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FOR REGISTRATION REGISTER OF DEEDS
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INSTRUMENT # 2015009268

**MASTER DECLARATION OF PROTECTIVE COVENANTS
FOR HELMS PORT**

Prepared by
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310 North Front Street, Suite 200
Wilmington, North Carolina 28401

NORTH CAROLINA

NEW HANOVER COUNTY

THIS MASTER DECLARATION OF PROTECTIVE COVENANTS FOR HELMS PORT (these "Protective Covenants") is made this 6TH day of APRIL, 2015, by SEL PROPERTY INVESTORS, LLC, a North Carolina limited liability company ("Declarant").

Declarant is the developer of the real property described in Exhibit A, which is attached hereto and incorporated by reference. These Protective Covenants are being executed and recorded by Declarant in order to facilitate the development of the Property as a planned community to be known as "Helms Port" (which will likely be composed of single family communities known as Saylor's Haven, Kathryn's Retreat, and Parker's Shores) and to fix and establish certain covenants, conditions and restrictions upon and subject to which the Property shall be improved, held, leased, sold and/or conveyed. These Protective Covenants impose restrictions upon the Properties (as defined in Article 1 herein) under a general scheme of development for the mutual benefit of the owners of each portion of the Properties.

Declarant hereby declares that all of the property described in Exhibit A, as well as any additional property subjected to these Protective Covenants by Supplemental Declaration in accordance with the terms hereof, shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following easements, restrictions, covenants, conditions, obligations and limitations, all of which are declared to be in furtherance of a plan of the improvement of the described property, which shall run with the real property subjected to these Protective Covenants, and to the provisions of the North Carolina Planned Community Act. These Protective Covenants shall be a burden and benefit to, and binding on, the Declarant, its successors and assigns, and any person or entity acquiring or owning any right, title or interest in the Properties or any part thereof, their heirs, successors, and assigns.

**Returned To
Block, Crouch, Keeter, Behm & Sayed**

ARTICLE 1
DEFINITIONS

The terms used in these Protective Covenants shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

- 1.0 "Helms Port" the development created or to be created on the Properties
- 1.1 "Articles of Incorporation" or "Articles" the Articles of Incorporation of Helms Port Master Association, Inc., which have been or will be filed with the North Carolina Secretary of State, and as may be amended from time to time
- 1.2 "Association" Helms Port Master Association, Inc., a North Carolina nonprofit corporation, formed by the Declarant as a property owners association for Lot owners in the Residential Community, all of whom shall be members of the Association
- 1.3 "Board of Directors" or "Board" the board governing the Association and managing the affairs of the Association
- 1.4 "Builder," or "Approved Builder," Any Person who has been approved by the Declarant, and who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers
- 1.5 "Business" and/or "Trade" shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration
- 1.6 "By-Laws" the By-Laws of Helms Port Master Association, Inc., as they may be modified or amended from time to time. The initial By-Laws are attached hereto as **Exhibit B.**
- 1.7 "Class "B" Control Period" the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3
- 1.8 "Committee" the Architectural Review Committee, as described in Article 10 herein
- 1.9 "Common Area" all real and personal property which the Association owns, holds an easement interest in, or leases, or which is designated as "common area", "amenity area", "Private R/W", or "Pump Station", "active open space", "passive open space" or words of similar import, on any plat of the Properties (or any portion thereof) recorded by Declarant, and which is held or maintained for the common use and enjoyment of the Members. Without limiting the generality of the foregoing, the Common Area shall be deemed to include all private roadways located within the Properties which are installed by Declarant for the general use of Owners and their guests for access (excluding driveways and other roadways located within the boundaries of any Lot), and any gates, structures, or other improvements of whatever nature and kind, within the right of way of any of the private roadways
- 1.10 "Common Expenses" the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including any reasonable reserve and actual and estimated expenses of maintaining and operating the Common Areas (including, without limitation, private access roads, drainage ponds, sewer lift stations, ditches and swales), conservation and buffer areas, and landscaped areas within road rights-of-way, as the Board may find necessary and

appropriate pursuant to these Protective Covenants the By-Laws, and the Articles of Incorporation, including the following

- (a) All sums lawfully assessed by the Association against its Members,
- (b) An amount equal to twenty five (25%) percent of the total annual budget for Helms Port Yacht Club, Inc , which is for the management, insuring, upkeep, maintenance, repair and replacement of those areas within the Helms Port Yacht Club which are designated for the mutual benefit and enjoyment of Members of Helms Port Yacht Club and the Residential Community,
- (c) Expenses of administration, maintenance, repair or replacement of the Common Areas, the storm water, sewer (including private lift station), water, utility, and other systems within the Residential Community that are for the benefit of some or all Owners,
- (d) Expenses declared to be Common Expenses by the provisions of these Protective Covenants or the By-Laws,
- (e) Expenses agreed by the Members to be Common Expenses of the Association, and
- (f) Any ad valorem taxes and public assessments levied against the Common Area

Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class "A" votes of the Association

1 11 "Community-Wide Standard" the standard of conduct, maintenance, or other activity generally prevailing throughout the Residential Community Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee

1 12 "Declarant" SEL Property Investors, LLC, a North Carolina limited liability company, together with such successors or assigns of Declarant and those who are specifically assigned or granted Declarant's rights hereunder

1 13 "Design Guidelines" the architectural design guidelines and procedures set forth in Article 10 and/or adopted by the Architectural Review Committee pursuant to Article 10 and applicable to all Lots within the Properties

1 14 "Future Development Property" any real property shown on the recorded Plat of Helms Port Subdivision as "Future Development,, or other real properties owned by Declarant within one (1) mile of any portion of the Properties,

1 15 "Individual Assessment" assessments levied in accordance with Section 9.6 of these Protective Covenants

1 16 "Limited Common Area" portions of the Common Area which the Association or Declarant has designated for the common use and enjoyment of more than one, but less than all, of the Members

1 17 "Lot" shall mean one of the subdivided and numbered parcels of land depicted on the Map of Subdivision for Helms Port recorded in Map Book 60 Pages 172 through 174 of the New Hanover County Registry The term shall also include any Lots depicted on any subsequently recorded plat on Future Development Property, which are made subject hereto pursuant to the terms hereof The term shall include a portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family

1 18 "Master Assessment" assessments levied on all Lots subject to assessment under Article 9 to fund Common Expenses for the general benefit of all Lots

1 19 "Member" a Person entitled to membership in the Association, as provided in Section 3 2

1 20 "Mortgage" a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1 21 "Mortgagee" a beneficiary or holder of a Mortgage

1 22 "Mortgagor" any Person who gives a Mortgage

1 23 "Owner" the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation

1 24 "Person" a natural person, a corporation, a partnership or limited partnership, a limited liability company or partnership, a trustee, association, or any other legal entity.

1.25 "Planned Community Act" the North Carolina Planned Community Act (N.C.G.S. §47F-1-101 et seq), as same may be amended from time to time

1 26 "Property" or "Properties" the real property described in Exhibit A, together with such additions thereto (including, without limitation, portions of the Future Development Property) as may hereafter be brought within the jurisdiction of the Association by the filing of a Supplemental Declaration

1 27 "Protective Covenants" shall mean this instrument as it may from time to time be amended or supplemented

1 28 "Residential Community" the residential development created or to be created on the Property

1.29 "Rules and Regulations" the rules and regulations adopted by the Board governing land use, individual conduct and uses or actions upon the Property pursuant to Article XI hereof

1 30 "Service Assessment" assessments levied in accordance with Section 9 13 of these Protective Covenants

1 31 "Special Assessment" assessments levied in accordance with Section 9 5 of these Protective Covenants

1 32 "Supplemental Declaration" an amendment or supplement to these Protective Covenants filed pursuant to Article 8 which subjects additional property to these Protective Covenants and/or imposes, expressly or by reference, changes to or additional restrictions and obligations on the land described therein.

ARTICLE 2 PROPERTY RIGHTS

2 1 Right to Use and Enjoyment of Common Area Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, and for ingress and egress to and from the Common Area, which shall be appurtenant to and pass with the title to every Lot, subject to the following provisions

(a) These Protective Covenants, the Articles, the By-Laws, the Rules and Regulations and any other applicable covenants or Supplemental Declarations,

(b) Any restrictions or limitations contained in any deed conveying such property to the Association,

(c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area and improvements thereon, including rules restricting use of the recreational facilities within the Common Area to occupants of Lots and their guests and rules limiting the number of guests who may use the Common Area, and the right of the Board to establish penalties for any infractions thereof,

(d) The right of the Board to suspend the voting rights and the right to use the Common Areas and the recreational facilities within the Common Area by an Owner (i) for any period during which any charge against such Owner's Lot remains unpaid, and (ii) for a period not to exceed sixty (60) days for a single violation, or for a longer period in the case of any continuing violation, of these Protective Covenants, any applicable Supplemental Declaration, the Articles, the By-Laws, the Design Guidelines or the Rules and Regulations, after notice and a hearing pursuant to the By-Laws,

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4 7,

(f) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts inclined, subject to the approval requirements set forth herein and the rights of such Mortgagees in said properties shall be subordinate to the rights of the Lot Owners hereunder,

(g) The right of the Helms Port Yacht Club, Inc., and its Members and invitees to non-exclusive use the roads, outdoor shower facilities, bath houses, parking areas, boardwalks, and walkways within the Residential Community

(h) Easements as provided in Article 12, and

(i) Declarant's rights as provided in Article 14

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the duration of the lease, to the exclusion of the leasing Owner, and any such lessee shall abide by all the restrictions contained herein. Any such lease shall not release the owner of his liability for damage to the Common Area caused by said lessee.

2.2 Boat Slips and Marina Facilities. Declarant has developed an inland basin marina and other amenities located within the Residential Community known as "Helms Port Yacht Club" (collectively, the "Marina"), and has conveyed the Marina to Helms Port Yacht Club, Inc., a North Carolina non-profit corporation. Access to and use of the Marina, as well as the opportunity to purchase or lease boat slips within the Marina, may be extended to Owners within the Residential Community, subject to conditions, rules and regulations to be specified by Helms Port Yacht Club, Inc. and Declarant from time to time. Helms Port Yacht Club, Inc. will designate one dock within the said Helms Port Yacht Club which will be made available for the non-exclusive use (day docking only) of the Members of the Association. Further, Declarant shall cause, Helms Port Yacht Club, Inc. to designate an area at Helms Port Yacht Club, as a kayak/canoe launch area, which will be made available for the non-exclusive use of the Members of the Association. Other than the foregoing, **NEITHER DECLARANT NOR THE ASSOCIATION MAKES ANY WARRANTIES OR REPRESENTATIONS WHATSOEVER WITH RESPECT TO ANY OWNER'S RIGHT OR PRIVILEGE TO PURCHASE OR LEASE A BOAT SLIP OR USE THE MARINA IN ANY OTHER WAY. EACH OWNER, BY ITS ACCEPTANCE OF TITLE TO ANY LOT, THEREBY WAIVES ANY CLAIM AGAINST THE DECLARANT AND/OR THE ASSOCIATION RELATIVE TO ACCESS TO OR USE OF THE MARINA OR ANY PORTION THEREOF.** Helms Port Yacht Club, Inc. shall have the exclusive right to establish reasonable rules and regulations relating to the use by Owners of the Marina. Additionally, the Members of the Association, through the Association, shall pay to Helms Port Yacht Club, Inc., an amount equal to twenty-five percent, of the approved assessments for Helms Port Yacht Club, to defray the Member's use and enjoyment of the Marina amenities described in this Section 2.2. The Association shall have the right and power to collect such payments as a part of and with its Owner's assessments as provided in Article 9 herein.

ARTICLE 3
ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

3.1 Function of Association. The Association shall be the entity responsible for management, maintenance, ownership, operation and control of the Common Area owned or leased by the Association within the Properties. The Association shall be the primary entity responsible for enforcement of these Protective Covenants and such reasonable rules regulating use of the Common Areas owned or leased by the Association as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural design guidelines and controls set forth in these Protective Covenants and in the Design Guidelines. The Association shall perform its functions in accordance with these Protective Covenants, the By-Laws, the Articles and applicable North Carolina law.

3.2 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of that membership. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association,

provided that only one person (and such person's immediate family members with respect to membership rights other than voting) may be designated to act in such capacity for such an Owner at any particular time

3.3 Voting The Association shall have two classes of membership, Class "A" and Class "B",

(a) Class "A" Class "A" Members shall be all Owners of Lots except the Class "B" Member, if any. Class "A" Members shall have one vote for each Lot in which they hold the interest required for membership under Section 3.2, there shall be only one vote per Lot

(b) Class "B" The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under these Protective Covenants and the By-Laws, are specified elsewhere in the Protective Covenants and the By-Laws. The Class "B" Member may appoint the members of the Board during the Class "B" Control Period, as specified herein. After termination of the Class "B" Control Period, the members of the Board shall be selected as provided in the By-Laws.

During the Class "B" Control Period, the Class "B" Member shall be entitled to fifteen (15) votes for each platted Lot in the Residential Community. The total number of planned Lots in the Residential Community is currently one hundred fifty nine (159), although the actual number of Lots may be more or less, and the Class "B" Member makes no representation whatsoever regarding the actual number of Lots to be included in the Residential Community. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of one of the following events, whichever occurs earlier:

(i) when the Declarant owns no Lots in the Residential Community, including any of the Future Development Property which may be annexed thereto, as herein provided, or

(ii) on January 1, 2046, or

(iii) when, in its discretion, Declarant so determines and declares in an instrument recorded in the New Hanover County Registry of Deeds

(c) Exercise of Voting Rights In any situation in which a Member is entitled personally to exercise the vote for his or her Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such Co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

3.4 Subordinate Associations and Declarations No declaration, restrictive covenants, or property owner's association shall be established upon or be binding upon or applicable to any of the Properties unless approved in writing by Declarant.

ARTICLE 4 RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area The Association, subject to the rights of the Owners set forth in these Protective Covenants, shall manage and control the Common Area and all improvements thereon (as defined in other sections herein including, without limitation, private roads, private road rights of way,

recreation pathways, decks, boardwalks, lighting, irrigation, furnishings, equipment, and common landscaped areas), and shall keep it and them in good repair and in a clean, attractive, sanitary condition consistent with these Protective Covenants and the Community-Wide Standard

4.2 Personal Property and Real Property for Common Use The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Residential Community, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth herein and in the deed

4.3 Rules The Association, through its Board, may make, revoke, amend and enforce reasonable rules governing the use of the Properties, in addition to further defining or limiting, and, where specifically authorized hereunder, creating exceptions to, those covenants and restrictions set forth in these Protective Covenants. Such rules shall be binding upon all Owners, occupants, invitees, lessees, guests and licensees

4.4 Enforcement The Association may impose sanctions for violations of these Protective Covenants, the By-Laws, or Rules and Regulations, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Lot of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. The Board may assess the reasonable monetary fines authorized by this Section as an Individual Assessment authorized by Section 9.6 of these Protective Covenants,

4.5 Implied Rights, Board Authority The Association may exercise any other right or privilege given to it expressly by these Protective Covenants or the By-Laws, by the Planned Community Act or Chapter 55A of the North Carolina General Statutes, and as reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in these Protective Covenants, the By-Laws, Articles, all rights and powers of the Association may be exercised by the Board without a vote of the membership

4.6 Indemnification To the maximum extent allowed by North Carolina law, the Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be party by reason of being or having been an officer, director or committee member. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available

4.7 Dedication of Common Areas The Association may dedicate portions of the Common Areas to any local, state, or federal governmental entity, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association

4.8 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION NOR THE DECLARANT (OR ANY SUCCESSOR TO DECLARANT) SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR

ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS RESULTING FROM ACTS OF THIRD PARTIES

4 9 Management and Administration The management and administration of the Association Common Areas and Amenities shall be the sole right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of these Protective Covenants, the Articles, By-Laws and Rules and Regulations, but they may be delegated to Manager(s) or a management service.

4 10 Assignment to Association Declarant has obtained certain permits and installed various permitted systems within the Residential Community during the course of developing the Property including but not limited to (i) Permit No. WQ0037170 issued by NCDENR to the Association for construction, maintenance and operation of a Private Pump Station and Sewer Wastewater Collection System, (ii) Stormwater Management Permit Number SW8 140211 issued by the North Carolina Division of Water Quality ("NCDWQ") under NCAC2H 1000, (iii) NCDOT Permit D-065-14-010, (iv) CAMA Minor Development Permit No 14-15, and modifications or amendments thereto. Declarant shall assign, and the Association shall assume all of such permits and systems including but not limited to water, sewer (including private lift station), land use, stormwater permits and systems and utility permits, agreements and easements between Declarant and any governmental agency or department or public or private utility company, whether or not specifically listed hereinabove. The Association shall, within ten days of a request by Declarant, accept the assignment and assume such permits and systems. Such obligation to accept assignment of such Permits and systems shall not be subject to the results of any inspections, analyses or reports. After such an assignment, the Association shall be responsible for and assume all duties, obligations, and rights and privileges of the Declarant under such permits, agreements and easements, including all maintenance responsibility, even if part of the water, sewer, land use, stormwater system or utility areas covered by the permits, agreements and easements are not located within the Properties.

Each Lot Owner, by his, her or its acceptance of his, her or its Deed to a Lot acknowledges this disclosure and agrees to accept his, her or its Lot subject thereto, and further to fully comply with each of the terms of all applicable Permits. The Permits shall be available for review by any Lot Owner upon reasonable request.

4 11 Common Area Unless such conveyance or encumbrance is permitted under the Planned Community Act, the Common Area shall not be mortgaged, conveyed or encumbered without the consent of eighty percent (80%) of the Lot Owners. During the Class "B" Control Period, any such mortgage, conveyance or encumbrance shall also require the consent of Declarant.

ARTICLE 5 MAINTENANCE

5 1 Association's Responsibility The Association shall maintain and keep in good repair the Common Area, which may include, but need not be limited to

- (a) all landscaping and other flora, parks, and signage for the Residential Community situated upon the Common Area, structures and improvements situated upon the Common Area, including any private roads, streets, rights of way and islands within their streets and cul-de-sacs; bicycle and pedestrian pathways and trails situated upon the Common Area, ponds,

lakes, drain ways, recreation pathways and sidewalks within or upon the Common Area, the entrance to the Residential Community, any part of the water and/or sewer system serving Lots in the Residential Community which have not been accepted for maintenance by any public authority or governmental agency, including the private lift station, all lines, valves and systems, all clubhouses, swimming pools, picnic areas, shelters, and other Amenities designated for the common use of Owners within the Properties;

(b) the Wastewater Collection System consisting of a lift station and all pumps, valves, piping, controls, electrical equipment, fencing, water supply and all other equipment required to operate the lift station, and as required to comply at all times with NCDENR Permit No WQ0037170, and,

(c) any other Common Area or Limited Common Area designated by the Board or the Declarant from time to time in a Supplemental Declaration

5.2 Owner's Responsibility Each Owner shall maintain his or her Lot and all structures, parking areas, landscaping and other improvements comprising or located upon the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is specifically assumed by or assigned to the Association, or to the Helms Port Yacht Club hereunder, or pursuant to any Supplemental Declaration or other Declaration of Protective Covenants applicable to such Lot. As to Lots which abut a watercourse or body of water, it shall be the responsibility of each Owner to maintain, in a manner consistent with the Community-Wide Standard and these Protective Covenants, any area lying between the boundary or lot line of such Lot and the waterline of such watercourse or body of water (as such waterline may fluctuate from time to time), subject however to the rights of the Association and its Members to use any of such areas as may be depicted on a recorded Plat as common area or easement area. Owners of Lots which abut the Helms Port Yacht Club marina basin shall be responsible for maintaining any bulkheading and landscaping located within the boundaries of such Lot, however, the Helms Port Yacht Club shall be responsible for maintaining, repairing, replacing and insuring all boardwalks, utility posts, huts, clean outs, and other structures located within any easement located on such Lots which are for the benefit of the marina. Any fencing which is not maintained by the Association shall be maintained and kept in good condition and repair by the Owner of the Lot on which such fencing is located (at such Owner's cost and expense). Each owner upon whose Lot there is constructed a fence, a berm or a landscaped buffer, or a landscape easement, shall be responsible for maintaining such fence, berm, landscaping, or easement consistent with the Community Wide Standard and these Protective Covenants. Owner shall not, however, be allowed to remove any landscaping or cut any trees without the prior approval of the Architectural Review Committee. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may, but is not required to, perform such maintenance responsibility and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 9.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Maintenance of Lots Each Owner shall maintain his or her Lot and all landscaping and improvements comprising the Lot in a manner consistent with the Community-Wide Standard and these Protective Covenants, the Articles, the By-Laws, the Rules and Regulations and any other applicable covenants or Supplemental Declarations, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. If, in the opinion of the Association, any Owner shall fail to maintain any Lot owned by him in a manner which is reasonably neat and orderly and as is required by Article 12 herein or

shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the sole opinion of the Association, the Association in its discretion, by the affirmative vote of a majority of the members of the Board of Directors, and following ten (10) days written notice to Owner, may enter upon and make or cause to be made repairs to such improvements and perform such maintenance on the Lot as the removal of trash, pressure washing structures or walks, cutting of grass, pruning of shrubbery, weeding and items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. The reasonable cost incurred by the Association in rendering all such services, plus a service charge of thirty percent (30%) of such cost plus attorney's fees, shall be added to and become an Individual Assessment to which such Lot is subject as provided in Article 9 herein.

5.4 Maintenance of Private Access Roads. The Association shall be obligated to repair and maintain any private access roads which constitute Common Area hereunder to standards consistent with those required for maintenance of public roads by the North Carolina Department of Transportation. The costs of such repairs and maintenance shall be deemed Common Expenses hereunder.

5.5 Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as other duties, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

ARTICLE 6 INSURANCE AND CASUALTY LOSSES

The Association shall maintain adequate and appropriate insurance coverage on all Common Areas, as provided in the By-Laws of the Association and as required by the Planned Community Act.

ARTICLE 7 SUBDIVISION

No Lot or Lots shall be subdivided except to enlarge an adjoining Lot, but any Lot so enlarged cannot be improved with more than, or used for any purpose other than, one single family dwelling. An Owner of a Lot and a portion or all of an adjoining or contiguous Lot or Lots may construct a dwelling or other structure permitted hereunder upon and across the dividing line of such adjoining and contiguous Lot(s). The number of Lots shall remain the same and shall be treated for all purposes under these Protective Covenants as two (2) or more Lots. Notwithstanding the preceding provisions of this Article 7 to the contrary, Declarant shall be entitled to revise and move lot lines of any Lots owned by Declarant as long as the total number of Lots remains the same.

ARTICLE 8 ANNEXATION AND WITHDRAWAL OF PROPERTY

8.1 Annexation without Approval of Membership

(a) Until January 1, 2046, Declarant may subject any portion(s) or all of the Future Development Property to the provisions of these Protective Covenants as provided in this Section 8.1. Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the Property. Nothing in these Protective Covenants shall be construed to require the Declarant or any successor to annex or develop any of the Future Development Property in any manner whatsoever.

(b) An annexation by Declarant under Section 8 1(a) shall be accomplished by filing a Supplemental Declaration in the land records of New Hanover County, North Carolina, describing the property to be annexed and specifically subjecting it to the terms of these Protective Covenants. Such Supplemental Declaration shall not require the consent of any Members other than Declarant, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

8.2 Annexation by Membership Except as provided in Section 8 1 herein, annexation of additional property shall require the assent of two-thirds (2/3) of the Class "A" Members at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. During the Class "B" Control Period, annexation of additional property under this Section 8 2 shall also require the consent of Declarant.

8.3 Withdrawal of Property The Declarant reserves the right to amend these Protective Covenants so long as it has a right to annex additional property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing property then owned by the Declarant, its affiliates, or the Association from the coverage of these Protective Covenants, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

8.4 Additional Covenants and Easements During the Class "B" Control Period, the Declarant may unilaterally subject the property submitted to these Protective Covenants initially or by Supplemental Declaration to additional covenants and easements, provided that such amendment or modification does not alter the general or common scheme of development for the Properties described herein and further provided that this right to amend shall not render these covenants and restrictions purely personal to the Declarant and the benefits and burdens contained in these Protective Covenants shall remain mutual and reciprocal to all Owners.

The rights reserved in this ARTICLE 8 by DECLARANT include the right to change, alter, or designate Lot(s), roads, utility and drainage facilities and easements, and to change, alter, or redesignate such other present and proposed amenities or facilities as may in the sole judgment of the DECLARANT, be necessary or desirable. The rights reserved in this ARTICLE 8 specifically include the right of DECLARANT to redesignate, change, or alter any platted Lot(s) into road(s) or parking spaces or vice-versa.

8.5 Amendment This Article shall not be amended without the prior written consent of Declarant during the Class "B" Control Period.

ARTICLE 9 ASSESSMENTS

9.1 Creation of Assessments

(a) The Association is hereby authorized to levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time as more particularly provided in this Article 9. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments. Such budget shall specifically include an amount equal to twenty-five percent (25%) of the Helms Port Yacht Club, Inc. budget.

(b) All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by North Carolina law), late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 9 9. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage or any individual obtaining title by or through a foreclosure shall be personally liable for unpaid assessments which accrued prior to such acquisition of title. In the event of any transfer of title to a Lot, the lien of the assessments shall not be extinguished.

(c) No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Lot, or any other means. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

9 2 Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant and Approved Builder, shall not be obligated to pay any regular assessments on its unsold Lots. Until the end of the Class "B" Control Period, all Common Expenses shall be borne by the Owners of Lots sold by Declarant to unaffiliated third parties (and assessments on Declarant's unsold Lots will only be payable to the extent needed to cover any shortfall not otherwise payable by assessments under this Article 9). After the expiration of the Class "B" Control Period, any unsold Lots owned by Declarant shall be subject to assessment on the same terms as all other Lots.

9 3 Computation of Master Assessment. On or before the end of each calendar year, the Board shall prepare and distribute to the Members a budget covering the estimated Common Expenses during the coming year (including, without limitation, a capital contribution to establish a reserve fund in accordance with a budget prepared as provided in Section 9 4) as and to the extent required in the Planned Community Act.

9 4 Capital Reserve Budget. The Board shall annually prepare a capital reserve budget for maintenance and replacement of capital improvements which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

9 5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover capital improvements or unbudgeted expenses (including, without limitation, expenses required to complete repair, maintenance and/or clean-up which the Board deems necessary or advisable after a storm, hurricane or other casualty event) or other expenses in excess of those budgeted. The Board may establish the amount of the Special Assessment if it is Two Hundred Fifty Dollars (\$250 00) or less in any assessment year for each Member. All other Special Assessments shall require the affirmative vote of sixty-seven percent (67%) of Members present and voting in person or by proxy which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9 6 Individual Assessments The Board shall have the power to levy Individual Assessments against a particular Lot or Lots constituting less than all Lots within the Properties as follows

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner,

(b) to cover costs including overhead and administrative costs and reserves incurred for maintenance, repair and replacement of any private roads, signs, mail boxes, fences and berms which are constructed for the benefit of certain specified lots,

(c) to cover costs incurred in bringing the Lot into compliance with the terms of these Protective Covenants, including, without limitation, Section 5.3, any applicable Supplemental Declaration, the Articles, the By-Laws, Rules and Regulations, or Design Guidelines or costs incurred as a consequence of the conduct of the Owner or occupant of the Lot, their lessees, licensees, invitees, or guest, provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying an Individual Assessment under this subsection (c); and

(d) to cover any costs or expenses assessed against or charged to the Association by SEL Property Investors, LLC or any club, association or entity having authority over the operation of the Marina (a "Marina Operator") relative to such Owner's use and enjoyment of the Marina or any portion thereof (but only to the extent the Association elects to collect same, it being acknowledged that the Association shall have no obligation to collect same unless it otherwise agrees in writing) Notwithstanding the foregoing, the Association shall be entitled, in its discretion, to elect to include any charges it collects under this Section 9 6(d) as part of the Master Assessment

9 7 Working Capital Assessment Upon the conveyance of title to any Lot to anyone other than an Approved Builder, the acquiring Owner shall contribute to the Association, as working capital, a working capital assessment equal to one year of the then budgeted annual assessment for such Lot. Such funds shall be used for operating and capital expenses of the Association, including but not limited to, prepaid insurance, supplies, utilities and equipment, capital improvements and repairs, reserves, etc Amounts paid into the working capital fund are not to be considered advance payment of regular assessments All working capital funds shall become part of the general operating funds of the Association

9 8 Date of Commencement of Master Assessments and Due Dates The Master Assessments provided for herein shall commence on the date of conveyance of each Lot to an Owner other than Declarant or Approved Builder The due dates shall be established by the Board of Directors

9 9 Lien for Assessments

(a) All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied until paid The lien shall also secure payment of interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including reasonable attorney's fees) Such lien shall be superior to all other liens, except (a) the liens of

all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any recorded first Mortgage made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

(b) The Association may record notice of the claim of lien in the Office of the Clerk of Superior Court of New Hanover County or file a suit to collect such delinquent assessments and charges. The Association may file Notice of *Lis Pendens*, bring an action of law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property, or utilize any other remedy provided under North Carolina law. No Owner may waive or otherwise escape liability for the assessments provided for herein.

(c) Upon foreclosure of the lien referenced in this Section 9.9, the Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it, and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

9.10 Effect of Nonpayment of Assessments Remedies of the Association Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at a rate not to exceed the maximum legal rate allowed in the State of North Carolina per annum and in addition, a late fee shall be assessed in such amount as may be determined by the Board of Directors. The Association may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and, in either event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments.

9.11 Failure to Assess Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release or any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Master Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

9.12 Exempt Property The following property shall be exempt from payment of Master Assessments, Service Assessments and Special Assessments:

- (a) all Common Area or Limited Common Area,
- (b) any property dedicated to and accepted by any governmental authority or public utility,
- (c) any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Lot which is subject to assessment hereunder (in which case the Lot shall not be exempted from assessment),

(d) any Lot which is not approved by any governmental agency for residential use, and

(e) any Lot or property owned of record by the Declarant, its successors or assigns, except as otherwise provided in Section 9 2

9 13 Service Assessments The Board shall have the power to levy Service Assessments against a particular Lot or Lots constituting less than all Lots within the Properties to cover the costs, including overhead and administrative costs, of providing specialized maintenance and/or landscaping services to such Lots and the occupants thereof (unless such maintenance is part of the services provided by the Association to Owners generally, in which case the cost of such maintenance shall be included in the Master Assessment). Such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner

9 14 Surplus Funds Any excess of Association income over Common Expenses (as defined in Section 1 10 herein and which shall include reasonable reserves) shall be applied against the subsequent tax year's general assessments

ARTICLE 10 DESIGN GUIDELINES

10 1 General

(a) No structures, buildings, improvements or construction, which shall include within its definition, clearing, grading, tree removal, excavation and other site work, shall be commenced, erected, or maintained upon any Lot or the Properties, nor shall any exterior addition to or change or alteration therein (including, without limitation, any change of color) be made to any Lot, except in compliance with this Article and the Design Guidelines, nor shall any such work commence until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Committee according to the provisions of Section 10 2. Structures, buildings and improvements shall include, but not be limited to, any dwelling, garage, fence, wall, sidewalk, hedge, tree, mass planting, change in grade or slope, drainage pipe, drainage canal, ditch, swale, catch basin, swimming pool, treehouse, playhouse, sign, flag pole, antenna, satellite dish, exterior illumination, monument or marker, outdoor statuary, exterior lights, security lights, storm door, well utility facility, patio, deck, screening for outdoor trash cans or other purposes, sprinkler or irrigation system, driveway, outdoor decorative objects, shrubbery or landscaping

(b) Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval. Approval of the Committee shall, however, be required to repaint the exterior of a structure even in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications

(c) This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association

(d) During the Class "B" Control Period, this Article may not be amended without the Declarant's written consent

10 2 Architectural Review

(a) Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the Committee as described in subsection (b) below. The members of the Committee need not be Members of the Association and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in MI or prior to review.

(b) Architectural Review Committee (herein "Committee"). The Committee shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all construction on any portion of the Properties. For as long as Declarant or an Approved Builder owns any Lot within the Properties, the Declarant retains the right to appoint all members of the Committee who shall serve at the Declarant's discretion. After the sale of the last Lot owned by Declarant or the Approved Builder to a third party, the Board shall be entitled to appoint the members of the Committee, who shall serve and may be removed in the Board's discretion.

10 3 Guidelines and Procedures. The Declarant shall prepare the initial Design Guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Committee shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them subject to the approval of the Board of Directors. The Committee shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines,

10 4 Submission of Plans and Specifications

(a) No construction or improvements, as specified in Section 10 11(a), shall be commenced, erected, placed or maintained on any Lot, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening shall have been submitted to and approved in writing by the Committee. The Design Guidelines shall set forth the procedure for submission of the Plans. A reasonable fee for the review of said plans may be required by the Committee, in which case such fee shall be submitted along with said Plans and any other supporting documents required by Committee. The Board or the Committee may also require an additional security deposit to be posted prior to the commencement of any construction or work, which sum shall be used to collect any fees, fines or penalties incurred during construction or work. If such a security deposit is required, any portion of the security deposit remaining upon the completion of construction shall be returned to the Owner.

(b) In reviewing each submission, the Committee may consider (but is not required to consider or limited to considering) visual aesthetics, natural platforms and finish grade elevations, harmony of external design with surrounding structures and environment, and location in the relation to surrounding structures and plant life. The Committee may require relocation of native plants within the

construction site as a condition of approval of any submission. Location of any driveways shall be subject to the approval of the Committee.

(c) The Association shall have the right to refuse to approve any plans and specifications or grading plans which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons. In so approving such plans, specifications and grading plans, the Association shall consider the suitability of the proposed building, improvements, structure, or landscaping and the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, and the effect thereof on the adjacent or neighboring property.

(d) No bulldozing or clearing of trees or excavation of lakes or ponds shall be commenced until the plans, specifications and grading plans showing the nature, kind, shape and location of work to be done shall have been submitted to and approved in writing by the Association and a copy thereof, as finally approved, filed permanently with the Association.

(e) The Committee shall, within forty-five (45) days after receipt of each submission of the Plans, advise the party submitting the same in writing, at an address specified by such party at the time of submission, of (1) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with these Protective Covenants and/or the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the Committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U S Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

(f) If construction does not commence on a project for which Plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans for reconsideration.

(g) Once construction has been initiated on a Lot, the Owner thereof must complete such construction within eighteen (18) months. If an Owner does not comply with such schedule, then Declarant, the Board and the Association shall each have the right (but not the obligation) to complete such construction on Owner's behalf and at such Owner's expense. In the event the Declarant, the Board or the Association exercises the right provided in the immediately preceding sentence, then Declarant, the Board and/or the Association (as the case may be) shall be entitled to collect from such Owner, in addition to a reimbursement of all costs expended in the completion of construction of the Lot, an administrative fee for such work, which fee shall be equal to twenty percent (20%) of the costs incurred by such party in completing the work. Any and all of the foregoing costs and fees that may be incurred by or payable to Declarant, the Board and/or the Association shall be a charge and continuing lien upon such Lot until paid, and Declarant, the Board and/or the Association may bring an action against such Owner, or foreclose the lien against the property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, **PT** both, and, in either event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount payable to Declarant, the Board and/or the Association.

10.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Committee will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be

deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval

10 6 Variance The Committee may authorize in its discretion reasonable variances or adjustments from compliance with any of its guidelines and procedures in order to alleviate practical difficulties and hardship in their enforcement and operation. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, or (b) stop the Committee from denying a variance in other circumstances. 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

10 7 Limitation of Liability The standards and procedures established or authorized by this Article is intended as a mechanism for maintaining and enhancing the overall aesthetics of Helms Port. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring Lot owners. Neither the Declarant, the Association, the Board, nor the Committee, shall be held liable for any injury, damages, or loss arising out of the review and approval of any application, including, but not limited to, the granting of a variance, the manner or quality of construction, or defects in any plans or specifications, or deficiencies in kind or quality of materials used, or any soil conditions, drainage or site work propose or approved, or for ensuring compliance with building codes and other governmental requirements

10 8 Enforcement

(a) Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required within thirty (30) days of being notified, then Declarant, the Board and the Association shall each have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed; provided however, if the violation is deemed by the Board or Declarant, in their sole discretion, to be a safety hazard or require immediate remediation, then the Board or Declarant may immediately take the actions authorized hereunder to remove the violation. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Lot's Owner and the benefited Lot and collected as an Individual Assessment. In the event the Declarant, the Board and/or the Association exercises any right provided above in this Section 10 8 (a), then Declarant, the Board and/or the Association (as the case may be) shall be entitled to collect from the relevant Owner, in addition to a reimbursement of all costs expended in the removal of the violation and/or the restoration of the property, an administrative fee for such work, which fee shall be equal to thirty percent (30%) of the costs incurred by such party in performing the work.

(b) Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties. In such event, none of the Association, its officers, or its directors shall be held liable to any Person for exercising the rights granted by this paragraph

(c) The Association shall have the authority to establish fines for violations of this Article and the Design Guidelines, including fines for continuing violation & the fine amounts may be deducted from any bond posted. If the fines are not paid, the Association may establish an Individual Assessment in accordance with the provisions of Article 9.

(d) In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Committee.

10 9 Architectural Change Committee At the discretion of the Declarant (or, if after the expiration of the Class "B" Control Period, at the discretion of the Association), either Declarant or the Association (as the case may be) shall have the option, but not the obligation, to establish an Architectural Change Committee to review minor changes or renovations to improvements previously approved by the Committee. If the Declarant or the Association elects to establish such an Architectural Change Committee, the Board shall establish guidelines regarding the operation and jurisdiction of such committee and shall appoint its members, each of whom shall serve and may be removed in the Board's discretion. Additionally, during the Class "B" Control Period, the Declarant shall have the right to remove and replace any member of the Architectural Change Committee.

ARTICLE 11 USE GUIDELINES AND RESTRICTIONS

11 1 Plan of Development, Applicability, Effect

(a) Declarant has created the Residential Community as a residential development and, in furtherance of its and every other Owner's interest, has established a general plan of development for the Residential Community. Accordingly, the Properties are subject to guidelines and restrictions governing land use, individual conduct, and uses of or actions upon the Properties as provided in this Article 11. These Protective Covenants establish affirmative and negative covenants, easements, and restrictions (the "Use Guidelines and Restrictions").

(b) All provisions of these Protective Covenants and of any Association rules shall also apply to all occupants, lessees, guests and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of these Protective Covenants, the By-Laws, and the rules of the Association.

11 2 Rules and Regulations Subject to the terms of this Article 11, upon a majority vote of the Board, the Association may, from time to time adopt, amend and repeal Rules and Regulations with respect to all aspects of the Association's rights, activities and duties under this Declaration. The Rules and Regulations may, without limitation, govern use of the Residential Community, including prohibiting, restricting or imposing charges for the use of any portion of the Residential Community by Owners, Residents or others, interpret this Declaration or establish procedures for operation of the Association or the administration of this Declaration, provided, however, that the Rules and Regulations shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be maintained in the office of the Association and shall be available to each Owner upon request.

11.3 Owners' Acknowledgment

(a) All Owners and all the Properties are subject to the Use Guidelines and Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board may add, delete, modify, create exceptions to, or amend the Use Guidelines and Restrictions in accordance with Section 11.2

(b) Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by these provisions, agrees to be bound thereby, and that the Use Guidelines and Restrictions and rules may change from time to time

11.4 Rights of Owners Except as may be specifically set forth in Section 11.5, the Board may not adopt any rule in violation of the following restriction. No rules shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, that block the views from other Lots, or that create an unreasonable source of annoyance, or that create a nuisance

11.5 Use Guidelines and Restrictions

(a) General The Properties shall be used only for residential and related purposes (which may include, without limitation, offices for any property manager retained by the Association, business or sales offices for the Declarant or the Association, and certain recreational uses ancillary to home ownership or as permitted in the Common Areas), except as otherwise provided herein. No commercial use shall be permitted on any Lot except in accordance with Section 11.5(m)

(b) Animals and Pets, No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained on any Lot or in any dwelling except a limited number of domestic household pets, which limit may be set by the Board. Domestic household pets may not be raised, bred, or kept for any commercial purpose. Pets must be leashed at all times when off Owner's Lot and droppings must be immediately removed. Fines assessed by the Association shall become an Individual Assessment in accordance with Article 9. All parties are hereby notified that, in the event any dog kept or maintained on a Lot or in any dwelling on the Properties barks excessively, continuously or in a manner that constitutes a nuisance, the Board may require such dog to wear a collar designed to reduce or control such excessive barking (provided that such action shall in no event limit any other rights or remedies for such situation that may be available to the Board or to any other parties at law or in equity)

(c) Placement of Outdoor Clothes Drying Structure No outdoor poles, clotheslines or similar equipment shall be erected or located on any Lot

(d) Offensive and Illegal Activities No immoral, improper, illegal, noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof tending to cause embarrassment, discomfort, annoyance or nuisance to the Association, the Declarant or any Owners. There shall not be maintained any plants or animals, odors, fumes, or device or anything of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the Owners thereof. All laws, orders, rules, regulations, ordinances or requirements of any government agency having jurisdiction

thereof, relating to any parties of the property, shall be complied with, by or at the sole expense of the Owner or of the Association, whichever shall have the obligation to maintain or repair such portion of the property

(e) Parking Parking of vehicles on any street in the Properties shall be allowed only in accordance with the policy determined by the Board of Directors. No truck or other vehicle in excess of a three-quarter (3/4) ton load capacity, boat, vessel, motorboat, camper, trailer, motor or mobile home, or similar type vehicle or apparatus shall be parked or kept overnight or longer, on any street or on any Lot unless it is stored in an enclosed garage or in such a manner as to not be visible to the Owners of other Lots or the users of a street or Common Area (it being agreed that if any screening or other improvements or landscaping used for the purpose of preventing visibility of such items shall be subject to the architectural review provisions of these Protective Covenants). All tools or other materials stored in vehicles for overnight parking shall be kept out of sight. No vehicles or equipment which are unsightly in appearance as determined by the Board of Directors shall be allowed.

(f) Repair or Removal of Buildings Any dwelling or improvement on any Lot that is destroyed in whole or in part by fire or other casualty shall be either rebuilt or torn down and all debris removed and the Lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three (3) months. If a replacement Lot is to be constructed, the replacement Lot must be approved by the Committee in accordance with Article 10.

(g) Outside Burning No outside burning shall be permitted except as may be approved by the Board in advance (provided that in no event shall burning be permitted except in compliance with all applicable governmental regulations).

(h) Signs For as long as the Declarant, its successors or assigns, or an Approved Builder, owns any land within the Residential Community, no "For Sale," signs shall be allowed on any Lot. Declarant, its successors or assigns, and any Approved Builder, has the absolute right to remove any such signage, and shall not be liable to the sign owner, or the Lot Owner for trespass, conversion, destruction, or any other legal recourse. Subject to the foregoing, all signs must be approved by the Committee prior to installation. The Committee may approve or reject any request for signage, or may approve with conditions including size limits. Subject to applicable law, no signs, billboards, political signs or other advertising structure(s) of any kind shall be erected on any Lot or displayed to the public on any Lot subject to these restrictions without prior written approval of the Committee. This covenant shall not apply to signs erected by the Declarant, including signs used to identify and advertise the Properties as a whole. Declarant or Committee has the right to enter upon the Lot and remove any unapproved sign. Without limiting the foregoing, the Committee shall issue guidelines from time to time outlining the Residential Community's policy for the posting of "for sale" signs and similar temporary signs by or upon any Lot (which policy shall include the permitted dimensions and appearance of such signs and may even prohibit such signs altogether).

(i) Hunting and Fishing No hunting or discharge of firearms within the subdivision is permitted. The Association, through its Board of Directors, reserves the right to control or remove animals (including, without limitation, the authorization of bow hunting to reduce or eliminate nuisance animals) subject to rules and restrictions to be determined by the Board. Fishing shall be permitted only in locations designated by the Board from time to time and shall be subject to reasonable restrictions imposed by the Board.

(j) Garbage Garbage and trash shall be disposed by Owners in accordance with the rules and regulations of the Association. All trash receptacles and garbage cans shall be screened so as not to be visible by the Owners of other Lots or the users of any street or Common Area. All such screening shall

be approved by the Committee For the safety of the community and to decrease congestion and wear and tear on the Common Areas, the Association may impose a requirement that a single refuse collection company shall be used by all Lot Owners for trash and garbage removal in the Residential Community.

(k) Antennas No outside antennas or satellite dishes shall be erected on any Lot or structure unless and until permission for the same has been granted by the Committee. The design and location of the dish shall be approved by the Committee

(l) Well Installation The Owners of single-family residential Lots shall be allowed to install one single well per Lot for the purpose of irrigating the land comprising the Lot. This right shall be subject to the Declarant's reservation of rights in all surface and sub-surface water in the Properties herein All wells and pumps permitted under these Protective Covenants must be located so as not to be visible from any street or recreational area or Common Area and must be approved by the Committee, screened from view, set back a minimum of fifty (50) feet from any street sewer line and well water shall be free of or treated to be free of iron, manganese, and other substances causing discoloration of grass, plants, sidewalks, pavement, and structures All structures within the Lot shall also be kept free from discoloration, including rust In the event the use of water from any well is determined, in the Board's discretion, to be causing rust or discoloration on a Lot, the Board shall be entitled to require the Owner of such Lot to discontinue the use of such well

(m) Restricted Activities The following activities are prohibited within the Properties unless expressly authorized by the Board subject to any conditions imposed by the Board:

(i) Activities which materially disturb or destroy the vegetation, wildlife, water or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution,

(ii) Any Business or Trade, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot, (b) the activity does not involve visitation of the Lot by clients, employees, agents, customers, suppliers, or other business invitees, delivery services, or door-to-door solicitation of residents of the Properties, and (c) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board

(iii) Nothing shall be kept and no activity shall be carried on in any building, structure or home or on the Common Area which will increase the rate of insurance, applicable to residential use, for the property or the contents thereof No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his home or on the Common Area which will result in the cancellation of insurance on any portion of the property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation No waste shall be committed on any portion of the Common Area

(n) Property Damage Owners shall be responsible for any damage done to any streets, roadways, access ways, curbing, street gutters, sidewalks, Common Areas or property of other Owners within the Properties which may be caused by any Owner, his agents, contractor or its subcontractor lessees, employees, guests, licensees or invitees The Association shall have the authority to assess any Owner for such damage and such charge shall be an Individual Assessment against the Owner and his Lot(s) and may be enforced in accordance with the provisions of Article 9 herein

(o) Junk Vehicles No stripped, partially wrecked, junk motor vehicle, or part thereof, or any motor vehicle not displaying a current valid inspection sticker shall be permitted to be parked or kept on any Lot

(p) Fuel Tanks No fuel tanks or similar storage receptacles may be exposed to view. The placement of any such receptacles may be approved by the Committee or Declarant and may only be located within the main dwelling house, within an accessory building, within a screened area, or buried underground

(q) Mailboxes Some Lots may be served by a single mailbox bank or kiosk. If that is the case, no mailboxes shall be installed or allowed to remain on any Lot which has a mailbox within such mailbox kiosk. Any Lots which are not served by such a mailbox kiosk may, have individual mailboxes installed subject to the following. All mailboxes and other such receptacles must be approved in advance by the Committee. Any boxes provided by the Declarant on a Lot shall be considered an improvement and must remain with the Lot and must be maintained by the Lot Owner. Boxes and/or posts damaged shall be repaired to an attractive condition or replaced by the Lot Owner within thirty (30) days of loss or damage. The restrictions in this subparagraph (q) shall not apply to any cluster mailboxes provided by Declarant on the Common Area (if applicable).

(r) Outdoor Objects, No outdoor statuary, flags or other decorative objects may be placed on any Lot without the written approval of the Committee. The American Flag no larger than 3 feet x 5 feet may be flown on a pole no longer than 5 foot 6 inches from a pole holder attached to the home in an approved location which can be reached by hand from the ground below so as to be easily installed and removed. Any flags will be displayed in accordance with traditional rules and regulations governing the flying and display of the American Flag

(s) Alteration of Common Area, No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area except at the direction of and with the express written consent of the Committee

(t) Use of Common Areas The Common Areas shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the homes, subject to any Rules or Regulations that may be adopted by the Association hereunder or pursuant to its By-Laws

(u) Storage of Personal Property All lawn mowers, bicycles, toys, grills and other similar objects must be stored when not in use so as not to be visible by the Owners of other Lots or the users of any street or Common Area

(v) Exterior Features and Structures All exterior storage areas, laundry facilities, utility areas, service yards or areas and carports are to be screened from view from streets and adjacent properties by an enclosure, fence, wall or natural landscape materials. Any screening shall be subject to the architectural review requirements of these Protective Covenants

(w) Road Use The roads are to be used by vehicles or pedestrians for the purposes of transportation. At no time shall any vehicle exceed the speed limit as determined by the Association or the applicable governmental authority. No permanent, frequent, or long-term parking is permitted along or on roads except in specifically designated areas. The Association is entitled to adopt reasonable rules and regulations regarding the supervision, maintenance, control, regulation and use of the roads and promenades, and to enforce the same in any lawful manner which may include, but not be limited to, the

imposition of fines for violations thereof, which fines shall be Individual Assessments and may be enforced in accordance with the provisions of Article 9

(x) Declarant's Activities (1) This subsection 11 5 shall not apply to any activity conducted by the Declarant or its assigns with respect to its development and sale of the Properties or any commercial activities of the Declarant or its assigns, including any sales office maintained by Declarant or its assigns, and (2) Declarant shall be specifically authorized to rent or lease any Lot which it owns or manages for other Owners, and to maintain model Lots or sales offices in any Lot which it owns or leases

11 6 Stormwater Runoff Rules The covenants in this Section 11 6 are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 140211 (the "Permit"), as issued by the North Carolina Division of Water Quality ("NCDWQ") under NCAC2H 1000

(a) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Permit

(b) The covenants under this Section 11 6 are to run with the land and be binding on all persons and parties claiming under them

(e) The covenants under this Section 11 6 pertaining to stormwater regulations may not be altered or rescinded without consent of NCDWQ

(d) Alteration of the drainage as shown on the plans for the Subdivision approved by NCDWQ may not take place without the concurrence of NCDWQ

(e) The maximum built upon area per lot is set forth as **Exhibit C** attached hereto This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the tight-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, coquina, driveways, and parking areas, but does not include raised, open wood decking or the water surface of swimming pools

(f) Affected lots shall provide a 50-foot-wide buffer adjacent surface waters, measured horizontally from and perpendicular to the normal pool of impounded structures, the top of bank of both sides of streams and rivers, and the mean high water line of tidal waters

(g) Lots within CAMA's Area of Environmental Concern may have the permitted built-upon area reduced due to CAMA jurisdiction within the AEC

(h) All runoff on the lot must drain into the permitted system This may be accomplished through providing roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales and directing them into the pond or street Lots that will naturally drain into the system are not required to provide these measures

(i) Built-upon area in excess of the permitted amount will require a permit modification

(j) Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of the stormwater rules is subject to enforcement procedures as set forth in G.S. 143 Article 21

(k) Declarant hereby reserves the right to impose additional restrictions upon the Properties as and to the extent required by the terms of the Permit. Further, Declarant may re-allocate any unused BUA for any Lot to any other Property within Helms Port, by modifying the Stormwater Permit. Such additional restrictions, or permitted reallocation of BUA, may be imposed or established by Declarant, by the recording of an Amendment to the Declaration, and no joinder or consent of the Association or any Owner or other Person shall be required.

ARTICLE 12 EASEMENTS

12.1 Easements for Utilities. There are hereby reserved unto Declarant (for the duration of the Class "B" Control Period) and for the Association, and for the designees of each, access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining any cable television system, any master television antenna system, irrigation systems, any security and similar systems, roads, walkways, bicycle pathways, recreation pathways, trails, ponds, lakes, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, meter boxes, telephone, garbage pickup, and electricity, irrigation and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes in these Protective Covenants or on recorded plats of the Properties. Any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement rights. Utilities may not be installed or relocated on the Properties, except as approved by the Board or Declarant.

12.2 Easement for Utility Installation

(a) All of the Property, including Lots and Common Area, shall be subject to a perpetual non-exclusive easement for water lines, sanitary sewers, storm drainage facilities, telephone and electric power lines, television antenna lines, and other public utilities as shall be established by the Declarant as may hereinafter be designated on any plat or replat of parcels within the Residential Community whether the same be within the boundaries of any Lot(s).

(b) Easements and rights of way over and upon the rear, front and side five (5) feet of each Lot for drainage and the installation and maintenance of utilities and services, including, without limitation, water, sewer, drainage and stormwater runoff facilities, are reserved to Declarant and its successors and assigns for such purposes as Declarant may deem incident and appropriate to its overall development plan. If the side setback is less than five (5) feet then the reserved easement shall be the width of the setback. The easements and right of way areas reserved by Declarant on each Lot pursuant hereto shall be maintained continuously by the Owner, but no structures or plantings or other material shall be placed or permitted or remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Improvements within such areas also shall be maintained by the respective Owner except those for which a public authority or utility company is responsible. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary in the opinion of the Declarant to provide an economical and safe installation. The Declarant shall have no maintenance responsibilities for such easement areas.

(c) The Declarant reserves a perpetual, non-exclusive easement for the installation, maintenance and repair of water, sewer, drainage and all other utilities within the right of way of

all roads and streets and other areas as shown on the recorded plats of the Property which easement may be exercised by Declarant or any public or private entity charged with the responsibility of maintenance and repair

(d) The Association hereinafter may grant easements for utility purposes for the benefit of the Properties and the Lots now or hereafter located thereon, over, under, along and through the Common Areas Provided, however, that no such grant of easement shall have a material adverse effect on the use, enjoyment or value of any Lot.

12.3 Easements to Serve Additional Property The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any Future Development Property, whether or not such property is made subject to these Protective Covenants. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

12.4 Easement for Yacht Club Helms Port Yacht Club, Inc. and its Members, shall enjoy an easement and right of use of all the roads, outdoor shower facilities, bath houses, parking areas, boardwalks, and walkways. Such easement right is established for the reasonable use of those identified Common Areas by the Members, subject to the reasonable uniform Rules and Regulations duly adopted and published by the Board.

12.5 Easements for Cross-Drainage

(a) Every Lot and the Common Area shall be burdened with easements for drainage of water runoff from other portions of the Properties, provided, no Lot Owner shall alter the drainage on any Lot so as to materially increase the drainage of water onto adjacent portions of the Properties without the consent of the Owner of the affected property.

(b) The Properties are burdened with a permanent and right to use easement for the benefit of the Declarant and its successors and assigns, for the stormwater runoff and drainage facilities located on the Properties, including, without limitation, any stormwater retention ponds or ditches. This easement includes the right to drill, install, locate, maintain and use pipes, conduits and pumps running to the stormwater retention ponds and other related facilities located on the Properties.

12.6 Power to Grant Easements Subject to the requirements of the Planned Community Act, the Association shall have the power and authority to grant and to establish in, over, upon and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the property.

12.7 Easement for Entry The Association have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance pursuant to Article 5 hereof, and to inspect for the purpose of ensuring compliance with these Protective Covenants, any Supplemental Declaration, the Articles, By-Laws, and the Rules and Regulations, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any single family detached

dwelling without permission of the Owner, except by emergency personnel acting in their official capacities

12 8 Easement Maintenance Except as provided in Article 5 herein, maintenance of any berm areas and water, sewer or drainage easement shall be the responsibility of the Owner of the Lot on which said easement is located. No structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, sewer or drainage facilities, or which may change the direction of flow of drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

12 9 Easement for Irrigation

(a) There is hereby reserved for the benefit of the Declarant, the Association, and their successors and assigns, a permanent exclusive easement and right (1) to pump water from any ponds, waterways, basins, water table, wells, water dependent structures and other bodies of water located in, on or under the Properties for the purpose of irrigating any portion of the Properties, and (2) to drill, install, locate, maintain and use wells, pumping stations, water towers, filtration basins and tanks and related water facilities and systems within the Common Areas and/or lands within the Properties owned by the Declarant. The pumping or other removal of any water from any pond or body of water wholly or partly within the Properties, for any purpose other than fire-fighting and as provided herein is prohibited without express written permission of the Declarant and/or the Association.

(b) The Property is hereby burdened with a permanent, exclusive easement in favor of the Declarant and its successors and assigns, for overspray and/or surface or subsurface flow of water from any irrigation system serving the Properties. Under no circumstances shall the Declarant or the Association be held liable for any damage or injury resulting from said water, or the exercise of this easement.

12 10 Easements for Owner's Ingress and Egress Every Owner, and his or her heirs, successors, assigns, guests and licensees, shall have a perpetual easement and right of ingress and egress over and across any of the roads and sidewalks located or to be located within the Properties, as shown on any recorded plats of the Property, for the purpose of providing vehicular and pedestrian access to and from the Properties. Notwithstanding the foregoing, Declarant shall be entitled to restrict access on certain roads and sidewalks in Declarant's discretion. Accordingly, the use of such roads and sidewalks shall be subject to applicable Rules and Regulations.

12 11 Easement for Pathways Each Owner, and their authorized guests or invitees, shall have a perpetual, non-exclusive easement for the use and enjoyment of bicycle paths, pedestrian paths, golf cart paths and parking areas or nature preserve trails, if any, which may be established by the Declarant. Notwithstanding the foregoing, Declarant shall be entitled to restrict access to the aforementioned improvements and amenities in Declarant's discretion. Accordingly, the use of such improvements and amenities shall be subject to applicable Rules and Regulations.

12 12 Common Area Easement

(a) Every Owner of a Lot within the Properties, as an appurtenance to such Lot, shall have a perpetual easement over and upon the Common Areas within the Properties for each and every purpose or use to which such Common Areas were intended as determined by their type, or for which such Common Areas generally are used, including, but not limited to, easement of access,

maintenance, repair or replacement of the Common Areas. Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Properties, whether or not specifically included in a deed thereto.

(b) An exclusive easement is hereby established in favor of Declarant over all Common Areas for access to adjacent properties for the purposes of future development and the installation of streets and public utilities.

(c) Maurice S. Emmart, Jr. and his wife Patricia Emmart, their children Mark R. Emmart, William M. Emmart, and the children of said Mark R. Emmart and William M. Emmart (the "Emmarts,") shall be entitled to the free use of the private roads, club house, pool, beach areas and boardwalks which form a portion of the Common Areas. Such right of use shall not be transferrable except to or among the Emmarts, and shall cease at such time that the Emmarts no longer own and occupy any of the properties abutting the southern boundary of the Residential Community. All provisions of these Protective Covenants and any Association Rules shall apply to the right of the Emmarts to use the areas described, provided however, the Emmarts shall not be obligated to pay the assessments described in Article 9, nor shall they be entitled to any voting rights in the Association. The grant described in this section shall be limited to the use of the areas described herein and shall not include the use of any boat slips or marina facilities described in Section 2.2.

12.13 Easements Run with the Land. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on all undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the benefit of and be binding on the undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said *easement is made in the respective deeds of conveyance, or in any Mortgage or trust deed or other evidence of obligation, to the easements and rights described in these Protective Covenants*.

ARTICLE 13 MORTGAGEE PROVISIONS

13.1 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

13.2 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response within thirty (30) days of the mailing of such request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE 14 DECLARANT'S RIGHTS

14.1 Transfer of Declarant's Rights. Any or all of the special rights and obligations of the Declarant set forth in these Protective Covenants or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in these Protective Covenants or the By-Laws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the land records of New Hanover County, North Carolina.

14.2 Rights of Declarant and Approved Builders Notwithstanding anything in these Protective Covenants to the contrary, so long as sales of Lots by the Declarant shall continue, the Declarant, and Approved Builders, may maintain and carry on such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, the construction and use of sales and business offices, signs and model Lots, and the use of any Common Areas and any facilities therein. The Declarant and Approved Builders shall have easements for access to and use of such facilities.

14.3 Rights to Alter The rights reserved by Declarant in these Protective Covenants (including, without limitation, the right to annex property under Article 8 herein) include the right to change, alter or designate Lot(s), roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment of the Declarant, be necessary or desirable. The rights reserved in this Section specifically include the right of Declarant to redesignate, change, or alter any platted Lot(s) into road(s).

ARTICLE 15 DURATION, AMENDMENT AND TERMINATION

15.1 Lots, Persons and Entities Subject to the Protective Covenants, Duration and Termination All present and future Owners, tenants, and occupants of Lots and their guests or invitees, licensees, employees or agents, shall be subject to, and shall comply with the covenants, conditions, restrictions and affirmative obligations set forth in these Protective Covenants, and as the Protective Covenants may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of these Protective Covenants are accepted and ratified by such Owner, tenant or occupant and that they will fully comply with the terms and conditions of said Protective Covenants. The covenants, conditions, restrictions, and affirmative obligations of these Protective Covenants shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date these Protective Covenants are recorded in the New Hanover County Registry, after which date these Protective Covenants shall be automatically extended for successive periods of ten (10) years, unless these Protective Covenants are terminated as provided in §47F-2-118 of the Planned Community Act (provided that, during the Class "B" Control Period, any termination shall also require the consent of Declarant). The covenants, restrictions, conditions and affirmative obligations of these Protective Covenants shall run with and bind the land and shall bind any person having at any time any interest or estate in any of the Properties as though such provision were made a part of each and every deed of conveyance or lease.

15.2 Amendment During the Class "B" Control Period, these Protective Covenants may be amended by Declarant in its discretion. Retention of this right by the Declarant is not intended to affect the general or common scheme of development for the property herein described but to correct and/or modify situations or circumstances which may arise during the course of development. Thereafter, these Protective Covenants may be amended by vote of not less than sixty-seven percent (67%) of the Class "A" Members, and an instrument must be recorded at the New Hanover County Registry for such an amendment to be effective. In addition, the Declarant may amend these Protective Covenants to annex additional property and make it subject to the terms, conditions, restrictions, obligations and covenants of these Protective Covenants as provided in Article 8 herein.

No amendments may remove, revoke, or modify any benefit, right or privilege of the Declarant hereunder without the written consent of the Declarant or the assignee of such right or privilege.

15.3 Storm Water Restrictions Notwithstanding the foregoing to the contrary, Declarant shall be entitled to unilaterally amend these Protective Covenants as provided in Section 11.6 herein

ARTICLE 16

COMPLIANCE WITH THESE PROTECTIVE COVENANTS, THE ARTICLES THE BYLAWS AND THE RULES AND REGULATIONS OF THE ASSOCIATION

In the case of failure of an Owner to comply with the terms and provisions contained in these Protective Covenants, the Articles, the By-Laws or Rules and Regulations of the Association, the following relief shall be available

16.1 Enforcement The Association, the Declarant and any aggrieved Owner within the Residential Community shall have the right to enforce by any proceeding at law or in equity, all of the conditions, covenants and restrictions of these Protective Covenants and the Articles, By-Laws and Rules and Regulations of the Association and any and all laws hereinafter imposed pursuant to the terms of these Protective Covenants. The prevailing party shall be entitled to collect all costs thereof, including reasonable attorney's fees (which shall be determined using reasonable hourly rates)

16.2 Remedies The Association shall have the right to remedy the violation and assess the costs of remedying same against the offending Owner as an Individual Assessment as provided in Article 9 herein

16.3 Suspension of Rights For any violation by an Owner, including, but not limited to, the nonpayment of any general, special or individual assessment, the Association shall have the right to suspend the offending Owner's voting rights and the use by such Owner, his agents, lessees, employees, licensees and invitees of the Common Areas and recreational facilities in the Residential Community for any period during which a violation continues

16.4 Fines The Association may establish a schedule of fines for the violation of these Protective Covenants, the Articles, By-Laws and Rules and Regulations. If an Owner does not pay the fine within fifteen (15) days the fine shall be an Individual Assessment against the property and may be enforced by the Association in accordance with Article 9 herein

16.5 Remedies Cumulative. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law

16.6 Waiver The failure of the Association or any person or Owner to enforce any restriction contained in these Protective Covenants, the Articles, the By-Laws or the Rules and Regulations shall not be deemed a waiver of the right to do so thereafter

ARTICLE 17

GENERAL PROVISIONS

17.1 Common Area and Amenities All of the Common Area and any other park, recreation area, recreation facility, dedicated access or other amenity appurtenant to the Properties, whether or not shown and delineated on any recorded plat of the Properties, shall be considered private and for the sole and exclusive use of the Owners of Lots within the Properties. Neither Declarant's execution nor the recording of any plat nor any other act of Declarant with respect to such area is, or is intended to be, or shall be construed as a dedication to the public of any such areas, facilities, or amenities

17.2 Conflict In the event of any irreconcilable conflict between these Protective Covenants and the By-Laws or Articles of the Association, the provisions of these Protective Covenants shall control

17.3 Severability Invalidation of any one of these covenants or restrictions by judgment or any court, agency or legislative order shall in no way affect any other provision, covenants, conditions or restrictions contained in these Protective Covenants


17.4 Captions The captions preceding the various Articles of these Protective Covenants are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Protective Covenants 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 these Protective Covenants, 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


17.5 Use of the Words "Helms Port" No Person shall use the words "Helms Port", any derivative or any other term which Declarant may select as the name of the development or any component thereof in any printed or promotional material without the Declarant's or the licensee's prior written consent However, Owners may use the words "Helms Port" in printed or promotional matter solely to specify that particular property is located within the Properties and the Association shall be entitled to use the words "Helms Port" in its name

IN TESTIMONY WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written

SEL PROPERTY INVESTORS, LLC

BY 
D I LOGAN, Manager

BY 
MAURICE S EMMART, Jr, Manager
DANIEL E. SMITH

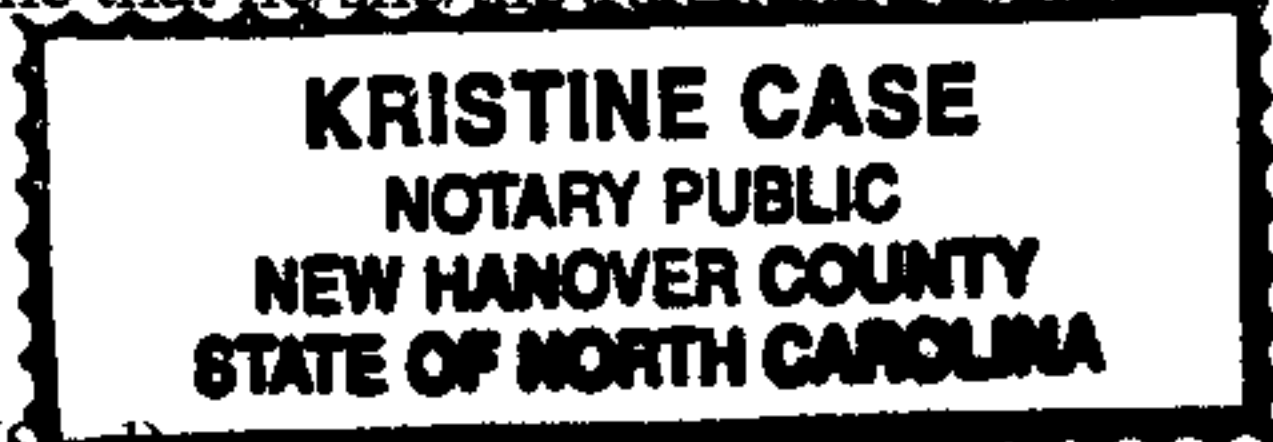
BY 
DANIEL E SMITH, Manager
MAURICE S. EMMART, Jr

State of North Carolina
County of New Hanover

I, Kristine Case, a Notary Public of New Hanover County, North Carolina do certify that on this 1st day of April, 2015, before me personally appeared O I Logan, Manager of SEL Property Investors, a North Carolina Limited Liability Company

personally known to me,
 proved to me by satisfactory evidence,
 proved to me on the oath or affirmation of _____ who is personally known to me,

to be the person(s) whose name(s) is/are signed on the preceding or attached record, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose



Kristine Case
Notary Public

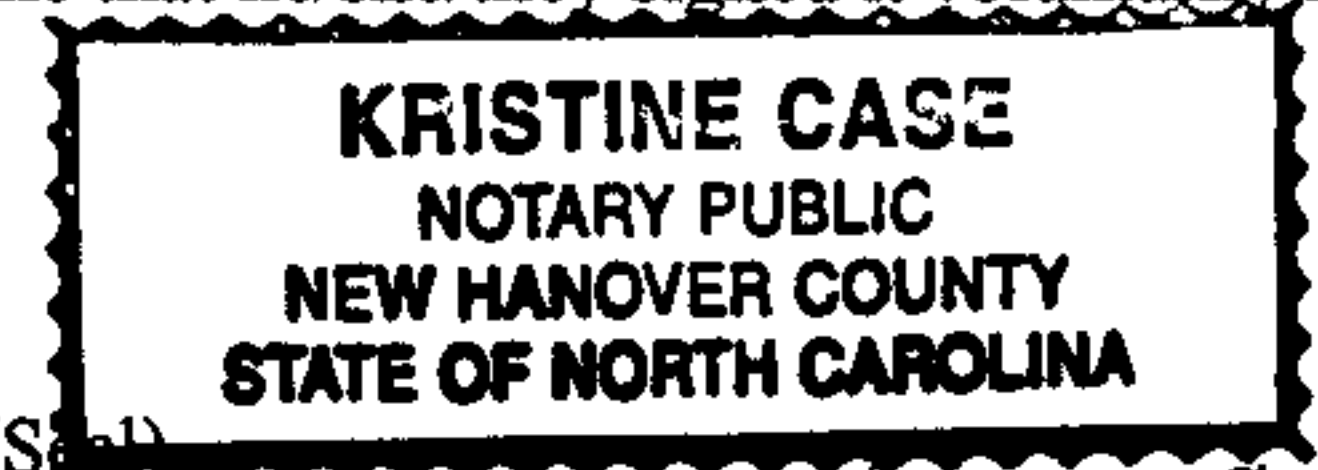
(Seal)
My Commission expires: August 8, 2016

State of North Carolina
County of New Hanover

I, Kristine Case, a Notary Public of New Hanover County, North Carolina do certify that on this 1st day of April, 2015, before me personally appeared Daniel E. Smith, Manager of SEL Property Investors, a North Carolina Limited Liability Company

personally known to me,
 proved to me by satisfactory evidence,
 proved to me on the oath or affirmation of _____ who is personally known to me,

to be the person(s) whose name(s) is/are signed on the preceding or attached record, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose



Kristine Case
Notary Public

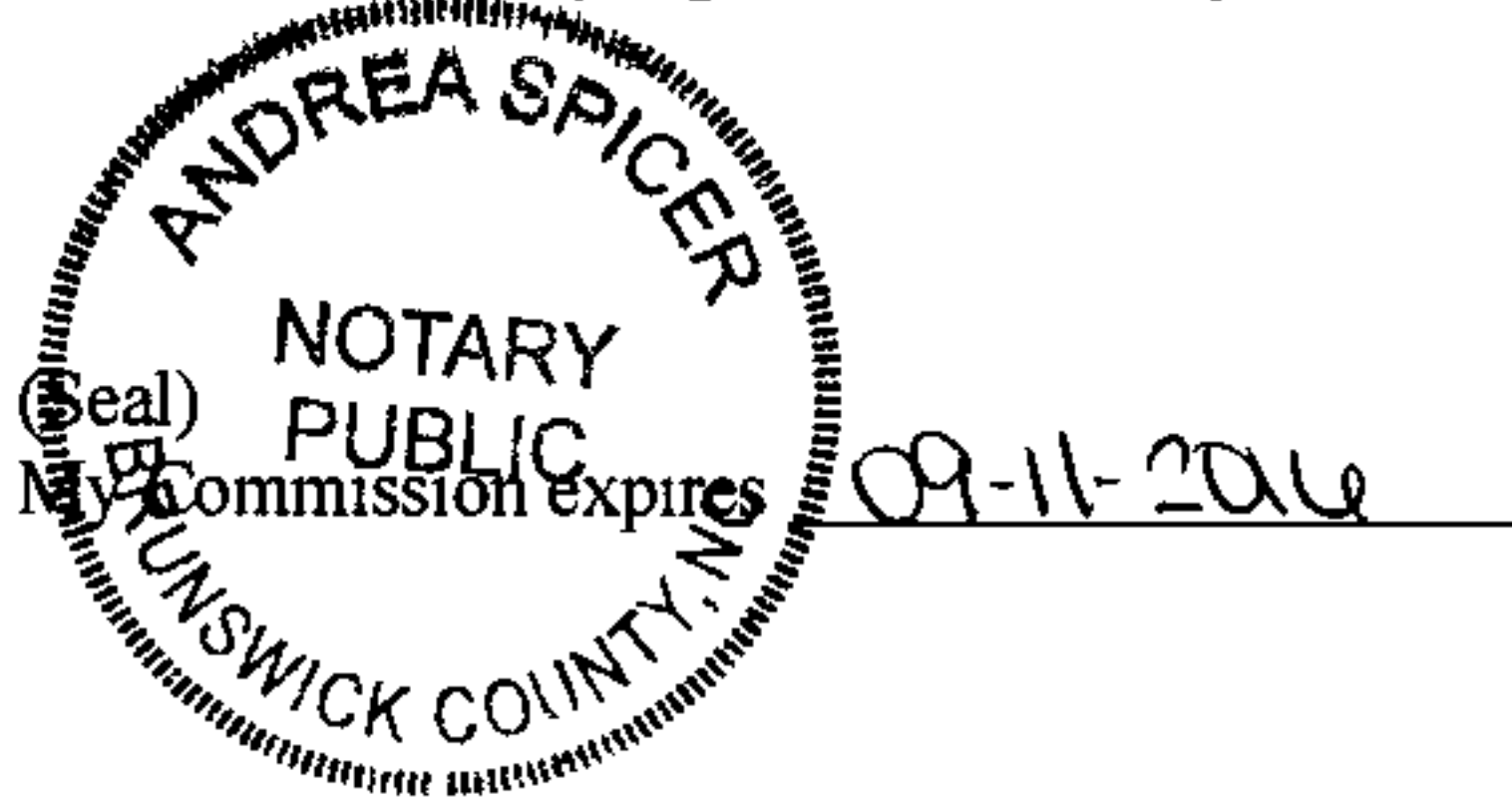
(Seal)
My Commission expires: August 8, 2016

State of North Carolina
County of New Hanover

I, Andrea Spicer, a Notary Public of Brunswick County, North Carolina do certify that on this 6 day of April, 2015, before me personally appeared Maurice S. Emmert, JR, Manager of SEL Property Investors, a North Carolina Limited Liability Company

X personally known to me,
____ proved to me by satisfactory evidence,
____ proved to me on the oath or affirmation of _____ who is personally known to me,

to be the person(s) whose name(s) is/are signed on the preceding or attached record, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose



[Signature]
Notary Public

CONSENT OF MORTGAGEE

MBM CAPITAL, LLC, a North Carolina limited liability company, is the holder of that certain Deed of Trust on the property as described in the foregoing Master Declaration of Protective Covenants for Helms Port (herein called, "Protective Covenants"), said Deed of Trust having been filed in **Book 5769 at Page 44** in the Office of the Register of Deeds of New Hanover County, and as holder of said Deed of Trust does hereby consent to the terms, conditions and covenants in the Protective Covenants and agrees that the lien of said Deed of Trust is subject to the terms, conditions and covenants contained in said Protective Covenants

In witness whereof, **MBM CAPITAL, LLC**, has caused this Consent of Mortgagee to be signed in its company name by its duly authorized Managers or Agents by authority of its Members, this the _____ day of _____, 2015

BENEFICIARY
MBM CAPITAL, LLC

BY Maurice S. Emmart, Jr.
Maurice S Emmart, Jr , Manager

By Mark R. Emmart
Mark R Emmart, Manager

By William M. Emmart
William M Emmart, Manager

State of North Carolina
County of New Hanover

I, Andrea Spicer, a Notary Public of Brunswick County, North Carolina do certify that on this 6 day of April, 2015, before me personally appeared Maurice S. Emmart, Jr., Mark R. Emmart, and William M. Emmart Managers of MBM CAPITAL, LLC, a North Carolina Limited Liability Company

X personally known to me,
_____ proved to me by satisfactory evidence,
_____ proved to me on the oath or affirmation of _____ who is personally known to me,
to be the person(s) whose name(s) is/are signed on the preceding or attached record, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose

[Signature]

Notary Public



My Commission Expires. 09-11-2016

CONSENT OF MORTGAGEE

SHP CAPITAL I, LLC, a North Carolina limited liability company, is the holder of that certain Deed of Trust on the property as described in the foregoing Master Declaration of Protective Covenants for Helms Port (herein called, "Protective Covenants"), said Deed of Trust having been filed in Book 5769 at Page 19, in the Office of the Register of Deeds of New Hanover County, and as holder of said Deed of Trust does hereby consent to the terms, conditions and covenants in the Protective Covenants and agrees that the lien of said Deed of Trust is subject to the terms, conditions and covenants contained in said Protective Covenants

In witness whereof, SHP CAPITAL 1, LLC has caused this Consent of Mortgagee to be signed in its corporate name by its duly authorized Managers or Agents by authority of its Members, this the 1st day of April, 2015

BENEFICIARY
SHP CAPITAL I, LLC

BY [Signature]
MICHAEL S BURNHAM, Manager

State of North Carolina
County of New Hanover

I, Kristine Case, a Notary Public of New Hanover County, North Carolina do certify that on this 1st day of April, 2015, before me personally appeared MICHAEL S BURNHAM, Manager of SHP CAPITAL I, LLC, a North Carolina Limited Liability Company

personally known to me,
 proved to me by satisfactory evidence,
 proved to me on the oath or affirmation of _____ who is personally known to me,

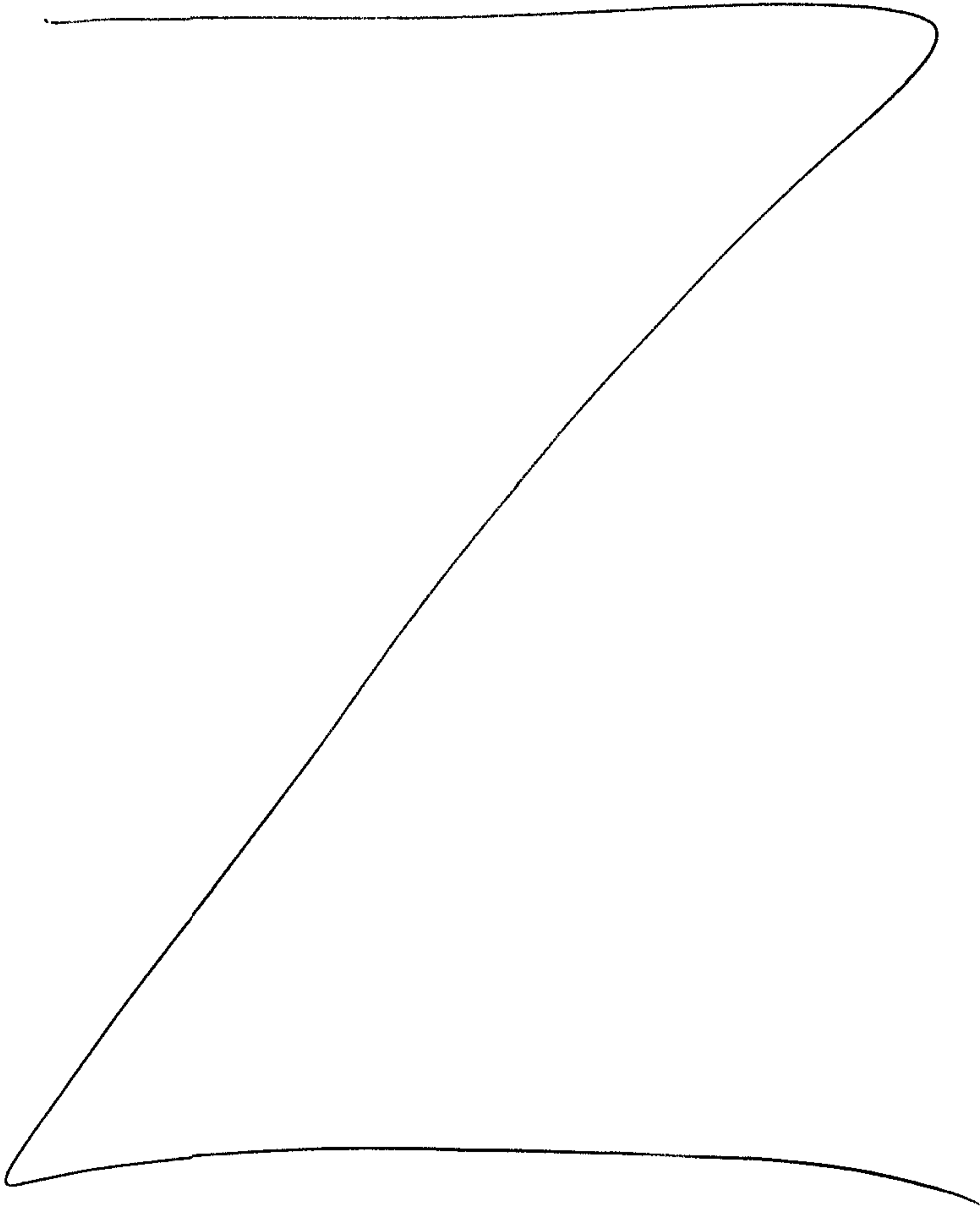
to be the person(s) whose name(s) is/are signed on the preceding or attached record, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose

**KRISTINE CASE
NOTARY PUBLIC
NEW HANOVER COUNTY
STATE OF NORTH CAROLINA**

Kristine Case
Notary Public

(Seal)
My Commission expires August 8, 2016

EXHIBIT A



PARAMOUNT

ENGINEERING INC

April 1, 2015

Helms Port – Phase I
Deed Book 5768 Page 297
100 Aqua Vista Drive
Wilmington NC

All that tract (Phase I) or parcel being part of lands conveyed to SEL Property Investors, LLC in Deed Book 5768 at Page 297 and located on the east side of Masonboro Loop Road – SR 1492, Masonboro Township, New Hanover County, North Carolina, said parcel being more particularly described as follows

Beginning at an iron rod located at the intersection of the easterly line of Masonboro Loop Road – SR 1492 (60' wide Public ROW) with the northerly street boundary of Masonboro Harbour Drive (60' Private ROW).

Thence North 22°27'23" East along the easterly street boundary of Masonboro Loop Road a distance of 1058 51 feet to an iron rod located at the intersection of the easterly street boundary of Masonboro Loop Road with the property line between said lands of SEL Property Investors, LLC on the south and the lands of Wilham M Todd and Carolyn J Todd as recorded in Deed Book 5481 at Page 2875 on the north,

Thence South 70°32'11" East along the property line between said lands of SEL Property Investors, LLC on the south and the lands of William M Todd and Carolyn J Todd (Deed Book 5481, Page 2875), Jeffery Scott Clark and Tammy W Clark (Deed Book 5206, Page 2942), Leah Massey Grenell (Deed Book 5266 Page 2919) Doris W Long (now or formerly) (Deed Book 9903 Page 1913), and Joseph C Gainey (now or formerly) (Deed Book 9910 Page 1203), on the north for a distance of 1170 27 feet to an iron rod found, said iron rod located on the property line between said lands of SEL Property Investors, LLC on the east and the lands of Joseph C Gainey (now or formerly) (Deed Book 9910 Page 1203) on the west,

Thence along said property line the following three (3) courses and distances

- 1 Thence North 26°01'59" East a distance of 12 42 feet to an iron rod,
- 2 Thence North 07°43'59" East a distance of 121 45 feet to an iron rod,
- 3 Thence North 03°45'01" West a distance of 123 38 feet to an iron rod, said iron rod located on the property line between said lands of SEL Property Investors, LLC on the south and the lands of the State of North Carolina as recorded in Deed Book 4151 at Page 52 on the north,

Thence South 69°57'15" East along said property line a distance of 733.79 feet to an iron rod, said iron rod located on the property line between said lands of SEL Property Investors, LLC on the south and the lands of the State of North Carolina as recorded in Deed Book 3688 at Page 555 on the north,

Thence South 20°33'40" West along said property line for a distance of 239.22 feet to an iron rod, said iron rod located on property line between said lands of SEL Property Investors, LLC on the south and said lands of the Endowment of UNCW on the north,

5911 OLEANDER DRIVE, SUITE 201
WILMINGTON, NC 28403
PH (910) 791-6707
FAX (910) 791 - 6760

2533 RAEFORD ROAD, UNIT - A
FAYETTEVILLE, NC 28305
PH (910) 263-8092
FAX (910) 223-1303

Helms Port – Phase 1

April 1, 2015

Page 2 of 2

Thence south $70^{\circ}27'43''$ East along said property line for a distance of 412 14 feet to an iron rod, said iron rod located on the property line between said lands of SEL Property Investors, LLC on the south and the lands of the State of North Carolina as recorded in Deed Book 5326 at Page 1737 on the north,

Thence along said property line the following eight (8) courses and distances running the Phase I boundary for SEL Property Investors, LLC

Thence South $16^{\circ}01'05''$ West along said property line for a distance of 250 82 feet to an iron rod,

Said curve turning to the left through a curve to the having a radius of 200 00 feet, and whose long chord bears $N 78^{\circ} 58' 19'' E$ for a distance of 17 49 feet to an iron rod with a non-tangential line

Thence South $81^{\circ}28'42''$ East along said property line for a distance of 41 62 feet to an iron rod,

Thence South $08^{\circ}31'18''$ West along said property line for a distance of 175 37 feet to an iron rod,

Thence North $78^{\circ}55'45''$ West along said property line for a distance of 50 83 feet to an iron rod.

Thence South $11^{\circ}04'12''$ West along said property line for a distance of 439 98 feet to an iron rod,

Thence South $48^{\circ}09'46''$ West along said property line for a distance of 43 54 feet to an iron rod,

Thence South $31^{\circ}26'02''$ West along said property line for a distance of 15 66 feet to an iron rod,

Thence North $65^{\circ}38'09''$ West along said property line for a distance of 640 91 feet to an iron rod, said iron rod located on the property line between said lands of SEL Property Investors, LLC on the north and the lands of the MBM Capital, LLC as recorded in Deed Book 5768 at Page 2969 on the south,

Thence South $24^{\circ}28'19''$ West along said property line for a distance of 353 26 feet to an iron rod, said iron rod located on the property line between said lands of SEL Property Investors, LLC on the north and the lands of the MBM Capital, LLC as recorded in Deed Book 5768 at Page 2969 on the south,

Thence North $65^{\circ}31'41''$ West along said property line a distance of 1728 44 feet, said iron rod located on the property line between said lands of MBM Capital, LLC on the north and the Masonboro Harbour Subdivision as recorded in Map Book 31 at Page 200 on the south, to the Point of Beginning, containing 2,655,098 +/- square feet or 60 95 acres, more or less

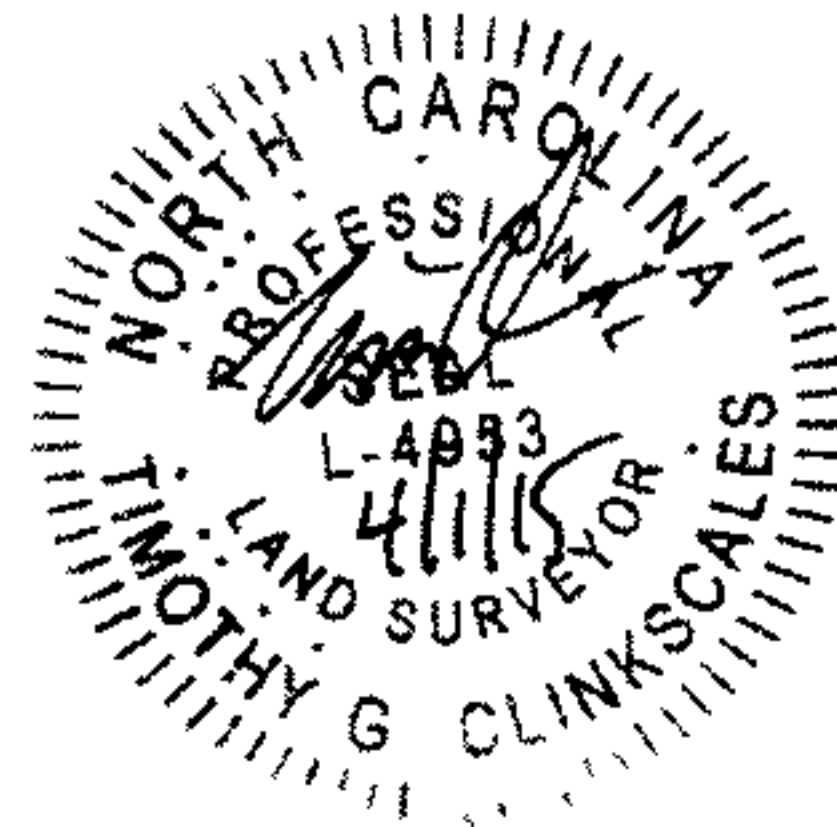


EXHIBIT B
BY-LAWS
OF
HELMS PORT MASTER ASSOCIATION, INC.

Article I
Name, Principal Office, and Definitions

1 1 Name

The name of the corporation is Helms Port Master Association, Inc (the "Association")

1 2 Principal Office

The principal office of the Association shall be located in New Hanover County, North Carolina. The Association may have such other offices, either within or outside the residential community of Helms Port ("Helms Port"), as the Board of Directors may determine or as the affairs of the Association may require.

1 3 Definitions

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized -terms shall have the same meaning as set forth in that certain recorded Master Declaration of Protective Covenants for Helms Port (as amended from time to time, the "Declaration"), unless the context indicates otherwise.

Article II
Membership: Meetings, Quorum, Voting, Proxies

2 1 Membership

Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of that membership. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association, provided that only one person (and such person's immediate family members with respect to membership rights other than voting) may be designated to act in such capacity for such an Owner at any particular time.

The Association shall have two classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2 Place of Meetings

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate

2.3 Annual Meetings

The first meeting of the Association, whether a regular or special meeting, shall be held within one year after the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur during the fourth (4th) quarter of the Association's fiscal year on a date and at a time set by the Board.

2.4 Special Meetings

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution signed by a majority of the Board or upon a petition signed by Members representing at least 10% of the total Class "A" votes of the Association.

2.5 Notice of Meetings

Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the Association's records, with postage prepaid.

2.6 Waiver of Notice

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings

If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called; provided, however, in the event any meeting is

adjourned and reconvened due to lack of a quorum, the quorum requirement applicable to such reconvened meeting shall be one-half (1/2) of the quorum requirement applicable at the meeting adjourned due to lack of a quorum

If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum

2 8 Voting

The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2 9 Proxies

Members may vote in person or by proxy, subject to the limitations of North Carolina law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws.

Every proxy shall be in writing specifying the Lot for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Lot for which it was given or (b) receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, from the date of the proxy, unless a shorter period is specified in the proxy.

2 10 Majority

As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2 11 Quorum

Except as otherwise provided in these By-Laws or in the Declaration, the presence of Members representing a majority of the total Class "A" votes in the Association shall constitute a quorum at all Association meetings.

2 12 Conduct of Meetings

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings

2 13 Action Without a Meeting

Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting of all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Article III

Board of Directors: Selection, Meetings, Powers

A Composition and Selection

3 1 Governing Body, Composition

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. Except with respect to directors appointed by the Class "B" Member, directors shall be Members or residents, provided, however, no Owner, resident or tenant representing the same Lot may serve on the Board at the same time. A "resident" shall be any natural person eighteen (18) years of age or older whose principal residence is a Lot within Helms Port. If a Member is not a natural person, any officer, director, partner or officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3 2 Number of Directors

The Board shall consist of three (3) to five (5) directors, as provided in Sections 3 3 and 3 5 below. The initial Board shall consist of three (3) directors as identified in the Articles of Incorporation.

3 3 Directors During Class "B" Control Period.

Directors appointed by the Class "B" Member pursuant to Section 3 5 of these By-Laws shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

3 4 Nomination and Election Procedures After the Class "B" Control Period

(a) Nominations and Declarations of Candidacy Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which *each* and *every* eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by votes of the Members. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Nominations also may be permitted from the floor.

Except with respect to directors selected by the Class "B" Member, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairman, who shall be a member of the Board, and three (3) or more Members. Members of the Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each annual meeting to serve a term of one (1) year and until their successors are appointed, and such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists *within* the pool of potential candidates.

Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

3 5 Election and Term of Office

Except as these By-Laws may otherwise specifically provide, election of directors shall take place at the Association's annual meeting. Notwithstanding any other provision of these By-Laws, within ninety (90) days after termination of the Class "B" Control Period, or whenever the Class "B" Member earlier determines, the Board shall be increased to five (5) directors. The President shall call for an election by which the Class "A" Members shall be entitled to elect three (3) of the five (5) directors. The remaining two (2) directors shall be appointees of the Class "B" Member. Directors elected by the Members under this subsection (a) shall not be subject to removal by the Class "B" Member (except as otherwise provided by North Carolina law) and shall be elected for a term of two (2) years.

Upon the expiration of the terms of the two (2) directors appointed by the Class "B" Member, the President shall call for an election by which the Class "A" Members shall be entitled to elect all five (5) of the directors.

Upon expiration of the term of office of each director elected by the Members, Members entitled to elect such director shall be entitled to elect a successor to serve a term of two (2) years. Directors elected by the Members shall hold office until their respective successors have been elected.

3 6 Removal of Directors and Vacancies

Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that

purpose Upon removal of a director, a successor shall be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director

Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as Declarant's representative The Class "B" Member or Declarant shall be entitled to appoint a successor *to fill any* vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant

B Meetings

3 7 Organizational Meetings

The first meeting of the Board following each annual meeting of the membership shall be held within thirty (30) days thereafter at such time and place as the Board shall fix

3 8 Regular Meetings

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter

3 9 Special Meetings

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by a majority of the directors

3 10 Notice, Waiver of Notice

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered The notice shall be given to each director by (1) personal delivery, (ii) first class mail, postage prepaid, (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director, or (iv) facsimile, computer, fiber optics or other electronic communication device, with confirmation of transmission All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the records of the Association Notices sent by first class mail shall be deposited into a United States mailbox at least five (5) business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (1) a quorum is present and (11) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3 11 Telephonic Participation in Meetings

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3 12 Quorum of Board

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in *these* By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at *the* meeting originally called may be transacted without further notice.

3 13 Conduct of Meetings

The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3 14 Open Meetings, Executive Session

(a) Except in an emergency, notice of Board meetings shall be posted at least forty-eight (48) hours in advance of the meeting at a conspicuous place within Helms Port which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of Section 3 15, all Board meetings shall be open to all Members and, if required by law, all Owners, but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3 15 Action Without a Formal Meeting

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote

C Powers and Duties.

3 16 Powers

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Declaration or North Carolina law require to be done and exercised exclusively by the Members or the membership generally

3 17 Duties

Duties of the Board shall include, without limitation

(a) preparing and adopting, in accordance with the Declaration, an annual budget of expenses (including, without limitation, Common Expenses),

(b) levying and collecting assessments from the Owners,

(c) providing for the operation, care, upkeep, and maintenance of the Common Area consistent with the standards required by the Declaration,

(d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties,

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association, provided, any reserve funds may be deposited, in the Board's best judgment in depositories other than banks,

(f) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws,

(g) enforcing by legal means the provisions of the Declaration and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association, provided, the Association's obligation in this regard shall be subject to the provisions of the Declaration,

(h) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate,

- (i) paying the cost of all services rendered to the Association,
- (j) keeping books with detailed accounts of the Association's receipts and expenditures,
- (k) making and amending use restrictions and rules in accordance with the Declaration,
- (l) opening bank accounts on behalf of the Association and designating the signatories required,
- (m) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Helms Port, and
- (n) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association, to the extent such indemnity is required by North Carolina law, the Articles of Incorporation or the Declaration

3 18 Compensation

Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes (and, if during the Class "B" Control Period, the Class "B" Member) at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

3 19 Right of Class "B" Member to Disapprove Actions

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of Declarant or an Approved Builder under the Declaration or these By-Laws, or interfere with development or construction of any portion of Helms Port, or diminish the level of services being provided by the Association.

(a) Notice The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with Sections 3 8, 3 9, 3 10, and 3 11 herein and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met

The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall *not* include a right to require any *action* or counteraction on behalf of any committee, the Board, or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations

3.20 Management

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3 17(a) (with respect to adoption of the budget), 3 17(b), 3 17(f), 3 17(g) and 3 17(i) herein. Declarant or its affiliate may be employed as managing agent or manager

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period unless such contract contains a right of termination exercisable by the Association, with or without cause and without penalty, at any time after termination of the Class "B" Control Period upon not more than ninety (90) days' written notice

3 21 Accounts and Reports

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed,
- (b) accounting and controls should conform to generally accepted accounting principles,
- (c) cash accounts of the Association shall not be commingled with any other accounts,
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise (*i e*, anything of value received shall benefit the Association),

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board,

(f) commencing at the end of the quarter in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing

- (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis,
- (ii) a statement reflecting all cash receipts and disbursements for *the* preceding period,
- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format,
- (iv) a balance sheet as of the last day of the preceding period, and
- (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the thirtieth (30th) day following the due date unless otherwise specified by Board resolution), and

(g) an annual report consisting of at least the following shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year (i) a balance sheet, (ii) an operating (income) statement, and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant, provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Lot, the Association shall provide an audited financial statement. During the Class "B" Control Period, the annual report shall include certified financial statements

3 22 Borrowing

The Association shall have the power to borrow money for any legal purpose, provided, however, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed ten percent (10%) of the Association's budgeted gross expenses for that fiscal year

3 23 Right to Contract

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with a Village Association and other owners' or residents' associations, within and outside Helms Port. Any common management agreement shall require the consent of a majority of the Board

3 24 Enforcement

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Declaration. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) Notice. The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a *written* request for a hearing to the Board, and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed, provided the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice 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 or its representative 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.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the dispute resolution procedures set forth in the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed as trespass.

3 25 Board Standards

In the performance of their duties, Association directors and officers shall be insulated from personal liability as provided by North Carolina law for directors and officers of nonprofit corporations, and as otherwise provided in the Declaration. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule.

As defined herein, a director shall be acting in accordance with the business judgment rule so long as the director (a) acts within the express or implied terms of the Declaration and the Articles of Incorporation and his or her actions are not *ultra vires* (*Le*, outside the scope of the director's authority), (b) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, they are made on an informed basis, (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in decisions and actions when a conflict exists; and (d) acts in a non-fraudulent manner and without reckless indifference to the association's affairs, A

director acting *in* accordance with the business judgment rule shall be protected from personal liability

Board determinations of the meaning, scope, and application of the Declaration and the Articles of Incorporation shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Declaration and Articles

Article IV Officers

4.1 Officers

Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members, other officers may, but need not be, Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary

4.2 Election and Term of Office

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected. Notwithstanding the foregoing, the initial officers shall be selected by a written consent or directive signed by the two (2) initial directors and such officers shall serve at the pleasure of the Board until the Board's expansion to three (3) directors as provided herein

4.3 Removal and Vacancies

The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term

4.4 Powers and Duties

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both

4.5 Resignation

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective

4 6 Agreements, Contracts, Deeds, Leases, Checks, Etc

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers unless otherwise authorized by written resolution by the Board

4 7 Compensation

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3 18 herein

**Article V
Committees**

5 1 General

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

**Article VI
Miscellaneous**

6 1 Fiscal Year

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution,

6 2 Parliamentary Rules

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law.

6 3 Conflicts

If there are conflicts among the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6 4 Books and Records

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot. the Declaration, the Articles of Incorporation, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within Helms Port as the Board shall designate.

(b) Rules for Inspection. The Board shall establish rules with respect to

- (i) notice to be given to the custodian of the records,
- (ii) hours and days of the week when such an inspection may be made, and
- (iii) payment of the cost of reproducing documents requested

(c) Inspection by Directors Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

6.5 Notices

Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid.

(a) if to a Member or Member, at the address which the Member or Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member or Member,

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section, or

(c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 Amendment

(a) By Class "B" Member Prior to termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these By-Laws. Thereafter, the class "B" Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination, (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots, or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots. Provided, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. So long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

(b) By Members Generally Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing fifty-one percent (51%) of the total Class "A" votes in the Association and the consent of the Class "B" Member, if such exists. In addition, the approval requirements set forth in the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific

clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause

(c) Validity and Effective Date of Amendments Amendments to these By-Laws shall become effective upon recordation in the New Hanover County Registry unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation in said registry, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

(d) Officers Authorized to Prepare, Execute, Certify, and Record Amendments to the Declaration and these By-Laws. In the event an amendment to the Declaration and/or the By-Laws is approved in accordance with the Declaration and/or these By-Laws, such amendment shall be prepared, executed, certified and recorded in the New Hanover County Public Registry by the President or Vice President of the Association.

CERTIFICATION

I, the undersigned, do hereby certify

That I am the duly elected and acting Secretary of Helms Port Homeowner's Association, Inc., a North Carolina non-profit corporation,

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the _____ day of _____ 2015

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this _____ day of _____ 2015

BY _____

State of North Carolina
County of _____

I, _____, a Notary Public of _____ County, North Carolina do certify that on this _____ day of _____, 2015, before me personally appeared _____ of _____, a North Carolina Limited Liability Company

_____ personally known to me,
_____ proved to me by satisfactory evidence;
_____ proved to me on the oath or affirmation of _____ who is personally known to me,
to be the person(s) whose name(s) is/are signed on the preceding or attached record, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose

Notary Public

(Seal)
My Commission expires _____

EXHIBIT C

BUILT UPON AREA LIMITATIONS

Helms Port

<u>LOT NUMBER</u>	<u>BUILT UPON AREA</u>
Lots 1 – 22	4,000 square feet
Lots 23 – 106	6,500 square feet
Lots 107 – 159	4,500 square feet



TAMMY THEUSCH BEASLEY
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration. 04/06/2015 02 11.39 PM

Book. RE 5879 Page. 850-907

Document No.: 2015009268

58 PGS \$194 00

Recorder: JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

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