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DECLARATION OF PROTECTIVE COVENANTS

FOR CAROLINA COLOURS

*Carolina Creek
119 Middle Street
New Bern NC 28560*

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STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

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DECLARATION OF PROTECTIVE COVENANTS
FOR CAROLINA COLOURS

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

OVERVIEW

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

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

b. as security for an obligation.

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

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

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

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

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

ARTICLE THREE

Master Association

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

ARTICLE FOUR

Commercial Property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

f. any sign erected by any governmental agency; and

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

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

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

ARTICLE SIX

Owners Association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.2 Lien and Personal Obligation.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE NINE

Easements and Reservations

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

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

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

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

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

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

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

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

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

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

ARTICLE TWELVE

Amenities

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

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

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

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

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

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

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

ARTICLE FIFTEEN

Sales and Marketing

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

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

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

ARTICLE SIXTEEN

Off Property Common Element

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

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

(iii) January 1, 2020.

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

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

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

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

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

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

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

ARTICLE NINETEEN

General Provisions

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

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

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

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

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

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

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

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

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

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

CAROLINA CREEK LLC

By:


KENNETH M. KIRKMAN, MANAGER

EXHIBIT A

DECLARATION OF PROTECTIVE COVENANTS FOR CAROLINA COLOURS

SIENNA WOODS PHASE 1 LOTS 1-56

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

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

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

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

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

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

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

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

