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Onslow County, NC
Mildred M Thomas Register of Deeds

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Index in the Grantor Index:

**LANDING AT MILL CREEK, PHASE I
SEA ISLAND HOMES, L.L.C.
COASTAL LIVING DESIGN & CONSTRUCTION, INC.
CNYA INVESTMENTS, LLC
LANDING AT MILL CREEK ARCHITECTURAL CONTROL COMMITTEE
THE LANDING AT MILL CREEK COMMUNITY SERVICES ASSOCIATION, INC.**

NORTH CAROLINA
ONSLow COUNTY

**MASTER DECLARATION OF
COVENANTS AND RESTRICTIONS
LANDING AT MILL CREEK
(47F-1-101 et seq.)**

THIS DECLARATION is made this 9th day of SEPTEMBER, 2006, by **COASTAL LIVING DESIGN & CONSTRUCTION, INC.**, a North Carolina Corporation ("**Declarant**") of Onslow County, North Carolina, and **SEA ISLAND HOMES, L.L.C.**, a North Carolina limited liability company and **CNYA INVESTMENTS, LLC**, an Alabama Limited Liability Company, which join in the execution hereof solely to subject property owned by it to these covenants;

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BACKGROUND STATEMENT

WHEREAS, Declarant is the owner of or may acquire a certain tract of land located in Onslow County, North Carolina, (hereinafter referred to as "Development Area") and being more particularly described on Exhibit A:

AND WHEREAS, Declarant is constructing on a portion of the development area a "residential subdivision" which may include community facilities for the benefit of the community, with a planned mix of residential housing types, which may include without limitation detached single family homes and townhouses (hereinafter referred to as "Project");

AND WHEREAS, pursuant to 47F-1-101 et seq., Declarant desires to provide for the preservation and enhancement of the property values and amenities within said community and to provide for the maintenance of common areas, properties and improvements located thereon, and to this end desires to subject Project property to the covenants, restrictions, easements, charges and liens as are hereinafter set forth, each and all of which are for the benefit of said real property and each present and future owner thereof;

AND WHEREAS, pursuant to 47F-1-101 et seq., the Declarant also desires to provide and allow for the submission of additional "sections" to the Project as said phases are developed and completed, and to provide for equality of rights, privileges and obligations of all lot owners in all phases of the Project by adding additional phases by amendment to this Declaration by the recording of an Amendment hereto;

DECLARATION

NOW THEREFORE, it is hereby declared that the Project property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth; said property being more particularly described as follows:

BEING all of that property as shown on Exhibit A-1 ("Project Area"), attached hereto and incorporated herein by reference as if fully set forth, and generally known as Phase or Section 1, of the Landing at Mill Creek.

1. DEFINITIONS:

A. "Association" shall mean and refer to THE LANDING AT MILL CREEK COMMUNITY SERVICES ASSOCIATION, INC., a North Carolina non profit corporation, its successors and assigns.

B. "Common Area" shall mean all real property owned by the Association, if any, for the common use and enjoyment of the Owners.

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C. "Declarant" shall mean and refer to **COASTAL LIVING DESIGN & CONSTRUCTION, INC.**, a North Carolina Corporation, its successors and assigns.

D. "Declaration" shall mean and refer to this instrument, as may from time to time be amended.

E. "Living Unit" or "Unit" shall mean and refer to any portion of a structure situated upon the Properties designed and intended for use and occupancy as a residence by a single family, including without limitation detached single family homes, townhouse homes, patio homes and condominium units.

F. "Property" or "Properties" shall mean and refer to any of the real property which is or may be subject to this Declaration or Supplemental Declaration.

G. "Lot" shall mean and refer to any plot of land or condominium unit as defined in N.C.G.S. 47C-1-103, shown upon any recorded subdivision map of the Properties with the exception of the Common Area, and includes any improvements thereon, if any.

H. "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 Properties but shall not include those having such interest merely as security for the performance of an obligation.

I. "Parcel" shall mean and refer to a portion or part of real property, together with the improvements located thereon, which becomes subject to this Declaration. This term shall include any additions to the existing Properties as herein provided.

J. "Supplemental Declaration" shall mean and refer to any declaration of covenants, restrictions, easements, charges and liens recorded by the Declarant, or its successors and assigns, which applies to a specific Parcel within the Properties.

K. "Project Property or Area" shall mean the total of the real property incorporated herein and described hereinabove in Exhibit A-1, together with all structures and other improvements thereon, together with such other portions of the Development Area as may from time to time be added to and incorporated in the Project Area by amendment of this Declaration.

L. "Development Area" shall include that property described in Exhibit A, all or part of which may from time to time be submitted to and made subject to the terms of this Declaration.

2. EXPANSION OF PROPERTIES INTO DEVELOPMENT AREA:

The Declarant, for itself and its successors and assigns, hereby expressly reserves the right, but shall in no way be obligated, to expand the properties which are subject to this Declaration

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without the consent or joinder of the Owners of Lots or persons or entities having a lien or security interest in such Lots by adding from time to time all or any portion of the tract of land known as the Development Area and being more particularly described as follows:

BEING all of that property as shown on Exhibit A, ("Development Area") attached hereto and incorporated herein by reference as if fully set forth.

The Declarant may also identify and add to the development area by amendment hereto any other such property as Declarant in its sole discretion may determine.

An amendment to this Declaration shall be made and recorded in the Office of the Register of Deeds of Onslow County, North Carolina, to include each portion of the real property which is to be included within this Declaration, and each such portion of the real property shall constitute an addition to the Properties. The right of the Declarant, or its successors and assigns, to expand the Properties as herein provided shall expire fifteen (15) years from the recording of this instrument or upon the sale of all of the properties described in Exhibit A-1 or Exhibit A.

3. SUPPLEMENTAL DECLARATIONS:

Declarant shall have the right, from time to time, to record Supplemental Declarations for portions ("Parcels") of the Properties which may designate specific use and other restrictions within said Parcel, may create Common Areas within such Parcel for the use only of Owners of Lots in said Parcel, and may create an internal owners association within said Parcel; provided, however, no Supplemental Declaration shall avoid membership in the Association by Owners of Lots in said Parcel, nor shall any Supplemental Declaration modify or amend the terms of this Declaration or of any prior Supplemental Declaration for another Parcel.

4. COMMON AREAS:

A. Dedication: The Common Areas, if any, in each Parcel shall be dedicated as such by the Declarant, or its successors and assigns by recording of a plat showing the Common Areas and the conveyance of same to the Association by recorded deed.

B. Maintenance: The Association shall be responsible for the exclusive management and control of the Common Areas and all improvements located thereon (including recreational facilities, landscaping, underground irrigation systems, fixtures and equipment related thereto), except as otherwise may be provided for in a Supplemental Declaration. This paragraph specifically empowers, but does not limit other powers, the Association to control and regulate the hours and periods of operation of all recreational facilities in the development area, and all maintenance of landscaping and underground irrigation systems in the Development area, even if in areas subject to a Sub-association created by amendment to this Declaration or the recording of a Supplemental Declaration.

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The Association shall specifically have the power, without limiting other powers, to control and regulate the hours and periods of operation of all recreational facilities in the development area, and all maintenance of landscaping and underground irrigation systems in the Development area, even if in areas subject to a Sub-association created by amendment to this Declaration or the recording of a Supplemental Declaration.

C. Owner's Easement of Enjoyment:

(1) Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to limit the number of guests of members;

(c) the right of the Association to suspend the right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes subject to such conditions as may be agreed to by the Association.

(e) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

(2) 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. Recreational facilities, if any, situated upon the Properties may be utilized by guests of Owners or tenants subject to the rules and regulations of the Association governing said use and as established by its Board of Directors. Provided, however, that this Section shall not give any owner or guest the right to use any golf course facilities or marina located within the Property, if any shall be constructed.

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D. Restriction on Alienation: Notwithstanding anything contained herein to the contrary, the Association shall not alienate in any way or transfer all or any part of the Common Areas without the prior approval of all holders of outstanding first priority mortgages against any of the Properties that are subject to this Declaration; provided, however, this restriction shall not be applicable to grants of easements for utilities, storm sewer, sanitary sewer, road right of ways and other conveyances for dedication to the public.

5. **ASSOCIATION: MEMBERSHIP AND VOTING RIGHTS:**

A. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

B. The Association shall have two (2) classes of voting membership and one (1) class of non-voting members:

Class I: Class I members shall be all Owners of a Lot with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class II: The Class II member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. For purposes of membership and voting rights, Declarant shall be deemed to own three (3) lots for each undeveloped acre of land set out in Exhibit A. The Class II membership shall cease and be converted to Class I membership on the happening of either of the following events, whichever occurs earlier.

(1) The sale of the last Lot by Declarant in the subdivision.

(2) On that date which is ten (10) years from the date of the recording of this document.

(3) at the discretion of Declarant.

C. Voting by Members:

(i) Directors During Class "II" Control. The directors shall be selected by the Class "II" Member acting in its sole discretion and shall serve at the pleasure of the Class "II" Member until the Class "II" membership shall cease as set forth in the Declaration or at such earlier date as when, in its discretion, the Class "II" member so determines.

Within one hundred twenty (120) days thereafter, the Class "II" member shall call a meeting, as provided the By-Laws for special meetings, to advise the membership of the termination of the Class "II" member's control.

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Declarant shall, at the beginning of the election of the Board of Directors, designate and select that number of the members of the Board of Directors which it shall be entitled to designate and select and upon such designation and selection of Declarant by written instrument presented to the meeting at which such election is held, said individuals so designated and selected by Declarant shall be deemed and considered for all purposes Directors of the Association, and shall thenceforth perform the offices and duties of such Directors until their successors shall have been selected or elected in accordance with the provisions of the By-Laws.

Should any vacancy in the Board of Directors be created in any Directorship previously filled by any person designated and selected by Declarant, such vacancy shall be filled by Declarant designating and selecting, by written instrument delivered to any Officer of the Association, the successor Director to fill the vacated Directorship for the unexpired term thereof.

In the event that Declarant in accordance with the rights herein established, selects any person or persons to serve on any Board of Directors of the Association, Declarant shall have the absolute right at any time, in its sole discretion, to replace such person or persons with another person or persons to serve on said Board of Directors. Replacement of any person or persons designated by Declarant to serve on any Association Board of Directors shall be made by written instrument delivered to any Officer of the Association, which instrument shall specify the name or names of the person or persons to be replaced and the name or names of the person or persons designated as successor or successors to the persons so removed from said Board of Directors. The removal of any Director and designation of his successor shall be effective immediately upon delivery of such written instrument by Declarant to any Officer of the Association.

(2) Veto. This Section may not be amended without the express, written consent of the Class "II" member, as long as the Class "II" member exists.

So long as the Class "II" member exists, the Class "II" member shall have a veto power over all actions of the Board and any committee, as is more fully provided in this Section. This veto power shall be exercisable only by the Class "II" member, or its successors and assigns, which successors and assigns must specifically take this power in a recorded instrument.

The veto power shall be as follows: No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) The Class "II" member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee by certified mail, return receipt requested, or by personal delivery at the address of its Registered Agent, as it may change from time to time, which notice complies as to the Board of Directors meetings and to regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

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(b) The Class "II" member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy or program to be implemented by the Board, any committee, or the Association. The Class "II" member and its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "II" member shall have and is hereby granted a veto power over any such action, policy, or program authorized by any committee or Board or the Association or any individual member of the Association if Board, committee, or Association approval is necessary for said action. This veto may be exercised by providing to the Association a notice of veto by certified mail, return receipt requested to the Registered Agent of the Association or any officer or Board member thereof within ten (10) days following the meeting held pursuant to the terms and provisions hereof.

(c) **Nomination.** Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

(d) **Election.** Election to the Board of Directors shall be by secret written ballot. At such election, the voting members or their proxies may cast one (1) vote for each vacancy. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

6. ARCHITECTURAL CONTROL COMMITTEE:

A. Except for original and initial construction and subsequent modification of improvements by the Declarant on any Lot which such construction is and shall be exempt from the provisions of this provision, no building, wall, fence, landscaping, berm or hedge which act as a fence or privacy inducing structure, pier, dock, ornamentation, or other structure or improvements of any nature shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping as may be required by the Architectural Control Committee have been approved in writing by the Architectural Control Committee. Each building, wall, fence or other structure or improvements of any nature, together with any ornamentation or landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Control Committee deem sufficient. Any change in the appearance of any building, wall, fence or other structure or improvements and any change in the appearance of the landscaping (excepting the

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planting of flowers and shrubs indigenous to the area), shall be deemed an alteration requiring approval.

B. The Architectural Control Committee shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph.

(1) Within thirty (30) days after receipt of all required information, the Architectural Control Committee shall submit in writing to the owner of the lot a response stating whether or not the requested improvements are approved. Unless a response is given by the Architectural Control Committee within thirty (30) days, the plan shall be deemed approved. The response of the Architectural Control Committee may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate and the thirty (30) day time period for response shall only commence upon the receipt of the requested additional information. Conditional approvals may be granted and if approval with conditions is granted and thereafter construction begins, the construction shall be deemed approved by the owner of the lot of the conditions imposed.

(2) Refusal of approval of plans, specifications and plot plans or any of them may be based upon any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Architectural Control Committee shall deem sufficient. The Architectural Control Committee shall make the following affirmative findings before any plans are approved:

- (a) That the improvements sought to be constructed will not have a negative economic impact on any other lot within the subdivision.
- (b) That all required specific buildings standards and other conditions contained within the Restrictive Covenants, By Laws and other subdivision documents have been met.
- (c) That the improvements are architecturally compatible with proposed or constructed improvements on other lots within the subdivision.
- (d) That the natural features of the lot have been retained to the maximum extent possible.

C. The paint, coating, stain and other exterior finishing colors on all buildings may be maintained as that originally installed, without prior approval of the Architectural Control Committee, but prior approval by the Architectural Control Committee shall be necessary before any such exterior finishing color is changed.

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D. Until such time as the sale of the last numbered lot in the subject property is evidenced by the recordation of a deed therefore, all rights, privilege, powers and authority granted herein to the initial Architectural Control Committee, to whom the specific power to act hereunder is expressly conveyed, shall be exercised by the Declarant, its successors or assigns. The Declarant may assign its powers hereunder to an Architectural Control Committee, but so long as Class II membership shall exist, the Declarant shall appoint a majority of the Architectural Board. Thereafter, all representatives shall be appointed by the Board of Directors of the Association. Except as set out above, the Architectural Control Committee shall be composed of three (3) owners appointed by the Board and shall serve at the pleasure of the Board.

E. A majority of the Architectural Control Committee may take any action said Committee is empowered to take, may designate a representative to act for the Architectural Control Committee, and may employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Architectural Control Committee, the remaining members shall have full authority to designate a successor. The members of the Architectural Control Committee shall not be entitled to any compensation for services performed pursuant to this covenant. The Architectural Control Committee may establish a fee to cover the expense of reviewing plans and related data at the time plans are submitted for review in order to compensate any consulting architects, landscape architects, urban designers or attorneys.

F. Any Owner may appeal the decision of the Architectural Committee provided that all parties involved comply with the decision of the Architectural Committee until such time, if any, as the Board of Directors amends, or reverses the Architectural Committee's decision. Appeals petitions must be legibly written, state the grounds for appeal and be submitted to the Board of Directors within thirty (30) days of the decision of the Architectural Committee. The Board of Directors shall act upon the appeal by amending, reversing or confirming the decision of the Architectural Committee within thirty (30) days of receipt of the petition. The Board of Directors' decision shall be by majority vote. Any owner must exhaust this avenue of appeal prior to resorting to a court of law or equity for relief.

G. Submissions for approval may be made to the Architectural Control Committee c/o the Association to any of the following:

- (1) the address to which an owner is directed to send assessments or dues as appears on the most recent billing statement,
- (2) the address of the Association Registered Agent as it is listed in the Office of the Secretary of State, or
- (3) at such address as may be provided in writing (on the letterhead of the Association and signed by the managing agent or officer of the

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Association) to the applicant upon request for instructions regarding submission.

7. **ASSESSMENTS:**

A. **Purpose of Assessments:**

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the owners in the Properties and for capital improvements and maintenance of the common areas and any improvements thereon.

In addition to the common areas, such assessments may be used for the maintenance of any multi family structure, if provided for in a Supplemental Declaration.

The assessments shall also be used for the maintenance, repair, and improvement of the those areas commonly used by all owners for ingress, egress and regress and non private parking areas, and all landscaping, irrigation systems, and specifically any storm water control or disposal improvements.

B. **Creation of the Lien and Personal Obligations of Assessment:** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any 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:

- (1) annual assessments or charges;
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided;
- (3) to the appropriate governmental taxing authority, a pro rata share of ad valorem taxes levied against the Common Area if the Association shall default in the payment therefor for a period of six (6) months, all as hereinafter provided.

The annual and special assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorneys' fees (as provided in North Carolina General Statutes Section 6-21.2) incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the Owner at the time when the assessment became due. The obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title.

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C. Minimum Annual Assessment: The Initial Annual Assessment shall be \$1140 per year (\$95 per month) for each lot. The owner of each Lot upon which there has been completed a structure shall be obligated to pay the full amount of the assessment. For the purposes of this paragraph, "completed" structures shall mean a structure which has actually tapped into any water or wastewater treatment system or has had provided to it either such service by private means. The owner of a Lot upon which construction is not complete shall pay only one-half (½) the annual assessment but be fully obligated to pay in full any other assessments or taxes levied against the Lot. The determination of "completion" shall be made by the Association.

Notwithstanding the forgoing, the Declarant shall pay no assessments on unoccupied lots owned by Declarant, but shall fund all operating budget deficits incurred so long as there is Class II membership, including reserves based upon expected lives of items for which funds reserved, but not including shortfalls caused by nonpayment of assessments by other members or extraordinary expenditures.

D. Collection of Assessments:

(1) The first pro rata payment of the balance of the current year assessment shall be due and payable beginning on the day of closing. In addition thereof, at closing the Declarant shall cause to be collected from the purchaser an amount equal to 2/12 annual assessments for said lot.

This amount shall be collected and maintained in a segregated account to be transferred to the Association when it assumes management, for the sole purpose and use as a working capital fund. At the time of closing of the initial transfer of each lot by the Declarant, the purchasers shall also pay, to the Declarant, a pro rata sum representing the balance of the premiums for insurance which have been pre-paid by the Declarant.

The Board of Directors shall fix the amount of the assessment against each lot at least thirty (30) days in advance of the annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors of the Association and the Board of Directors shall have the authority to require the assessment to be paid in pro-rata monthly installments, quarterly and semi-annually as well as annually. 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 lot have been paid.

(2) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum assessment may be increased each year not more than 15% percent above the maximum assessment for the previous year without a vote of the membership.

(3) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 15% by a vote of a majority of members of each class who are voting in person or by proxy, at a meeting duly called for this purpose. For purposes of this meeting a quorum shall be 25% of of each class. Except, however, increases attributable solely to increases in insurance premiums, uninsured loss or

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deductibles, and the annexation of new areas, including new Common Areas, shall not be subject to this limitation.

(4) If an additional property owner's association(s) is established on any property which is or may become subject to this declaration by a supplemental declaration hereto, then, notwithstanding anything contained therein to the contrary, all assessments made by and for any such association shall be paid to THE LANDING AT MILL CREEK COMMUNITY SERVICES ASSOCIATION, INC., for bookkeeping and record keeping purposes, and shall then be transferred as necessary to the appropriate association. THE LANDING AT MILL CREEK COMMUNITY SERVICES ASSOCIATION, INC. may charge a reasonable fee for its record keeping services and deduct same from assessments collected.

E. Special Assessments for Insurance and Capital Improvements: (a) In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any insurance premium. No approval of the members shall be required for a special assessment for the cost of any insurance premium. (b) In addition, the Association may levy, in any assessment year, a special assessment applicable to that 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. Any such assessment 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 shall have the assent of 50% of the votes of the members of each class who are voting in person or by proxy at a meeting duly called for this purpose. For purposes of this meeting a quorum shall be 25% of each class.

F. Remedies for Non-Payment of Assessments: Any assessment which are not paid when due shall be delinquent. The assessment shall bear interest from the due date at the rate established by the Board of Directors of the Association, or if not set by the Board, at the highest rate allowed by law, together with such late fees as may be set by the Board. The Association shall file a lien of record against any lot where there remains an assessment unpaid for a period of thirty (30) days or longer. Said lien shall be filed in the office of the clerk of superior court of Onslow County in a manner provided therefor by Article 8 of Chapter 44 of the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the Common Area or abandonment of his dwelling unit or site.

The Association may bring an action at law against the Owner personally obligated to pay any assessments and interest. Costs and reasonable attorneys' fees for the prosecution of any such action shall be added to the amount of such assessment. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then, and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

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The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Chapter 45 of the North Carolina General Statutes. All fees, charges, late charges, fines, and interest are enforceable as assessments.

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration. The Registered Agent of the Association shall be the Trustee for all purposes of the foreclosure proceeding and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the said substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the trustee to sell the land subject to the lien at public action for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for mortgages and deeds of trust, and upon such and resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey to the purchaser in as full and ample manner as authorized by Chapter 45. The Trustee shall be authorized to retain an attorney to represent him in such proceedings. The proceeds of the Sale shall, after the Trustee retains his commission, together with any addition attorney's fees incurred by the Trustee, be applied to the costs of the sale, including but no limited to costs of collection, taxes, assessment, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the property, and any advancements made by the Association in the protection of the security.

G. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

8. GENERAL RESTRICTIONS: [Applicable to all properties except as specifically noted.]

A. As to that property designated as "Project Property or Area" and set out in Exhibit A-1. Section 1. Residential Use: All lots shall be used exclusively for residential purposes of a single family (which may include separate living quarters for one or more members of the owners' family or relative). No business, trade, garage sale, moving sale, rummage sale, or similar activity shall be conducted upon a lot without the prior written consent of the Board. An Owner or occupant residing in a dwelling on a lot may conduct business activities within the dwelling 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 dwelling; (ii) the business activity conforms to all zoning requirements for the lot; (iii) the business activity does not involve regular visitation of the dwelling or lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the subdivision; and (iv) the business activity is consistent with the residential character of the subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten

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the security or safety of other residents of the subdivision, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

The leasing of a dwelling or lot shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any lots which it owns within the subdivision, including the operations of a timeshare or similar program.

(2) Allowable/Prohibited Structure: As to that property designated as "Project Property or Area" and set out in Exhibit A, no structure shall be erected, altered, placed or permitted to remain on any Lot other than a single, one family dwelling not to exceed two stories in height, (which may include separate living quarters for one or more members of the owners' family or relative), a private garage which may contain living quarters for occupancy by domestic servants of the lot occupant only, provided that the same are constructed in line with general architectural design and construction standards used as the dwelling itself. Each dwelling shall contain a minimum 1700 heated square feet. This covenant shall not be construed as prohibiting the use of a new dwelling as a model home for sales/rental purposes.

B. (1) Construction Time and Activity: No construction of any kind, including but not limited to, the clearing or grading of any Lot, or the building of any wall, fence, landscaping, berm or hedge which act as a fence or privacy inducing structure, pier, dock, ornamentation, or other structure or improvements of any nature shall be erected, placed or altered on any Lot until: 1) the construction plans and specifications and a plan showing the location of the structure and landscaping have been approved in writing by the Architectural Control Committee; and 2) the owner of said Lot shall have paid to the Association a non refundable "Construction Fee" in the sum of \$1000 (which sum shall be separately designated by the Association as a capital reserve). The construction fee requirement shall not be waivable.

Once construction of a dwelling or other improvements are started on any Lot, the improvements must be substantially completed in accordance with the approved plans and specifications within twelve (12) months from commencement. The Association shall have the right to assess any owner a fine per day in the maximum amount allowed by statute and subject to any hearing procedure as required by statute or the By Laws of the Association, for failure to

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825 Gum Branch Road, Suite 115, Jacksonville, NC 28540

substantially complete the construction in accordance with the approved plans and specifications within twelve (12) months from commencement.

Construction activity shall be confined within the boundaries of each Lot. Each owner shall be responsible for any damage done to any streets, roadways, access ways, common areas, or property of other Owners within the subdivision which may be caused by any owner, his agents, employees, guests, licensees or invitees, during construction and at any other time. The Association shall have the right to assess any owner for such damage and such charge shall be an assessment against the owner and the Lot and shall be subject to collection as any other regular assessment.

Notwithstanding the forgoing, this paragraph 3.1 shall not apply to Declarant.

Section 2. Construction Debris: During construction of improvements on any Lot, adequate portable sanitary toilets must be provided for the construction crew and the lot must be cleaned of excess debris at least once per week. Each lot owner shall be obligated to collect and dispose of all rubbish and trash resulting from construction on his lot.

Section 3. Limitation on Building Materials: **As to that property designated as "Project Property or Area" and set out in Exhibit A-1.** No dwelling or other improvement shall be constructed which shall have an exterior of concrete blocks, asbestos or asphalt siding. Materials used and construction techniques employed shall be primarily those that are typical to the community setting. Low-maintenance materials are encouraged. Roof colors and textures and exterior wall materials should be compatible with the setting and reflective of a beach and resort setting. Front elevation siding shall consist of brick.

Roof material may be classic composite shingle, "dimensional" asphalt or fiberglass shingle similar in style to cedar shake construction. Colors that are compatible with the elevations and surroundings should be used. Roof vents and accessories should be located on the part of the roof unseen from the right-of-way, and must be painted to match the roof color. Gutters shall match the fascia trim color or they shall be seamless aluminum or copper. Downspouts shall match the exterior wall trim. Flue pipes shall be cased in a chimney enclosure that matches exterior materials. All dwellings shall be constructed of material of good grade, quality and appearance and all construction shall be performed in a good workmanlike manner and quality. Any permitted outbuilding shall be of the same material, quality, general appearance and workmanship as the dwelling.

Outdoor, uncovered living areas should be constructed with materials and colors that are compatible with the exterior materials and detailing of the house. Railings should be consistent with the architectural character of the house. Patio and terrace surfacing materials should be concrete, stone, or pavers, wood or wood-polymer or plastic manufactured to appear as a wood replacement. All front yards shall have underground irrigation systems installed according to specifications approved by the Declarant or Association.

C. **Nuisances:** No noxious, offensive, or illegal activity shall be carried on or conducted

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upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted to remain on a Lot. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands except in an enclosed garage. Declarant, or Association, its successors or assigns, reserves the right to enter upon and cut grass, weeds, or undergrowth on any lot or easement, but shall be under no obligation to do so. The Declarant or Association may contract for, and assess to owner, any maintenance necessary to enforce his covenant.

D. Animals: No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that household pets may be kept provided that said pet shall not exceed 90 pounds in weight and are not kept for breeding or commercial purposes. Any such household pet shall not be allowed off the Lot of the Owner of said pet unless said pet is attended and on a leash. Owners shall be solely and absolutely liable for the acts of any pet kept on their Lot. The following dog breeds shall be specifically prohibited: Rottweiler, Doberman, Mastiff, Boxer, Bulldog, Pit Bulls, Chows and wolf hybrids. In addition, the Association shall specifically have the power and responsibility to designate, based upon temperament, size and/or nature or tendencies, from time to time a list of breeds of animals which shall be prohibited on any lot.

E. Garbage and Refuse Disposal: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be burned or disposed of on any Lot and shall be kept except in sanitary containers approved by the Architectural Committee. All equipment for the storage prior to disposal of such material shall be kept in a clean and sanitary condition. The placement of containers shall be approved by the Architectural Committee and, in any event, shall be kept in an enclosed area not subject to view from any person, from any direction. The Declarant and Association reserves the right for itself, its successors and assigns, to contract for garbage collection services for each lot in the subdivision and the lot owner shall be responsible for the payment of such garbage services to the company providing the same, or the Association may make such a common expense or expense to a particular owner.

F. Exterior Lights: All light bulbs or other lights installed in any fixture located on the exterior of any dwelling, building or other structure located on any Lot shall be clear or white lights or bulbs. No mercury vapor or similar wide area lighting similar to street lights shall be allowed without prior Architectural Committee approval.

G. Sight Distance at Intersections: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street

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property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

H. Mailboxes: Multiple unit mailboxes may be constructed by the Declarant for the use of a number of owners within certain areas as determined by the Declarant and postal service. No mailboxes shall be installed on any lot or common area without first obtaining approval by the Architectural Control Committee. Application shall be made thereafter to the Architectural Control Committee prior to installation or replacement for approval as to the style, design, color and location. By accepting a deed to any subject property, owner gives the Architectural Control Committee the right to remove any nonapproved mailbox in a reasonable manner; all costs for same shall be paid by owner, and all damages against the Architectural Control Committee are waived.

I. Signs: No sign, billboard, or other advertising of any kind, including without limitation "professionally prepared "for sale" and "for rent" signs, shall be placed or erected on any Lot, right of way or Common Area save and except a professionally prepared "for sale" or "for rent" sign not to exceed six (6) square feet in size. Although approval by the Architectural Committee is not required prior to the display of such signs, the Architectural Committee may itself remove, have removed, or require the removal of any such sign which in its opinion would not otherwise be allowed under paragraph 6 of this Declaration. A valid easement shall exist on any Lot for such removal by the Architectural Committee or its agents. Provided, however, nothing shall prohibit or limit in any manner "construction" signs designating the job site and builder which may be placed upon a Lot during the period of the construction of a residential dwelling on the Lot but must be immediately removed upon final completion of such construction. Notwithstanding the above, any additions to the Project Property in the Development area may be further limited in regard to signs, billboards or advertising as set out in any Supplemental Declaration. Nothing herein shall prohibit any sign erected by the Declarant or its assigns.

J. Antennas: There shall be no exterior antennas of any kind for receiving and/or sending of T.V., radio or other signals unless same have first been approved by the Architectural Committee.

K. Driveways/Parking: **As to that property designated as "Project Property or Area" and set out in Exhibit A-1.** All driveways constructed on any Lot shall be paved with concrete or such other material as may be approved by the Association. The use or construction of a headwall or other ornamental structure, gravel, rock or other material at or around the driveway culvert shall be prohibited. The earthwork extending from the driveway to each end of the culvert shall be gently sloped and sodded, as approved in each case. An Owner shall provide a minimum of two (2) paved off-street parking spaces, excluding garage space(s) and shall provide at least one per automobile or other vehicle owned and regularly used at the Lot. On street parking is prohibited except for temporary, short gatherings.

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I. Vehicles, Boats, Storage, Travel Trailers, etc: No vehicle without current inspection sticker, vehicle over 7000 pounds empty weight, pleasure boat, camper trailer, raw firewood, bicycles, motorcycles, or other items, motor homes or bus may be parked overnight on any lot except in an enclosed garage. Such vehicles or other items may be parked or may be stored only in storage areas, if any, designated by the Association for use, or outside of the subdivision.

M. Window Appearance: All draperies or other window dressings in each dwelling unit shall be white or off white or in lieu thereof shall have a white lining.

N. Trees: Except as to development or construction by Declarant, or as may be approved by the Architectural Committee, no tree four (4) inches in diameter at any location on said tree or ten feet (10') in height shall be cut, removed or intentionally damaged on any Lot unless first approved by Architectural Committee.

O. Swimming pools: Outdoor swimming pools, hot tubs, jacuzzis, and other similar facilities may be located on a lot only after the Architectural Committee approval, and shall be screened and fenced. All such improvements shall be subject to approval of and compliance with all governmental laws and regulations.

P. Clotheslines: Exterior clotheslines shall be prohibited.

Q. Fence Minimum Requirements: Architectural review requirements must be met prior to construction of any fence. Prior to any Architectural approval, the owner shall waive his right to have the Association maintain the grounds and landscaping contained within the fence. The Association shall retain the right, however, and any fence construction shall be subject to the right of the Association to remove the fence in the event the owner fails to maintain the grounds and landscaping contained within the fence. No fences over six (6) feet in height shall be constructed on any lot. The term fence shall include but not be limited to, a wall, fence, landscaping, berm, or hedge which act as a fence or privacy or security inducing structure.

R. Termite Contracts Required: The Association may subject any lot which constitutes part of a multi family building and the improvements there to a termite contract and assess the cost thereof against the lot for which the contract is provided, or alternatively, the Association may contract for a termite contract on all or part of the multi family units and lots as a common expense. Declarant, or Association, its successors or assigns, reserves the right to enter upon any lot or dwelling for the purpose of inspection, treatment and maintenance and/or repair pursuant to the providing of any such termite contract. A valid easement shall exist on any Lot for such acts undertaken by the Association or its agents.

9. STREET LIGHTING AGREEMENT:

The Declarant and Association reserves the right to subject the real property to a contract with an electric utility company for the installation of underground electric cables and/or the

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installation of street lighting, either or both which may require an initial payment and/or a continuing monthly payment to an electric utility company or Association by the owner of Lot.

10. RESTRICTION ON FURTHER SUBDIVISION:

No resubdivision of any single Lot shall be allowed, if any resulting Lot will be smaller in size than any of the Lots resubdivided, prior to resubdivision, except that nothing contained herein shall prohibit the owner of a Lot from conveying by deed or easement a portion of a Lot to an adjoining Lot owner for the purpose of curing an encroachment or setback violation. Further, provided, however, that the Declarant, its successors or assigns, reserves the right to make minor boundary line adjustments between lots so long as said adjustment does not exceed ten percent (10%) of the total area of a given lot.

Nothing contained herein shall prohibit conveyance of more than one Lot, or portions of contiguous Lots, as long as the resulting Lot or Lots are greater in size than those originally subdivided. Upon the recombination of any Lots to reduce the total number of allowable building Lots, for purposes of membership in the Association and for purposes of the payment of dues and assessments, any recombined Lots shall be considered a single Lot upon recordation of a plat so showing in the office of the Register of Deeds.

Any recombined or resubdivided lot shall be restricted to the construction thereon of one Living Unit per redivided Lot. It is the intention that the recombining of lots will decrease the number of homes within the property subject to this declaration, but that in no event shall the maximum number of homes which can be constructed within the property subject to this declaration increase.

Furthermore, should any Lot be determined by Declarant to be unbuildable, and should such Lot then be deeded to the Association as Association Property, or dedicated by Declaration as recreation or open space area for the benefit of the Association, all by document duly recorded in the office of the Register of Deeds of Onslow County, there shall be no further dues or assessments owed from the date of such recordation; however, any dues prepaid shall not be reimbursed.

11. EASEMENTS:

A. Easements: There is hereby reserved by the Declarant, its successors and assigns, and for the benefit of the Association, the easements, for utility, sight and buffer areas as well as any other easements, as shown on the recorded plats of the Parcels or included within the Supplemental Declarations pertaining to the Parcels. Said easements may be used for the purposes shown on the plat and, in addition thereto, ingress, egress and regress and for the purpose of installing, maintaining, repairing and replacing all utility service lines and systems including, but in no way limited to, those for water, sewer, gas, telephone, electricity and cable television.

In addition to the above, there is hereby reserved for the benefit of each owner and the Association, an easement over each parcel or lot of each other owner a blanket easement and right of way on, over and under the ground within a parcel or lot for the purpose of installing, maintaining,

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repairing and replacing all utility service lines and systems including, but in no way limited to, those for water, sewer, gas, telephone, electricity, cable television and garbage or refuse collection and pick up.

In addition to the above, there is hereby reserved for the benefit of the Association, an easement over each parcel or lot which may be enclosed by a fence a blanket easement and right of way on and over the ground within a parcel or lot for the purpose of ingress, egress and regress for the purpose of maintenance on any lot and for the purpose of maintaining the grounds and landscaping which may be enclosed by a fence.

B. Easement to Correct Drainage: For a period of two (2) years from the date of conveyance of the first Lot in a Parcel, the Declarant reserves a blanket easement and right of way on, over and under the ground within a Parcel to maintain and correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary. Following such action the Declarant shall restore the affected property to its original condition as near as practical. The Declarant shall give reasonable notice of its intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice. At the expiration of such two year period, said easement to correct drainage shall automatically be held by the Association.

C. Encroachments: In the event any portion of a Common Area encroaches upon any Living Unit or any Living Unit encroaches on a Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for the encroachment and for the maintenance of same shall exist so long as the encroachment exists.

D. Association Maintenance: The Board of Directors of the Association and the Architectural Board, acting through the Association, its officers, agents, servants and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably be necessary for maintenance.

E. Common Areas: Easements are also reserved over those portions of the Common Areas, if any, that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the common area or the air and light space above such common area.

F. Grant to Others: The Declarant or Association may grant permits, licenses, and easements over any common area or utility easement reserved elsewhere for utilities, roads or other purposes reasonably necessary or useful for the Project maintenance or operation of the Project.

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12. VARIANCES:

A. The Association may allow reasonable variances and adjustments of the restrictions set forth in this Declaration and as set forth on any recorded plat in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that any such variance granted must be done in conformity with the intent and purposes of the general development scheme and provided also that in every instance such variance or adjustment shall not materially be detrimental or injurious to other property or improvements within the Properties.

13. COMPLIANCE, ENFORCEMENT AND REMEDIES:

A. Default and Remedies: A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, the Association Bylaws, the Association Articles of Incorporation, or the rules and regulations, as the same may be amended from time to time, by any Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as set in the Bylaws, sums due for damages, an injunction, or any combination thereof, which relief may be sought by the Association, an aggrieved Owner, or by any person or class of persons adversely affected. Also, if any Owner fails to perform any obligation under the Declaration, the Bylaws, the Articles of Incorporation or such rules and regulations, then the Association may, but is not obligated to, perform the same for the Owner's account, and for such purpose may enter upon his lot or dwelling, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may collect all such sums against the lot owned by such defaulting Owner.

B. Suspension of Rights: The Association also shall be entitled to suspend the right of a defaulting Lot Owner to vote as a member of the Association until the default is cured and may suspend the voting rights of and right to use of the recreational facilities of a Owner during any period in which such Owner shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice of hearing as set forth in the By Laws, for infraction of published rules and regulations; but provided, however, that the right of an owner to ingress to and egress from his Lot shall not be impaired;

C. Remedy of Abatement in Additional to Other Remedies: In the event a Owner fails to effect the cure specified by the Board where the default is a structure, thing, or condition existing in or on the premises of the Owner's Lot, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the Owner's Lot in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting Owner's expense (and collect the costs as if an assessment), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

D. Injunction: The Association, an aggrieved Owner, or by any person or class of

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persons adversely affected, is entitled to seek relief for any such default or failure and may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established herein, if such default or failure creates an emergency or a situation dangerous to persons or property.

E. Fine: Any owner who shall violate the Declaration, By-laws, the articles or the Rules and Regulations may be fined in an amount as set out in the By Laws for each day of such violation. Such fine shall be enforced and collected as an assessment. Prior to the implementation of any fine, or the suspension of voting rights for the infraction of published rules and regulations, a hearing pursuant to the procedure set out in the By Laws.

F. Recovery of Attorneys' Fees and Costs: In any proceeding arising because of an alleged default by a Owner, the person, class of persons or Association bringing an action against an alleged defaulting Owner shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees and costs as may be allowed by the Court, with interest thereon at the highest rate allowed by law.

G. Non Waiver: The failure of the Association or of any Owner thereof to enforce any terms, provision, right, covenants or condition that may be granted by the Declaration, these Bylaws, the Articles, the rules and regulations, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a Owner or other person to enforce such term, provision, right, covenants, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

II. Recovery of Fines and Expenditures: Any fine, costs or expenses hereunder shall be recovered by the Association as if an assessment lien.

13.1 REMEDIES EXTENDED TO THE STATE OF NORTH CAROLINA: To ensure that this subdivision is maintained consistent with the laws of the State of North Carolina and its political subdivision, the State of North Carolina and any political subdivision thereof, are specifically empowered to take such acts necessary by and through its officers to enforce any of these covenants against an owner or the Association. The State of North Carolina and any political subdivision thereof, are specifically made a beneficiary of these covenants.

14. RIGHTS OF MORTGAGEES:

A holder or insurer of a mortgage, upon written request to the Association (such request to state the name and address of such holder or insurer and the description of secured properties) will be entitled to timely written notice of:

A. Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

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B. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot upon which it holds a mortgage.

C. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

D. Any proposed amendment to the project instruments effecting a change in the boundaries of any Lot, ownership of Common Elements, if any, the number of votes in the Association pertaining to any Lot or any proposed change in the restrictions on the properties.

15. INSURANCE:

A. Common Areas:

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

The Board shall also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have at least a One Million and no/100 (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Three Million and no/100 (\$3,000,000.00) Dollar limit per occurrence, and a Five Hundred Thousand and no/100 (\$500,000.00) Dollar minimum property damage limit.

Premiums for all insurance on the Common Area shall be common expenses of the Association. This policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total. Cost of insurance coverage obtained by the Association for the Common Area shall be included in the regular assessment.

16. AMENDMENT:

A. Declarant may amend this Declaration in accordance with this Declaration to add additional property to this Declaration.

B. These restrictions are subject to being altered, modified, canceled or changed at any time as to said subdivision as a whole or as to any subdivided lot or part there by written document executed by Declarant or their successors in title and by the owner of not less than 51% of the

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subdivided lots or parts of said subdivision to which these restrictions apply, and recorded in the office of the Register of Deeds of the County in which this Declaration is recorded.

C. The Declarant, without the consent or approval of any other Owner, 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 Lots and improvements thereon for mortgage or improvement loans made by, guaranteed by, sponsored by or insured by a governmental or quasi-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 in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of the 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 (VA), U. S. Department of Housing and Urban Development (HUD), the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, requiring an amendment as a condition of approval, or suggesting an amendment, shall be sufficient evidence of the approval of such amendment of VA, HUD and/or such corporation or agency and permit Declarant to amend to accord with such letter. No amendment made pursuant to this Section shall be effective until duly recorded in the Office of the Court for Onslow County, North Carolina.

17. DECLARANT'S RIGHTS:

Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the county in which this Declaration is recorded. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit A in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, successors and assigns, may be reasonably required, convenient, or incidental to the sale, re-sale, or rental of such Lots, including, but not limited to, business offices, signs, model units, and sales/rental offices. The Declarant shall have an easement for access to such facilities and activities shall include specifically the right to use residences owned by the Declarant, if any, and any which may be owned by the Association.

The Declarant shall have the rights (i) to use or grant the use of a portion of the Common Area for the purpose of aiding in the sale, or rental, or management of Lots; (ii) to use portions of the Property for parking for prospective purchasers or lessees of Lots and such other parties as the Declarant determines; (iii) to erect and display signs, billboards and placards and store and keep the same on the property; (iv) to distribute audio and visual promotional material upon the Common

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Area; and (v) to use or permit to be used any Lot which it owns or leases as a sales and/or rental office, management office or laundry and maintenance facility.

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

This provision may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this provision shall terminate upon the earlier of (a) fifteen (15) years from the date this Declaration is recorded, or (b) the end of Class II membership.

18. GENERAL PROVISIONS:

A. Duration: The covenants and restrictions set forth herein shall run with and bind the Properties for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive ten (10) year periods unless otherwise terminated by a vote of eighty per cent (80%) of the then record Owners of all Lots within the Properties.

B. Severability: Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

C. Captions: The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration.

D. Construction: Whenever the context so requires, the use herein of any gender shall be deemed to include the plural and the plural shall include the singular.

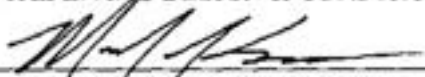
E. Litigation: No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of the membership and a majority of the Board of Directors. This Section shall not apply, however to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of personal assessments, c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the Declarant or is approved by the percentage votes and pursuant to the same procedures necessary to institute proceedings as provided above.

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19. **JOINDER:** The undersigned **CNYA INVESTMENTS, LLC**, an Alabama Limited Liability Company, and **SEA ISLAND HOMES, L.L.C.**, a North Carolina Limited Liability Company, join in the execution hereof solely to subject property owned by it to these covenants and not as Declarant.

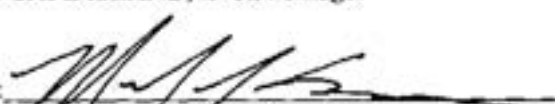
IN WITNESS WHEREOF, as the above date, Grantor (whether person, corporation, limited liability company, general partnership, limited partnership, or other entity) has signed this instrument in the ordinary course of business, by the signature(s) below if its duly authorized representative(s), as the act of such entity.

COASTAL LIVING DESIGN & CONSTRUCTION, INC.

BY: 
MARK S. EVANS, PRESIDENT

SEA ISLAND HOMES, L.L.C.
A North Carolina Limited Liability Company

By: CAPE ISLAND, INC., Manager

By: 
Mark S. Evans, President

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Onslow County
North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: MARK S. EVANS (for Coastal Living Design & Construction, Inc.)

Date: 9-14-06

Deborah J. Hemby
(Official Signature of Notary)

Deborah J. Hemby Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: 9-19-2009



Onslow County
North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: MARK S. EVANS (for Sea Island Homes, L.L.C.)

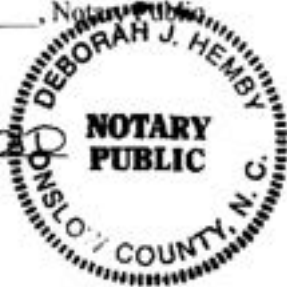
Date: 9-14-06

Deborah J. Hemby
(Official Signature of Notary)

Deborah J. Hemby Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: 9-19-2009



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CNYA INVESTMENTS, LLC
An Alabama Limited Liability Company

BY: R. James Thornton
R. JAMES THORNTON, Manager

STATE OF New York
COUNTY OF New York

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: R. JAMES THORNTON

Date: September 8, 2006

Elizabeth F. Bosco
(Official Signature of Notary)

Elizabeth F. Bosco, Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: March 8, 2007

ELIZABETH F. BOSCO
NOTARY PUBLIC, State of New York
No. 01B08020808 Qualified in Nassau County
Certificate Filed in New York County
Commission Expires March 8, 2007



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EXHIBIT A (DEVELOPMENT AREA)

PARCEL A:
 PARCEL ID#
 766 33,4
 766 33,7



McKIM & CREED

All of that certain tract or parcel of land located in Slump Sound township, Onslow County, North Carolina and being a portion of the tract described in Deed Book 1976 Page 403 as recorded in the Onslow County Register of Deeds Office and being more particularly described as follows:

Commencing at a NCGS monument "Born", said monument having NC NAD 83 grid coordinates of N = 288408.8556 and E = 2471526.9830; thence South 43°01'21" West a distance of 267.22 feet to an iron pipe at the southeastern corner of said tract, said iron pipe being the true Point of Beginning;

Thence from the Point of Beginning South 83°19'28" West, a distance of 816.34 feet to an angle iron; thence North 12°18'09" East, a distance of 1296.10 feet to a concrete monument; thence North 12°38'54" East, a distance of 605.54 feet to an axle in Mill Swamp; thence with Mill Swamp South 68°14'44" East, a distance of 40.22 feet to a point; thence South 50°48'46" East, a distance of 128.77 feet to a point; thence South 35°31'22" West, a distance of 123.96 feet to a iron rod; thence South 42°04'33" East, a distance of 146.40 feet to an iron rod; thence South 17°32'58" East, a distance of 459.96 feet to an iron rod; thence along the arc of a curve to the right a distance of 262.02 feet, said curve having a radius of 475.00 feet, a central angle of 31°36'19" and a chord bearing of North 80°00'59" East with a chord distance of 258.71 feet to an iron rod; thence South 84°10'51" East tangent to said curve, a distance of 82.74 feet to an iron rod on the western right of way of NC HWY 210; thence along said right of way South 05°49'09" West, a distance of 80.00 feet to an iron rod; thence leaving said right of way North 84°10'51" West, a distance of 82.74 feet to the beginning of a curve to the left; thence along the arc of said curve a distance of 161.74 feet, said curve having a radius of 395.00 feet, a central angle of 23°27'40", a chord bearing of South 84°05'19" West and a chord distance of 160.62 feet to an iron rod; thence South 05°49'09" West, a distance of 399.53 feet to an iron rod; thence South 84°10'51" East, a distance of 29.34 feet to an iron rod; thence South 04°57'02" West, a distance of 45.31 feet to an iron rod; thence North 88°55'55" East, a distance of 29.08 feet to an iron pipe; thence South 00°04'13" West, a distance of 521.38 feet to the Point of Beginning and containing 929,134 sq. ft. or of 21.33 Acres as shown on a map entitled "Recombination Survey For Sea Island Homes, LLC" by McKim and Creed dated March 18, 2004.

All bearings shown hereon are based on the North Carolina State Plane Coordinate System (NAD 83).

PARCEL B: PARCEL ID#766 36,

BEING ALL OF THAT 80.84 ACRE TRACT OF LAND AS SHOWN ON THAT PLAT ENTITLED, "BOUNDARY SURVEY FOR SEA ISLAND HOMES, L.L.C." AS RECORDED IN MAP BOOK 47, PAGE 193, ONSLOW COUNTY REGISTRY.

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EXHIBIT A (DEVELOPMENT AREA) PAGE TWO

PARCEL C: PARCEL ID #766 31,1; 766 29; 766 31;

Being all of Tract 1 of 57.265 acres, Tract 2 of 34,791 acres and Tract 3 of 51.320 acres as same are shown and delineated on a map entitled Boundary Survey for Loney Mae Alberti and Orvin Bryan Everett, said map being recorded in Plat Cabinet 41, Slide 187, in the office of the Register of Deeds of Onslow County, reference to said map being hereby made for a more perfect description of said property.

PARCEL D: PARCEL ID#766 1,1; 766C 13;

BEING all of Tract I and Tract II as shown on that plat entitled, "Boundary Survey for SEA ISLAND HOMES, LLC" as recorded in Map Book 46, Page 129, Onslow County Registry.

PARCEL E:

Being all of those lots and all of that property as shown on that plat entitled, "Final Plat The Landing at Mill Creek Phase 1" as recorded in Map Book 49, Page 63, Onslow County Registry.

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31

Book. 2735 Page, 1977-Current. 180 Seq. 31

EXHIBIT A (DEVELOPMENT AREA) PAGE THREE**LESS AND EXCEPT FROM THE ABOVE PARCELS OF LAND:****TRACT ONE (EXCEPTION)**

A portion of that certain tract of parcel of land located in Stump Sound township, Onslow County, North Carolina and being a portion of Deed Book 2222 Page 938, as recorded in the Onslow County Register of Deeds Office and being more particularly described as follows:

Beginning at an iron rod, said rod being located South 35°31'22" West a distance of 123.96 feet from a calculated point marked "A" as shown on a map prepared by McKim and Creed titled "Recombination Survey For Sea Island Homes, LLC" dated March 18, 2004, and recorded in Map Book 45 Page 217 of the Onslow County Register of Deeds, which said point is tied by various bearings and distances to NCGS Born as shown on said map, said iron rod being the Point of Beginning;

Thence from said Point of Beginning: South 42°04'33" West, a distance of 146.40 feet to an iron rod; thence South 17°32'58" East, a distance of 459.66 feet to an iron rod; thence along the arc of a curve to the left a distance of 107.80 feet, said curve having a radius of 475.00 feet, a central angle of 13°00'13" and a chord bearing of South 57°42'43" West with a chord distance of 107.57 feet to an iron rod at the point of reverse curvature; thence along the arc of said curve to the right a distance of 276.50 feet, said curve having a radius of 360.00 feet, a central angle of 44°00'24" and a chord bearing of North 73°12'48" East with a chord distance of 269.76 feet to an iron rod at the point of a continuing curve to the right; thence along the arc of said curve to the right a distance of 93.45 feet, said curve having a radius of 1184.49 feet, a central angle of 4°31'13" and a chord bearing of North 82°31'23" West with a chord distance of 93.43 to an iron rod; thence North 07°27'25" East, a distance of 270.04 feet to an iron rod; thence North 36°04'51" East, a distance of 327.87 feet to an iron rod; thence North 09°31'25" West, a distance of 139.63 feet to the Point of Beginning and containing 165,662 sq. ft. or 3.80 Acres and being a portion of Deed Book 2222 Page 938 as referenced on a map entitled "Recombination Survey For Sea Island Homes, LLC" by McKim and Creed dated March 18, 2004 and recorded in Map Book 45 Page 217 of the Onslow County Register of Deeds.

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EXHIBIT A-1 (PROJECT AREA)

BEING all of that property as shown on that plat entitled "THE LANDING AT MILL CREEK PHASE 1", as recorded in Map Book 49, Page 63, of the Onslow County Public Registry.

DATA\RE\RESCOV\PCUD MF VA. Frm 04242000
DATA\CLIENT\EVANS, MARK\MILLCREEK\RCPUD021405(021505)021805dh rev 032505fwe
rev fwe 081405'rev 081506fwe'rev 081605 fwe
K:\Evans, Mark\MILLCREEK\RCPud083006-final.wpd
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