juridical proceedings.

19.4 Notices. All notices required or provided for in this Declaration shall be in writing and hand delivered or sent by United States mail. If hand delivered, the notices shall be sent to the addresses shown below and shall be deemed to have been given on the date hand delivered to the address of the party to whom the Notice is sent. If United States mails are used, the notices shall be sent to the addresses shown below, certified or registered mail, return receipt requested, postage prepaid, and shall be deemed to have been given on the date deposited in the United States mails. Notice shall be addressed as follows:

To Declarant:	Carolina Creek LLC 119 Middle Street New Bern, N. C. 28560
with copy to:	Kenneth Kirkman 255 Cedar Lane Newport, N. C. 28570
To the Association:	To the Registered Agent of the Association at his/her address as listed with the Secretary of State of North Carolina.
To members:	To the last known address of the member as shown on the records of the Association at the time of such mailing, and if there is no such address, then to the Lot of such member.

Any Person shall have the right to designate a different address for the receipt of notices other than set forth above, provided the Person's new address is contained in a written notice given to the Declarant while it has the right to appoint the Executive Board and to the Association.

19.5 No Reverter or Condition Subsequent. No provision herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

19.6 Remedies. Damages may not be deemed adequate compensation for any breach or violation for any provision hereof, so that any Person entitled to enforce any provision hereof shall be entitled to relief by way of injunction, preliminary or final, as well as any other available relief either at law or in equity. To the fullest extent allowed by law, attorney fees and all other costs of collection may be collected by the Association and the Declarant in any successful action to enforce this Declaration, and interest may be collected at the rate of 12% per annum on any sum due and unpaid, until time of payment in full, from the date such sum became overdue.

19.7 Headings. The headings or titles herein are for convenience of reference only and shall not affect the meaning or interpretation of the contents of this Declaration.

19.8 Gender. Whenever used in this Declaration, the words of any gender shall include the other gender.

19.9 Running with the Land. All conditions and obligations contained within this Declaration are necessary to preserve and protect the value of Lots and the viability of the Association over time, and are not limited in benefit to the first Purchaser of any Lot, or to Declarant. All of the provisions contained in this Declaration therefore shall run with the land, shall be binding on successive Purchasers of all Lots, and are expressly declared NOT to be personal in nature.

19.10 Disclaimer. At the time of the recordation of this Declaration, Declarant holds record title to the property described on Exhibit A, and holds a valid, binding and enforceable option to procure the balance of the Property. Provisions of this Declaration are binding only on Declarant, and not upon the owner of the portion of the Property subject to the option, BCP Investors, LLC, or its assigns, unless expressly assumed in writing.

IN WITNESS WHEREOF the undersigned has executed this instrument under authority duly given as of the day and year above written.

CAROLINA CREEK LLC

By:

  
KENNETH M. KIRKMAN, MANAGER

STATE OF NORTH CAROLINA

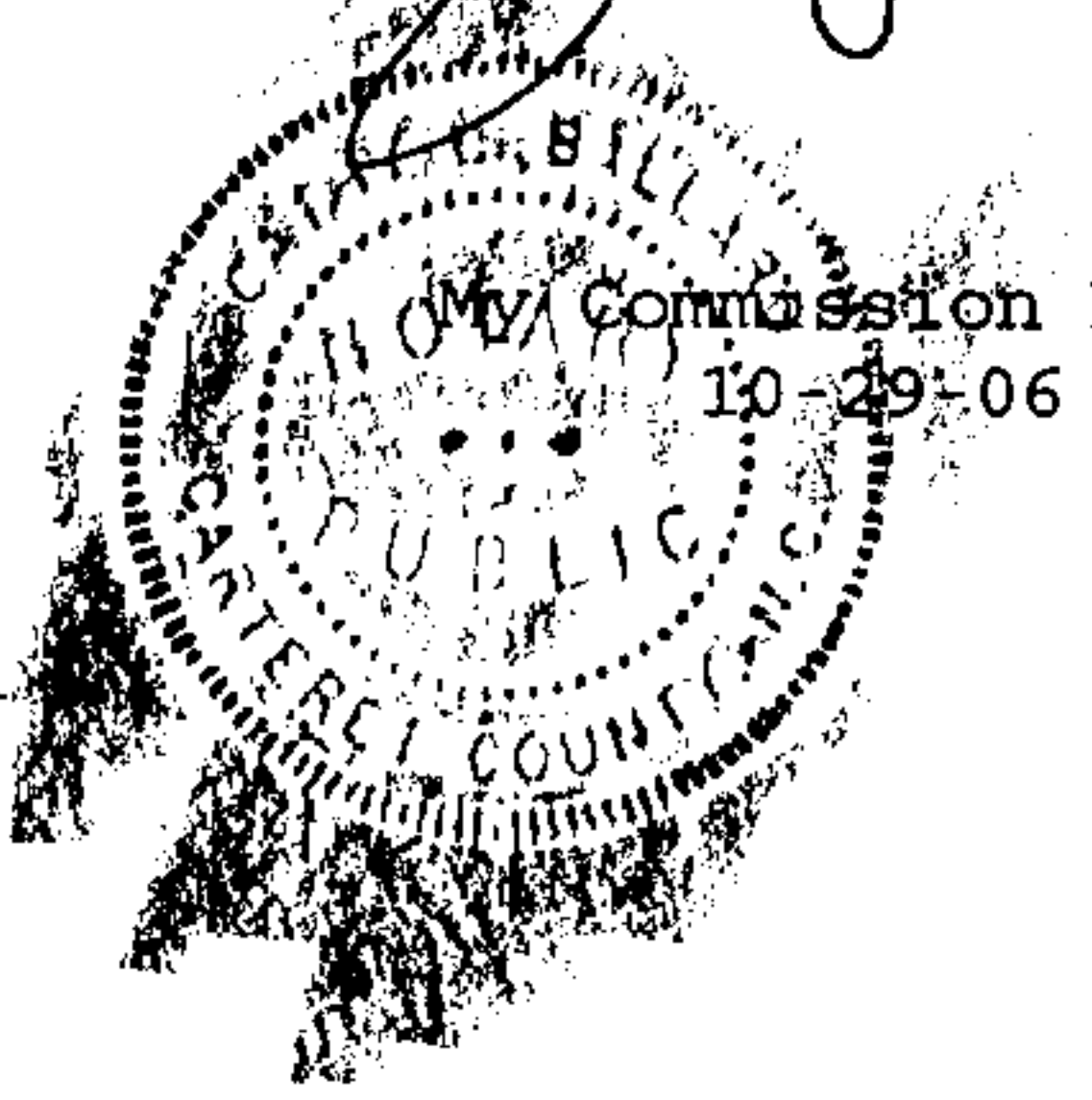
COUNTY OF CRAVEN

I, CATHY L. BALLARD, a Notary Public of the aforesaid County and State, do hereby certify that Kenneth M. Kirkman, personally came before me this day and acknowledged that he is member/manager of Carolina Creek LLC, a North Carolina Limited Liability Company and further acknowledged the due execution of the foregoing instrument on behalf of the Limited Liability Company.

Witness my hand and notarial seal, this 17th day of January, 2005.

*[Handwritten signature]*

*Cathy L. Ballard*  
NOTARY PUBLIC



State of North Carolina, Craven County  
The foregoing certificate(s) of *Cathy L. Ballard*

is (are) certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the office of the Register of Deeds of Craven County, NC in Book 2266 Page 270  
This 17 day of Jan A.D. 2005 at 2:30 o'clock PM

*Betty Thompson* *Althea Carter*  
Register of Deeds Asst./Deputy Register of Deeds

Word/Carolina Colours/CC  
ProtectiveCovenants; Dr 18; 11-05-04  
Dr 19 12/31/04; Dr 20 1/4/05; 1/5/05;  
1/8/05; 1/9/05;

EXHIBIT A

DECLARATION OF PROTECTIVE COVENANTS FOR CAROLINA COLOURS

SIENNA WOODS PHASE 1 LOTS 1-56

Being all of that property shown on the Final Plan for Carolina Colours-Sienna Woods, Phase 1 as shown on that plat recorded in Plat Cabinet H, Slides 10-B, 10-C and 10-D, Craven County Registry (the "Plat"). Nothing contained in the Protective Covenants shall in any way restrict the use of those public rights of way shown on said plat by the City of New Bern.

EXHIBIT B

DECLARATION OF PROTECTIVE COVENANTS FOR CAROLINA COLOURS

SIENNA WOODS PHASE 1 LOTS 1-56

The Lots and properties described in Exhibit A shall be subject to the following restrictions, in addition to those set out in the Protective Covenants. To the extent there is any conflict between the restrictions contained in this Exhibit B and those contained in the Protective Covenants, those restrictions contained in this Exhibit B shall control.

1. Minimum Building Requirements: No primary residential Structure shall contain less than 2000 heated square feet. If any primary residential Structure contains more than one living floor, there must be a minimum of 1700 square feet of heated space on the first living floor. Heated space shall only include fully enclosed space heated by the primary central heating system utilized for the primary residential Structure.

2. Set-backs: The minimum building set-backs shall be the greater of the set-backs shown on the Plat, or the following:

- |                                       |         |
|---------------------------------------|---------|
| a) Front (street) set-back:           | 40 feet |
| b) Side set-back:                     | 15 feet |
| c) Rear set-back, Lots 1-10 and 24-56 | 30 feet |
| d) Rear set-back, Lots 11-23          | 40 feet |

On Lots 11-23, the 30 feet of the rear set-back nearest Waterscape Way shall remain as a vegetated buffer. No tree with a diameter of two inches or more shall be removed from said 30 feet. Underbrush may be cleared from said area, and grass or plantings may be installed with the vegetated buffer. It shall be the responsibility of the Lot Owner to maintain the area in a slightly condition. No Structures shall be erected or installed within said vegetative buffer.

3. Impervious Surface Limitations: No more than 6,500 square feet of any Lot shall be covered by structures or impervious materials. Impervious materials include asphalt, gravel, concrete, brick, stone, slate or similar material but do not include wood decking or the water surface of swimming pools. Swales shall not be filled in, piped, or altered except as necessary to provide driveway crossings. This covenant is intended to insure ongoing compliance with North Carolina State management permits as issued by the Division of Water Quality and can not be modified or deleted without the consent of the State of North Carolina by issuance of a permit amendment. The State of North Carolina and the City of New Bern are specifically given the right, by specific performance, to enforce the limitations and restrictions contained in this paragraph 3 of Exhibit B.

The Association is specifically required to maintain any storm water collection, distribution or holding facilities constructed in accordance with ordinances or, or permits issued by, the City of New Bern as relates to storm water management and discharge, and as relates to nitrogen reduction, whether or not said facilities are located on Common Elements or on Lots. The Association is also specifically authorized to pay any inspection fees charged by the City of New Bern for inspection of such facilities and improvements.

4. Riparian Buffer Lots: Lots 23, 24, 25, 37, 38, 47, 48, 49, 50, 51 and 52 are subject to buffer rules imposed by the State of North Carolina, in areas shown on the Plat. The State of North Carolina has the right and authority to enforce these rules, which rules strictly limit the right to remove vegetation or construct structures within the area subject to buffer rules.

5. Flood Zone: By law, the nine foot contour line is the determining point for the boundary between the X and the AE flood zone lines, as established by the Federal Emergency Management Agency (FEMA). The location of said lines as shown on the Plat is as reflected on the maps published by FEMA. In field surveys have determined the location of said line as shown on the Plat to be in error, with the area of unrestricted building greater than as shown on said Plat. Amendments to the flood zone map have been requested by Declarant, and it is expected that such amendments will accepted by FEMA. These changes may effect the flood zone location on Lots 37, 38, 48, 49, 50, 51 and 52. Declarant. Upon issuance of such amendments, said relocated line shall be valid, in lieu of the line as shown on the Plat. Declarant reserves the right to amend the Plat to properly show the correct flood zone lines, if and when FEMA approves map amendments.

6. Rental Limitations: No rental of any home shall be allowed that is for a term of less than six months.

7. Other Restrictions: Drainage Easements as shown on the Plat, other than the typical drainage easements described in paragraph 9.4 of the Protective Covenants, have been established in order to comply with certain restrictions regarding nitrogen reduction imposed by the City of New Bern and/or the State of North Carolina. Should such easements be utilized for drainage purposes, with or without drainage structures contained therein, no Lot Owner shall interfere in any way with such easements or structures. Maintenance of such easements and structures shall be the responsibility of the Association. Declarant reserves the right to abandon such easements if their use is not required to comply with governmental requirements. No private use of said easements for drainage or other purposes may be made without consent of the Association.

7. Common Element Dedication: There is denoted on the Plat "Common Element 1" and "Common Element 2." Both of these Common Elements shall be conveyed to the Association, and the Association shall maintain these Common Elements as a vegetative buffer, in accordance with buffer standards adopted from time to time by the Association.

8. Telecommunications Services and Rates: The following are the minimum, basic services that will be provided, and the initial payment that will be made to the Association by each improved Lot Owner therefore. Prices and services are subject to change upon approval of the Association.

DATA SERVICE: (Fiber based internet service)

1. Downstream speed of 3Mbps
2. Upload speed of 1Mbps
3. Simultaneous access from multiple computers
4. 1 email account with 10MB web space
5. Toll free customer support
6. Fiber based intranet (35Mbps)
7. Wireless access from primary Carolina Colours amenities

VIDEO SERVICE

At least 65 cable channels, local channels, HBO Multi-Channel Package.

Enhanced High Definition capability with fiber system delivery.

Data Service and Video Service are "Bundled Services." Bundled Services are provided by the service provider through agreement with the Association, and payment for the basic services provided shall be by payment to the Association. (See paragraph 11 of the Covenants for more detail). As of the time of recording of this instrument, the monthly cost for the Bundled Services is \$81.50. Additional services will be made available to each Owner by these service providers; if such additional services are elected, payment by the Owner shall be made directly to the service provider for only those elective additional services.

Voice Services and Security Services are not Bundled Services. The Association shall designate the exclusive provider of these services. Only that provider may utilize the fiber system that is being installed. The Voice Service provider has contracted with the Association agreeing that its charges for basic services shall be at all times at least 10% lower than the cost of comparable services provided by the incumbent provider of such services. The provider of Security Services has contracted with the Association to provide monitored service without charge for

12 months following home construction; thereafter, it is elective with the Owner as to whether or not to continue such services.

Payment for Voice Services and Security Services shall be made directly by the Owner to the provider of such services.

EXHIBIT C

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DECLARATION OF PROTECTIVE COVENANTS FOR CAROLINA COLOURS

SIENNA WOODS PHASE 1 LOTS 1-56

TELECOMMUNICATIONS EASEMENT

In addition to the easements referenced in the Protective Covenants, the Property is further encumbered by an Easement and Modification Agreement recorded in book 2264, page 6, Craven County Registry.