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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF  
SUNSET SOUTH

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Prepared by Ward and Smith, P.A., University Corporate Center, 127 Racine Drive,  
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RETURNED TO *Charles H Holden*  
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This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF SUNSET SOUTH ("Declaration"), a subdivision located in New Hanover County, North Carolina, made and entered into as of the \_\_\_\_ day of March, 2004, by and among HOUSING AND ECONOMIC OPPORTUNITIES, INC., a North Carolina nonprofit corporation (hereinafter called "Declarant"); WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association (hereinafter called "Lender"); and ALL PROSPECTIVE PURCHASERS OR OWNERS of Lots as shown on the map of "Sunset South" recorded in the New Hanover County Register of Deeds Office;

WITNESSETH:

WHEREAS, Declarant is the owner of all the Lots and Common Elements and streets shown on the map of Sunset South recorded in Map Book \_\_\_\_, at Page \_\_\_\_ in the office of the Register of Deeds of New Hanover County (herein referred to as "the Map");

WHEREAS, Declarant, desires to submit the Lots and Common Elements, together with the improvements thereon, to the provisions of Chapter 47F of the General Statutes of North Carolina (hereinafter sometimes referred to as the "North Carolina Planned Community Act" or the "Act"), and develop a residential community and intends by the recordation of this Declaration to impose the covenants, conditions, restrictions and easements contained herein (hereinafter sometimes called Restrictions) on the property described herein as Lots and Common Elements to the end that the Lots and Common Elements shall be held subject to the Act and said Restrictions;

NOW, THEREFORE, Declarant does hereby declare that the Restrictions contained herein shall run with the Lots and Common Elements described herein; shall be a burden on and a benefit to such Lots and Common Elements; shall be binding on all parties having or acquiring any right, title, or interest in the Lots or any part thereof; and shall inure to the benefit of each Owner of any part thereof.

I.  
Definitions

As used in this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association, exhibits attached and all amendments thereof, unless the context requires otherwise, the following definitions shall prevail:

(1) "Additional Property" means of property designated on the Map as "RESERVED FOR FUTURE DEVELOPMENT" which Declarant may submit to this Declaration and to the jurisdiction of the Association pursuant Article XIII hereof.

(2) "Articles" means the Articles of Incorporation of Sunset South Owners Association.

(3) "Association" means Sunset South Owners Association, its successors and assigns.

(4) "Association Documents" means collectively, the Articles of Incorporation of the Association, this Declaration, the Bylaws and the Rules and Regulations, all as may be amended, modified or restated from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

(5) "Bylaws" means the Bylaws of Sunset South Owners Association.

(6) "Common Elements" means all real property (including the improvements thereon), interests in real property and personal property now owned or hereafter acquired by the Association for the common use and enjoyment of all of the Owners. The Common Elements are subject to those easements and restrictions set forth in this Declaration.

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

(8) "Declarant" means Housing and Economic Opportunities, Inc., its successors and assigns.

(9) "Declaration" means this Declaration of Sunset South and any amendments hereto. This Declaration sometimes is referred to herein as the Restrictions.

(10) "Development Period" means the period ending on the earliest of (i) March 31, 2015 or (ii) the date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date.

(11) "Dwelling" means the primary residential structure located on a Lot built in accordance with the requirements of this Declaration.

(12) "Eligible Mortgage Holder" means the holder of a first deed of trust on a Lot who has requested in writing that the Association notify them of any proposed amendment to the Declaration, the Articles, or the Bylaws.

(13) "Executive Board" means the Executive Board of Sunset South Owners Association.

(14) "Lot" means those separately numbered and designated parcels shown on the Map.

(15) "Owner" means the record Owner, whether one or more Persons, of a fee or undivided fee interest in a Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(16) "Permit" shall mean the North Carolina State Stormwater Management Permit Number SW 8030404 and any amendments, additions or replacements thereof, or any such permit obtained by Declarant.

(17) "Person" means a natural person, a corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company or other legal or commercial entity.

(18) "Stormwater Management Facilities" or "Stormwater Management Facility" as those terms are used herein shall mean all areas consisting of ditches, swales, stormwater retention ponds and any other improvements located in the Subdivision constructed pursuant to the Permit.

(19) "Subdivision" means all of the property defined herein as Lots and Common Elements.

(20) Any capitalized word not defined herein, unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall, as used herein, have the meaning as set forth in N.C.G.S. 47F-1-103.

## II.

### Association - General Purposes, Membership and Voting

(1) An association named Sunset South Owners Association has been formed under the direction of Declarant pursuant to the rules and requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina as an association of the Owners of Lots. Its purposes are to own, manage, maintain, and operate the Common Elements and facilities located upon the Common Elements, specifically including, but not limited to, the Subdivision entrance signs, street lights, Stormwater Management Facilities, drainage pipes and drainage outlets, streets (until accepted for maintenance by a governmental entity) and other improvements and amenities in the Subdivision owned by the Association; to enforce the Restrictions contained herein; and to make and enforce rules and regulations governing the Owners' use and occupancy of Lots and Common Elements. In addition to the foregoing, the Association has as its purposes the acceptance of the transfer of the Permit from Declarant and to take all actions and pay all fees required to effect such transfer of the Permit, and thereafter to oversee, inspect, manage and, when necessary, repair and replace all Stormwater Management Facilities located within the Common Elements or on individually owned Lots.

(2) To fulfill the general purposes of the Association as set forth herein, in the other Association Documents, and in the Act, the Association shall have all the powers set forth in the Act and the North Carolina Nonprofit Corporation Act and any other specific powers enumerated and set forth in the Association Documents.

(3) Declarant, by this Declaration, and the Owners of individual Lots, by their acceptance of individual deeds thereto, covenant and agree with respect to the Association: (A) that each is a member of the Association; (B) that for so long as each is an Owner, each will perform all acts necessary to remain in good and current standing as a member of the Association; and (C) that each shall be subject to the rules and regulations of the Association with regard to ownership of a Lot.

(4) Each membership in the Association shall relate to and have a unity of interest with an individual Lot which may not be separated from ownership of said Lot.

(5) The Association shall have two (2) classes of members:

Class A - The Class A member(s) shall be all Owners with the exception of any Owners who qualify as Class B members, and they shall be entitled to one vote for each Lot owned; provided, however, when more than one Person holds an interest in any Lot, all such Persons shall hold the membership with regard to such Lot in undivided interests. The vote of such multiple Owners of a Lot shall be exercised as they, among themselves, shall determine, but in no event shall any fractional vote be counted or more than one vote be cast with respect to any Lot.

Class B - The Class B member shall be Declarant. Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the occurrence of either of the following events, whichever first occurs: (i) December 31, 2010; or (ii) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership.

### III.

#### Management and Administration of Subdivision

The Association shall be fully responsible for the maintenance, management and operation of the Common Elements and the Subdivision entrance signs, street lights, Stormwater Management Facilities, drainage pipes and drainage outlets, roads (until accepted for maintenance by a governmental entity) and other improvements and amenities in the Subdivision owned by the Association. The Association shall also be responsible for maintenance of Landscaping installed within the right of way of the Subdivision streets between the edge of the paved street and the boundary line of each Lot. The management shall be carried out in accordance with the terms and conditions of the Association Documents, but may be delegated or contracted to managers or management services. Provided, however, any contract entered into by the Association prior to the termination of the Class B membership shall contain a provision allowing the Association to terminate the contract without cause and without penalty or extra charge, at any time after the termination of the Class B membership upon ninety (90) days advance notice.

#### IV.

##### Assessments for Common Expenses

(1) Assessments:

(a) Each Owner of any Lot by acceptance of a deed for same (whether or not it shall be so expressed in such deed) is deemed to agree to pay to the Association assessments as hereinafter provided. The assessments, together with interest, costs and reasonable attorneys' fees, subject to the provisions of Section (7) of this Article, shall be a continuing lien upon the Lot against which each such assessment is made. Furthermore, each assessment, together with interest, costs, and Reasonable Attorneys' Fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the assessment fell due. The personal obligation for assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot. Assessments shall commence as to each Lot upon the delivery of the deed to the Person owning the Lot.

(b) Subject to the limitations set forth herein upon the Declarant's obligation to pay assessments, the Executive Board shall establish and set the assessment for each Lot for each fiscal year and may provide that such assessments shall be payable installments during the fiscal year, which installment shall be no less frequent than monthly. The initial assessment for each Lot is Three Hundred Sixty and No/100 Dollars (\$360.00) per year.

(2) Annual Budget:

(a) As provided in the Bylaws and subject to the restrictions and limitations provided herein, the Executive Board shall establish an Annual Budget in advance for each fiscal year. Such budget shall project all Common Expenses for the forthcoming fiscal year, including a reasonable allowance for contingencies and reserves. The budget shall take into account the maintenance obligations as set forth above and any projected or anticipated income. The Executive Board shall keep separate, in accordance with subparagraph (c) of this Section 2, items relating to the daily operation, management and maintenance of the Association and Common Elements from items relating to capital improvements. Upon adoption of such Annual Budget by the Executive Board, copies of said budget shall be delivered to each Owner and the assessment for said year shall be established, subject to the restrictions and limitations provided herein, based upon such budget; however, the non-delivery of a copy of said budget to each Owner shall not affect the liability of any Owner for such assessment. The Annual Budget shall be ratified by the Owners as provided by Section 4.5(n) of the Bylaws. Should the Executive Board at any time determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the Common Expenses of the Association during such fiscal year, or in the event of emergencies, the Executive Board shall have the authority to levy such additional assessment or assessments it may deem to be necessary.



(b) The Executive Board, in establishing the Annual Budget, shall designate therein a sum to be collected and maintained as a reserve fund (the Capital Improvement Fund) for the periodic maintenance, repair and replacement of capital improvements to the Common Elements and Landscaping on the Lots. The amount to be allocated to the Capital Improvement Fund may be established by the Executive Board so as to collect and maintain a sum reasonably necessary to anticipate the need for repair, maintenance and replacement of capital improvements to the Common Elements and to maintain, repair and replace Landscaping on the Lots as provided herein. The Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only for periodic maintenance, repair and replacement of capital improvements to the Common Elements and to maintain, repair and replace Landscaping on the Lots as provided herein. Any interest earned on monies in the Capital Improvement Fund shall not be expended for daily operation, management and maintenance of the Association and Common Elements.

(c) All monies collected by the Association shall be treated as the separate property of the Association and such monies may be applied by the Association to the payment of any expense of operating and managing the Association, or the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles and the Bylaws, except that monies placed in the Capital Improvement Fund shall be used only for the specified purposes of said account. As monies for assessments are paid into the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners for the same purposes. Although all funds, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Elements, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When the Owner of a Lot shall cease to be a member of the Association by reason of his divestment of ownership of such Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, including any monies which such Owner may have paid to the Association, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Association.

(3) Except as herein provided, assessments for Lots shall be fixed at a uniform rate.

(4) The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment shall bear interest at such rate as may be determined by the Executive Board, but not greater than the rate permitted by the Act, from time to time, until paid in full. The Executive Board may establish procedures to collect delinquent assessments, together with penalties, interest and other charges as permitted by the Act; and, in accordance with such procedures, may declare the payment of any future

installments of the assessment to be accelerated and the entire assessment due and payable immediately.

(5) The assessments levied by the Association shall be used exclusively to pay Common Expenses and to promote the recreation, health, safety and welfare of the Owners and the improvement and maintenance of the Common Elements and Lots as provided herein.

(6) 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

(7) The lien of the assessments provided for herein shall be subordinate to the lien of any first lien deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first lien deed of trust or any proceeding in lieu thereof, shall extinguish the lien (but not the personal obligation of the Person who was the Owner of the Lot at the time when the assessment fell due) of such assessments as to payments which became 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) In order to establish a working capital fund, upon the conveyance of a Lot, each such Owner shall contribute at closing an amount equal to one-sixth (1/6) of the assessment levied for the current year against such Lot, said sum to be paid to the Association. Said sum shall be an advance payment of regular assessments.

## V.

### Special Assessments

(1) Special assessments may be levied against Lots for such reasons as are provided in the Association Documents, and on such terms as provided by the Executive Board. Furthermore, special assessments may be assessed against a specific Lot to pay for the cost of curing a violation of the Association Documents and as may be provided otherwise for in the Act. No special assessments shall be levied upon any Lot owned by Declarant unless Declarant consents. Special assessments, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such special assessment is made. Furthermore, each such special assessment, together with interest, court costs, and reasonable attorneys' fees, shall be the personal obligation of the Person who was the Owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent special assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent special assessments shall continue to be a lien upon such Lot. It is provided, however, that no special assessments shall be levied upon a Lot until a Dwelling on such Lot either has been constructed and occupied or constructed and sold unless Declarant consents to such special assessments.

(2) The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the special assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of special assessments on a Lot is binding upon the Association as of the date of its issuance.

## VI.

### Lien for Assessments

Any assessment, together with interest at the rate specified herein, costs of collection, court costs, and Reasonable Attorneys' Fees, shall constitute a lien against the Lot upon which such assessment is levied. If such assessment is not paid within thirty (30) days after the date such assessment is due, the Association may record notice of the same in the Office of the Clerk of Superior Court of New Hanover County and thereafter proceed to collect such delinquent assessments and charges in accordance with the assessment collection policy established from time to time by the Executive Board. Action to collect delinquent assessments may include, but not be limited to, filing a Notice of Lis Pendens, bringing an action at law against the Owner personally obligated to pay the same and/or bringing an action to foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein.

## VII.

### Compliance With Association Documents

In the case of failure of an Owner to comply with the terms and provisions contained in Association Documents, the following relief shall be available:

(1) The Association or an aggrieved Owner on his behalf shall have the right to bring an action and recover sums due, damages, injunctive relief, and/or such other and further relief as may be just and appropriate including all rights and powers enumerated in the Act.

(2) The Association, in addition to any other rights and remedies set forth in the Act and the Association Documents, is authorized and shall have the right to: (a) enter any portion of the Subdivision or a Lot on which, or as to which, a violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of the Association Documents, and the Executive Board, its agents or employees, shall not thereby be deemed guilty in any manner of trespass; and (b) to use self-help to remove or cure any violation of the Association Documents within the Subdivision. Such actions undertaken by the Association shall be upon compliance with the Hearing Procedure contained in this Declaration. However, notwithstanding any other provisions in the Declaration to the contrary, the Association, acting through its Executive Board may enforce any provision and regulations of

the Association Documents by self-help specifically including, but not limited to, violations and defaults which create a health hazard, a dangerous or emergency situation, the towing of vehicles that are in violation of parking rules and regulations and removing of signs, mail boxes and other items of similar size which are in violation of the Association Documents. Additionally, the Board may elect to enforce any provision of the Association Documents without complying with the Hearing Procedure through a civil action at law or in equity to enjoin any violation or to recover monetary damages or both. In any such civil action or lawsuit, to the maximum extent permissible, the Owner or occupant responsible for the violation for which abatement is sought shall pay all costs incurred by the Association, including Reasonable Attorneys' Fees actually incurred, if the court finds for the Association.

(3) Except as set forth in (2) above, the Executive Board shall not impose a fine or penalty, other than reasonable charges for late payment of assessments, undertake permitted remedial action, suspend voting or infringe upon other rights of an Owner or other occupant of a Lot for violations of the Association Documents without compliance with the Hearing Procedure contained in this Declaration.

(4) The remedies provided by this Article are cumulative and are in addition to any other remedies provided in the Association Documents, by law and the Act.

(5) The failure of the Association or any Person to enforce any provision of the Association Documents shall not be deemed a waiver of the right to enforce such provisions thereafter as to the same violation or subsequent violation of similar character.

## VIII.

### Property Rights of Lot Owners,

### Cross-Easements, and Exceptions

(1) Every Owner of a Lot as an appurtenance to such Lot shall have a non-exclusive perpetual easement over and upon the Common Elements for each and every purpose or use for which such Common Elements were intended as determined by their type or for which such Common Elements generally are used, subject to the limitations and provisions contained herein, together with a non-exclusive perpetual easement over these areas designated as "15' ACCESS EASEMENT" to access certain portions of the Common Elements. Such easements and rights shall be appurtenant to and shall pass with the title to every Lot, whether or not specifically included in a deed thereto, subject to the restrictions and limitations contained herein, including but not limited to, the following provisions:

(a) The Association shall have the right to make reasonable rules and regulations respecting the use of same, and exercise any powers granted by the Act and the North Carolina Nonprofit Corporation Act.

(b) The Association shall have the right, upon compliance with the Hearing Procedure contained in this Declaration, to suspend the rights of an Owner to utilize the Common Elements and the improvements thereon during any period in which any assessment against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any other violation of the Association Documents.

(2) Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Elements and facilities to the members of his family and guests.

(3) Easements for the installation and maintenance of utilities and drainage facilities as shown on the Map are hereby reserved and retained by Declarant, together with the right to grant similar easement rights to other Persons. No structure, fence, planting, Landscaping or other material which may interfere with the installation and maintenance of utilities, which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements may be placed in the easement areas without prior approval by the Committee. Structures, fences, Landscaping and other materials which have been approved by the Committee may be placed in the easement areas. The Committee may deny placement of structures, fences, Landscaping or other materials in the easement areas if it determines they would adversely affect the drainage or utilities of the Subdivision.

## IX.

### Architectural Committee and Architectural Restrictions

(1) There hereby is constituted Sunset South Architectural Committee ("Committee") to be appointed, and replaced, and to possess the qualifications and powers as specified herein. The Committee shall consist of one (1) individual to be appointed by Declarant until Declarant releases its right, in writing, to make such appointment who shall serve until he resigns or is replaced by Declarant, which Declarant reserves the right to do. Declarant shall have the sole right to replace said member unless Declarant has released that right to appoint the member of the Committee. The right of Declarant to appoint, remove and replace the Committee shall expire upon termination of the Development Period without any further action or consent of Declarant, at which time the Executive Board shall thereafter have the right to appoint, remove and replace members of the Committee. Thereafter, the Committee shall be subject to such procedures and regulations as may be approved, amended, restated or modified from time to time at the direction of the Executive Board.

(2) Before any Lot clearing, grading, or removal of trees, or before any structure, fence, building, wall, walkway, mailbox, paper box, sign, trash can holder, or any improvement, replacement or addition to any of same shall be commenced, erected, or maintained upon any Lot, or upon any Common Elements and before any alteration (including painting) of the exterior portion of any structure located upon the Lots or the Common Elements and before any alteration of the surface of any Lot or area appurtenant to any Lot including, but

not limited to installation of Landscaping, in the Subdivision shall be commenced (except as shall be undertaken by the Declarant or the Association itself), the Person desiring to make such changes or erections shall submit and have approved by the Committee plans and specifications detailing the changes and erections. The plans and specifications must show the structure, kind, shape, height, color, material and location of the changes or erections. Applications to the Committee shall include two (2) complete sets of the final plans and specifications for any and all proposed improvements and other information requested by the Committee on its application forms and shall be (a) hand delivered to the current president of the Association, or (b) mailed certified or registered with return receipt requested to the registered office of the Association and marked to the attention of the Committee.

(3) The Committee shall make its decision approving or disapproving the plans by taking into consideration the nature of the Subdivision, the aesthetics of the proposed changes or alterations, the harmony of the proposed change or erection with the architectural style of neighboring buildings (including the Dwelling on a Lot in the case of approval sought for permitted outbuilding appurtenant to the Dwelling), durability of construction, relative costs, and protection of the investment of the Owners of other Lots in the Subdivision. Submission of incomplete or inaccurate plans and specifications shall result in disapproval. One set of plans and specifications with the approval or disapproval of the Committee shall be returned to the party submitting them and the other copy shall be retained by the Committee for its permanent files.

(4) A majority vote of the Committee shall be required to take any action. If the Committee fails either to approve or disapprove any plans so submitted within thirty (30) days of receipt by the chair of the Committee, the plans will be deemed approved. The Committee does not have to hold formal meetings. Any action or decision of the Committee may be appealed to the Executive Board by the Person submitting such request to the Committee or any other party deemed by the Executive Board to have standing as an aggrieved party. The Executive Board may modify or reverse any such action or decision of the Committee or may grant reasonable variances of the requirements of this Article as generally permitted in Article XVI. Any appeal to the Executive Board shall be in writing and delivered to the President of the Executive Board in the manner provided for delivery of notices set forth in Article XXI within ten (10) days following the decision by the Committee.

(5) Neither the Executive Board, the Committee nor any agent of Declarant shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions or any structural or other defect in any work done according to such plans and specifications.

(6) The requirements of this Article shall not constitute a lien or encumbrance on any Lot on which construction is complete, and any subsequent purchaser thereof is in no way affected by the failure of his predecessors in title to comply with the terms hereof.

(7) Subject to approval of the Executive Board, the Committee may establish (a) such procedures and requirements for submittal and review of plans and specifications as it

deems appropriate from time to time the review of plans and inspections which are not inconsistent with Sections (2), (3) and (4) above, (b) times during which construction may take place upon Lots or within Dwellings and (c) fees and costs associated with the review of plans and the conduct of inspections.

## X.

### Insurance

(1) The Association shall purchase and maintain, to the extent reasonably available, hazard insurance against loss or damage by fire and similar perils for all improvements and fixtures owned by the Association located on Common Elements, including personal property of the Association. The insurance, if reasonably available, shall cover at least ninety percent (90%) of the current replacement costs of the improvements and fixtures, after application of any deductibles, as determined by the Association with the assistance of the insurance company providing coverage or consultant selected by the Executive Board. Coverage may exclude land, foundations, excavations, or other items that are usually excluded from insurance coverage. The insurance policy shall require that the insurer notify the Association in writing at least sixty (60) days prior to any substantial change in coverage or cancellation. The insurance policy shall also contain clauses providing for waiver of subrogation.

(2) If the property of the Association is located within a special flood hazard area, the Association may purchase and maintain flood insurance in amounts it deems necessary. Any such policy shall require the insurer to notify the Association in writing at least sixty (60) days prior to cancellation or any substantial change in the coverage.

(3) The Association shall purchase and maintain at all times a comprehensive general liability insurance policy covering all Common Elements and any other areas that are under its supervision. The liability insurance shall insure against liability to the public or to Owners, their tenants, guests or invitees, relating in any way to the ownership, operation, maintenance and/or use of the Common Elements, and any part thereof, and any other areas under the Association's supervision. Such insurance policy shall, if reasonably available, contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners. Limits of liability shall be at least One Million Dollars (\$1,000,000) covering all claims for bodily injury and/or property damage arising out of a single occurrence. Coverage under this policy shall include, if available and economically feasible, legal liability arising out of losses related to employment contracts of the Association. The policy shall require the insurer to notify the Association in writing at least 10 days before the insurer cancels or substantially changes the coverage. The general liability insurance to be purchased pursuant to this subsection shall include Directors and Officers Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00), or, if such coverage cannot be obtained within said policy, a separate policy providing such coverage and in such amount shall be purchased by the Association.

(4) Fidelity bonds or insurance coverage against dishonest acts on the part of such persons (including by way of illustration and not limitation, Association members, officers, directors, managers, agents, employees and volunteers) handling or responsible for funds belonging to or administered by the Association may be maintained by the Association if deemed necessary. In the event the Association has delegated some or all of the responsibility for handling of funds to a management agent, such bonds or insurance coverage may include officers, employees and agents of such management agent. Any such fidelity bond or insurance shall name the Association as the named insured. Any such policy shall contain a provision providing that it may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association and all Eligible Mortgage Holders.

(5) If the insurance described in Sections (1) and (3) above is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners.

(6) Any loss covered by the insurance maintained by the Association under Section (1) of this Article shall be adjusted with the Association; provided, however, all insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Lot Owners and their respective mortgagees as their interests may appear. Such proceeds shall be distributed and utilized as provided in the Act.

(7) Each Owner shall be responsible for obtaining and shall pay the cost of any hazard insurance against fire and similar perils including flood on such Owner's Dwelling, personal property, fixtures and appliances. Each Owner's hazard insurance policy shall name the Association as a loss payee. Each Owner shall be responsible for purchasing and maintaining liability insurance covering his Lot and Dwelling.

(8) If any Dwelling located on a Lot is destroyed by fire or other casualty, all rubbish and debris shall be removed with promptness after such fire or other casualty. In no event shall debris or rubbish remain on a Lot longer than two (2) months after such fire or other casualty. Provided, however, no such removal or demolition shall be required if prohibited by court order or if a legal or insurance investigation concerning such fire or casualty is ongoing.

(9) The deductible, if any, of any insurance policy purchased by the Executive Board shall be a Common Expense; provided, however, that the Association may, pursuant to Article V hereof, assess as a special assessment any deductible amount necessitated and arising from the act, misuse or neglect of an Owner or such Owner's tenant, household, guests, employees, agents and invitees.



## XI.

### Restrictions on Use and Occupancy

(1) All Lots shall be used for single family residential purposes only and no dwelling shall be erected on any Lot other than one detached single family dwelling not to exceed two and one-half stories in height, a one, two, or three car garage, and appurtenant accessory buildings or structures as may be approved by the Committee. No permitted garage or accessory building shall be utilized for living quarters. No trailer, tent, mobile home, or other structure of a temporary character shall be placed on any Lot. All buildings shall be of wood, stone, brick, brick veneer, stucco, masonite, or vinyl siding. Any other materials must be approved by Declarant or the Committee.

(2) No building shall be erected nearer to the front lot line, or side lot line, or rear lot line than the setback lines shown or noted on the Map.

(3) No dwelling erected on any Lot shown on the Map shall have less than 1100 square feet of enclosed dwelling area. The term "enclosed dwelling area" as used herein shall be the total finished/heated area within the dwelling; provided, however, that such term does not include garages, terraces, decks, porches and other unheated areas.

(4) No Lot shall be re-subdivided.

(5) No commercial trade or activity, or any noxious trade or activity whatsoever, shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to other Lot Owners. Unsightly, inoperative junk cars and like eyesores cannot be maintained on any Lot either prior to or after a dwelling has been erected on said Lot or on any Street located in the Subdivision and any such automobiles may be removed by the Declarant or the Association at the Lot Owner's expense.

(6) Owner covenants that it will use, enjoy and occupy the dwelling on the Lot as Owner's primary and principal residence for Owner and his family. Owner shall not rent or lease the dwelling and Lot or permit the dwelling and Lot to be occupied by Persons other than Owner and his family members under any oral or written agreement.

(7) All buildings, structures and their appurtenances located on a Lot shall be maintained in a suitable state of repair, and in the event of destruction by fire or other casualty, the Lot is to be cleared and debris removed within ninety (90) days from date of such casualty.

(8) No animals, other than domesticated dogs, cats or other household pets, may be kept or housed on any Lot. No dogs, cats or other household pets may be kept, bred or maintained for any commercial purposes, nor may they be kept in such numbers or of such nature as to be or become a nuisance to adjoining Lot Owners or any residents of the Subdivision. Any housing or shelter constructed for said domesticated dogs or cats shall be

screened with fencing (or otherwise) that shall be approved by Declarant or the Committee. Animals, when not housed, shall be on a leash at all times.

(9) No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste, and such materials may not be kept on any Lot, except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Upon completion of construction of a dwelling, and as a part of the construction, the Owner of said Lot thereof shall generally landscape the Lot so as to be in keeping with the yards of the Owner's neighbors. The front yard areas of all Lots shall be generally smoothed and sodded at all street fronts. There shall be no mass clearing or stripping of trees from any Lot without the prior written consent of the Declarant or the Committee.

(10) No fence shall be erected on any Lot nearer the front property or lot line than the rear corners of the dwelling erected on said Lot, and all fences erected on any Lot shall not exceed four (4) feet in height and shall be constructed of wood or "PVC" type composition. No fence or structure of any kind shall be placed within utility and drainage easements shown on the Map or upon any Stormwater Management Facility except as permitted by the Permit.

(11) No boat, motor boat, camper, trailer, school bus, motor home, mobile home, truck rated over one (1) ton, or other vehicle similar to any of the same shall be permitted to remain on any Lot, or in any parking space on or adjacent to any Lot, unless prior written consent for the same is obtained from the Declarant or the Committee, or unless the same is properly stored in an enclosed area such that no part of such vehicle is visible to anyone from the Streets located in the Subdivision.

(12) Any and all erosion from a Lot occurring as the result of any construction on said Lot must be stabilized and controlled as described hereinabove within sixty (60) days of the occupancy of said dwelling by the Owner of the Lot or as required by any applicable law, regulation, rule or ordinance.

(13) The maximum allowable "built-upon area" on any Lot in the Subdivision is 2,500 square feet. "Built-Upon Area" includes any area constructed within the Lot property boundaries and that portion of the right-of-way between the front lot line and the edge of the pavement. "Built-Upon Area" includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools. All runoff from the Built-Upon Area on all Lots must drain into the permitted Stormwater Management Facilities. This may be accomplished through providing roof drain gutters which drain to the streets, grading the Lots to drain toward the streets or grading perimeter swales to collect Lot runoff and directing them into the Stormwater Management Facilities or into the streets. Lots that will naturally drain into the Stormwater Management Facilities are not required to provide these additional measures. The covenants set forth in this Paragraph (13) are intended to ensure ongoing compliance with State Stormwater Management Permit No. SW8030404 as issued by the Division of Water Quality under NCAC 2H.1000 and any amendments, additions or replacements thereof, or any such permit obtained by Declarant

and relating to property annexed into the Subdivision by Declarant as provided herein (the "Permit"). The State of North Carolina is made a beneficiary of the covenants set forth in this Paragraph (13) to the extent necessary to maintain compliance with the Permit. The covenants set forth in this Paragraph (13) pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality. Alteration of the drainage as shown on the approved stormwater plan for the Subdivision may not take place without the concurrence of the State.

(14) In the event the Owner of a Lot shall damage or through negligent failure to act allow damage to occur to any drainage or utility easement or Stormwater Management Facilities located in the Subdivision, the Owner of said Lot shall be responsible and liable for the repair or replacement of said drainage or utility easement or the Stormwater Management Facilities as provided in these Restrictions. From and after the time the Permit is transferred to the Association, Declarant shall have no responsibility for maintaining any drainage easements or Stormwater Management Facilities in the Subdivision except drainage easements or Stormwater Management Facilities located on Lots owned by Declarant. Within the drainage and utility easements set forth in these Restrictions or shown on the Map, no structure, fencing, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may change the direction or flow of drainage channels in the easements or violate the provisions of the Permit.

(15) It shall be the obligation of the Owner of any Lot in the Subdivision to provide, install and maintain an adequate culvert or drain pipe beneath any driveway located on said Lot as said driveway crosses the ditch or swale line at the front of the Lot in order that the natural flow of drainage will not be at any time blocked along the street. The culvert or drainage pipe must be of sufficient size to accommodate the flow of surface water in the ditch line. In no instance shall said drainage pipe be less than 15 inches in diameter. This pipe shall be installed prior to the construction of any dwelling on a Lot. The foregoing provisions of this Paragraph 15 notwithstanding, all such culverts or drain pipes shall comply with the Permit.

(16) Motor vehicles without current and valid licenses and inspections shall not be permitted to remain on any Lot or any Streets within the Subdivision. Motor vehicles utilized for commercial purposes shall not be permitted upon any Lot or upon the Streets within the Subdivision except during the construction of residential dwellings upon the Lots and for the delivery of goods and services to the residential dwellings located upon the Lots.

(17) No signs of any type or description shall be placed on or displayed on a Lot or the improvements thereon except signs advertising the property as being for sale, which signs shall not exceed six (6) square feet in size.

## XII.

### Special Declarant Rights

In addition to rights elsewhere reserved by Declarant in this Declaration, the Articles and the Bylaws, Declarant hereby reserves those Special Declarant Rights as defined in the Act together with the following:

(1) Declarant reserves the right to subject the Lots to a contract with any public utility or municipality for electricity and lighting to the Lots, including the installation of underground electric cables, which contract may require an initial payment and/or continuing monthly payments to such public utility or municipality by the Owner of each Lot. Such expense, including both initial and continuing monthly payments, shall be an individual cost to be borne by each individual Lot Owner and is not a Common Expense paid through assessments.

(2) Declarant hereby retains and reserves for itself, together with the right to grant similar easements to other Persons, perpetual non-exclusive general access and utility easements over, upon and under the streets, roads, utility lines, and drainage and utility easements existing in the Subdivision and/or shown on the Map. Such easements are non-exclusive and are for the purpose of providing utilities and access to property in the Subdivision area. Said easements shall run to the benefit of all parties and property to whom Declarant grants similar easements. Reference to access easements throughout this Declaration shall be interpreted to include perpetual non exclusive general access and utility easements for ingress, egress, regress, access and the maintenance and installation of utilities.

(3) Declarant retains and reserves a perpetual easement over and under the streets in the Subdivision for the purpose of installing, maintaining, and repairing power lines, light poles, light fixtures and other apparatus necessary for a street light system for the Subdivision.

(4) Declarant retains and reserves for itself, together with the right to grant a similar easement to any other Person, a perpetual easement over and under the streets in the Subdivision for the purpose of installing, maintaining, and repairing water and sewer lines to service property in the Subdivision area.

(5) The right to appoint the Committee as set forth in Article IX(1) of this Declaration.

Declarant may transfer all or any portion of the Special Declarant Rights created or reserved hereunder to any Person pursuant to the provisions of the Act.

### XIII.

#### Development of Subdivision

(1) Declarant hereby reserves an option to expand the Subdivision from time to time without the consent of any Owner or Eligible Mortgage Holder by submitting all or any portion of the Additional Property to the provisions of this Declaration and the jurisdiction of the Association. The option to incorporate Additional Property into the Subdivision shall continue to the end of the Development Period and may be terminated prior thereto only upon the recordation by Declarant of an instrument relinquishing such option. When submitting any portion of the Additional Property to the provisions of this Declaration and the jurisdiction of the Association, Declarant reserves the right unilaterally to record additional amendments to the Declaration subjecting any such portion of the Additional Property to such covenants, restrictions and conditions as may be necessary, in the discretion of the Declarant, to reflect the different characteristics of the development of such portion of the Additional Property.

(2) Declarant shall record in the office of the Register of Deeds of New Hanover County one or more amendments to the Declaration submitting such portion of the Additional Property described therein to this Declaration and to the jurisdiction of the Association. Each amendment shall include a legally sufficient description of the real estate added and each recorded plat shall designate such real estate with the term "Section" followed by a unique identifier so as to differentiate between each Section of the Subdivision. Any such amendment may contain such additions, modification or other changes to the provisions in this Declaration as may be necessary, in the discretion of Declarant, to reflect the different character of the Additional Property added thereby; provided, however, that such additions shall not apply to any real estate previously submitted to this Declaration. When recording an amendment adding all or portions of the Additional Property to the Subdivision, appropriate plats shall be recorded showing such Additional Property being submitted, describing any real estate being conveyed to the Association as Common Elements and showing any new Lots.

### XIV.

#### Transfer of Permit and Responsibilities

The Declarant shall, at its sole cost and expense, initially construct all Stormwater Management Facilities required to be located upon the Common Elements and the Lots to the standards required by the Permit. Upon completion of the initial construction of said Stormwater Management Facilities, Declarant shall transfer the Permit and Declarant's responsibilities under the Permit to the Association and the Association shall accept such transfers. Transfer of any such Permit shall occur upon the earlier to occur of (i) the date the North Carolina Department of Environment and Natural Resources allows the transfer of the Permit to occur; or, (ii) the date after which at least fifty percent (50%) of the Lots therein are conveyed to Owners other than Declarant.

Prior to any such transfer of the Permit, the Stormwater Management Facilities shall be certified to the Association and the State of North Carolina, either by state inspection or by a licensed engineer, as being in compliance with the applicable Permit prior to such assignment or transfer.

The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as the responsible party under the Permit from and after the date Declarant tenders transfer of its responsibilities under the Permit. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as holder of the Permit from and after the date Declarant tenders transfer of the Permit to the Association following the approval of such transfer by the North Carolina Department of Environment and Natural Resources and the certification of compliance as set forth above. Further, Declarant may bring an action for specific performance of the obligations of the Association pursuant to this paragraph.

From and after the transfer of Declarant's responsibilities under the Permit applicable to the property annexed into the Subdivision and from and after transfer of the Permit from the Declarant to the Association, the oversight, supervision, management and administration of the Permit shall be the sole responsibility of the Association. The Association's duties with respect to the Permit shall be carried out in accordance with the terms and conditions of this Declaration, the Articles, the Bylaws, and the Permit.

The Association hereby is granted and conveyed an easement over, under and upon each Lot for the purpose of access to and inspection, maintenance, repair and replacement of all Stormwater Management Facilities and to enforce all requirements of the Permit. In the event the Declarant annexes additional property into the Subdivision and transfers the applicable Permit and Declarant's responsibilities under the Permit to the Association, the Association shall have, and hereby is granted and conveyed, an easement over, under and upon each annexed Lot for the purpose of access to and inspection, maintenance, repair and replacement of all Stormwater Management Facilities located upon such additional property and to enforce all requirements of the Permit.

## XV.

### Waiver

No provision contained in Association Documents shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any Person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

## XVI.

### Variances

The Executive Board in its discretion may allow reasonable variances and adjustments in the restrictions contained herein in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lots owned in fee by various Persons with each such Owner having an easement upon areas owned by the Association. No variance or adjustment will be permitted if such would be materially detrimental or injurious to the welfare of the other property and improvements in the Subdivision as determined by the Executive Board.

## XVII.

### Duration, Amendment and Termination

(1) The Restrictions contained in this Declaration shall run with and bind the Lots and Common Elements until March 31, 2024, after which time they shall automatically be extended for successive periods of ten (10) years. This Declaration may be amended in full or part by an affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided, that no amendment shall: (a) alter any obligation to pay ad valorem taxes on the Common Elements; (b) alter any obligation to pay assessments for street lighting as herein provided or affect any lien for the payment of same; (c) modify any provision contained herein which specifically requires the consent of another party to modify such provision unless the required consent of such other party has been obtained; or (d) modify the rights or add to the obligations of the Declarant unless the Declarant executes the instrument.

To be effective any amendment must be recorded in the New Hanover County Register of Deeds office.

(2) Until the termination of the Class B membership, Declarant may unilaterally amend this Declaration for any purpose; however, any such amendment shall not adversely affect the title to any Lot unless the Owner thereof shall consent in writing.

(3) Invalidation of any of these Restrictions by judgment or court order shall in no way affect any other provision of these Restrictions which shall remain in full force and effect.

(4) This Declaration and the Sunset South planned community may be terminated only by written agreement signed by Owners of Lots to which at least eighty percent (80%) of the votes in the Association are allocated. Any such termination shall be in accordance with the provisions of N.C. Gen. Stat. § 47F-2-118.

XVIII.

Common Elements: Private

(1) All Common Elements and any facility thereon are private. Neither the Declarant's execution of this Declaration nor recording of the Map nor any other act of the Declarant with respect to the property is or is intended to be or shall be construed as a dedication to the public of any of the Common Elements. An easement for the use and enjoyment of each of the areas designated as Common Elements is reserved by the Declarant, its successors and assigns.

(2) All Common Elements shall be owned by the Association and shall be accepted by the Association free and clear of all liens and encumbrances except pro rata ad valorem real property taxes for the year of conveyance, reasonable drainage and utility easements, the easement rights specified herein, including but not limited to, easement rights retained by Declarant herein, all government laws and regulations, and this Declaration.

XIX.

Acceptance

(1) The grantee of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or by the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such Lot, shall accept such deed or contract upon and subject to each and all of these Restrictions herein contained and also the jurisdiction, rights and powers of Declarant and the Association, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant and the Association and to and with the grantees and subsequent owners of each of the Lots to keep, observe, and comply with the Association Documents.

(2) Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors and assigns, all of the risks and hazards of ownership or occupancy attendant to such Lot, including but not limited to its proximity to any Common Element or recreational facility.

XX.

Captions

The captions preceding the various Articles of these Restrictions are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Restrictions. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include



the feminine, the feminine to include the masculine and the neuter to include the masculine and feminine.

## XXI.

### Notice

All notices provided for or permitted pursuant to these Restrictions shall be in writing and, except as is herein expressly otherwise provided, notice shall be deemed sufficient and service thereof completed upon transmittal by facsimile, hand-delivery or receipt, refusal or nondelivery of same when mailed postage prepaid to the party to or upon whom notice is being given or served at the address of such party last reflected on the records of the Association.

## XXII

### Hearing Procedure

Except as may be otherwise specifically authorized by this Declaration or the Bylaws, the Executive Board shall not impose a fine or penalty, undertake permitted remedial action, suspend voting or infringe upon other rights of a member or other occupant for violations of the Declaration, the Bylaws, or the Association's rules and regulations, or during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer unless and until the following procedure is followed:

(1) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation may result in the imposition of a sanction after notice and hearing if the violation is not continuing.

(2) Notice. At any time within twelve (12) months following such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board or its delegate shall serve the violator with a written notice of a hearing to be held by the Covenants Committee if such committee is appointed, and if not the Executive Board of the Association in executive session. The notice shall contain: (i) the nature of the alleged violation; (ii) the time and place of the hearing, which shall not be less than ten (10) days from the giving of the notice; (iii) an invitation to attend the meeting and produce any statement, evidence and witness on his or her behalf; and (iv) the proposed sanction to be imposed. The notice prescribed herein may be served by mailing a copy of said notice to the alleged violator by placing said notice in the United States mail, postage prepaid, by any method as permitted for the service of summons as set forth in Rule 4 of the North Carolina Rules of Civil Procedure or by the delivery of said notice by an officer, director

or agent of the Association to the alleged violator or to any person who may be served on the alleged violator's behalf as provided in said Rule 4.

(3) Hearing. The hearing shall be held in executive session of the Covenants Committee, if such committee is appointed, or if not, the Executive Board of the Association pursuant to the notice affording the member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. In addition, a written statement of the results of the hearing and the sanction, if any, imposed shall be mailed by the United States mail, postage prepaid, by the Association to the violator.

(4) Appeal. Following a hearing before the Covenants Committee of the Association, if such committee is appointed, the violator shall have the right to appeal the decision to the Executive Board. To perfect this right, a written notice of appeal must be received by the managing agent of the Association, President or Secretary of the Association within thirty (30) days following the hearing date, said written notice to contain information by which the Executive Board may notify the alleged violator of the date of the appeal hearing. If no Covenants Committee is appointed by the Executive Board, no right of appeal shall exist.

(5) Sanction as Assessment. Pursuant to the provisions of this Section, a fine may be imposed by the Association is an amount not exceeding One Hundred Fifty and No/100 Dollars (\$150.00) (or as may be provided otherwise by law) per violation of the Declaration, the Bylaws, and the Association's rules and regulations and without further hearing, for each day after the decision to impose such fine that the violation occurs. Any such fine shall be an assessment as set forth in North Carolina General Statutes Section 47F-3-107(d). If it is decided pursuant to the provisions of this Section that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

### XXIII.

#### Liberal Construction

The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a Planned Community of fee simple ownership of Lots with Common Elements governed and controlled by rules, regulations, restrictions, covenants, conditions, reservations and easements administered by an owners' association with each Owner entitled to and burdened with various rights and easements.

XXIV

Joinder of Lender

Lender joins in the execution of this Declaration to consent to the terms of the same and subordinate the lien of the deed of trust held by Lender and recorded in Book 4144, at Page 360 to the provisions of this Declaration.

IN TESTIMONY WHEREOF, the parties have caused this instrument to be executed in such form as to be binding, all by authority duly given, this the day and year first above written.

HOUSING AND ECONOMIC  
OPPORTUNITIES, INC.  
a North Carolina nonprofit corporation

By: Benjamin J. Quattela  
President

TRSTE, INC.

By: Michael D. Deppa  
VIC President

WACHOVIA BANK, NATIONAL  
ASSOCIATION, Lender

By: Michael D. Deppa  
VIC President

STATE OF NORTH CAROLINA  
COUNTY OF New Hanover

I, Karen A Schraml, a Notary Public in and for said County and State, do hereby certify that Benjamin J. Guttlerman, II personally came before me this day and acknowledged that he is President of HOUSING AND ECONOMIC OPPORTUNITIES, INC., a corporation, and that he, as President being authorized to do so, executed the foregoing on behalf of the corporation.

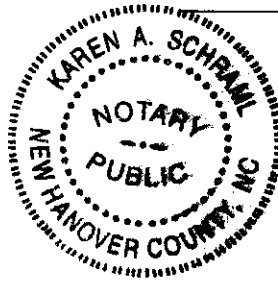
WITNESS my hand and official seal, this the 24<sup>th</sup> day of March, 2004.

Karen A. Schraml

Notary Public

My Commission Expires:

2/4/2009

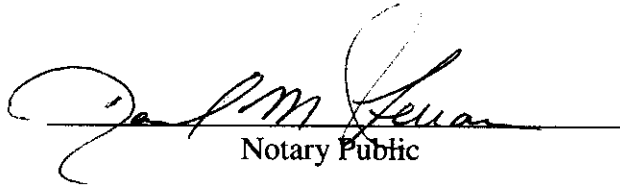


Notary seal or stamp must appear within above box.

STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, David M. Ferraro, a Notary Public in and for said County and State, do hereby certify that Michael D. Suppan personally came before me this day and acknowledged that he is ~~is~~ President of TRSTE, INC., a corporation, and that he, as ~~is~~ President being authorized to do so, executed the foregoing on behalf of the corporation.

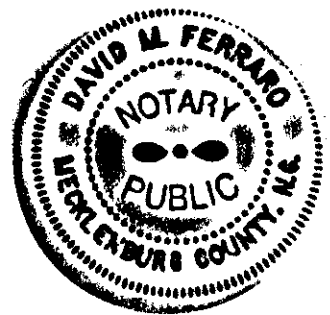
WITNESS my hand and official seal, this the 26 day of March, 2004.

  
Notary Public

My Commission Expires:  
MY COMMISSION EXPIRES  
OCTOBER 05, 2008

\* Vice

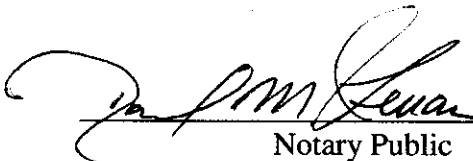
Notary seal or stamp must appear within above box.



STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, David M. Ferraro, a Notary Public in and  
for said County and State, do hereby certify that Michael D. Skellan personally  
came before me this day and acknowledged that he is ~~is~~ President of WACHOVIA BANK,  
NATIONAL ASSOCIATION, a corporation, and that he, as ~~is~~ President being authorized to do so,  
executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the 26 day of March, 2004.

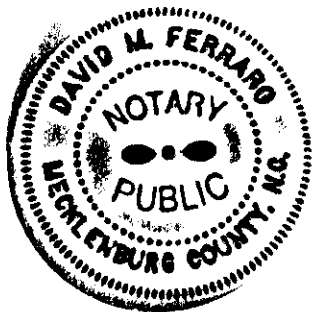
  
\_\_\_\_\_  
Notary Public

\* Vice

My Commission Expires:

**MY COMMISSION EXPIRES**  
**OCTOBER 05, 2008**

Notary seal or stamp must appear within above box.



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WLM\MAIN\94525\1



REBECCA T. CHRISTIAN  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*  
Filed For Registration: 03/30/2004 01:13:16 PM  
Book: RE 4253 Page: 668-698  
Document No.: 2004015610  
DECL 31 PGS \$101.00

Recorder: LIESEL WARD

\*\*\*\*\*  
State of North Carolina, County of New Hanover

The foregoing certificate of KAREN A SCHRAML , DAVID M FERRARO Notaries are certified to be correct. This 30TH of March 2004

REBECCA T. CHRISTIAN , REGISTER OF DEEDS

By: Liesel Ward  
Deputy/Assistant Register of Deeds

\*\*\*\*\*  
YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.  
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

**\*2004015610\***

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