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INSTRUMENT # 2011002027

FOR REGISTRATION REGISTER OF DEEDS  
Jennifer Leggett Whitburne  
Beaufort County, NC  
April 18, 2011 12:12:09  
Book 1749 Page 795-822  
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NORTH CAROLINA  
BEAUFORT COUNTY

BEAUFORT BLUFFS DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made on this 21<sup>st</sup> day of March, 2011, by Beaufort Bluffs LLC, a North Carolina Limited Liability Company (the "Declarant");

WITNESSETH

WHEREAS, Declarant is the owner of certain property located in Beaufort County, North Carolina, being lots 4 thru 18 of Beaufort Bluffs subdivision, which are more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

WHEREAS, Declarant will convey the property, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as herein set forth;

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants restrictions, and conditions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1.1. "Act" means the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes), as amended from time to time, or any corresponding provisions of succeeding law.

Section 1.2. "Additional Property" shall have the meaning set forth in Section 2.2 below.

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EXHIBIT A

In Bath Township, Beaufort County, North Carolina, and being all of Lots 4 thru 12 and 14 through 18, Phase I, of Beaufort Bluffs Subdivision as shown on the Survey by Bryant E. Hardison, Jr., Professional Land Surveyor, a copy of which is recorded in Plat Cabinet H, Slides 67-5, and 67-6, Beaufort County Registry.

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Section 1.3. "Amenities" shall mean the facilities constructed, erected or installed on the Common Areas, as the same may change or be added to from time to time.

Section 1.4. "Annual Assessments" means the assessments described in Section 6 below.

Section 1.5. "Architectural Committee" shall mean and refer to a committee of up to three (3) Persons, appointed by the Board (subject to the following sentence) and charged with reviewing and passing judgment upon the design of any proposed improvements, including Buildings and other Structures, as described in Article VIII below. The Declarant shall be the Architectural Committee until the date of the termination of the Declarant Control Period, at which time the Board will appoint the members of the Architectural Committee.

Section 1.6. "Association" shall mean and refer to the Beaufort Bluffs Community Association, Inc., a North Carolina non-profit corporation formed by Declarant, together with its successors and assigns.

Section 1.7. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association, unless a contrary intent is evident. During the Declarant Control Period, the Board shall consist of two (2) persons appointed by the Declarant. Following the Declarant Control Period, the Board shall consist of at least three (3) persons.

Section 1.8. "Building" shall mean and refer to a residential structure, constructed or erected on a Lot.

Section 1.9. "Bylaws" shall mean and refer to the bylaws of the Association, as they may now or hereafter exist and may change from time to time.

Section 1.10. "Common Area" shall mean and refer singularly or collectively, as applicable, to all land, improvements and other properties now or hereafter owned by or in the possession of the Association or Declarant and being specifically designated by Declarant by plat, supplemental declaration, deed or other written instrument as Common Area for the Property, such land, improvements and other properties being subject to this Declaration and/or any applicable supplemental declaration, and being subject to control and maintenance assessments by the Association. Common Area shall also include any waterlines, storm water drainage lines and sewer lines that may be located within the Common Area and not within municipal sanitary sewer easements.

Section 1.11. "Declarant" shall mean and refer to Beaufort Bluffs, L.L.C., a North Carolina limited liability company, and its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section 1.12. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and all subsequent valid amendments thereto.

Section 1.13. "Declarant Control Period" means the period commencing on the date of recordation of this Declaration with the Beaufort County Registry and continuing until the date on

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which the Declarant transfers, in writing, its Development Rights to the Association, said date to be no later than five years after the date of recordation of this Declaration.

Section 1.14. "Development of Rights" means all rights of control and/or approval granted to Declarant, as Declarant, under this Declaration, including, but not limited to, the rights granted under Article II below.

Section 1.15. "Lot" shall mean Lots 4 thru 18 as shown on the Plat, or any subsequent recorded map of the Property with the exception of the Common Area and area designated as open space.

Section 1.16. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.16.1. "Member not in Good Standing" shall mean a Member who is shown on the books or records of the Association to be more than thirty (30) days delinquent on the payment of any annual or special assessment due the Association.

Section 1.17. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.18 "PME" shall mean the Public Management Entity that shall manage the System as described herein in Article XIII, Section 13.6, and the Tri-Party Agreement recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, Beaufort County Registry. The PME shall also manage the on-site wastewater systems described in Article XIII, Section 13.7.

Section 1.19. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 1.20. "Plat" shall mean the map entitled "Beaufort Bluffs Subdivision" by Bryant E. Hardison, Professional Land Surveyor, recorded in Plat Cabinet H, Slide 69-5 ~~and 69-6~~, in the Beaufort County Registry or any amended map of the Property so recorded in the Beaufort County Registry.

Section 1.21. "Property" shall mean and refer to that certain real property described on Exhibit A attached hereto, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

Section 1.22. "River View Lot" shall mean lots 4,5,6,7,14,15,16,17, and 18 as shown on the Plat.

Section 1.23. "Structure" shall have the meaning set forth in Section 8.2 below.

Section 1.23. "Supplemental Declaration" shall have the meaning set forth in Section 2.2 below.

Section 1.24 "System" shall mean the ground water lowering system as described herein in Article XIII, Section 13.6 and the Tri-Party agreement recorded in Book 1749, Page ~~823~~ 823 72, Beaufort County Registry.

ARTICLE II

PROPERTIES; ANNEXATION OF ADDITIONAL PROPERTIES

Section 2.1 Property Made Subject To Declaration. The Property is hereby made subject to this Declaration and (subject to the right of Declarant to, as hereinafter described, amend and/or supersede in whole or in part, this Declaration by Supplemental Declarations) the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2.2. Annexation of Additional Property. If Declarant is the owner from time to time of any property adjacent to or across the street from the Property ("Additional Property") which it desires to add to the provisions of this Declaration, it may do so by filing of record a "Supplemental Declaration" or "Declaration of Annexation" (therein so called) which shall extend the provisions of this Declaration to such Additional Property; provided, however, that such Supplemental Declaration or Declaration of Annexation, as applied to the Additional Property covered thereby, may include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration or Declaration of Annexation; and if a person or entity other than Declarant desires to add property to the provisions of this Declaration, such property may only be so added if the Declarant gives written consent thereto and if such consent is given, such property shall be considered Additional Property.

Section 2.3. Contents of Supplemental Declaration. Supplemental Declarations may set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may desire; provided if such party is other than Declarant, as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of Declarant. In no event shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the original Property or to previously added portions of Additional Property.

Section 2.4. Conveyance of Common Area Upon Annexation. Subsequent to recordation of the Supplemental Declaration by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Area within the Additional Property annexed as such Common Area is developed, as set forth in Article V, Section 5.4 of this Declaration.

Section 2.5. Additional Amenities. It is expressly understood that the Association may, from time to time, add to or alter the Amenities, including additions of capital nature. Such addition could potentially include, by way of example, recreational facilities, a fitness facility, tennis courts, or an exercise trail. This Section shall not require or even infer any such additions to the Amenities, such potential additions being at the pleasure of the Association. The cost of such additional Amenities may be paid for through a special assessment.

Section 2.6. Common Area Improvements provided by Declarant. Declarant shall construct, and shall convey to the Association as common areas, the following:

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- (a) The common areas designated on the Plat;
- (b) The private streets shown on the Plat, which Declarant has been built to meet NC Department of Transportation standards;
- (c) A Community pier facility which will be built when construction has commenced for houses on at least two "River View" lots;
- (d) The System described in Article XIII, Section 13.6.

Section 2.7. Waterfront and Bulkhead. The responsibility for proper maintenance of the waterfront, heavy stone or "rip rap" both from a perspective of sound construction and aesthetics shall be that of the adjacent lot owner and shall be subject to enforcement by the Association.

#### ARTICLE III MEMBERSHIP

Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject to the Declaration shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot.

#### ARTICLE IV VOTING RIGHTS

Section 4.1. Upon termination of the Declarant Control Period, all Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one Person holds such interest in any Lot, all such Persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot, and no fractional vote may be cast with respect to any Lot.

Section 4.2. Suspension of Voting Rights. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations as they may now or hereafter exist and may change from time to time. Any Member not in Good Standing shall not be entitled to vote.

#### ARTICLE V PROPERTY RIGHTS

Section 5.1. Members' Easements of Enjoyment. Every Member shall have a non-exclusive right and easement of enjoyment in and to the Common Area, including the rights of ingress and egress, and such easement shall be appurtenant to and shall pass with the right to every Lot, subject to each of the following provisions:

- (a) The right of the Association, in accordance with its articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage the Common Area, or any portion thereof, provided the rights of such mortgagee in said Common Area Property

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shall be subordinate to the rights of the owners hereunder.

(b) The right of the Association to dedicate or transfer all or any part of the Common Area for utility, drainage, pedestrian walkway and cable television easements and other similar purposes.

(c) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Area and their Amenities (including limiting the number of guests of Members who may use the Common Area) subject to limitations established by Declarant on such right to impose regulations.

(d) The right of the Association to take such steps as are reasonably necessary to protect the Common Area within the jurisdiction of the Association against foreclosure.

(e) The right of the Association to charge Members reasonable fees for the use of recreational facilities and other amenities on the Common Area within the jurisdiction of the Association.

(f) Actions contemplated under subparagraph (a) and (b), above shall not be taken until the following action occurs; Members entitled to cast eighty percent (80%) of all the votes of the Association have voted in person or by proxy for such action at a meeting duly called for said purpose, notice of which was sent to every Member not less than ten (10) nor more than sixty (60) days in advance of the meeting.

The instrument effecting such dedication, transfer, conveyance or mortgage shall be sufficient if executed by appropriate officers of the Association and contains a recital of the above provisions, and that they have been complied with.

Section 5.2. Declaration of Use. Any Member may delegate his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the Property and to his guests and invitees.

Section 5.3. Suspension of Rights of Use. Any Member's right to use and enjoyment of Common Areas and Amenities shall be suspended during any period in which that Member is in default in payment of any annual or special assessment levied by the Board of Directors, as provided in the Bylaws. Such rights may also be suspended, after written notice, for a period to be determined by the Board of Directors, for violation of any rules and regulations established by the Board of Directors governing the use of the Common Area.

Section 5.4. Title to the Common Area. Declarant shall dedicate and convey (by deed without warranty) the fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements, other encumbrances and mineral interests outstanding and of record in Beaufort County, North Carolina, at Declarant's sole option but not later than the date that three lots have been conveyed. Common Area may be conveyed by Declarant to the Association in whole or in part from time to time.

## ARTICLE VI COVENANT FOR ASSESSMENTS

Section 6.1. Creation of the Lien and Personal Obligation of Assessments. Each Member, other than the Declarant, who is the owner of any Lot or Dwelling Unit, by acceptance of a deed

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therefore, and all other Members other than the Declarant, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay, as limited below, to the Declarant:

- (a) Annual assessments or charges as herein provided;
- (b) Special assessments for capital improvements (such annual and special assessments to be fixed, established, and collected from time to time as herein provided); and
- (c) Any liquidated damages or summary charges imposed under authority contained herein, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Declarant or Owner's Association incidental to the enforcement of any rules and regulations, collection of assessments (both annual and special) or collection of damages or charges arising herein.

The annual and special assessments of an Owner and any liquidated damages or summary charges as herein provided, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons jointly and severally, who is (are) the Owner(s) of such properties at the time when the Assessment fell due.

Section 6.2. Purpose of Assessments. The assessments levied by the Declarant or Association shall be used for the purposes of enforcing and carrying out the terms and provisions hereof and of any Supplemental Declaration applicable to the Property and promoting the enjoyment and welfare of the Owners of Lots, and in particular, but without limitation, for the (i) future improvement and maintenance of the Common Area; (ii) payment of premiums for hazard insurance in connection with the Common Area and any Amenities thereon, and public liability and other insurance of such Association; (iii) paying the costs of labor equipment (including the expense of leasing any equipment) and material required for, and management and supervision of, the Common Area; (iv) carrying out the duties of the Board of such Association; and (v) carrying out the purposes of such Association as stated in its Articles of Incorporation, Bylaws, and as stated herein or in any applicable Supplemental Declaration.

Section 6.3. Amount of Annual Assessment.

- (a) Initial Annual Assessment. The initial annual assessment shall be \$400.00 per year per Lot.
- (b) Increase by Association. From and after January 1, 2012, the annual assessment effective for any year may be increased by the Board of Directors, without a vote of the membership, to an amount which may not exceed the original assessment (or revised assessment determined pursuant to Subparagraph (c) below) plus fifteen percent (15%) of said assessment per year since 2011, or the year the revised assessment was established, whichever is later.
- (d) Increase by Members. From and after the year in which the Common Areas have been conveyed to the Association or the date of the termination of the Declarant Control Period, whichever occurs later, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. The limitations herein set forth shall not apply to an increase in

assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(e) Criteria for Establishing Annual Assessments. The Association is required to set the annual assessment high enough to enable the Association to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas. The fund shall be maintained out of annual assessments for common expenses as provided for in this article. In establishing the annual assessment for any assessment year, the Board of Directors shall set the annual assessment high enough to cover all current costs and expenses of the Association, any accrued debts, and reserves for future needs.

(f) Decrease of Annual Assessment. The Board of Directors may decrease the annual assessment from time to time if in its opinion such decrease is prudent.

Section 6.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year after the termination of the Declarant Control Period, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the Amenities, the necessary fixtures and personal property related thereto; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. The amount of the proposed assessment need not be stated in the notice.

Section 6.5. Uniform Rate of Assessments. Subject to Section 6.1 above, the annual assessment and special assessments must be fixed at uniform rate for all Lots, on a per Lot basis, and may be collected on a semi-annual or annual basis.

Section 6.6. Quorum for Any Action Authorized Under Sections 6.3 and 6.4. At the first meeting called, as provided in section 6.3 and 6.4 above, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, subsequent meetings may be called, subject to the notice requirement set forth in Sections 6.3 and 6.4 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the next preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the next preceding meeting.

Section 6.7. Date of Commencement of Annual Assessments. Unless postponed by the Declarant, as provided in section 6.2 of this Article, the annual assessments provided for herein shall commence as to any Lot, on the day of the sale of the Lot by the Declarant. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto not later than thirty (30) days following each establishment thereof. The due dates and appropriate penalties for late payment shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certification in writing signed by an officer of Association setting forth whether the assessments on a specified lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been made and shall be binding upon the Association as of the date of its issuance.

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Section 6.8. Effect of Nonpayment of Assessments; Remedies of the Association. Any annual assessments or special assessments which are not paid when due shall be delinquent and shall constitute a lien on the Lot of the delinquent owner. If the annual assessments or special assessments are not paid within thirty (30) days after the due date, then (1) there shall be a late fee equal to 10% of the then current annual assessment or the highest amount allowed by law, whichever is less, and (2) annual assessments or special assessments shall bear interest from the date of delinquency at the lesser of the highest lawful rate or eighteen (18%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and late fees, interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such annual assessment or special assessment. No Owner may waive or otherwise escape liability for the annual assessment or special assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 6.9. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. A sale or any transfer of any Lot shall not affect the assessment liens; provided, however, that the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or deed of trust or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from the liability for any assessment thereafter becoming due or from the lien thereof.

Section 6.10. Working Capital Contribution: One-Sixth of Annual Assessment to be Collected at Closing. At the closing of each sale of a Lot to a party other than Declarant, a sum shall be collected from the purchaser of such Lot equal to one-sixth of the annual assessment, and such sum shall be contributed to the accounts of the Association to insure that the Association will have sufficient funds to meet unforeseen expenditures. This contribution shall not be considered an advance against assessments to become due or a refundable deposit.

Section 6.11. Management of Funds. All funds collected through assessments shall be managed by the Association subject to provisions of this Declaration. Disbursement of funds collected from Lot Owners shall be as directed by the Board of Directors.

Section 6.12. Priority of maintaining and repairing the System. Notwithstanding the provisions of this Article and this Declaration, the Association shall treat the maintenance and repair of the System as described in Article XIII, Section 13.6, and the operation of the components and maintenance of all easements of the System, as the highest priority expenditures of the Association, except for federal, state and local taxes and insurance.

#### ARTICLE VII MAINTENANCE OF PROPERTY

Section 7.1. Maintenance of Lots. If in the opinion of the Board, an Owner fails to maintain the Owner's Lot in a neat and orderly condition, fails to maintain the owners' individual wastewater system as described in Article XIII, Section 13.7, or otherwise neglects his property and allows unsightly conditions to develop, the Board, after thirty (30) days written notice to the Owner, may, but is not obligated to, take steps to remedy the problem. Such remedy may include, but shall not be limited to: the removal of debris or junked cars, the mowing of grass or cutting of brush and the painting or repair of structures and systems located on the property. The Board may bill such Owner

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for all expenses incurred in correcting the problem. Every Owner by acceptance of a deed covenants to pay said bill. Upon failure to pay said bill, the Board may file a lien against said property and enforce said lien by action at law. Alternatively, or in addition to the above, the Board shall have all remedies available at equity to require the specific performance of an Owner's obligation to maintain that Owner's Lot in a neat and orderly condition.

Section 7.2. Declarant's Inaction. Neither the execution and recordation of this Declaration, nor the recordation of any other instrument subjecting any land in the Property to protective covenants, conditions or restrictions or other provisions shall obligate or require (i) Declarant to grant any right, power, duty or privilege of any nature or kind to the Association or to any other entity except as expressly set forth herein, or (ii) Declarant to perform any act permitted by this Declaration or by any other recorded instrument, or to enforce any covenant, condition, restriction or other provision hereof or thereof, or to do anything which it does not, in its sole discretion, elect to do so.

Section 7.3. Maintenance of On-site Wastewater Treatment Systems. Each Owner shall contract with the PME (that is under contract with the Association), to manage the installation and operation of the on-site wastewater treatment system for said Owner's Lot as described in Article XIII, Section 13.7, and the Permits issued by the Beaufort County Health Department.

ARTICLE VIII  
GENERAL POWERS AND DUTIES OF THE BOARD  
ARCHITECTURAL CONTROL AND INSPECTION

Section 8.1. Powers and Duties of the Board of the Association. In addition to those rights and duties set forth in Article V, the Board of the Association, for the mutual benefit of the Owners of such Association, shall have the following powers and duties:

- (a) To improve, maintain or cause to be maintained the Common Area, including, but not limited to, planting, moving, pruning, fertilizing, preservation and replacement of the landscaping and the upkeep and maintenance of and other amenities in such Common Area, and the upkeep and maintenance of sprinklers, sprinkler mains and laterals, sprinkler heads, equipment, signs, lighting and planting boxes located in such Common Area.
- (b) To enter into agreements with the appropriate governmental authorities to enable the Association to improve and maintain the Common Area;
- (c) To make reasonable rules and regulations for the use and operation of the Common Area, and to amend them from time to time, provided that if such amendment is proposed prior to the conveyance of the Common Areas to the Association, such amendment must also be approved by Declarant before it may become effective, which approval may not be unreasonably withheld;
- (d) To enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Area;
- (e) To enter into agreements, contracts or easements with utility companies with respect to utility installation, consumption and service matters relating to the Common Area;
- (f) To borrow funds to pay costs of operation of such Association, which borrowing may be secured by assignment or pledge of rights against Owners who are in default in regard to the payment of assessments due to the Association or by liens on other Association assets, if the

Board of the Association sees fit;

(g) To enter into contracts, maintain one or more bank accounts (any disbursements made from or checks written on any Association account shall require the signatures of two Board members), and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(h) To sue or defend in any court of law in behalf of the Association and to provide adequate reserves for repairs and replacements;

(i) To make available to each Member of the Association within sixty (60) days after the end of each year an annual report and, upon the written request of the Members of the Association holding at least three-fourth (3/4) of the eligible votes of the Association at such time, to have such report audited (at the expense of such Association) by an independent certified public accountant, which audited report shall be made available to each Member of the Association within thirty (30) days after completion;

(j) Subject to the terms hereof to adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members of the Association in proportionate amounts to cover the deficiency;

(k) To exercise for the Association all powers, duties and authority vested in or delegated by this Declaration, the Bylaws of the Association, or the Articles of Incorporation of the Association to the Association and not reserved to the Members of such Association or Declarant by other provisions of this Declaration, any applicable Supplemental Declaration, the Bylaws of such Association or the Articles of Incorporation of such Association;

(l) To declare the office of a member of the Board of the Association to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of such Board;

(m) To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors, or such other employees as the Board of such Association may deem necessary, and to prescribe their duties and to set their compensation;

(n) To retain the services of legal and accounting firms;

(o) To enforce the provisions of this Declaration, and any applicable Supplemental Declaration and any rules made hereunder or under any such applicable Supplemental Declaration and to enjoin and/or, in its discretion, seek damages or other relief from any Member of such Association for violation of such provisions or rules;

(p) To contract with any third party or any Owner (including, without limitation, Declarant) for performance, on behalf of such Association, of services which the Association is otherwise required to perform pursuant to the terms hereof or pursuant to any applicable Supplemental Declaration, such contracts to be at competitive rates and otherwise upon such terms and conditions and for such consideration as the Board of the Association may deem proper, advisable and in the best interest of such Association;

(q) To take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder or under any applicable Supplemental Declaration, for the operational protection of the Association or for the enforcement

of the controls, covenants, conditions, restrictions and development standards contained herein;

(r) To contract with a PME for the continuing maintenance and repair of the System as required by the Tri-Party Agreement described in Section 13.6, and recorded in the Beaufort County Registry; and

(s) To set assessments, whether annual or special, as provided herein.

Section 8.2. Architectural and Landscaping Control. Except for initial improvements by Declarant, no construction, erection, or installation of any improvements, including, but not limited to, buildings, detached garages, horse barns, swimming pools, tennis courts, fences, walls, screens (whether by plants or structures), lighting (such as exterior house lighting), playground equipment, arbors, bulkheads, rip-rap, piers, boat lifts, boat houses, pump houses, garden sheds and other structures (individually a "Structure" and collectively "Structures"), shall be undertaken upon the Property unless the site plans, building plans, and specifications therefore, showing the nature, kind, shape, height, materials and location of the proposed improvements shall have been submitted to the Architectural Committee or its agent and expressly approved in writing. No grading, landscaping, planting, excavation, tree removal (except as provided herein), lighting or change of exterior color or other work which in any way alters the exterior appearance of any Structure or Lot may be done without the prior approval of the Architectural Committee. No subsequent alteration or modification of any existing improvements, landscaping or planting, nor construction, erection, or installation of additional improvements, landscaping or planting, may be undertaken on any of the Property without prior review and express written approval of the Architectural Committee.

In the event an Owner desires to construct a house, the Owner shall, prior to the commencement of any construction, submit in sequence to Architectural Committee the following materials: (i) a "preliminary concept plan" which shall include schematic site plans, floor plans and exterior elevations and materials; (ii) "design proposals" which shall include more detailed building and site design plans and specifications sufficient and definite in detail so that there can be determined the character, exterior appearance, exterior materials and colors, and the quality and kind of building and landscape materials proposed (brick samples and paint color samples must be submitted; other samples may also be required); and (iii) "construction plans and specifications" which shall be a true extension of the preliminary concept plan and design proposals, including a plot plan, sealed by a surveyor, in detail and to scale. The Architectural Committee shall, in writing, within thirty (30) days after receipt of each fully completed and adequate required submittal which it deems complete, approve, reject, or approve subject to change, such plans, proposals and specifications as are submitted to it as required above. After approval, any change in location, plot plan, exterior colors or exterior materials must be re-submitted for approval. Failure to obtain approval of Architectural Committee of all such plans, proposals, specifications and plot plan prior to the commencement of any construction shall be deemed a material breach hereof and Architectural Committee shall then have the right, in addition to any other rights permitted by law or in equity, to proceed in the courts to obtain a mandatory injunction requiring any construction done without said approval to be torn down or removed forthwith.

In general, no exterior alterations or additions to Buildings or other Structures shall be considered for approval unless such alterations or additions are in harmony with existing Structures, as to building material, style, shape (including roof line, type and pitch), color and size. The architectural plans for such alteration or addition must be drawn and sealed by a registered architect or engineer.

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In general, the construction of fences, walls and other Structures and the planting of screens will not be permitted if in the opinion of the Architectural Committee such construction or planting constitutes an unreasonable obstruction of the view of another Owner.

In the event that the Architectural Committee fails to approve or disapprove the site or design or any proposed improvements within thirty (30) days after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Association if they contain erroneous data or fail to present adequate information upon which the Declarant or the Association, as the case may be, can arrive at a decision.

The Declarant and/or the Architectural Committee shall have the right, at its election, but shall not be required, to enter upon any of the Property during site preparation or constructions, erection, or installations of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

Section 8.3. Liability Limitations. Neither Declarant, nor any Member nor any Board nor any directors on any Board (or any one of them) nor the officers (if any) of Declarant or of the Association nor any member of the Architectural Committee and/or any other committee established by the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of an Association or otherwise. Neither Declarant, the Association, nor the directors, officers, agents or employees of either thereof shall be liable for any actual, incidental or consequential damages for failure to inspect any premises, improvements of portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association liable to make such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board of the Association and all members of the Architectural Committee from and against any and all loss, cost, expense, damage, liability, action or cause of action arising from or relating to the performance by the Board of the Association and/or such Architectural Committee of their duties and obligations except for any such loss, cost, expense, damage, liability, action or cause of action resulting from the gross negligence or willful misconduct of the person is) to be indemnified.

Section 8.4. Articles of Incorporation and Bylaws. The Articles of Incorporation and Bylaws of the Association, as the same may be amended from time to time, are fully incorporated into this Declaration by reference.

Section 8.5. Notice of Meetings. Notice of all Association meetings shall be provided to all Members by hand delivery or U.S. Mail not less than ten (10) days nor more than sixty (60) days in advance of the applicable meeting.

ARTICLE IX  
RULES AND REGULATIONS

Section 9.1. Common Area. The Board of Directors of the Association shall have the power and responsibility to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a book of resolutions which shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours.

Section 9.2. Rules and Regulations for Parking of Vehicles. The Board of Directors of the Association shall have the power and responsibility to formulate, publish, amend and enforce reasonable rules and regulations concerning the parking of any type of vehicle on the Property, including Common Areas. Said rules shall provide, without limitation, the following:

(a) A definition of a "recreational vehicle" and regulations covering the parking of recreational vehicles on private streets;

(b) That campers, motor scooters, motorcycles, motorbikes, planes, boats, trailers, golf carts, "gator" type vehicles, trucks and commercial vehicles of any kind that the Board designates cannot be parked on any street within the Subdivision, in any Common Area or on any Lot, except in areas designated for that purpose, if any; and

(c) Limitations on the period of time and extent to which a motor vehicle may be repaired on the premises, and that all motor vehicles parked on private streets or in Common Area are to have currently valid license plates issued by a state in the United States and insurance coverage which satisfies North Carolina Department of Transportation requirements for insurance coverage of motor vehicles licensed in the State of North Carolina.

ARTICLE X  
RESTRICTIVE COVENANTS. MAINTENANCE

Section 10.1. Land Use and Non-Residential Activities or Uses. The Lots shall be for single-family residential use only. No trade, business, profession or commercial activity, or any other non residential use shall be conducted on the Property or within any Lot or Structure without the consent of the Board except that an Owner or occupant residing in a Building may conduct business activities within the Building so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Building; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of residents; (iv) the business activity is consistent with the character of the Property, and does not constitute a nuisance, a hazardous or offensive use, or a threat to the security or safety of others, and (v) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Property which is beyond the level of traffic and vehicular parking that occurs in residential developments similar to the Property, as the Board determines in its sole discretion. The foregoing limitations shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities, provided that such activities may not be held on any one Lot more than once in any six month period and, when held, may not exceed two consecutive days in duration. The foregoing shall not prohibit an Owner from leasing his Building.

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Section 10.2 Dwelling Size. No dwelling shall be permitted on any Lot unless the dwelling has, exclusive of decks, porches, breeze ways, steps, basements and garages, 1,500 square feet of heated living area. No dwelling shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed 35 feet in height (as measured on the front elevation).

Section 10.3. Structure Location. No Structure shall be located nearer to any front lot line than twenty-five (25) feet, with the exception of the waterfront lots number 8 through 12 ; nearer to any rear lot line than twenty-five (25) feet; nearer to any side lot line than ten (10) feet, or nearer to any side-street line than twenty (20) feet. For the waterfront lots the front setback is from the high water mark of the Pamlico River. For lots 8, 9 and 12, the front setback is 75 feet; for lot 10 the front setback is 78 feet; and for lot 11 the front setback is 76 feet. In addition, no Structure shall violate any other applicable governmental setback.

Section 10.4. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved over the front ten (10) feet and over the side ten (10) feet of each Lot.

Section 10.5. Temporary Structure. No structure of a temporary character, trailer, basement, tent, shack, garage, barn other outbuilding shall be used on any Lot at any time as a residence, either temporary or permanently.

Section 10.6. Animals. Unless otherwise permitted by the Declarant or the Homeowners Association, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that (1) horse may be kept per acre owned by the Homeowner and no more than two (2) dogs (2) rabbits and no more than two (2) cats may be kept. No such animals may be kept or bred for commercial purposes. No pit bulls (or other overly aggressive dogs or breeds), farm animals or exotic animals shall be allowed. A reasonable number of chickens may be kept, not to exceed twelve. No pet may be maintained which is an unreasonable nuisance or annoyance to other residents on the Property. All dogs must be kept on a leash when on the Property or outside a Lot, and Owners are responsible for cleaning up behind their animals. Each Owner who keeps or intends to keep a pet agrees to indemnify the Association and Declarant and hold them harmless against any loss or liability of any kind or character whatsoever arising from he or she having any animal on the Property. The Board may adopt rules and regulations concerning animals which are more restrictive than the provisions of this Declaration.

Section 10.7. Utility Yard. Garbage cans shall be kept in a screened area or garage and shall not be visible from the street or an adjacent Lot.

Section 10.8. Mail Boxes. All mail boxes, newspaper boxes and support posts shall be of material and design as initially approved by Declarant or by an Architectural Committee.

Section 10.9. Signs. No sign of any kind, except an owner and street number identification, shall be displayed to the public's view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale period, unless prior approval of the Declarant or Architectural Committee has been obtained. Notwithstanding the foregoing, political signs are permitted on a Lot provided that: (1) the display of political signs earlier than 45 days before the day of the election and later than 7 days after an election day is prohibited, (2) no more than 3 political

signs on a Lot are permitted, and (3) the maximum dimensions of a political sign are 24 inches by 24 inches. For purposes of this Section, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. These rules regarding political signs shall apply to owners of Lots who display political signs on Lots owned exclusively by them. No signs shall be displayed on common areas, easements, rights-of-way, or areas owned by others.

Section 10.10. Driveways. All driveways shall be gravel or other material through which water may percolate unless a different material has been approved by the Declarant or the Architectural Committee.

Section 10.11. Satellite Dishes, Clotheslines and Antennae. Satellite dishes wider than two (2) feet in diameter shall be prohibited. Antennae and outdoor clotheslines are prohibited on the Property unless approved in writing by the Architectural Committee.

Section 10.12. Drapes, Blinds, Etc. The side of all drapes, blinds and/or other window treatments which is visible from the exterior of a Unit shall be white or neutral in color.

Section 10.13. Duty of Maintenance. The Owner of each Lot, whether improved or unimproved, shall have the duty and responsibility, at such Owner's sole cost and expense, to keep that part of the Property owned by such Owner, including Structures thereon, ground and drainage easements or other rights-of-way incident thereto, in accordance with the terms and provisions of this Declaration (to the extent applicable) and of any applicable Supplemental Declaration and in a first-class, well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (1) Prompt removal of all litter, trash, refuse and waste;
- (2) Lawn mowing on a regular basis;
- (3) Tree and shrub pruning;
- (4) Watering by means of a lawn sprinkler system and/or hand watering as needed;
- (5) Keeping exterior lighting and mechanical facilities in working order and clean;
- (6) Keeping lawn and garden areas alive;
- (7) Any dead plant material must be removed;
- (8) Keeping vacant land well maintained and free of trash and weeds;
- (9) Keeping parking areas and driveways in good repair;
- (10) Complying with all governmental health and police requirements;
- (11) Repainting of Structures; and
- (12) Repair of exterior damage to Structures.

Section 10.14. Occupancy. The number of occupants in each residential dwelling shall not exceed (i) the family members of one (1) family only, together with a maximum of two (2) employees of that family; or (ii) three (3) individuals unrelated by blood or marriage in that particular Structure. No transient tenants may be accommodated; provided, however, that the guests and invitees of Lot occupants may reside on the Lot for a maximum period of sixty (60) days per calendar year. A Lot owned or leased by a corporation, partnership, fiduciary, or any other entity may

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be occupied by an officer, director, partner, owner, beneficiaries, or employees of such entity, or by family members or guests of any of the foregoing.

Section 10.15. Leasing. No Lot or portion thereof shall be leased for transient or hotel purposes. An Owner may nevertheless lease the entire Lot provided that: (i) each lease must be in writing and must provide that it is subject to this Declaration and the Bylaws and that any failure of the tenant to comply with the terms of the Declaration and the Bylaws shall be a default under the lease; and (ii) all leasing/management activities for a Lot to be leased must be conducted through the management company designated for that purpose by the Association. The Owner shall promptly provide the Association with copies of any and all leases entered into by Owner. In no event, however, shall a portion of a Lot (as opposed to the entire Lot) be sold, conveyed, leased or subleased.

Section 10.16. Tree Cutting; Landscaping. Except for clearing areas shown on an approved site plan for construction, no trees, shrubs, bushes or other vegetation having a trunk diameter of five (5) inches or more at a point two feet above the ground level may be cut, pruned, mutilated or destroyed at any time without the prior written approval of the Association, or if so designated, its Architectural Committee; provided, however, that dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any Lot by the Owner thereof after such dead or diseased condition is first brought to the attention of the Association or Architectural Committee and permission for such cutting and removal has been obtained. Owners shall maintain the landscaping on their Lot in accordance with the original landscaping plan approved by the Architectural Committee. Owners must adhere to all governmental regulations regarding riparian buffer zones.

Section 10.17 Completion of Construction Activity. The exterior of all Buildings, Structures or other improvements must be completed within one (1) year after commencement of construction, except where, in the sole discretion of the Board, such completion within one (1) year is not possible or would result in great hardship to the Owner or builder due to strike, fire, national emergency or natural calamity.

Section 10.18. Firearms. Use of firearms for sport, amusement, hunting or target practice is not permitted.

Section 10.19. Colors. No exterior colors on any Structure shall be permitted that, in the sole judgment of Declarant or the Architectural Committee, would be inharmonious or discordant or incongruous. Any future exterior color changes desired by an Owner must be first approved by the Architectural Committee.

Section 10.20. Underground Utility Lines. All electric, telephone, gas, cable television and other utility lines shall be installed underground. Any propane tanks, excluding LP tanks for grills, must be buried underground.

Section 10.21. Trucks, Commercial Vehicles, Mobile Homes.

(a) No commercial truck, commercial van, mobile home or other commercial vehicle of any kind shall be permitted to be parked on any Lot for a period of more than twenty-four (24) hours unless such vehicle is necessary in the actual construction and/or maintenance activities taking place on that Lot. Provided however, that work vehicles used by residents in their regular work shall be exempt from this requirement.

(b) All vehicles parked on any driveway must be licensed vehicles. Any non-licensed vehicles must be kept in the garage.

(c) None of the aforementioned vehicles shall be used as a domicile or residence, either permanent or temporary.

(d) Paragraphs (a) through (c) shall not be deemed to prohibit any temporary facility otherwise permitted pursuant to this Declaration.

Section 10.22. Casualty Destruction to Structures or other Improvements. In the event that a Structure or other improvement is damaged or destroyed by casualty loss or other loss then within a reasonable period of time after such incident, as determined by Declarant, the Owner thereof shall either commence to rebuild or repair the damaged Structure or improvement and diligently continue such rebuilding or repairing until completion or properly clear the damaged Structure or improvement and restore or repair the Lot in a manner aesthetically satisfactory to Declarant. As to any such reconstruction of a destroyed Structure or improvement, the same shall only be replaced with Structures or improvements as are approved by Declarant or the Architectural Committee as provided herein.

Section 10.23. No Implied Waiver. The failure of Declarant to object to an Owner or another person's failure to comply with the covenants and restrictions contained herein shall in no event be deemed a waiver by Declarant, or any other Person having an interest herein, of its rights to object to the same and to seek compliance therewith in accordance with the provisions of this Declaration.

Section 10.24. Boats. No more than one boat and one trailer (or one boat trailer without a boat) may be stored in the yard on each Lot, and said boat and/or trailer shall be placed in a location on the Lot which creates the least amount of visibility to neighbors. All other boats (including sailboats, kayaks, canoes, etc.) and trailers must be kept in a garage. More than one boat and/or trailer may be kept in the yard of a Lot during a storm.

Section 10.25. Lights. No street lighting shall be allowed on the private or public streets located on the Property, unless required by the relevant governmental entity. No pole lights/overhead lights shall be allowed on any Lot. Post lamps may be allowed to facilitate entry to a home, subject to the review and approval of the Architectural Committee. Any and all flood lights attached to a Unit must be motion activated only. No lighting may be directed toward any neighboring structure.

Section 10.26. Inoperable vehicles. Inoperable vehicles must be stored in a garage, but may be moved into the driveway from time to time for the purpose of repairing said vehicles if said repair work cannot be completed in the garage.

Section 10.27. Parking on Private Streets and Common Areas. No parking shall be allowed on private streets unless for a limited time not to exceed twenty-four (24) hours in connection with a special event. No parking shall be allowed in Common Area unless in designated parking spaces. Parking in Common Area may not exceed the posted parking time limit. Overnight parking in Common Area is prohibited.

Section 10.28. Parking of other Recreational Vehicles. Motor scooters, motorcycles and motorbikes must be parked in a garage.

Section 10.29. Parking of Large Recreational Vehicles. Campers that will not fit inside a garage must be parked on a gravel portion of the Lot, and may not be parked on a Lot more than fourteen (14) total days during any six (6) month period.

Section 10.30. Number of Structures per Lot. Each Lot may contain a maximum of two (2)

Structures, unless otherwise approved by the Architectural Committee.

Section 10.31. Nuisances. No obnoxious or offensive activity shall be carried on about the Lots, Common Areas, boat ramp, boat house, boat dock, pier, or in or about any Structures, or on any portion of the Property, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. No use or practice shall be allowed in or around the Structures and Lots which is a source of annoyance to Owners or occupants of the Buildings or which interferes with the peaceful possession or proper use of the Structures or the surrounding areas. No loud noises or noxious odors shall be permitted in any Structures or Lots.

Section 10.32. Gazebos and Storage Buildings. Gazebos and storage buildings are not permitted on any Lot unless approved by the Architectural Committee.

Section 10.33. Swimming Pools. Swimming pools are not permitted unless approved by the Architectural Committee.

Section 10.34. Yard Ornaments/Decorations. Yard ornaments/decorations are not permitted unless approved by the Architectural Committee. All holiday or special occasion decorations in the yard must be removed no later than fifteen (15) days after the holiday/special occasion.

Section 10.35. Obnoxious Vehicles. Obnoxious vehicles and/or vehicles that create excessive noise may be required to be removed from the Property in the discretion of the Board.

Section 10.36. Boat Houses. Boat houses for lots adjoining the Pamlico River may be built with the approval of the Architectural Committee. All boat houses must be open on all four (4) sides. Minimal siding is allowed with the prior approval of the Architectural Committee. The eave of the boat house may not exceed nine (9) feet in height measured from the top of the dock. Roofs are strongly discouraged, but if permitted, must have a 3/12 slope.

Section 10.37. Fences. Fences are not be permitted on any Lots adjoining the Pamlico River between the river and the front of the Dwelling house constructed on the Lot. Fences are not permitted on "River View" lots between the adjoining road right of way and the front of the dwelling house constructed on the Lot. Privacy fences (e.g., a 6-foot tall opaque fence) will not be permitted on any Lot. Fences must be substantially similar to the fence installed by Declarant located in the Common Area.

Section 10.38. Crops. No crops that exceed six (6) feet in height shall be allowed to be planted or raised on any Lot.

Section 10.39. Burning. Burning of any sort, including trash or yard waste, is not permitted.

Section 10.40. Fire Hydrants. The area surrounding any fire hydrant located on a Lot shall be kept in good condition by that Lot owner. The grass shall be mowed so that the fire hydrant is easily accessible. All fire hydrants located on Common Area shall be maintained by the Association. The Association shall also be responsible for keeping the paint on all fire hydrants in good condition.

Section 10.41. Septic Systems. All septic systems and other waste disposal systems shall be properly maintained and periodically serviced in accordance with manufacturer's specifications and this requirement shall be carefully enforced by the Directors of the Association.

ARTICLE XI  
RIGHTS OF FIRST MORTGAGEES AND INSURERS OF FIRST MORTGAGES

Any institutional holder of any mortgage on a Lot will, upon request in writing to the Association, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (c) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage, (d) receive written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage, (e) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (f) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, (g) be furnished with a copy of any insurance policy owned by the Association, and (h) to be furnished with at least one copy of the annual financial statement and report of the Association, prepared by a certified public accountant designated by the Association, including a detailed statement of annual carrying charges or income collected and operating expenses. The Association may require the payment of expenses incurred in preparing copies and mailing of documents furnished to mortgage holders pursuant to this Article.

ARTICLE XII  
GENERAL PROVISIONS

Section 12.1. Enforcement. In addition to rights granted elsewhere herein, if any Owner or occupant has failed in any of the duties or responsibilities of such Owner as set forth in this Declaration (to the extent applicable) or in any applicable Supplemental Declaration, then the Board of the Association or Declarant may give such person written notice of such failure and such person must within ten (10) business days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered,) perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or the Declarant, acting through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance otherwise to any person. The Owner of Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by such Association or the Declarant in performing such work computed at the highest lawful rate from the date(s) such amounts are expended until repaid to such Association or the Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder and shall reimburse such Association or the Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse such Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expense by such Association or the Declarant, then, without limitation of any other rights of such Association or Declarant, such Association may issue a special assessment against such Owner. In addition to the above, and without limiting any similar rights herein granted, the Board may impose reasonable fines against any Lot for a violation of any of the terms and covenants as set forth in this Declaration. Said fines shall be treated as a special assessment due to the Association, and as such will be a lien against the Owner's Lot. Fines shall be paid not less than thirty (30) days after notice of the imposition or assessment of the fines. The fines shall not be

construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may otherwise be entitled. The Board may impose a fine not to exceed \$50.00 per day for a violation of the terms and covenants of this Declaration and any subsequent amendments hereto, said violations may include, without limitation, violations of the rules and regulations of the Architectural Committee, violations of the Declaration regarding the proper procedures for obtaining architectural approval, failure to construct any Structure in accordance with approved plans or in the timely manner required hereunder, or failure to properly maintain the Structures or landscaping on one's Lot. Provided, that in all proceedings herein set forth, the Board shall comply with the notice and hearing provisions of N.C.G.S. 47-F-102.

Section 12.2. Insurance. In the event the Association becomes the owner of any buildings, or other improvements, or personal property, located within the Common Area, the Board of Directors shall obtain hazard insurance (if available) in an amount equal to the maximum insurable replacement value as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks (including flood insurance) as from time to time shall be customarily covered with respect to buildings and properties similar in construction, location and use.

The Board of Directors shall also procure and maintain public liability and property damage insurance, insuring each member of the Board of Directors; the manager, if any; and the Association against any liability to the public or to homeowners (and their invitees, agents, and employees) arising out of or incident to the ownership and/or use of the Common Area and facilities, or such other areas for which the Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy shall not be prejudice with respect to his action against another named insured. The amount of such public liability insurance shall be determined by the Board of Directors, but in no event shall it be less than \$1 million per occurrence with regard to the Association and each individual director.

There shall also be obtained such other insurance coverage as the Board of Directors shall determine from time to time to be desirable and necessary. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors as a common expense of the Association.

Section 12.3. Severability. Invalidation of any one or more of the covenants, conditions or restrictions of this Declaration by judgment or court order by a court of competent jurisdiction shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect to the full extent under applicable law.

Section 12.4. FHA/VA Approval. Notwithstanding any provisions in this instrument to the contrary, if Declarant desires to qualify sections of the Property for Federal Housing Administration or Veterans Administration approval (but not otherwise), the following actions will require the prior approval of Federal Housing Administration or the Veterans Administration: Annexation of additional properties, amendment of the Declaration of Covenants, Conditions and Restrictions, merger and consolidations, dissolution and exchange of Common Areas.

Section 12.5. Term of Declaration; Amendment. The covenants, conditions and restrictions

of this Declaration shall run with and bind the Property for a term of thirty (30) years from the date this Declaration is recorded in the Beaufort County Registry, after which time they shall be automatically extended for an unlimited number of successive periods of ten (10) years each, unless the Members, by an eighty percent (80%) vote, elect not to so continue the Declaration and record an instrument to that effect. This Declaration may be amended by an instrument signed by the Owners of not less than two-thirds (2/3) of the voting authority hereunder, as described in Article IV, provided however that Declarant may amend this Declaration without the consent of the Owners during the Declarant Control Period.

Furthermore, the Declarant, for so long as it controls the Board, and thereafter, the Board of Directors, may amend this Declaration without the consent of the Owners and hereby reserves the right to act on behalf of the owners to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any units therein for mortgage or improvement loans made, guaranteed or insured by a governmental agency, including, without limitation, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, Housing and Urban Development and Federal Home Loan Mortgage Corporation, or to comply with the requirements of law or regulations of any governmental corporation or agency regarding purchase of mortgage interests in units by such agency. A letter from any such agency stating that a change is desired or necessary in order to qualify the Property or any units for loans eligible to be guaranteed by, insured by or purchased by such agency, shall be sufficient authority for the amendment of this Declaration.

Section 12.6. Certification of Amendment. If any amendment to this Declaration is executed by the Owners, each such amendment shall be delivered to the Board of Directors of the Association. Thereupon, the Board of Directors, shall, within thirty (30) days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined;

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS,  
CONDITIONS AND RESTRICTIONS OF BEAUFORT BLUFFS

By authority of its Board of Directors, \_\_\_\_\_ hereby certifies that the foregoing instrument has been duly executed by the Owners of \_\_\_\_ percent of the voting authority of \_\_\_\_\_, and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment

to be recorded in Beaufort County Registry.

All amendments shall be effective from the date of recordation in the Beaufort County Registry, provided, however, that no such amendment shall be valid until it has been indexed in the name of the Beaufort Bluffs Community Association, Inc. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots.

Section 12.7. Prohibition Against Association Entering Into Long Term Contract While Declarant in Control of the Board of Directors. With the exception of the Tri-Party Agreement described in Article XIII, Section 13.6 and the contract with the PME for the management of the construction and maintenance of the System, until such time as the Declarant terminates the Declarant Control Period, or December 31, 2010, whichever occurs first, the Association is not bound either directly or indirectly to contracts or leases (including a management contract) unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after the occurrence of one of the above events, upon not more than ninety (90) days notice to the other party.

Section 12.8. Notice. Whenever written notice to an Owner (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, a the address of such Owner appearing on the records of the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not.

Section 12.9. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 12.10. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot(s) or of the Common Area.

Section 12.11. Statutory Authority. To the extent specific statutory authority for the making of this Declaration shall be deemed necessary, this Declaration shall be construed in accordance with Chapter 47F of the North Carolina General Statutes. Liens for assessments would be asserted as a lien under N.C.G.S. 47F-3-116 if statutory authority is deemed necessary.

Section 12.12. No Reversionary Interest. No provision hereof shall be deemed to vest in Declarant or any other person any reversionary interest in any lot.

Section 12.13. Further Subdivisions. Further subdivision of the Lots or Common Area is prohibited.

ARTICLE XIII  
EASEMENTS AND  
SYSTEMS

Section 13.1. Easements Reserved by Declarant. Easements for installation, maintenance, repair and removal of utilities and drainage facilities are reserved by Declarant for itself, its

successors and assigns, over, under and across the Lots (other than the portions thereof used as building sites). Full right of ingress and egress shall be had by Declarant at all times over the Lots (other than the portions thereof used as building sites) for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies. No new easements shall be established hereafter without consent of the Owner of the Lot which is subjected to such an easement. It is understood and agreed that Declarant has the right to impose other easements on Lots which it owns.

Section 13.2. Easements Appurtenant to Lots. All Common Area shall be subject to an easement in favor of every Lot to which they are adjacent or which they are designated to serve and shall be deemed appurtenant to each such Lot, whereby the owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

Section 13.3. Emergencies. Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any building or portion of the Common Area.

Section 13.4. Easement for Governmental Agencies. An easement is hereby established over the Common Area, streets and utility easements as shown on the Plat for the benefit of applicable governmental agencies, public utilities companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 13.5. Emergency Vehicle Access. Neither the Association nor Members shall restrict emergency vehicle access.

Section 13.6. The System. The Developer shall construct a ground water lowering system (the System) to serve the individual on-site wastewater treatment systems to be installed by the future owners of each lot. The System shall consist of a sand line trenched system including ground water lowering forced mains, drainage swales, repair areas and exclusive easements and other components as more particularly described in the Tri-Party Agreement executed by the Association, Declarant, and the Beaufort County Health Department to be recorded simultaneously with this Declaration. Developer shall contract with a PME for the management of the construction and maintenance of the System.

Section 13.7 Individual Lot Wastewater Systems. Each Owner shall be responsible for installation and maintenance of an on-site wastewater system in accordance with the Improvement Permits that have been issued for each lot by the Beaufort County Health Department. Each Owner shall install lift stations, ground water collection lines and electrical house panels. Each Owner shall contract with the PME (that is under contract with the Association) to manage the installation and maintenance of said on-site system components. If the Owner of a lot fails to pay for the services of the PME then upon notice of said default by the PME to the Association, the amount due from the Owner shall be deemed a Special Assessment against the lot of the Owner. After due notice given to the Owner as provided herein, if said amount and any interest and costs are not paid by the Owner,

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then the Association may pay the amount due and file a lien against the Lot for said amount paid plus costs and attorney fees. The Association may proceed to enforce said lien in the same manner as it may enforce liens for non-payment of other dues and assessments under this Declaration.

Section 13.8 Notwithstanding anything to the contrary, the easements reserved, granted or dedicated herein are perpetual, shall run with the land and shall be binding on successors or assigns of the Property.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be duly executed the day and year first above written.

BEAUFORT BLUFFS, LLC

BY: Robert H. Bilbro  
ROBERT H. BILBRO, MANAGING MEMBER

STATE OF NORTH CAROLINA  
COUNTY OF Wake

I, Ann S. Cole, a Notary Public for said County and State, do hereby certify that Robert H. Bilbro acknowledged that he is Managing Member of Beaufort Bluffs, LLC, a North Carolina Limited Liability Company, and further acknowledged the due execution of this document on behalf of Beaufort Bluffs, LLC. The undersigned Notary Public has personal knowledge of the identity of the principal or satisfactory evidence of the principal's identity.

Witness my hand and official seal this the 21<sup>st</sup> day of March, 2011

Ann S. Cole  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 3-14-2015



CONSENT OF MORTGAGEE

Wells Fargo Bank, N.A., successor in interest by merger to Wachovia Bank, N.A. being the Beneficiary under that certain Deed of Trust from Declarant to TRSTE, Inc., Trustee, recorded in Book 1659, at Page 497, Beaufort County Registry, conveying the property described on Exhibit A attached to this Declaration, hereby: (a) consents to the recordation of this Declaration and the imposition of the provisions hereof to the real, property described in Exhibit A (the "Property"); and (b) subordinates the lien and operation of the Deed of Trust to this Declaration and the provisions contained herein. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of the Property in lieu of foreclosure, Beneficiary and Trustee agree that the purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the Property together with and subject to all of the terms and conditions of this Declaration. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of the Declarant under this Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent as Trustee for the purposes set forth above.

TRUSTEE: TRSTE, INC.

By   
Vice-President

Wells Fargo Bank, N.A., successor in interest by merger to Wachovia Bank, N.A., Beneficiary

By   
Vice-President

STATE OF NORTH CAROLINA  
COUNTY OF Wake

I, Michelle A. Felmy, Notary Public in and for the State and County aforesaid, certify that George F. Basom personally and voluntarily came before me this day and acknowledged that he/she is Vice President of TRSTE, Inc., a corporation, and that he/she, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation. The undersigned Notary Public has personal knowledge of the identity of the principal or satisfactory evidence of the principal's identity.

Witness my hand and official seal or stamp, this the 11 day of April,



Michelle A. Felmy  
NOTARY PUBLIC

My commission expires: 2-26-14

STATE OF NORTH CAROLINA  
COUNTY OF Wake

I, Michelle A. Felmy, Notary Public in and for the State and County aforesaid, certify that George F. Basom personally and voluntarily came before me this day and acknowledged that he/she is Vice President of Wells Fargo Bank, N.A., successor in interest by merger to Wachovia Bank, N.A., Beneficiary, a corporation, and that he/she, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation. The undersigned Notary Public has personal knowledge of the identity of the principal or satisfactory evidence of the principal's identity.

Witness my hand and official seal or stamp, this the 11 day of April



Michelle A. Felmy  
NOTARY PUBLIC

My commission expires: 2-26-14

Tom Archie / BH