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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF THE ENCLAVE

THIS DECLARATION, made this the 7th day of December, 1998,  
by ENCLAVE ASSOCIATES, LLC, hereinafter referred to as "Declarant";

WHEREAS, Declarant is the owner of certain property in New  
Hanover County, North Carolina, which is more particularly  
described as follows:

BEING all of THE ENCLAVE, as the same is shown on a map  
thereof recorded in Map Book 38 at Page 151 in the Office  
of the Register of Deeds of New Hanover County, North  
Carolina, reference to which is made for a more  
particular description.

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

ARTICLE I

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DEFINITIONS

As used herein, the following terms shall mean:

Section 1. ASSOCIATION shall mean and refer to THE ENCLAVE  
OWNERS ASSOCIATION, INC., a North Carolina Non-profit Corporation,  
its successors and assigns, the owners' association organized for  
the mutual benefit and protection of the Properties. All property  
owners of building lots in THE ENCLAVE shall be members of the  
Association, which membership shall be appurtenant to and may not  
be separated from the ownership of such building sites.

Section 2. OWNER shall mean and refer to the record owner,  
whether one or more persons or entities, of fee simple title to any  
building site which is a part of the Properties, including contract  
sellers, but excluding those having such interest merely as  
security for the performance of an obligation.

Section 3. PROPERTIES shall mean and refer to all of THE  
ENCLAVE as described above.

Section 4. COMMON AREA shall mean and refer to all real  
property owned by the Association for the common use and enjoyment  
of the owners. The Common Area to be owned by the Association at  
the time of the conveyance of the first building site shall be all  
the area designated as "Common Area" on the plat of THE ENCLAVE,  
recorded in the New Hanover County Registry, in map Book 38 at Page  
151.

Section 5. BUILDING LOT shall mean and refer to any  
numbered building lot shown upon the recorded plat of THE ENCLAVE  
and any additions thereto now or hereafter recorded in the New  
Hanover County Registry, including any and all improvements located  
thereon.

Section 6. DECLARANT shall be used interchangeably with  
Developer (which designations shall include singular, plural,  
masculine, feminine and neuter as required by the context) to mean  
and refer to ENCLAVE ASSOCIATES, LLC, and their heirs and assigns,  
if such heirs and assigns should acquire undeveloped property from  
the Declarant for the purpose of development.

Section 7. DECLARATION shall mean this instrument as it

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may be from time to time amended or supplemented.

**Section 8.** MEMBERSHIP shall mean and refer to the rights, privileges, benefits, duties and obligations which shall inure to the benefit of and burden each member of the Association.

**Section 9.** MEMBER shall mean and refer to every person or entity who has a membership in the Association.

**Section 10.** LIMITED COMMON AREA AND FACILITIES shall mean those portions of the Common Area that serve only a certain lot, and which may include, but specifically is not limited to driveways, turn around areas, walkways, parking lots or storage areas serving only specified building lots, and such other similar areas as may be designated by the Association.

## ARTICLE II

### PROPERTY RIGHTS

**Section 1. Owners' Easements of Enjoyment.** Every owner shall have a right and easement of enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every building lot, subject to the following provisions:

- a. The right of the Association to suspend the voting rights and privileges of an owner for any period during which any assessment against his building lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- b. The right of the Association to mortgage or convey the Common Area, or to dedicate or transfer all or part of the Common Area, if any, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective until approved by a vote of at least two-thirds (2/3) of the members, excluding the **Developer**, as indicated in an instrument executed by the corporation and recorded in the New Hanover County Registry.
- c. The right of the Association to impose regulations for the use and enjoyment of the Common Area, if any, and improvements thereon, which regulations may further restrict the use of the Common Area.

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

## ARTICLE III

### EASEMENTS

**Section 1.** Perpetual easements are reserved as necessary in the Properties and the Common Areas thereof for installation and maintenance of underground facilities and drainage facilities.

**Section 2. Easement and Right of Entry for Repair, Maintenance and Reconstruction.** Every owner shall have an easement and right of entry upon the Common Areas or limited Common Areas adjacent to his building lot whether said limited Common Area is appurtenant to his building lot or not to the extent reasonably necessary to perform repairs, maintenance, inspection or reconstruction of any improvements which are situated on the building lot. Such repairs, maintenance or reconstruction shall be done expeditiously, and upon completion of the work, the owner shall restore the Common Areas or limited Common Areas to as near or the same condition as that which prevailed prior to commencement

of the work as is reasonably practicable. Said easement shall also exist in favor of utility personnel for purposes of reading meters and the like.

**Section 3.** In the event that any improvements on any building lot shall encroach upon any of the Common Areas or limited Common Areas not part of that particular lot, then an easement appurtenant to such building lot shall exist for the continuance of such encroachment upon the Common Areas and/or limited Common Areas for so long as such encroachment shall naturally exist, and in the event that any portion of the Common Areas and/or limited Common Areas shall encroach upon any building lot, then an easement shall exist for the continuance of such encroachment of the Common Areas and/or limited Common Areas upon such building lot for so long as such encroachment shall naturally exist.

**Section 4.** Each lot and all common areas and facilities are hereby subjected to an easement for the repair, maintenance, inspection, removal, or other service of or to all electricity, television, telephone, water, sewer, utility, and drainage whether or not the cause of any or all of those activities originates on the unit in which the work must be performed.

**Section 5.** Ingress and egress is reserved for pedestrian traffic flow over, through and across sidewalks, pathwalks and lanes as the same from time to time may exist upon the common areas and facilities and for vehicular traffic over, through and across all streets as from time to time may be paved and intended for such purposes, for all lot owners in **THE ENCLAVE**, their guests, families, invitees and lessees, the Association, the Declarant its successors and assigns.

**Section 6.** An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the lots and common area in the performance of their duties.

**Section 7.** In case of any emergency originating in or threatening any structure or building on any lot or the common areas and facilities, regardless whether the lot owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the lot owners, and such right of entry shall be immediate.

**Section 8.** All easements and right described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

**Section 1.** Every owner of a building lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any building lot.

**Section 2.** Each member shall be entitled to one vote in the affairs of the Association for each building lot owned. When more than one person holds an interest in any building lot, all such persons shall be members. The vote for such building lot shall be exercised as the owners of such building lot among themselves determine, but in no event shall more than one (1) vote

be cast with respect to any building lot.

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ARTICLE V

MANAGEMENT AND CONTROL

RECORDED & VERIFIED  
MARY SUE OOTS  
REGISTER OF DEEDS ✓

Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with the Declaration and the By-Laws; provided, however, that all of the powers and duties of the Board of Directors may be exercised by the **Declarant** until such time as 90% of the building lots have been sold and conveyed by the **Declarant** to purchasers or until December 31, 2000, whichever occurs first. Management and control may be transferred to the building lot owners at any time but no later than 120 days after the happening of the earlier of the above events.

ARTICLE VI

COVENANTS FOR ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation for Assessments.** The Declarant, for each building lot owned within the properties, hereby covenants and agrees to pay and each owner of any building lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. Annual assessments or charges, and
- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and
- c. Insurance assessments as hereinafter provided, and
- d. To the appropriate governing taxing authority, a pro rata share of ad valorem taxes levied against the Common Area, if any.

The annual, special and insurance assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the building lot's owner's successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the owners in the properties and for the improvement and maintenance of all easements, utilities and the Common Area. The funds arising from said assessments or charges may be used for any or all of the following purposes: Maintenance and improvement of the common areas, streets, roads, drives, drainage and utility easements and rights of way and enforcing these restrictions; and, in addition, doing any other things necessary or desirable in the opinion of the Association to keep the property in neat and good order and to provide for the health, welfare and safety of owners of **THE ENCLAVE**.

**Section 3. Annual Assessments.** Annual assessments shall be in an amount to be fixed from year to year by the Board of Directors which may establish different rates from year to year as it may deem necessary for the purposes set forth in **Section 2** above. The amount of the annual assessment against each building

lot for any given year shall be fixed at least 30 days in advance of the annual assessment period; provided, however, that the first annual assessment shall be set by the Declarant and shall be Ninety Dollars (\$90.00) per lot, per month.

Written notice of each annual assessment thereafter shall be sent to every owner subject thereto. The due date shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified building lot have been paid.

- a. From and after January 1 of the year immediately following the conveyance of the first building lot to an owner, the annual assessment may be increased each year not more than ten per cent (10%) above the assessment for the previous year without a vote of the membership, except as herein provided.
- b. From and after January 1 of the year immediately following the conveyance of the first building lot to an owner, the maximum annual assessment may be increased each year above ten per cent (10%) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- c. The Board of Directors may fix the annual assessment at an amount not in excess of the assessment for the previous year plus an increase of ten percent (10%).

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including 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.

**Section 5. Insurance.** A) The Board of Directors on behalf of the Association, as a common expense, shall at all times keep the property of the Association, if any, insured against loss or damage by fire or other hazards and other such risks, including, but not limited to, directors' liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the Properties and Common Area, which insurance shall be payable in case of loss to the Association for all members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each member to insure his personal property for his own benefit at his own expense. B) Individual Lots: Each lot owner shall maintain at his own expense such insurance as he desires on any improvements on his building lot or limited common area and shall maintain such liability insurance coverage on his lot as he deems appropriate. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by members or their mortgagees.

**Section 6. Insurance Assessments.** All insurance policy premiums on the Common Area for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the owners equally as an additional annual assessment, (herein called "Insurance Assessment") which shall be in addition to the amounts provided for under Section 3 above, an amount sufficient to pay the annual cost

of all such insurance premiums and deductibles.

**Section 7. Notice and Quorum for any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum.

**Section 8. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all building lots and may be collected on a monthly basis.

**Section 9. Commencement of Assessments.** Assessments for each building lot shall commence upon the date of acceptance by an owner of a deed from Declarant. Declarant shall not be required to pay maintenance assessments on unsold building lots retained by the Declarant, except for those building lots retained for rental purposes for which Declarant shall pay maintenance assessments which shall commence upon the date the same are occupied by a tenant.

**Section 10. Effect of Nonpayment of Assessments and Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the owner personally obligated to pay the same, and/or foreclose the lien against the property and may pursue any other legal or equitable remedy available. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or by abandoning his building lot.

**Section 11. Subordination of the Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any building lot shall not affect the assessment lien. However, the sale or transfer of any building lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such building lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 12. Working Capital Assessment.** At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capital reserve an amount equal to a two months estimated dues or assessments. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies, repairs and improvements of the common areas and facilities, furnishings and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

**Section 13. Loan by Declarant to Association For Initial Association Costs.** The Declarant reserves the right to loan the association up to \$5,000.00 in an interest free loan to cover the initial cost incurred for any and all expenses related to the Association. The Association shall repay said loan to the Declarant no later than December 31, 1999, or upon the sale of all lots in The Enclave Subdivision by the Declarant, whichever occurs first.

## ARTICLE VII

ARCHITECTURAL CONTROL

**Section 1. Developer's Rights.** All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the By-Laws of the Association shall be exercised and performed by the **Declarant** or its designee, so long as **Declarant** shall own any building lot in the Properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

**Section 2. Building and Site Improvements.** No building, wall, signs, fixtures or other structure shall be commenced, erected, or maintained upon any building lot in the Properties, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the **Declarant**, or its designee, or after the sale of all building lots by **Declarant**, by the Board of Directors of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board. In the event the **Declarant**, or its designee, or, if applicable, the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal of approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the **Declarant** or Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the **Declarant** or Architectural Control Committee, as the case may be, for its records. Neither the **Declarant** nor the Architectural Control Committee shall be responsible for any structural or other defects in plans or specifications submitted to it or any structure erected according to such plans and specifications.

**Section 3. Maintenance by the Association.** The Association at its expense shall be responsible for maintaining, repairing and replacing any improvements within the Common Areas. The Association shall have the right to go on to the building lots at reasonable times for the purpose of maintaining, repairing and replacing all utility and drainage lines and pipes which might be located on such building lots and each owner hereby grants permission to the Association to enter his building lot for such purposes. In the event that such need for maintenance, repair or replacement is caused through the wilful or negligence act of an owner, his family guests or invitees, the cost of such maintenance, repair or replacement shall be added to and become part of the assessment to which such building lot is subject. Notwithstanding the foregoing, the Association shall have the right to recover through legal action costs of such maintenance, repair or replacement, including interest, Court costs and reasonable attorney's fees from those persons legally responsible for causing damage to the property of the Association.

The Association shall maintain all Common Areas, including roadways, plantings and shrubbery, boardwalks or walkways located thereon and lighting fixtures and shall pay all costs of operation thereof, including premiums associated with general liability insurance insuring the Association from liability arising from ownership and operation thereof.

In addition to maintenance upon the common area, the Association shall provide exterior maintenance upon each lot which

is subject to assessment hereunder as follows: paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, decks, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall include glass surfaces.

In the event that the need for maintenance, repair or replacement on any individual lot is caused through the willful, or negligent act of the Owner, his family, guests or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance Policies, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the assessment to which such lot is subject.

Each owner shall be responsible for and maintain the interior of all buildings and other improvements located on his building lot. Provided, each owner shall maintain his individual HVAC system (heating and air conditioning) whether the same is located on the interior or exterior of his house.

**Section 4.** No house plans will be approved unless the proposed house shall have a minimum of 1,250 square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling; provide, however, that such term does not include garages, terraces, decks, open porches, and like areas; provided, further, that shed type porches, even though attached to the house are specifically excluded from the definition of the aforesaid term "enclosed dwelling area".

**Section 5.** Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines are established by these Restrictions. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any lot shall be controlled by and must be approved absolutely by the architectural control committee.

**Section 6.** The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder, due to strikes, fires, national emergency or natural calamities.

**Section 7.** No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any lot other than a single family dwelling not to exceed two (2) stories in height, without the express written permission of the architectural control committee.

**Section 8.** All service utilities, fuel tanks, clothes lines, wood piles and trash and garbage accumulations are to be enclosed within a fence, wall or plant screen of a type and size approved by the architectural control committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision.

**Section 9.** Off street parking for not less than two (2) passenger automobiles will be provided as limited common area of each lot prior to the occupancy of any dwelling constructed on said lot.

ARTICLE VIII

USE RESTRICTIONS

**Section 1. Land Use and Building Type.** All lots shall be used for residential purposes except that so long as the Declarant shall retain ownership of any lots, it may utilize any such lot or lots for sales or rentals, offices, models or other usage for the purpose of selling or renting lots within said project. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all lots have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling not to exceed two stories in height. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

**Section 2. Nuisances.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**Section 3. Junk Vehicles.** No inoperable vehicle or vehicle without current registration and insurance will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

**Section 4. For Sale Signs Prohibited.** No "For Sale" signs or any other signs shall be permitted on any lot or in the common areas and facilities.

**Section 5. Temporary Structures.** No structure of a temporary character, trailer basement, tent, shack, garage, barn or other outbuilding shall be used on any lot any time as a residence either temporarily or permanently.

**Section 6. Recreational Vehicles.** No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle, shall be permitted to remain on any lot, or in parking spaces, at any time, unless by consent of the Association, and if properly stored out of sight in garages.

**Section 7. Animals.** No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed and personally escorted.

**Section 8. Outside Antennas.** No outside radio or television antennas shall be erected on any lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

**Section 9. Exterior Lights.** All light bulbs or other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white, or non-frost lights or bulbs.

**Section 10. Municipal Water and Sewer:** Water service and sewer service for the Development will be provided by the City of Wilmington and no private well shall be permitted on any lot.

**Section 11. Garbage/Trash:** All garbage and trash shall be kept in containers and stored in garages or otherwise concealed from view from the front of each lot except on garbage or trash collection days when the same shall be placed in the appropriate place for collection.

ARTICLE IX

RIGHTS OF INSTITUTIONAL LENDERS

**Section 1.** "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, the Veterans Administration, the Federal Housing Authority, the Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any building lot, or shall be the owner of any building lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- a. To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such financial statement and report to be furnished by April 15 of each calendar year.
- b. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and By-Laws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.
- c. To be given notice of default in the payment of assessments by any owner of a building lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.
- d. To inspect the books and records of the Association and the Declaration, By-Laws and any Rules and Regulations during normal business hours, and to obtain copies thereof.
- e. to be given notice by the Association of any substantial damage to any part of the Common Area.
- f. To be given notice by the Association if any portion of the Common Area is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

**Section 2.** Whenever any Institutional Lender, guarantor or insurer desires the benefits of the provisions of this section requiring notice to be given or to be furnished a financial statement, such lender shall serve written notice of such fact upon the Association by registered mail or certified mail addressed to the Association and sent to its address stated herein, or to the address of the property, identifying the building lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any building lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE X

GENERAL PROVISIONS

**Section 1.** Enforcement. The Association, or any owner,

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

**Section 2. Enforcement of Storm Water Runoff Regulations.** The State of North Carolina is hereby made a beneficiary of this Declaration to the extent necessary to enforce its storm water runoff regulations as the same may be amended from time to time.

**Section 3. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 4. Building lots Subject to Declaration.** All present and future owners, tenants and occupants of building lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and any amendments. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any building lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the owner of any building lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any building lot, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

**Section 5. Amendment of Declaration.** Except as provided in Article X, Section 6, below, and elsewhere herein, the covenants and restrictions of this Declaration may be amended only by an instrument duly recorded in the Office of the Register of Deeds of New Hanover County executed by the duly authorized officers of the Association upon the vote of not less than two-thirds (2/3) of the building lot owners; provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant.

**Section 6. Amendments by the Declarant.** The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the members:

- a. Prior to the sale of the first building lot, this Declaration may be amended by the Declarant.
- b. The Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction.
- c. The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any building lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such building lots and improvements, or mortgage interests therein, as well as any other law or

regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, the United States Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

- d. The Declaration, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status.
- e. The Declarant for so long as it has control of the Board may amend this Declaration to include any platting change of the Property as permitted herein.

IN WITNESS WHEREOF, ENCLAVE ASSOCIATES, LLC, have adopted this Declaration of Covenants, Conditions and Restrictions as of the date first above written.

ENCLAVE ASSOCIATES, LLC

By: [Signature] (SEAL)  
JOHN P. BERENT, Member

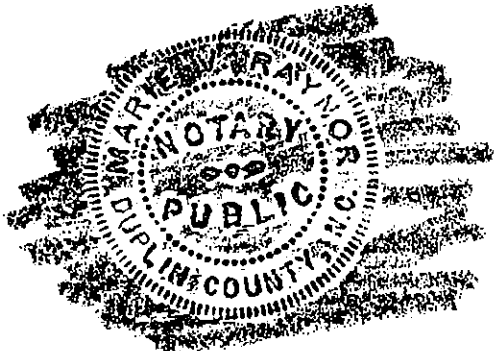
STATE OF NORTH CAROLINA  
COUNTY OF Duplin ~~NEW HANOVER~~

I, a Notary Public of the County and State aforesaid certify that JOHN P. BERENT personally came before me this day and acknowledged that he/she is a Member/Manager of ENCLAVE ASSOCIATES, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the LLC, the foregoing instrument was signed for and on behalf of the LLC.

WITNESS my hand and official stamp or seal, this the 7th day of December, 1998.

[Signature: Marie V. Raynor]  
Notary Public

My Commission Expires: 6-13-2000



STATE OF NORTH CAROLINA  
New Hanover County

The Foregoing/ Annexed Certificate(s) of

[Signature: Marie V. Raynor]

Notary (Notaries) Public is/ are certified to be correct.

This the 10 day of Dec 1998  
Mary Sue Oots, Register of Deeds

by [Signature]  
Deputy/Assistant