BOOK PAGE

'98 APR 23 PM 4 25 2352 0354

RECORDED & VERIFIED
MARY SUE COTS
REGISTER OF DEEDS
NEW HANOVER CO. NC

PREPARED BY
Ward and Smith, P.A.
Attorneys at Law
University Corporate Center
127 Racine Dr.
Wilmington, N.C. 28406-7068

DECLARATION FOR CARLETON PLACE TOWNHOMES

TABLE OF CONTENTS

ARTICLE NUMBER	SECTION NUMBER	PAGE
1	GENERAL PROVISIONS	2
	1.1. Definitions	2
	1.2. Construction of Association Documents	6
	1.3. Carleton Place Townhomes Association	7
2	COMMON ELEMENTS	8
	2.1. Conveyance and Title	8
	2.2. No Dedication	9
	2.3. Regulation of Common Elements	9
	2.4. Leasing of Common Elements	9
	2.5. Additional Improvements on Common Elements	9
3	EASEMENTS	10
	3.1. Development Easements	10
	3.2. Association Power to Make Dedications and Grant Easements	12
	3.3. Easement for Upkeep	13
	3.4. Limitations on Exercise of Rights and Easements	14
	3.5. Easements for Encroachments	14
	3.6. Easement for Support	15
	3.7. Emergency Access	15
	3.8. Easement for Use of Common Elements	15
	3.9. Limited Common Elements	17
	3.10. Priority and Enforcement of Easements	17
4	DEVELOPMENT OF THE PROPERTY	18
	4.1. Expansion by the Declarant	18
	4.2. Expansion by the Association	19
	4.3. Procedure for Expansion	19
5	SPECIAL DECLARANT RIGHTS; TRANSFER	20
	5.1. Special Declarant Rights	20
	5.2. Transfer of Special Declarant Rights	20
6	COMMON EXPENSES AND ASSESSMENTS	20
	6.1. Determination of Common Expenses and Assessments	20

000180

Ward & Smith

518687

6.2. Assessments and Common Expenses 22
6.3. Exemptions 26
6.4. Liability for Common Expenses 27
6.5. Collection of Assessments 28
6.6. Statement of Common Expenses 28

7 OPERATION OF THE PROPERTY 29
7.1. Upkeep of Common Elements and Lots 29
7.2. Owner Upkeep 30
7.3. Manner of Repair and Replacement 31
7.4. Additions, Alterations or Improvements by the Executive Board 31
7.5. Additions, Alterations or Improvements by the Owners 32
7.6. Disclaimer of Liability 35
7.7. Services to Owners 36
7.8. Contracts for Garbage Removal 36

8 RESTRICTIONS ON USE OF LOTS AND COMMON ELEMENTS; RULES AND REGULATIONS 37
8.1. Permitted Uses 37
8.2. Restrictions 37
8.3. Rules and Regulations 42
8.4. Leasing Restrictions 42
8.5. Exclusion for the Declarant and Designees of the Declarant 43

9 COVENANTS COMMITTEE 43
9.1. Covenants Committee 43
9.2. Subcommittees of the Covenants Committee . . 46
9.3. Compensation of the Covenants Committee . . . 46

10 INSURANCE 46
10.1. Authority to Purchase 46
10.2. Physical Damage Insurance 48
10.3. Liability Insurance 50
10.4. Other Insurance 51
10.5. Separate Insurance on Lots 52

11 RECONSTRUCTION AND REPAIR 53
11.1. When Reconstruction or Repair of Common Elements Required 53
11.2. Procedure for Reconstruction and Repair of Common Elements 53
11.3. Disbursement of Construction Funds for Common Elements 54
11.4. When Reconstruction and Repair of Common Elements Not Required 56

12 COMPLIANCE AND DEFAULT 56
12.1. Relief 56
12.2. Lien for Assessments 60
12.3. Subordination and Mortgage Protection 62

13 MORTGAGES 62
13.1. Notice to Executive Board 62
13.2. Notices to Mortgagees 63
13.3. Other Rights of Mortgagees 63

14 CONDEMNATION 64
14.1. Definition 64
14.2. Taking of Common Elements 64

15 AMENDMENT, EXTRAORDINARY ACTIONS 65
15.1. Amendment by the Declarant 65
15.2. Amendment by the Association 65
15.3. FHA/VA Approval 65
15.4. Prerequisites 66
15.5. Extraordinary Actions of the Association . . 66
15.6. Application of Future Statutory Law Governing Property Owners Associations 67

16 TERMINATION 68
16.1. Termination by the Association 68
16.2. Prerequisites 68

17 PARTY WALLS AND FENCES 69
17.1. Beale's Rule; Laws of North Carolina to Apply; Easement 69
17.2. Upkeep 69
17.3. Destruction by Fire or Other Casualty . . . 69
17.4. Liability 70
17.5. Arbitration 70
17.6. Fences and Other Barriers 71
17.7. Right to Contribution Runs with Land 71

DECLARATION FOR CARLETON PLACE TOWNHOMES

This Declaration made and entered into as of the ____ day of _____, 1998, by and between CARLETON ASSOCIATES, INC. (hereinafter "Declarant"); DIAMOND LAND COMPANY, a North Carolina corporation (hereinafter "Diamond"); ALL PROSPECTIVE PURCHASERS AND OWNERS of real property within the planned unit development generally known as "Carlton Place Townhomes"; SOUTHLAND ASSOCIATES, INC., Trustee as hereinafter stated; and, CENTRAL CAROLINA BANK AND TRUST COMPANY.

W I T N E S S E T H:

WHEREAS, Declarant and Diamond own in fee simple the real estate designated as Submitted Property and described on Exhibit A to this Declaration and have elected to subject the Submitted Property to certain covenants, restrictions, reservations, easements, servitudes, liens and charges, all of which are more particularly set forth hereinafter;

WHEREAS, Declarant also owns in fee simple the real estate designated as Additional Property in the description attached to this Declaration as Exhibit B, as the same may be amended by the Declarant from time to time, and may elect hereafter to subject all or any portion of the Additional Property to the provisions of this Declaration and the amendments thereto;

WHEREAS, Declarant and Diamond deem it desirable and in the best interests of all the prospective purchasers and owners of the real estate subject to this Declaration to protect the value and desirability of such real estate by providing for the development of such real estate in accordance with a common plan and the maintenance of certain shared facilities; and,

WHEREAS, to provide a means for meeting the purposes and intents set forth herein, Declarant has caused to be created Carleton Place Townhomes Association, a nonprofit corporation incorporated under Chapter 55A of the General Statutes of North Carolina (North Carolina Nonprofit Corporation Act).

NOW, THEREFORE, Declarant and Diamond do hereby covenant and declare, on behalf of itself and their heirs, successors and assigns, that the real estate designated as Submitted Property in Exhibit A hereto shall, from the date this Declaration is recorded in the office of the Register of Deeds of New Hanover County, North Carolina, be held, conveyed, acquired and encumbered subject to the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all prospective purchasers and parties who may acquire any right, title, estate or interest in or to any of such real estate or who may acquire any right of occupancy or entrance upon any portion thereof, all subject to the right of the Declarant or the Association to amend this Declaration according to its terms and to add all or any portion of the Additional Property to be subject to this Declaration.

ARTICLE 1
GENERAL PROVISIONS

Section 1.1. Definitions. Terms used throughout this Declaration shall have the meanings specified for such terms below unless the context otherwise requires:

(1) "Additional Property" means the real property designated on Exhibit B attached hereto and such real property as may be designated Additional Property in amendments to Exhibit B made by the Declarant from time to time which the Declarant may submit to this Declaration and to the jurisdiction of the Association, or any real estate that the Association may submit to the Declaration and assume jurisdiction over pursuant to Section 4.2.

(2) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of Carleton Place Townhomes Association, as may be amended from time to time.

(3) "Association" means Carleton Place Townhomes Association.

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

(5) "Bylaws" means the bylaws of the Carleton Place Townhomes Association.

(6) "Common Elements" means any real estate within the Property owned or leased by the Association other than a Lot and, any and all personal property and fixtures owned, leased, maintained or operated by the Association for the benefit of the Property or the Owners.

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

(8) "Common Expense Liability" means the liability for common expenses allocated to each Lot pursuant to Section 6.2.

(9) "Covenants Committee" means the committee that may be established by the Executive Board pursuant to Article 9 to assure that the Property shall be owned, maintained, operated, enjoyed and used in a manner consistent with the purposes and intent of this Declaration.

(10) "Declarant" means Carleton Associates, Inc., its successors or assigns.

(11) "Declaration" means this Declaration for Carleton Place Townhomes and all amendments, restatements and revisions hereto including all amendments to the Declaration amending the provisions herein submitting Additional Property to the terms of this Declaration and the jurisdiction of the Association.

(12) "Design Guidelines" means the standards developed by the Covenants Committee pursuant to Article 9 and any standards established by the Declarant prior to the submission of real estate to this Declaration by an amendment hereto adding Additional Property.

(13) "Development Period" means the period ending on the earliest of:

(a) The later of five (5) years from the date of the recordation of this Declaration or two (2) years from the date of recordation of the most recent amendment to the Declaration made by the Declarant adding Additional Property; provided, however, that once the Development Period has expired, the recordation of a subsequent amendment to the Declaration shall not reinstate the Development Period; and provided, further, that if the Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond the Declarant's control, then the aforesaid period shall be extended for the length of the delay or two (2) years, whichever is less, upon written notice to the Association of such extension;

(b) Or the date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date.

(14) "Development Plan" means the plan for development of the Property and Additional Property approved by the New Hanover County Planning Department, as amended from time to time, and such additional development as may be approved for any Additional Property. The total number of Lots which may be created pursuant to the Development Plan is the maximum number of Lots permitted by zoning regulations and ordinances, as may be amended and changed from time to time, of the City of Wilmington or other governmental entity having jurisdiction over the Additional Property.

(15) "Executive Board" or "Board" means the executive and administrative entity established by the Articles and the Bylaws to act on behalf of the Association and function as the governing body of the Association.

(16) "Limited Common Element" means any portion of the Common Elements designated or allocated for the exclusive use of one or more but fewer than all of the Lots (i) shown and designated on plats of the Property, (ii) as may be established by the Association from time to time, and (iii) as may be created by the operation of Section 3.9 of this Declaration.

(17) "Lot" means a separately numbered portion of the Property (but not including the real estate designated as Common Elements) on plats of the Property recorded in the office of the Register of Deeds of New Hanover County, North Carolina, and includes any improvements now or hereafter appurtenant to that real estate.

Lots may be identified numerically, alphabetically or a combination of the two. For example, a Lot may be designated as the number "1", the letter "A" or the dual designation "1A", "1B", et seq. For purposes of the Association Documents, a Lot comes into existence on the date which a map or plat depicting said Lot is recorded in the office of the Register of Deeds of New Hanover County, North Carolina.

(18) "Majority Vote" means a simple majority (more than fifty percent (50%)) of the votes actually cast in person or by proxy at a duly held meeting of the members of the Association at which a quorum is present or at a duly held meeting of the Executive Board at which a quorum is present.

(19) "Mortgagee" means an institutional lender (commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies and any other lender regularly engaged in financing the

purchase, construction or improvement of real estate, or any assignee of loans made by such lenders) holding a first mortgage or first deed of trust ("Mortgage") encumbering a Lot.

(20) "Owner" means one or more Persons who own a Lot in fee simple but does not mean any Person having an interest in a Lot solely by virtue of a contract of purchase or as security for an obligation.

(21) "Person" means one or more natural persons, corporations, partnerships, limited liability companies, trusts or other entities capable of holding title to real estate.

(22) "Property" means, at any given time, the real estate then subject to this Declaration and includes all improvements and appurtenances thereto now or hereafter existing.

(23) "Rules and Regulations" means the rules and regulations governing the use, occupancy, operation and physical appearance of the Property adopted from time to time by the Board.

(24) "Section" means a portion of the Property designated as provided in Section 4.3 hereof.

(25) "Submitted Property" means the real estate designated as such in Exhibit A hereto and all real estate which is from time to time submitted to the Declaration.

(26) "Upkeep" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

Section 1.2. Construction of Association Documents.

(1) Caption. The captions are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of the Article, Section, Subsection or any other portion of this Declaration.

(2) Severability. Each provision of the Association Documents is severable from every other provision and the validity

of any one or more provisions shall not change the meaning of or otherwise affect any other provision.

(3) Interpretation. If there is any conflict between the Association Documents, the Declaration shall control. Particular provisions shall control over general provisions. The provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted pursuant to any of the Association Documents.

Section 1.3. Carleton Place Townhomes Association.

(1) The Association. The Association is a nonprofit corporation organized and existing pursuant to Chapter 55A of the General Statutes of North Carolina charged with the duties and vested with the powers prescribed by law and set forth in the Association Documents.

(2) Membership. Members of the Association shall at all times be, and shall be limited to, the Persons who constitute Owners of the Lots. If more than one Person owns a Lot, then all of the Persons who own such Lot shall constitute collectively one Owner and be one member of the Association. Each Person is entitled to attend all meetings of the Association.

Membership in the Association is mandatory. Upon acquiring title to a Lot, each new Owner shall immediately give written notice to the Secretary of the Association stating the name and address of such new Owner and the Lot acquired by such new Owner. If the new Owner fails to give the Secretary such notice within thirty (30) days of acquiring title to such Lot, then the costs of locating each new Owner and reasonable record keeping costs incurred by the Association may be assessed against such Owner.

(3) Classes of Members and Voting Rights. During the Development Period, the Association shall have two (2) classes of membership as follows:

(a) Class A - Class A Members shall be the Owners of Lots with the exception of the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

(b) Class B - The Class B Member shall be the Declarant. The Class B Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership and, in addition, shall be entitled to appoint a majority of the members of the Executive Board of the Association during the Development Period as specified in the Bylaws. The Class B Member shall have a veto power over all actions of the Executive Board or any committee as may have been appointed by the Executive Board or established by the Bylaws. The Class B Membership shall terminate and become converted to Class A membership upon the earlier of (i) one hundred twenty (120) days after the conveyance of seventy-five percent (75%) of the Lots (including those Lots which may be created pursuant to the Development Plan) to Owners other than a declarant; (ii) two (2) years after all declarants have ceased to offer Lots for sale in the ordinary course of business; (iii) two (2) years following the last exercise of the rights of a declarant to add Additional Property or (iv) when, in its discretion, the Declarant so determines.

(c) Board Authority to Act. Unless otherwise specifically provided in the Association Documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Executive Board on behalf of the Association.

ARTICLE 2

COMMON ELEMENTS

Section 2.1. Conveyance and Title. Declarant shall convey the Common Elements in each Section of the Property to the Association, in fee simple released from any encumbrance securing the repayment of monetary obligations incurred by the Declarant,

but subject to all easements and other encumbrances appearing of the public records including those created by this Declaration. The conveyance of the Common Elements as contemplated herein Property shall occur prior to or simultaneously with the conveyance of the first Lot to an Owner.

The Association shall accept title to real estate and personal property offered to the Association by the Declarant.

Section 2.2. No Dedication. Nothing contained herein shall be construed as a dedication to public use or as an assumption of responsibility for Upkeep of any Common Elements by any public or municipal agency, authority or utility, nor shall it be constructed to prevent the Board of the Association from permitting public access to or use of any Common Elements.

Section 2.3. Regulation of Common Elements. The Association shall have the right to regulate the use of the Common Elements pursuant to Section 8.3 hereof and to charge fees for the use thereof. In the event the Association imposes fees for the use of the Common Elements, such fees to be charged to Persons entitled to use the Common Elements shall be uniform and shall not discriminate against any one or more Persons or groups of Persons entitled to use the Common Elements. The Association may also mortgage, dedicate, convey or grant easements across the Common Elements subject to the restrictions in Section 15.5 hereof.

Section 2.4. Leasing of Common Elements. The Association shall have the right to lease the Common Elements and improvements located thereon subject to rules, regulations and fees adopted by the Association from time to time.

Section 2.5. Additional Improvements on Common Elements. After construction of the initial improvements, if any, and conveyance of the Common Elements to the Association, the Declarant may, but is not obligated to, construct additional improvements on the Common Elements for the benefit of the Property pursuant to the

easements in Section 3.1 hereof; provided, however, that such construction is subject to the review and approval of the Executive Board.

ARTICLE 3

EASEMENTS

Section 3.1. Development Easements.

(1) Easements Reserved to the Declarant.

(a) Easement to Facilitate Development. The Declarant hereby reserves to itself and its designees a nonexclusive blanket easement over and through the Property and Common Elements for all purposes reasonably related to the development and completion of improvements on the Property and Common Elements, including without limitation: (i) temporary slope and construction easements; (ii) drainage, corrosion control, and storm and sanitary sewer easements (including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter the Declarant shall restore the affected area as near as practicable to its original condition); (iii) easements for the storage (in a sightly manner) of reasonable supplies of building materials and equipment necessary to complete the improvements; and (iv) easements for the construction, installation and Upkeep of improvements (e.g., landscaping, street lights, signage, etc.) on the Property and Common Elements or reasonably necessary to serve the Property and Common Elements.

(b) Easement to Facilitate Sales. The Declarant hereby reserves to itself and its designees the right to: (i) use any Lots owned by the Declarant, any other Lot with the written consent of the Owner thereof, or any portion of the Common Elements as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; (ii) place and maintain in any location on the

Common Elements and on any Lot street and directional signs, temporary promotional signs, plantings, street lights, entrance features, "theme area" signs, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features; provided, however, that all signs shall comply with applicable governmental regulations and the Declarant shall obtain the consent of the Owner of any Lot upon which the improvements are to be located; and (iii) relocate, within the areas permitted by this paragraph, or remove all or any of the above from time to time at the Declarant's sole discretion. These rights and easements shall continue throughout the Development Period.

(c) Easement for Utilities and Related Services. The Declarant hereby reserves to itself and its assignees, during the Development Period, the right to grant and reserve easements, rights of way and licenses, over, through, upon and under the Property and the Common Elements for ingress, egress, installation and Upkeep of equipment for providing to any portion of the Property or Common Elements any utilities including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private, or for any other purpose necessary or desirable for the orderly development of the Property. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where initially installed with the permission of the Declarant, where contemplated on any site plan approved by the Declarant or where approved by resolution of the Executive Board.

(d) Easements for Future Access and Utilities. The Declarant hereby reserves for itself, its heirs, successors and assigns, non-exclusive easements for (i) ingress, egress and regress for pedestrian and vehicular access to and from the Additional Property, and (ii) the installation, maintenance and

provision of utilities including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private, or for any other purposes necessary or desirable for the orderly development of the Additional Property, across, under, over and upon a portion of the Common Elements, more particularly described on Exhibit C to this Declaration.

(e) Dedications and Easements Required by Governmental Authority. The Declarant hereby reserves to itself and its designees, during the Development Period, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Elements or the Property.

(2) Further Assurances. Any and all conveyances made by the Declarant to the Association with respect to any of the Common Elements or the Property shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. Upon written request of the Declarant, the Association and each Owner shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

(3) Assignment of Development Rights. The Declarant may assign its rights under Section 3.1, or share such rights with, one or more other Persons, exclusively, simultaneously or consecutively with respect to the Common Elements, or Lots and Additional Property owned by the Declarant or such Persons. The Declarant shall notify the Association of any such assignment or designation by the Declarant.

Section 3.2. Association Power to Make Dedications and Grant Easements. The Declarant, on behalf of itself and its successors and assigns, hereby also grants to the Association the equal rights and powers as reserved to the Declarant by Paragraphs

3.1(1) (a), (b) and (c) hereof. These rights and easements may be exercised by the Association, subject to Section 15.5 hereof; provided, however, that the limitations on duration applicable to the Declarant shall not apply to the Association. If the Declarant or any Owner requests the Association to exercise its powers under this section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

Section 3.3. Easement for Upkeep.

(1) Association Access. The Declarant, on behalf of itself and its successors and assigns, hereby grants the right of access over and through any Lot to the Association and any other Person authorized by the Executive Board, in the exercise and discharge of their respective owners and responsibilities, including without limitation to make inspections, correct any condition originating in a Lot or in the Common Elements threatening another Lot or the Common Elements, correct drainage, perform installations or Upkeep of utilities, landscaping or other improvements located on the Property for which the Association is responsible for Upkeep, or correct any condition which violates the Association Documents. The agents, contractors, officers and directors of the Association may enter any area of any Lot (including any building) in order to utilize or provide for the Upkeep of the areas subject to easements granted in this Article to the Association.

(2) Declarant Access. Until the expiration of any applicable warranty period, the Declarant hereby reserves to itself and its designees a right of access over and through the Common Elements and any Lot to perform warranty-related work within the Common Elements or the Lots. The Declarant may assign its rights under this subsection to, or share such rights with, one or more other Persons, exclusively, simultaneously or consecutively.

Section 3.4. Limitations on Exercise of Rights and Easements.

(1) These easements are subject to all other easements and encumbrances of record in the office of the Register of Deeds of New Hanover County, including those created by this Declaration.

(2) The Declarant or the Association, as appropriate, when exercising the rights and easements granted by this Article, shall: (i) give reasonable prior notice to all affected Owners, unless an emergency exists which precludes such notice; (ii) minimize any economic or aesthetic injury to the affected Lots or the Common Elements; and (iii) not unreasonably interfere with the affected Owners' use, enjoyment and benefit from such Owners' Lots or the Common Elements.

(3) If an easement is relocated, the cost of such relocation shall be paid by the Person requesting the relocation.

(4) Any damage resulting from the exercise of the aforesaid rights and easements shall be promptly repaired and the site restored to the extent practicable by the Declarant or the Association, as appropriate, or at the option of the Declarant or the Association, the party responsible for such damage. In either case, the cost of such repair and restoration shall be paid for by the party responsible for the damage.

Section 3.5. Easements for Encroachments.

(1) General Encroachments. If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (1) the original construction thereof, (2) deviations within normal construction tolerances in the Upkeep of any improvement, or (3) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time any encroachment exists. The Owner of the encroaching improvement shall also have an easement for the limited purpose of Upkeep of the encroaching

improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

(2) Roof or Eave Overhang. If the original design and construction of any improvements on a Lot shall result in an encroachment by a roof or eave over and upon the Common Elements or an adjacent Lot, an easement is hereby granted to the extent of any such encroachment for the period of time such encroachment exists, which easement shall continue upon any reconstruction or repair of the Improvements in accordance with the original design and construction.

Section 3.6. Easement for Support. To the extent that any portion of the Property now or hereafter supports or contributes to the support of any other portion of the Property, the former is hereby burdened with an easement for the lateral and subjacent support of the latter.

Section 3.7. Emergency Access. The Declarant, on behalf of itself and its successors and assigns, hereby grants an easement (1) to all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies and (2) to the Association over and through all Lots, if emergency measures are required in any Lot to reduce a hazard thereto or to any other portion of the Property. The Association is hereby authorized but not obligated to take any such measures.

Section 3.8. Easement for Use of Common Elements.

(1) Use and Enjoyment. The Declarant hereby reserves to itself and, on behalf of itself and its successors and assigns, grants to each Owner and each Person lawfully occupying a Lot a non-exclusive right and easement of use and enjoyment in common with others of the Common Elements. Such right and easement of use and enjoyment shall be appurtenant to each Lot, whether or not

mentioned in the deed thereto. Any purported conveyance or other transfer of such rights and easements without the Lot to which such rights and easements are appurtenant shall be void.

(2) Vehicle and Pedestrian Access. The Declarant hereby reserves during the Development Period and for so long as the Declarant is an Owner and also, on behalf of itself and its heirs, successors and assigns, grants to each other Owner and each Person lawfully occupying a Lot a non-exclusive easement over all roadways, driveways, alleys, walkways, pathways and bicycle pathways on the Common Elements for the purpose of vehicular and/or pedestrian access, ingress and egress, as appropriate, to any portion of the Property to which such Person has the right to go, subject to any Rules and Regulations promulgated by the Association pursuant to Section 8.3 hereof. Any purported conveyance or other transfer of such rights and easements without the Lot to which such right and easement are appurtenant shall be void.

(3) Limitations. The rights and easements of enjoyment created hereby shall be subject (in addition to any easements granted or reserved in this Declaration or pursuant to the other Association Documents) to all rights and powers of the Declarant and the Association when exercised in accordance with the other applicable provisions of the Association Documents, including without limitation the Association's right to regulate the use of the Common Elements and to establish reasonable charges therefor, to grant easements across the Common Elements, to dedicate portions of the Common Elements and to mortgage the Common Elements.

(4) Delegation. Subject to the Rules and Regulations or such other restrictions as adopted by the Association, any Person having the right to use and enjoy the Common Elements may delegate such rights to such Person's guests, tenants, agents and invitees and to such other Persons as may be permitted by the Association.

Section 3.9. Limited Common Elements. The Declarant shall have the power, for as long as the Declarant has the right to add Additional Property under Section 4.1 hereof, to restrict portions of the Common Elements in the nature of an easement for the exclusive use of one or more specific Lots by designating such portions of the Common Elements as Limited Common Elements. The Declarant may either: (1) indicate the locations of the Limited Common Elements appurtenant to one or more Lots by depicting such Limited Common Elements and the Lots to which it is appurtenant on the plats recorded to effect the inclusion of said Additional Property or (2) label a portion of the Common Elements as "Common Elements that may be assigned as Limited Common Elements" on plats of the additional Property and thereafter assign such Limited Common Elements to one or more specific Lots by unilaterally amending this Declaration to indicate the Limited Common Elements being assigned and the Lots to which it is appurtenant.

Section 3.10. Priority and Enforcement of Easements.

(1) No Person who owns Property subject to this Declaration may subordinate the easements herein created to any subsequent encumbrance.

(2) The easements and rights granted by this Declaration shall not be enforceable by Persons to whom such easements and rights may be delegated by Owners, including without limitation the guests, tenants, agents or invitees of any Owner. This section does not affect, however, the rights of Mortgagees in possession or court-appointed officers in possession and control of a Lot acting in the name, place and stead of Owners or any Person's right to enforce any easements or rights granted in any lease or agreement between such Person and an Owner.

ARTICLE 4

DEVELOPMENT OF THE PROPERTY

Section 4.1. Expansion by the Declarant.

(1) The Declarant intends to develop the Property substantially in accordance with the Development Plan. The Declarant reserves the right to modify the Development Plan subject only to approval by the New Hanover County Planning Department or its duly constituted successor; provided, that the Declarant may not modify the Development Plan to increase the number of Lots.

(2) The Declarant hereby reserves an option during the Development Period to expand the Property from time to time without the consent of any Owner or Mortgagee by submitting all or any portion of the Additional Property to the provisions of this Declaration and the jurisdiction or the Association whether or not such real estate is owned by the Declarant. The option to expand prior to the end of the Development Period may be terminated only upon the recordation by the Declarant of an instrument relinquishing such option. When submitting any portion of the Additional Property, the Declarant reserves the right unilaterally to record additional amendments to the Declaration subjecting any Lot on such portion to such additional covenants and restrictions as may be necessary to reflect the different characteristics of such Lot or portion as are not inconsistent with the overall scheme of the Declaration; provided, however, that the Declarant shall not have such right after the conveyance of such Lot to an Owner other than the Declarant. The Declarant shall add Additional Property in accordance with the procedures set forth in Section 4.3 hereof. There are no limitations on the option to expand except as set forth in this Article.

(3) The Declarant may unilaterally amend the description of Additional Property set forth in Exhibit B hereto and record plats of the Additional Property to expand the land area referred

to as Additional Property whether or not such real estate is owned by the Declarant.

Section 4.2. Expansion by the Association. With the written consent of the fee simple owner (if not the Association) and any mortgagee or holder of a deed of trust on such real estate, a sixty-seven percent (67%) vote of the members and the written consent of the Declarant during any period of that the Declarant has the right to add Additional Property under Section 4.1 hereof, the Association may submit any real estate located immediately adjacent to the Property or across a public road from the Property to the provisions of this Declaration and the jurisdiction of the Association, in accordance with the procedures set forth in Section 4.3 hereof.

Section 4.3. Procedure for Expansion. The Declarant or the Association, as appropriate, may record in the office of the Register of Deeds of New Hanover County one or more amendments to the Declaration submitting the real estate described therein to this Declaration and to the jurisdiction of the Association. Each amendment shall include a legally sufficient description of the real estate added and each recorded plat shall designate such real estate with the term "Section" followed by a unique identifier so as to differentiate between each Section of the Property. Any such amendment may contain such additions to the provisions in this Association as may be necessary to reflect the different character of the Additional Property added thereby and as are not inconsistent with the overall scheme of this Declaration; provided, however, that such additions shall not apply to any real estate previously submitted to this Declaration. When recording an amendment adding Additional Property, appropriate plats shall be recorded showing the Additional Property being submitted to the Declaration and the jurisdiction of the Association, describing any real estate being conveyed to the Association as Common Elements,

Limited Common Elements or Common Elements that may be assigned as Limited Common Elements and showing any new Lots.

ARTICLE 5

SPECIAL DECLARANT RIGHTS; TRANSFER

Section 5.1. Special Declarant Rights. Special declarant rights are those right reserved for the benefit of the Declarant as provided for in the Association Documents, and shall include without limitation the following rights: (1) to complete improvements on the Property; (2) to maintain improvements on the Property; (3) to maintain models, management offices, construction offices, sales offices, customer service offices and signs advertising the Property; (4) to use easements over and through the Property for the purpose of making improvements within the Property and the Additional Property; (5) to exercise the rights, votes and veto power of the Class B member of the Association; (6) to add Additional Property; (7) to remove and replace any director appointed by the Class B member until the meeting at which the Class A members are entitled to elect a majority of the directors; and (8) to exercise any other rights given to the Declarant by the Association Documents.

Section 5.2. Transfer of Special Declarant Rights.

The Declarant may transfer special declarant rights created or reserved under the Association Documents to any Person acquiring Lots or Additional Property previously owned by the Declarant by an instrument evidencing the transfer recorded in the office of the Register of Deeds of New Hanover County.

ARTICLE 6

COMMON EXPENSES AND ASSESSMENTS

Section 6.1. Determination of Common Expenses and Assessments.

(1) Preparation and Approval of Budget.

(a) At least sixty (60) days before the beginning of each fiscal year, the Executive Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary for the ensuing fiscal year to pay the cost of management of the Association and management and Upkeep of the Common Elements and, to the extent provided in the Association Documents, Upkeep of the Lots, and the cost of other expenses that may be declared to be Common Expenses by the Association Documents or by resolution of the Executive Board.

(b) Such budget shall also include such reasonable amounts as the Executive Board considers necessary to provide working capital (available cash for day-to-day expenses which is otherwise uncommitted), a general operating reserve (including an amount to cover operating losses due to insurance deductibles) and reserves for contingencies (potential costs or liabilities which have not been incurred but which should be planned for) and replacements. At least thirty (30) days before the beginning of each fiscal year, the Executive Board shall make available a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Owner and provide a copy of such budget to each member. Such budget shall constitute the basis for determining the assessment against each Lot.

(c) Effect of Failure to Prepare or Adopt Budget. For the first fiscal year of the Association following the first conveyance of any Lot to an Owner other than the Declarant, and for all fiscal years thereafter, the Executive Board shall establish the annual assessment against each Lot for Common Expenses. The failure or delay of the Executive Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay the allocable share of the Common Expenses as herein provided whenever the same shall

be determined. In the absence of any annual budget or adjusted budget, each Owner shall continue to pay assessments at the rate established for the previous fiscal year until notified of the new payment which is due on the first day of the next payment period which beings more than ten (10) days after such new annual or adjusted budget is adopted and the Owner receives such notice.

Section 6.2. Assessments and Common Expenses.

(1) Rate of Assessment and Payment. Subject to the provisions of Section 6.3 hereof, the total amount of the estimated funds required for the management and Upkeep of the Property set forth in the budget as an annual assessment or levied as an additional assessment shall be assessed against each Lot annually in amounts as determined by the Executive Board, which said amounts shall be equal for all Lots.

(a) Notwithstanding the foregoing, no Lot shall be liable for assessments until a map or plat showing said Lot has been duly recorded in the office of the Register of Deeds of New Hanover County, North Carolina, all in accordance with Section 4.3 hereof.

(b) Any additional assessment for each Lot shall be calculated on the same basis as the annual assessment; provided, however, that expenses designated as Limited Common Expenses shall be assessed against the Lots benefitted on the same basis or based on usage, as may be determined by the Executive Board.

(c) Any and all such assessments and other charges shall be a lien against each Owner's Lot as provided in Section 12.2 hereof. On or before the first day of each fiscal year, and the first day of each succeeding payment period in such fiscal year, each Owner shall pay to the Association at such place as the Executive Board may direct that installment of the annual assessment which is due during such period. The Executive Board shall establish one or more payment periods and the due dates for

each such payment in each fiscal year; provided, however, that payments shall be due not less than quarterly or more frequently than monthly. All sums collected by the Executive Board with respect to assessments against the Lots or from any other source may be commingled into a single fund.

(2) Initial Budget and Initial Assessment. Upon taking office, the first Executive Board shall determine the budget, as defined in this section, for the period commencing thirty (30) days after taking office and ending on the last day of the fiscal year in which such directors take office. The first installment shall be payable as determined by the Executive Board.

(3) Lots Added During the Fiscal Year. Notwithstanding any other provision of this Article, whenever any Additional Property is added, the assessment against each Lot being added shall be prorated based upon the number of days remaining in the payment period and shall be calculated in the same manner and due in the same number of installments as the assessment for the remainder of the fiscal year against Lots already a part of the Property.

(4) Additional Assessments. The Executive Board may levy additional assessments on the Lots in the following manner: the Executive Board shall give written notice of any proposed additional assessment to the Owners specifying the amount and the reasons therefor, which said notice shall provide for a special meeting of the members of the Association to be held not less than fifteen (15) days following said notice, the sole purpose of said meeting to be to vote upon said proposed additional assessment. At the special meeting held for that sole purpose, said assessment must be approved by two-thirds (2/3) of the votes actually cast in person or by proxy of each Class of members.

Following the approval of said additional assessments on the Lots as herein specified, the Executive Board shall give notice

to the Owners and, unless otherwise specified in the notice, said additional assessments shall be payable in full with the next periodic installment of regular assessments which is due not more than ten (10) days after the date of such notice or in not more than twelve (12) equal periodic installments, as the Board may determine. Such additional assessments shall be a lien as set forth in Section 12.2 hereof.

(5) Special Assessments. The Executive Board shall have the power to assess an Owner's Lot individually (i) for the amount of and costs incurred by the Association pursuant to Subsection 7.2(1) hereof in performing Upkeep that the Owner failed to perform as required by that section, (ii) for the costs of improvements determined by the Board to be substantially for the benefit of that Owner pursuant to Section 7.4 hereof, (iii) for the amount of any charges imposed on that Owner pursuant to Subsection 12.1(7) hereof, and (iv) for any costs incurred by the Association because of any violation or negligence for which that Owner is responsible under Subsection 12.1(1) hereof. Each such assessment shall be due ten (10) days after notice thereof is given to the Owner unless the notice specifies a later date.

(6) Optional Expenses. Upon request, the Association may provide certain services to Owners (including the Declarant) on a contractual basis pursuant to Section 7.7; provided, however, that the charge for such services shall be assessed against such Owner's Lot in accordance with the terms of the contract.

(7) Reserves. The Executive Board shall build up and maintain reasonable reserves for working capital, contingencies and replacements. Such funds shall be a Common Expense of the Association and may be deposited with any financial institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Executive Board, be invested in obligations of, or fully guaranteed as to principal by,

the United States of America. Reserves for items serving only certain Lots shall be accounted for and funded solely by the Owners served as a Limited Common Expense. As to each separate reserve account:

(a) Extraordinary expenditures not originally included in the annual budget, which may become necessary during the year, shall be charged first against the appropriate reserves. Except for expenses for normal Upkeep shown in the annual operating budget, all expenses for repair and replacement of physical assets maintained by the Association shall be charged first against the appropriate reserves. Unless otherwise determined by the Executive Board, the amount held as reserves shall not be substantially exceed the amount reasonably required to assure the Association's ability to replace components as they reach the end of their useful lives.

(b) If regular annual maintenance extends the useful life of components so that reserves are excessive, the reserves shall be adjusted by reallocation to other budget items or by distribution to each Owner (including the Declarant) in proportion to the percentage (if any) of assessments paid by such Owner.

(c) If the reserves are inadequate to meet actual expenditures for any reason (including non-payment of any Owner's assessment) then the Executive Board shall, in accordance with Subsection 6.2(4) hereof, levy an additional assessment against the Lots; provided, however, that during the period the Declarant owns Lots exempt from full assessment pursuant to Section 6.3 hereof, the Declarant shall pay any expenses that the Association is unable to meet from budgeted income or reserves, but the Declarant is not obligated to pay any expenses that the Association is unable to meet because of nonpayment of any Owner's assessment.

(d) In order to establish an initial working capital fund, upon the first conveyance of a Lot by Declarant or any successor declarant to each Owner, each Owner shall contribute at closing an amount equal to two-twelfths (2/12) of the estimated assessment levied for the current year against each Lot, said sum to be paid to the Association. Said sum is not an advance payment of regular assessments but shall be utilized to establish the working capital fund.

(8) Surplus and Deficit.

(a) Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Executive Board, be placed in reserve accounts, be placed in a special account to be expended solely for the general welfare of the Owners, be credited to the next periodic installments due from Owner under the current fiscal year's budget, until exhausted, or distributed to each Owner (including the Declarant) in proportion to the percentage (if any) of assessments paid by such Owner.

(b) Unless the budget for the succeeding fiscal year is adjusted to amortize the deficit during such fiscal year, any net shortage in expenses (including reserves) shall be assessed promptly against the Owners as an additional assessment in accordance with Subsection 6.2(4) hereof; provided, however, that if unoccupied Lots owned by the Declarant are exempt from assessments in accordance with Section 6.3 hereof, then during the period the Declarant owns Lots exempt from assessment the Declarant shall make up any net shortage (expenses and reserves) in the Association's budgeted income over the Association's expenses as provided in Section 6.1(c) hereof, but the Declarant is not obligated to pay any expenses that the Association is unable to meet because of non-payment of any Owner's assessment.

Section 6.3. Exemptions. Unoccupied Lots owned by the Declarant, including Lots utilized by the Declarant as models,

sales offices and construction offices, shall be liable for twenty-five percent (25%) of the total amount of any assessment levied by the Executive Board against any Lot. The Common Elements owned by the Declarant or the Association shall be exempt from assessments and the lien created hereby.

Section 6.4. Liability for Common Expenses.

(1) Declarant and Owner Liability. The Declarant for each Lot owned by the Declarant, hereby covenants and agrees, and each Owner of a Lot by acceptance of a deed therefor, whether or not so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association all Common Expenses and other charges assessed by the Executive Board pursuant to the provisions of this Declaration. Each Owner shall be personally liable for all assessments against such Owner's Lot. No Owner may be exempted from liability for the assessment for Common Expenses by reason of waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot. No owner shall be liable for the payment of any part of the Common Expenses assessed against the Lot subsequent to the date of recordation of a conveyance by such Owner in fee of such Lot. Prior to or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Lot shall be jointly and severally liable with the selling Owner for all unpaid assessments against the latter for the proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Owner amounts paid by the purchaser therefor, provided, however, that any such purchaser may rely on a Statement of Common Expenses obtained pursuant to Section 6.6 herein.

(2) Mortgagee Liability. Each Mortgagee who comes into possession of a Lot by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a

foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against such Lot which accrue prior to the time such Mortgagee or purchaser comes into possession thereof. The lien created by Section 12.2 hereof shall cease to exist with respect to assessments and charges levied prior to the time title is transferred by foreclosure or by deed of assignment in lieu thereof; provided, however, that if the proceeds of a foreclosure exceed the total amount due to the Mortgagee, the excess shall first be paid to the Association and applied to the satisfaction of the lien.

Section 6.5. Collection of Assessments. Any assessment, or installation thereof, not paid within fifteen (15) days after the due date shall be delinquent and shall accrue a late charge in the amount of one-half of one percent of such assessment, or such greater percentage as may be established from time to time by the Executive Board. The Executive Board, or the managing agent at the request of the Board, shall take prompt action to collect any assessments for Common Expenses due from any Owner or member which remain unpaid for more than thirty (30) days after the due date for payment thereof.

Section 6.6. Statement of Common Expenses. The Executive Board or managing agent shall provide any member, Owner, contract purchaser or Mortgagee, within ten (10) days after a written request therefor, with a written statement of all unpaid assessments for Common Expenses due with respect to a specific Lot (or a statement that the amount of unpaid assessments is zero). No contract purchaser, Mortgagee or purchaser from a Mortgagee requesting such a statement shall be liable for, nor shall the Lot conveyed to such Person relying on such statement be subject to a lien for, any unpaid assessments due prior to the date of such statement in excess of the amount set forth on such statement; provided, however, that this section shall not be interrupted to

release any Person from personal liability for such assessments levied while such Person owned the Lot. The Executive Board may impose a reasonable charge for the preparation of such statement.

ARTICLE 7

OPERATION OF THE PROPERTY

Section 7.1. Upkeep of Common Elements and Lots. The Association shall be responsible for the management and Upkeep of all of the Common Elements, except Limited Common Elements, the Lots, the exterior elements of improvements on the Lots (including maintenance of landscaping but specifically excluding replacement of damaged, diseased and dead shrubbery, trees and other plantings which shall be the obligation and responsibility of the Owner) and all fences originally installed by Declarant, including replacements of such fences and fences subsequently permitted by the Covenants Committee; provided, however, that such Upkeep shall not include glass surfaces, windows and window frames and doors and door frames, porches and decks, cleaning the surface of driveways, the responsibility for Upkeep being that of the Owner. The cost of the management and Upkeep by the Association shall be assessed against all Lots as a Common Expense, or Limited Common Expense, as appropriate, except for improvements specially assessed in accordance with Sections 7.2 and 7.4 hereof. Notwithstanding the general provisions for maintenance of Common Elements set forth in this section, specific maintenance responsibilities and allocation of maintenance costs shall be determined by any provisions therefor indicated on either an amendment to the Declaration or the plat recorded with the amendment to the Declaration subjecting such Common Elements to the Declaration. If the Executive Board determines that certain Upkeep was necessitated by the negligence, misuse or neglect of any Owner or for which an Owner is responsible pursuant to Section 12.1 hereof, the cost of such Upkeep shall be assessed against such Owner's Lot pursuant to Subsection 12.1(1)

hereof. Further the Board may determine that all or a part of the Upkeep of any portion of the Common Element designated as Limited Common Elements shall be performed by the Persons having the exclusive right to use the same. The Executive Board shall establish the standard for Upkeep of the Common Elements, the Lots and improvements in its sole discretion. The Executive Board shall provide for the Upkeep of the rights-of-way along dedicated streets and roadways and dedicated public easements to the extent not provided by the City of Wilmington. Further, the Executive Board shall maintain as Common Elements landscaping and plantings contained within the thirty (30) foot periphery setback and any other buffer areas as may have been established or required by the Wilmington Planning and Zoning Commission.

Section 7.2. Owner Upkeep. Each Owner shall be responsible for the Upkeep of that portion of the improvements on his Lot as described in Section 7.1 hereof and upon any Limited Common Elements for which the Board has directed specific Owners to provide Upkeep. Each Owner shall perform this responsibility in such manner as shall not unreasonable disturb or interfere with the other Owners. If any Owner shall fail to provide Upkeep for which he is responsible consistent with such Rules and Regulations as the Executive Board may promulgate, then the Board may, pursuant to resolution, give notice to that Owner of the condition complained of, specifying generally the action to be taken to rectify that condition. If the Owner fails to rectify that condition within thirty (30) days after the date the notice is given, or such shorter period as may be specified in the notice is the circumstances warrant a shorter period, the Executive Board shall have the right, pursuant to Section 3.3 and Subsection 12.1(5) hereof and any resolutions adopted by the Executive Board, to rectify that condition by taking such action (or by causing such action to be taken) as was specified in the notice. The costs

incurred in rectifying that condition shall be assessed against such Owner's Lot in accordance with Section 12.1 hereof. If such Owner fails to reimburse the Association within thirty (30) days after receipt of a statement for such expenses from the Board, then the indebtedness shall constitute a lien as provided for in Section 12.1 hereof. The Owner may contract with a third party, including the Association to the extent provided for in Section 7.8 hereof, to perform the Owner's responsibility for Upkeep under this section.

Section 7.3. Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be made with contemporary materials. The method of approving payment vouchers for all repairs and replacements made by the Association shall be determined by the Executive Board.

Section 7.4. Additions, Alterations or Improvements by the Executive Board.

(1) Action of the Board. Whenever in the judgment of the Executive Board the Common Elements shall require capital additions, alterations or improvements (other than for Upkeep) costing in excess of fifteen percent (15%) in the aggregate of the total annual assessment for Common Expenses for that fiscal year, the making of such additions, alterations or improvements requires a Majority Vote of the members, and the Executive Board shall assess all Owners benefited for the cost thereof as a Common Expense. Any capital additions, alterations or improvements (other than for Upkeep) costing in the aggregate fifteen percent (15%) or less of the total annual assessment for Common Expenses for that fiscal year may be made by the Executive Board without approval of the members and the cost thereof shall constitute a Common Expense. Notwithstanding the foregoing, if the Executive Board determines that such capital additions, alterations or improvements are

exclusively or substantially exclusively for the benefit of specific Owners, such Owners shall be assessed therefor in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportion as may be determined by the Executive Board.

(2) Permits. Each Owner shall cooperate with the Association in obtaining any governmental approvals or permits as may be necessary for the Association to alter, improve, reconstruct or repair all or any portion of the Common Elements which may be located on such Owner's Lot, either as approved above or as required for Upkeep. If requested by the Executive Board, each Owner shall name or appoint the Association as agent for such owner to apply for and secure such approvals or permits with respect to such Common Elements in the Association's name.

(3) Liens. Within thirty (30) days after the filing thereof, each Owner shall, either by payment of bond or otherwise, cause any mechanic's, materialmen's or other lien affecting any portion of the Common Elements located within such Owner's Lot and arising by reason of any work or materials ordered by the Owner or any action taken by the Owner to be discharged of record.

Section 7.5. Additions, Alterations or Improvements by the Owners.

(1) Approval.

(a) No member or Owner shall make any addition, alteration or improvement in or to any Lot (other than for normal Upkeep or natural landscaping) which is visible from the exterior or the Lot without the prior written consent of the Covenants Committee. No member or Owner shall paint, affix a sign not permitted by the Rules and Regulations to or alter the exterior of any improvement located upon such member's or Owner's Lot, including the doors and windows, if such exterior is visible from another Lot or the Common Elements, without the prior written

consent of the Covenants Committee. Except when a request is being handled by the Covenants Committee, the Executive Board shall be obligated to answer any written request by a member or owner for approval of a proposed structural addition, alteration or improvement within fifteen (15) days after the first Executive Board meeting held following such request, and failure to do so within the stipulated time shall constitute a consent by the Executive Board to the proposed structural addition, alteration or improvement; provided, however, that the Executive Board has no right or power, either by action or failure to act to waive enforcement or grant variances from written Design Guidelines without a specific finding that enforcement of such guidelines would impose an unfair burden on such member and stating the variance and the reasons therefor in a written instrument which shall be part of the records of the Association. Upon such written approval of any specific variance or exception from the requirements of the Design Guidelines, all development conforming to such variance or exception shall be deemed to comply; provided, however, that such approval shall not relieve a member or Owner from any obligation to obtain any governmental permit which may be required. If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement to any Lot or improvement located on any Lot requires execution by the Association, and provided consent has been given by the Executive Board or the Covenants Committee, as appropriate, then the application shall be executed on behalf of the Association by an Officer only, without incurring any liability on the part of the Executive Board, the Association, the Executive Board or the Covenants Committee or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any Person having a claim for personal injury or property damage arising therefrom.

(b) Subject to the approval of any Mortgagee of the affected Lots, the Executive Board, any Owner affected and the New Hanover County Planning Department, if required, any Lot may be subdivided or altered so as to relocate the boundaries between such Lot and any adjoining Lot. Otherwise, no Lot may be subdivided nor may any Lot's boundaries be relocated except by the Declarant. Unless said Lot has previously been subdivided pursuant to this paragraph, no portion less than all of any Lot shall be conveyed or transferred by an Owner without the prior written approval of the Executive Board. However, this paragraph is not intended to require the approval of the Executive Board or Covenants Committee to grant deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments or to grant any easement, right-of-way or license to any municipality, political subdivision, public utility or other public body or authority, or to the Association or the Declarant for any purpose.

(c) The provisions of this section shall not apply to a Mortgagee in possession of a Lot as a result of foreclosure, judicial sale or proceeding in lieu of foreclosure affixing a sign or taking any other actions that may be necessary to sell or lease all or any portion of the Lot, if such actions are in accordance with applicable zoning and not detrimental to the valve of the Property.

(2) Limitations.

(a) Unless a Person commences construction in accordance with plans and specifications approved by the Covenants Committee within twelve (12) months after the date of approval, the approval shall lapse. Such construction shall be substantially completed within twelve (12) months after the date of commencement. Notwithstanding the foregoing, the approval may provide for a longer period during which to commence or complete construction.

(b) Any Person obtaining approval of the Covenants Committee shall not deviate materially from the plans and specifications approved without the prior written consent of the Covenants Committee. An Owner shall notify the Covenants Committee when the alterations or improvements are complete. Approval of any particular plans and specifications or design does not waive the right of the committee to disapprove such plans and specifications, or any elements or features thereof, if such plans and specifications are subsequently submitted for us in any other instance or by any other Owner.

(3) Certificate of Compliance. Upon the completion of any construction or alterations in accordance with plans and specifications approved by the Covenants Committee, the Covenants Committee shall, at the request of the Owner thereof, issue a certificate of compliance which shall be prima facia evidence that such construction or alteration referenced in such certificate has been approved and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of the Association Documents as may be applicable. The certificate shall not be used and may not be relied upon for any other purpose, and shall not constitute a representation either as to the accuracy or sufficiency of the plans and specifications reviewed by the Committee or the quality or soundness of the construction, alterations or improvements. The Committee may impose a reasonable charge to cover the costs of preparation and inspection.

Section 7.6. Disclaimer of Liability.

(1) Bailee. The Executive Board, the Association, any member, any Owner and the Declarant shall not be considered a bailee of any personal property stored or placed on the Common Elements (including property located in vehicles parked on the Common Elements), whether or not exclusive possession of the

particular area is given to an Owner for parking or otherwise, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

(2) Operational. The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage caused by the elements or by any Owner, or any other Person, or resulting from electricity, water, snow or ice which may leak or flow from or over any portion of the Property or from any pipe, drain, conduit, appliance or equipment, or any secondary or consequential damages of any type. The Association shall not be liable to any member or Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any portion of the Property. No diminution, offset or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property by the Association or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any governmental authority. This section is not intended nor shall it be construed to relieve any insurer of its contractual obligation under any policy benefiting the Association, a member or an Owner.

Section 7.7. Services to Owners. The Association may, in the sole discretion of the Executive Board, provide additional services to Owners (including the Declarant), on a contractual basis at the request of such Persons. The charges for such services shall be assessed to the Lot of the Owner or charged to the owners association or condominium unit owners association.

Section 7.8. Contracts for Garbage Removal. The Association may, in the sole discretion of the Executive Board,

exercise an exclusive right to contract on behalf of all Owners for garbage, trash and debris removal. The charge for such services may be billed individually by the Association to each Owner or included in the annual budget and collected and paid as Common Expense.

ARTICLE 8

RESTRICTIONS ON USE OF LOTS AND COMMON ELEMENTS; RULES AND REGULATIONS

Section 8.1. Permitted Uses. Except to the extent permitted in an amendment to the Declaration adding Additional Property, with respect to such real estate, no Lot shall be used for any purpose other than as a residence. The permitted use may be further limited, expanded or otherwise modified with respect to Additional Property by the amendment to the Declaration submitting such Additional Property.

Notwithstanding the above limitations, the Declarant (and any other Persons designated by the Declarant from time to time in notices to the Association) may use any Lot or portion thereof of which the Declarant or such Persons are the Owner (or any other Lot with the permission of the Owner thereof) or any portion of the Common Elements for such purposes and functions as set forth in Section 5.1 and 8.2(1) of this Declaration.

Section 8.2. Restrictions. Each Lot and the Common Elements shall be occupied and used as follows:

(1) Except as otherwise provided in the Association Documents, no Lot shall be used for other than the purposes for which such Lot is zoned and designed. Nothing in the Association Documents shall be construed to prohibit the Declarant or its assignees from using any Lot owned by the Declarant (or any other Lot with the permission of the Owner thereof) or any portion of the Common Elements for promotional, marketing, display or customer service purposes (such as a visitors' center) or for the settlement of sales of Lots. Further, the Declarant specifically reserves the

right to operate a construction office or a rental, brokerage and management office at any time on Lots owned by the Declarant (or any other Lot with the permission of the Owner thereof) and on any portion of the Common Elements. The Declarant may assign its rights under this subsection to or share such rights with one or more other Persons, exclusively, simultaneously or consecutively with respect to the Common Elements and Lots owned by the Declarant or such Persons.

(2) Nothing shall be done or kept on the Property which will increase the rate of insurance for the Common Elements or any part thereof applicable for permitted uses without the prior written consent of the Executive Board including, without limitation, any activities which are unsafe or hazardous with respect to any person or property. No Owner or member shall permit anything to be done or kept on the Property which will result in the cancellation of any insurance on the Common Elements or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste will be committed on the Common Elements.

(3) No improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with by and at the sole expense of the Owner, the Association and the Declarant, whichever shall have the obligation for the Upkeep of such portion of the Property, and, if the Association, then the cost of such compliance shall be a Common Expense.

(4) No Person shall cause any unreasonably loud noise (except for security devices) anywhere on the Property, nor shall

any Person permit or engage in any activity, practice or behavior which causes annoyance, discomfort or disturbance to any Person lawfully present on any portion of the Property; but this provision shall not be construed as forbidding any work involved in the construction or Upkeep of any portion of the Property so long as such work is undertaken and carried out (i) with the minimum practical disturbance to Persons occupying other portions of the Property; (ii) in such a way as does not violate the rights of any Person under other provisions of this Declaration; and (iii) in accordance with all applicable restrictions in the Rules and Regulations, the resolutions of the Executive Board and the other provisions of this Declaration.

(5) No Owner shall obstruct any of the Common Elements or otherwise impede the rightful access of any other Person on any portion of the Property upon which such Person has the right to be. No Owner shall place or cause or permit anything to be placed on or in any of the Common Elements without the approval of the Executive Board. Nothing shall be altered or constructed in or removed from the Common Elements except with the prior written approval of the Executive Board.

(6) The Common Elements shall be used only for the furnishing of the services and facilities for which the same is reasonably suited and which are incident to the use and occupancy of the Lots. The improvements located on the Common Elements shall be used only for their intended purposes. Except as otherwise expressly provided in the Association Documents, no Owner shall make any private, exclusive or proprietary use of any of the Common Elements without the prior written approval of the Executive Board and then only on a temporary basis. No Owner shall engage or direct any employee of the Association on any private business of the Owner or otherwise direct, supervise or in any manner attempt

to assert control over such employee during the hours such employee is employed by the Association.

(7) Except for such signs as may be posted by the Declarant for promotional or marketing purposes or the Association, no signs of any character shall be erected, posted or displayed in a location that is visible from the Common Elements or any other Lot without the prior written approval of the Covenants Committee.

(8) Except in connection with construction activities, no burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials or trash of any other kind shall be permitted on any Lot. Trash containers, except of a commercial size being utilized during the construction of improvements on a Lot, shall not be permitted to remain in public view from the Common Elements or another Lot except on days of trash collection. No incinerator shall be kept or maintained upon any Lot without the prior written approval of the Covenants Committee.

(9) No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public or private streets.

(10) Pavement, plantings and other landscape materials shall not be placed or permitted to remain within any easements upon any Lot: (i) if such materials may damage or interfere with any easement for the installation or maintenance of utilities; (ii) in violation of the requirements of such easements; (iii) unless in conformity with public utility standards; or (iv) if each materials may unreasonably change, obstruct or retard direction or flow of any drainage channels. Otherwise, the installation of such materials within utility easements shall be encouraged.

(11) Without the prior written approval of the Covenants Committee, no outside antenna of any nature or type shall be maintained upon the Property.

(12) Except for any fence installed by any Declarant or by the Association, no fence shall be installed except in conformance with standards established therefor and with the written approval of the Covenants Committee.

(13) Except for window coverings originally installed by Declarant or subsequently permitted by the Covenants Committee, the owner of each Lot shall install and thereafter continuously maintain mini-blinds as a window covering for each window which, when viewed from the exterior of the improvements on the Lot, must show a white backing. Additional window treatments must be located within the improvements on the Lot so as not to be visible from the other Lots or the Common Elements.

(14) No trailers, campers, recreational vehicles, boats and other similar or large vehicles may be parked on the Property. However, grounds maintenance equipment may be stored and maintained on the Property with the prior written approval of the Covenants Committee. No junked vehicle or other vehicle on which current registration plates and current state inspection permits are not displayed shall be kept upon any portion of the Property. Vehicle repairs and storage of vehicles are not permitted on the Property without the prior written approval of the Covenants Committee.

(15) No structure of a temporary character, except in connection with construction activities, trailer, basement, tent, shack, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.

(16) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets may be kept providing they are not kept, bred

or maintained for commercial purposes, do not constitute a danger or nuisance to other Owners and the Owners of such permitted pets adhere to the Rules and Regulations as may be established from time to time by the Executive Board relating to the keeping of such pets on the Property.

(17) No building shall be erected or permitted to remain nearer to any street or roadway within the Property or nearer to any sideline or rear line of any Lot than the setback lines or building window shown on the recorded plats of the Submitted Property and Additional Property.

Section 8.3. Rules and Regulations. The Executive Board shall have the power to adopt, amend and repeal Rules and Regulations restricting and regulating the use and enjoyment of the Property or of any portion thereof, which may supplement, but may not be inconsistent with the provisions of the Association Documents. The Property shall be occupied and used in compliance with the Rules and Regulations. Copies of the Rules and Regulations shall be furnished by the Executive Board to each member. Changes to the Rules and Regulations shall be published and made available to all members prior to the time when the same shall become effective and copies thereof shall be provided to each member. The Rules and Regulations shall not unreasonably interfere with the use or enjoyment of the Lots or Common Elements or the reasonable conduct of business on the Lots. Also, the Executive Board may issue temporary exceptions to any prohibitions expressed or implied by this Article, for good cause shown.

Section 8.4. Leasing Restrictions. Nothing contained herein shall prohibit leasing or renting of a Lot; provided, however, that no Lot shall be leased or rented for a period of less than thirty (30) consecutive calendar days. The Executive Board may require Owners who lease their Lots to insert provisions in the lease which would require the tenant to abide by the Association

Documents and allow enforcement of the Association Documents directly against the tenant as well as the Owner.

Section 8.5. Exclusion for the Declarant and Designees of the Declarant. Notwithstanding any other provision of the Association Documents, neither the restrictions in this Article nor the Rules and Regulations of the Association shall apply to any otherwise lawful acts or omissions of the Declarant or of any Person designated by the Declarant from time to time in notices to the Association as long as the Declarant or such designee is engaged in construction or sales, or activities related thereto, anywhere within the Property or on any Additional Property.

ARTICLE 9

COVENANTS COMMITTEE

Section 9.1. Covenants Committee.

(1) Purpose. The Executive Board shall establish a Covenants Committee consisting of at least three (3) members appointed by the Board, each to serve for a term of from one (1) to three (3) years as may be determined by the Executive Board, in order to assure that the Property shall always be maintained in a manner: (i) providing for visual harmony and soundness of repair; (ii) avoiding activities deleterious to the aesthetic or property values of Property; and (iii) promoting the general welfare and safety of the owners, such Owners' tenants and such Owners' (or tenants') households, guests, agents and invitees. If the Executive Board fails to appoint a Covenants Committee, then the Executive Board shall perform the duties of the Covenants Committee.

(2) Powers.

(a) The Covenants Committee shall regulate the external design, signage, appearance, use and maintenance of the Lots and the Common Elements. In exercising its powers, it shall adopt Design Guidelines for the Property and review and approve or

disapprove the plans for the construction of any structure to be located on the Property, including without limitation the site development plan, architectural design, architectural material, landscaping plan, non-structural improvements and general appearance, in order to ensure the quality and compatibility of style of all the improvements to be located on the Property; provided, however, that the Covenants Committee shall not have the power to regulate the activities of the Association or the Declarant on the Common Elements or any Lot owned by the Declarant.

(b) The Covenants Committee may from time to time establish requirements regarding the form and content of plans and specifications to be submitted for approval. The Covenants Committee shall have the power to impose reasonable application fees as well as the costs of reports, analyses or consultations required in connection with improvements or changes proposed by an Owner. Such fees shall be assessed against the Owner submitting plans and specifications.

(c) The Covenants Committee shall have the power pursuant to Subsection 12.1(9) hereof (upon petition of any Owner or upon its own motion) to impose reasonable charges upon, and issue a cease and desist request to, an Owner, such Owner's tenant and such Owner's (or tenant's) household, guests, agents, and invitees whose actions are inconsistent with the provisions of the Association Documents.

(d) Subject to the review of the Executive Board, the Covenants Committee shall from time to time provide interpretations of the Association Documents pursuant to the intents, provisions and qualifications thereof when requested to do so by an Owner, a member or the Executive Board. The Covenants Committee may publish and record such interpretations in order to establish precedents for application of the Association Documents or the Design Guidelines or other matters relative to architectural

control and protection of the aesthetic or property values of the Property. The Covenants Committee shall propose Design Guidelines for approval by the Executive Board. Such Design Guidelines are hereby incorporated by this reference and shall be enforceable as if set forth herein in full; provided, however, that no Design Guidelines shall be enforced against an Owner which are more restrictive than those in effect when the Owner purchased the Lot.

(e) A majority vote of the Covenants Committee shall be required in order to take any action except as otherwise provided in Subsection 12.1(9) hereof. The Covenants Committee shall keep written records of all its actions. Any action, ruling or decision of the Covenants Committee may be appealed to the Executive Board by any party deemed by the Board to have standing as an aggrieved party and the Board may modify or reverse any such action, ruling or decision. The Covenants Committee and the Executive Board shall have no authority to regulate construction by the Declarant during the Development Period.

(3) Conduct of Business. The Covenants Committee shall not exercise its powers and authority to interfere with the reasonable conduct of business on the Property or the development of the Property in accordance with the Development Plan. Reasonable signs, modifications, alterations and changes of use which are consistent with Design Guidelines and needed for the proper conduct of business shall be permitted.

(4) Authority. The Covenants Committee shall have such additional duties, powers and authority as the Executive Board may from time to time provide by resolution. The Executive Board may relieve the Covenants Committee of any of its duties, powers and authority either generally or on a case-by-case basis. The Covenants Committee shall carry out its duties and exercise its powers and authority in accordance with Subsections 12.1(8) and 12.1(9) hereof and in the manner provided for in the Rules and

Regulations adopted by the Executive Board or by resolution of the Executive Board. The Covenants Committee shall act on all matters properly before it within forty-five (45) days; failure to do so within the stipulated time shall constitute an automatic referral to the Executive Board.

(5) Specific Exclusions. Amendments to this Declaration adding Additional Property may exclude certain types of improvements or alterations from Covenants Committee review to the extent such improvements or alterations are not visible from another Lot or any other portion of the Property.

Section 9.2. Subcommittees of the Covenants Committee. The Covenants Committee may in its discretion establish additional subcommittees to carry out its functions. Wherever in the Association Documents reference is made to the Covenants Committee, such reference shall mean the Covenants Committee itself or the appropriate subcommittee thereof.

Section 9.3. Compensation of the Covenants Committee. One or more members of the Covenants Committee may be compensated for their services on the Covenants committee as may be determined by the Executive Board.

ARTICLE 10
INSURANCE

Section 10.1. Authority to Purchase.

(1) Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Executive Board shall (a) purchase, and thereafter maintain, insurance policies relating to the Common Elements, Lots and improvements thereon, and other matters more particularly set forth in this Article (b) adjust all claims arising under such polices and (c) execute and deliver releases upon payment of claims. The cost of all insurance policies purchased by the Board shall be a Common Expense. The Executive Board, the managing agent and the Declarant

shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at an unreasonable cost. Exclusive authority to negotiate losses under such policies shall be vested in the Executive Board or with its authorized representative. The Executive Board shall promptly notify the members of material adverse changes in, or termination of, insurance coverages obtained on behalf of the Association.

(2) The Executive Board shall exercise reasonable good faith efforts to insure that each such policy provides that:

(a) Each Owner is an insured Person under the policies to the extent of his insurable interest;

(b) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policies;

(c) If, at the time of a loss under the policies, there is other insurance in the name of an Owner covering the same risk covered by the policies, the Association's policy shall be deemed to provide primary insurance;

(d) The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Executive Board, the managing agent, any member or the Owners and their respective households, guests, tenants, agents and invitees;

(e) Such policy shall not be canceled, invalidated or suspended due to the conduct of any member or any Owner, or such Owner's tenant or such Owner's (or tenant's) household, guests, agents and invitees, or of any member, officer or employee of the Executive Board or the managing agent without a prior demand in writing that the Board or the managing agent cure the defect and

neither shall have so cured such defect within a reasonable time after such demand; and

(f) Such policy may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to the Executive Board or the managing agent.

(3) All policies of insurance shall be written by reputable companies licensed or qualified to do business in North Carolina.

(4) The deductible (if any) on any insurance policy purchased by the Executive Board shall be a Common Expense; provided, however, that the Association may, pursuant to Subsection 12.1(1) hereof, assess any deductible amount necessitated by the act, misuse or neglect of an Owner, or such Owner's tenant or such Owner's (or tenant's) household, guests, agents or invitees against such Owner.

(5) The Declarant, so long as the Declarant shall own any Lot, shall be protected by all such policies as an Owner.

Section 10.2. Physical Damage Insurance.

(1) The Executive Board shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, cost of demolition, debris removal, and water damage endorsements, insuring (a) any improvements located on the Common Elements (including without limitation any floor covering, fixtures and appliances), together with all air conditioning and heating equipment and other service machinery contained therein and covering the interests of the Association and all improvements located on any Lot (including without limitation any floor covering, fixtures, appliances, cabinets and other installations constituting a part of the original improvements in their completed form as constructed on the Lots, and (b) in an amount equal to one hundred percent (100%) of

the then current replacement cost of any improvements located on the Common Elements and the Lots (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board with the assistance of the insurance company affording such coverage). The Executive Board shall also obtain and maintain appropriate coverage on all personal property and real estate other than the Common Elements owned by the Association.

(2) The Executive Board shall exercise reasonable good faith efforts to ensure that each such policy also provides:

(a) a waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made not to do so;

(b) the following endorsements (or equivalent): (1) "no control" to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Owner or their agents or any member when such act or neglect is not within the control of the insured or the Owners collectively, nor by any failure of the insured, any members or the Owners collectively, to comply with any warranty or condition with regard to any portion of the Property over which the insured, the members or the Owners collectively, have no control); (2) "cost of demolition"; (3) "contingent liability from operation of building laws or codes"; (4) "increased cost of construction"; (5) "replacement cost"; and (6) "agreed amount" or elimination of co-insurance clause;

(c) that any "no other insurance" clause expressly exclude individual members' and owners' policies from its operation so that the physical damage policy purchased by the Executive Board shall be deemed primary coverage and any individual members' or Owners' Policies shall be deemed primary coverage, and in no event

shall the insurance coverage obtained and maintained by the Executive Board hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their Mortgagees, unless otherwise required by law; and

(d) such deductibles as to loss, but not coinsurance features, as the Executive Board in its sole discretion deems prudent and economical.

(3) Certificates of physical damage insurance signed by an agent of the insurer, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Mortgagee requesting the same, at least ten (10) days prior to expiration of the then current policy. All Mortgagees shall be notified promptly of any event giving rise to a claim under such policy arising from damage to improvements located on the Common Elements in excess of ten percent (10%) of the then current replacement cost of such improvements.

Section 10.3. Liability Insurance. The Executive Board shall obtain and maintain comprehensive general liability, broad form endorsement (including libel, slander, false arrest and invasion of privacy coverage) and property damage liability insurance in such limits as the Board may from time to time determine, insuring each director, the managing agent and the employees of the Association against any liability to the public or to any member or any Owner or such Owner's tenant and such Owner's (or tenant's) household, guests, agents, and invitees arising out of, or incident to the ownership or care, custody, control and use of the Common Elements or legal liability arising out of employment contracts of the Association. Such insurance shall be issued on a comprehensive liability basis and shall contain: (1) a cross-liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an

action against another named insured; (2) hired and non-owned vehicle coverage; (3) host liquor liability coverage with respect to events sponsored by the Association; (4) deletion of the normal products exclusion with respect to events sponsored by the Association; and (5) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to an Owner or member because of negligent acts of the Association or of another Owner or member. The Executive Board shall review such limits once each year, but in no event shall such insurance be less than one million dollars covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess or the primary limits shall also be obtained in an amount not less than Three Million and No/100 Dollars ($3,000,000.00).

Section 10.4. Other Insurance. The Executive Board shall obtain and maintain:

(1) adequate fidelity coverage to protect against dishonest acts on the part of directors, Officers, trustees and employees of the Association and all others who handle, or are responsible for handling funds of the Association, including the managing agent. If the Association has delegated some or all of the responsibility for handling funds to a managing agent, such managing agent shall be covered by its own fidelity bond. Such fidelity bonds (except for fidelity bonds obtained by the managing agent for its own personnel) shall: (i) name the Association as an obligee, and (ii) contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression;

(2) if required by a majority of the Mortgagees or governmental regulations, flood insurance in accordance with the applicable regulations for such coverage;

(3) workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);

(4) if applicable, pressure, mechanical and electrical equipment including air conditioning equipment coverage on a comprehensive form and in an amount not less than Fifty Thousand and No/100 Dollars ($50,000.00) per accident per location;

(5) to the extent coverage can be obtained at a reasonable cost, directors and officers liability insurance in an amount not less than One Million and No/100 Dollars ($1,000,000.00); and

(6) such other insurance: (i) as the Executive Board may determine; (ii) as may be required with respect to the Additional Property by any amendment to this Declaration adding such Additional Property; or (iii) as may be requested from time to time by a Majority Vote of the members.

Section 10.5. Separate Insurance on Lots.

(1) Each member or Owner shall have the right to obtain insurance for such member's or Owner's benefit, at such member's or Owner's expense, covering the personal property located on such Owner's Lot or the Lot owned or maintained by such member. No member or Owner shall acquire or maintain insurance coverage on the Common Elements on the Lots and improvements on the Lots insured by the Association so as: (i) to decrease the amount which the Executive Board may realize under any insurance policy maintained by the Board or (ii) to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by a member or Owner. No member or Owner shall obtain separate insurance policies on the Common Elements owned by the Association.

(2) Members and Owners may be required to obtain certain insurance coverages with respect to Additional Property in amendments to this Declaration adding such Additional Property.

ARTICLE 11

RECONSTRUCTION AND REPAIR

Section 11.1. When Reconstruction or Repair of Common Elements Required.

(1) Common Elements. Except as otherwise provided in Section 11.4 hereof, if all or any part of any improvement located on the Common Elements is damaged or destroyed by fire or other casualty, the Executive Board shall arrange for and supervise the prompt repair and restoration thereof (including without limitation any floor coverings, fixtures and appliances). The Association shall not use the proceeds of casualty insurance received as a result of damage or destruction of improvements located on the Common Elements for purposes other than the repair, replacement or reconstruction of such improvements except in accordance with Sections 11.4 and 15.4 hereof.

(2) Lots. If a building or other major improvement located upon a Lot is damaged or destroyed, the Owner thereof shall restore the site either (i) by repairing or reconstructing such building or other major improvement or (ii) by clearing away the debris and restoring the site to an acceptable condition compatible with the remainder of the Property. Unless the Covenants Committee permits a longer time period, such work must be commenced within six (6) months after the casualty and substantially completed within eighteen (18) months after the casualty.

Section 11.2. Procedure for Reconstruction and Repair of Common Elements.

(1) Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of any improvement located on the Common Elements, the Executive Board shall obtain reliable

and detailed estimates of the cost of restoring and repairing such improvement (including without limitation any floor coverings, fixtures and appliances) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Executive Board determines to be necessary.

(2) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of any improvement located on the Common Elements, subject to any modifications required by changes in applicable governmental regulations, and using contemporary building materials and technology to the extent feasible; provided, however, that other action may be taken if approved in accordance with Section 15.4 hereof.

Section 11.3. Disbursement of Construction Funds for Common Elements.

(1) Construction Fund and Disbursement. The proceeds of insurance collected on account of a casualty and the sums received by the Executive Board from the collection of assessments against the Owners pursuant to Subsection 11.3(2) hereof, or any Owner pursuant to Subsection 12.1(1) hereof, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner.

(a) If the estimated cost of reconstruction and repair is less than five percent (5%) of the total annual assessment for Common Expenses for that fiscal year, their the construction fund shall be disbursed in payment of such costs upon order of the Executive Board.

(b) If the estimated cost of reconstruction and repair is five percent (5%) or more of the total annual assessment for Common Expenses for that fiscal year, then the construction fund shall be disbursed in payment of such costs upon approval of

an architect qualified to practice in North Carolina and employed by the Executive Board to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a prior description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other Persons who have rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the vague of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(2) Shortfalls. If the proceeds of insurance are not sufficient to defray such estimated costs of repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds or shall be deemed a Common Expense and an assessment therefor shall be levied subject to Section 6.2 hereof.

(3) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds. If, after payment of the costs of all reconstruction and repair, and the refund of any excess payments made by Owners pursuant to Subsection 11.3(2) hereof in proportion to their contributions or the refund of excess payments by any Owner pursuant to Subsection 12.1(1) hereof, there remains any surplus fund, such fund shall be paid to the Association and shall be placed in the appropriate reserve account.

Section 11.4. When Reconstruction and Repair of Common Elements Not Required. If destruction of the improvements located on the Common Elements is insubstantial, the Executive Board may elect not to repair such insubstantial damage. Otherwise, any decision not to repair or restore improvements on the Common Elements shall be made in accordance with Section 15.4 hereof. If damaged improvements are not repaired, then the Executive Board shall remove all remnants of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the Common Elements and the balance of any insurance proceeds received on account of such damage shall be placed in the appropriate reserve account.

ARTICLE 12

COMPLIANCE AND DEFAULT

Section 12.1. Relief. Each Owner shall comply with all of the terms of the Association Documents as they may be amended from time to time. For the purpose of determining an Owner's liability for the violation of any provision of the Association Documents or for an act or omission of such Owner, each Owner is responsible for the acts or omissions of such Owner's (or tenant's) household, guests, agents or invitees, a default by an Owner shall entitle the Association, acting through its Executive Board or through the managing agent, to the following relief.

(1) Additional Relief.

(a) Each Owner shall be liable to the Association or to any affected member or Owner for the expense of all Upkeep rendered necessary by such Owner's act or omission regardless of negligence or culpability, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Executive Board. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances. Nothing contained

herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Any costs including, without limitation, legal fees incurred as a result of a failure to comply with the Association Documents by any Owner may be assessed against such Owner's Lot.

(b) If a new Owner does not give the Secretary written notice stating the name and address of the new Owner and the number or address of the Lot within thirty (30) days after acquiring title to such Lot, pursuant to Section 1.3 hereof, then reasonable record keeping costs incurred by the Association, as determined by the Executive Board, may be assessed against such Owner. The Board may set or change the amount of such assessment from time to time. Such assessment shall be a lien against such Owner's Lot as provided in Section 12.2 hereof.

(2) Costs and Attorneys' Fees. In any proceedings arising out of any alleged default or violation of the Association Documents by an Owner, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be determined by the Court.

(3) No Waiver of Rights. The failure of the Association, the Executive Board or of a member or Owner to enforce any right, provision, covenant or condition which may be granted by the Association Documents shall not constitute a waiver of the right of the Association, the Board or any member or Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Executive Board or any member or Owner pursuant to any term, provision, covenant or condition of the Association Documents shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising

such other privileges as may be granted to such party by the Association Documents, at law or in equity.

(4) Interest. In the event of a default by any Owner in paying any sum assessed against such Owner's Lot which continues for a period in excess of fifteen (15) days, interest from the due date at a rate not to exceed ten percent (10%) per annum may be imposed in the discretion of the Executive Board on the principal amount unpaid from the date due until paid; provided, however, that if the Executive Board does not impose interest, the Board shall set forth its reasons for not charging such interest in a written record of its decision.

(5) Abating and Enjoining Violations. The violation of any of the Rules and Regulations adopted by the Executive Board or the breach of any other provision of the Association Documents shall give the Executive Board the right, in addition to any other rights set forth in the Association Documents: (a) to enter the portion of the Property on which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner or member, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the Association Documents, and the Board shall not thereby be deemed guilty in any manner of trespass; (b) to use self-help to remove or cure any violation of the Association Documents on the Property (including without limitation the towing of vehicles); or (c) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that before any construction may be altered or demolished (except in emergencies) judicial proceedings shall be instituted.

(6) Legal Proceedings. Failure to comply with any of the terms of the Association Documents shall be grounds for relief, including without limitation an action to recover any sums due for

money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in the Association Documents and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Executive Board, the managing agent, or, if appropriate, by any aggrieved Owner or member and shall not constitute an election of remedies.

(7) Other Remedies. The Executive Board may suspend an Owner's voting rights pursuant to the Bylaws. The Board may also suspend the right of an Owner or the resident, and the right of such Person's household, guests, tenants, agent and invitees, to use the Common Elements for a reasonable period not to exceed sixty (60) days for any violation of any provision of any of the Association Documents or for any period during which any assessment against an Owner's Lot remains unpaid; provided, however, that the Association shall not suspend the right to use the private streets and roadways for both vehicular and pedestrian ingress and egress to and from such Owner's Lot and for parking or to use the Common Elements for necessary, ordinary and reasonable pedestrian ingress and egress to and from such Owner's Lot, or to suspend any easement over the Common Elements for storm water drainage, electricity, water, sanitary sewer, natural gas, television reception, telephone service or similar utilities and services to the Lots.

(8) Fines, Charges and Suspension of Rights. The Executive Board, or the Covenants Committee created by the Executive Board for this purpose, shall constitute a subcommittee having the power to impose fines, charges, suspend the right to vote in the Association and suspend the right of an Owner, his family, guests, invitees, and tenants to utilize and enjoy any recreation facilities located on the Common Elements in the case of an Owner found by the subcommittee to be responsible for a violation of the Association Documents (personally or under the

provisions of the Association Documents). No such penalty shall be imposed until the Owner charged with such a violation has been given notice and an opportunity for a hearing as set forth in Section 4.5 of the Bylaws. No charge may be imposed for failure to pay an assessment except as otherwise provided in the Declaration. Charges are special assessments and shall be collectible as such and shall also constitute a lien against an Owner's Lot in accordance with Section 12.2 hereof.

(9) Due Process. The Executive Board or the Covenants Committee, before imposing any fine, charge or before taking any action affecting one or more specific Owners shall afford such Owners the right to a hearing as set forth in Section 5.9 of the Bylaws.

Section 12.2. Lien for Assessments.

(1) Lien. The total annual assessment of each Owner for Common Expenses, any additional assessment, any special assessment or any other sum duly levied (including without limitation fines, charges, interest, late charges, etc.), pursuant to the Association Documents, is hereby declared to be a lien levied against any Lot owned by any Owner. Until fully paid and satisfied, the lien shall apply to and encumber all of the Lots that were owned, as of the date when payment was due, by the Owner from whom payment was due, and shall also apply to and encumber any and all Lots thereafter acquired by that Owner from the time such Owner becomes the Owner thereof. With respect to annual assessments, the lien is effective on the first day of each fiscal year of the Association and, as to additional assessments, special assessments and other sums duly levied, on the first day of the next payment period which begins more than fifteen (15) days after the date of notice to the Owner of such additional assessment, special assessment or levy. The Board or the managing agent may file or record such other or further notice of any such lien, or such other or further document,

as may be required to confirm the establishment and priority of such lien. The lien created by this section shall be prior to all liens and encumbrances hereafter recorded except a first mortgage or first deed of trust held by a Mortgagee as defined in Article 1, Section 1.1(19), real estate taxes and other charges levied by governmental authority and made superior by law. The personal obligation of the Owner to pay such assessment shall, in addition, remain such Owner's personal obligation and a suit to recover a money judgment for non-payment of any assessment or installation thereof, levied pursuant hereto, may be maintained without foreclosing or waiving the lien herein created to secure the same.

(2) Acceleration. In any case where an assessment against the Owner is payable in installments, upon a default by such Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Executive Board, and the entire balance of the assessment may be declared due and payable in full by the service or notice to such effect upon the defaulting Owner.

(3) Enforcement. The lien for assessments may be enforced and foreclosed in any manner permitted by the laws of North Carolina for foreclosure of mortgages or deeds of trust containing a power of sale or by an action in the name of the Executive Board, or the managing agent, acting on behalf of the Association. During the pendency of any such action to enforce the Association lien, the Owner shall be required to pay a reasonable rental for the Lot for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the laws of North Carolina. The Association shall have the power to bid on the Lot

at foreclosure or other legal sales and to acquire, hold, lease, mortgage, convey or otherwise deal with such Lot.

(4) Remedies Cumulative. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 12.3. Subordination and Mortgage Protection. Notwithstanding any other provision hereof to the contrary, the lien of any assessment levied pursuant to the Association Documents upon any Lot (and any charges, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a Mortgage made in good faith for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to foreclosure or any proceedings in lieu of foreclosure. Such sale or transfer shall not relieve the Mortgagee or the purchaser of the Lot at such sale from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

ARTICLE 13

MORTGAGES

Section 13.1. Notice to Executive Board. Upon request, an Owner who mortgages such Owner's Lot shall notify the Executive Board of the name and address of the Mortgagee. No Mortgage shall be entitled to any Mortgagee rights under the Association Documents unless such Mortgagee has notified the Board of its address as required by Section 13.2 below and has requested all rights under the Association Documents.

Section 13.2. Notices to Mortgagees. Any Mortgagee who desires notice from the Association shall notify the Secretary of the Association to that effect by certified or registered United States Mail. Any such notice shall contain the name and post office address of such Mortgagee and the name of the person to whom notices from the Association should be directed. The Executive Board shall notify Mortgagees of the following:

(1) Any default of an Owner of a Lot, upon which the Mortgagee has a Mortgage, in paying assessments for Common Expenses (which remains uncured for sixty (60) days) or any other default, simultaneously with the notice sent to the defaulting Owner;

(2) Any casualty, if required by Subsection 10.2(3) hereof;

(3) All actions taken by the Association with respect to reconstruction of the Common Elements or a Lot upon which the Mortgagee has a Mortgage;

(4) Any lapse in any insurance policy held by the Association;

(5) Any taking in condemnation or by eminent domain of the Common Elements and the actions of the Association pursuant to Article 14 hereof;

(6) Any proposal to terminate the Declaration, at least sixty (60) days before any action is taken to terminate in accordance with Section 16.2 hereof; and

(7) Any proposal to amend materially the Articles of Incorporation, this Declaration or the Bylaws, at least seven (7) days before any action is taken.

Section 13.3. Other Rights of Mortgagees. All Mortgagees or their representatives shall have the right to receive notice of and to attend and to speak at meetings of the Association. All such Mortgagees shall have the right to examine the Association Documents and books and records of the Association

and to require the submission of annual financial reports and other budgetary information. Any Mortgagee who makes a request shall be entitled to an audited financial statement for the preceding fiscal year of the Association prepared at the Association's expense and provided within a reasonable time.

ARTICLE 14

CONDEMNATION

Section 14.1. Definition. For the purposes of this Article, "Taking" means an acquisition of all or any port of the Common Elements or of any interest therein or right accruing thereto as a result of, in lieu of or in anticipation of the exercise of the right of condemnation or eminent domain, or a change of grade caused by action or a governmental entity affecting the value of any portion of the Common Elements so severely as to amount to condemnation.

Section 14.2. Taking of Common Elements. If there is a Taking of all or any part of the Common Elements, then the Association shall notify the members and Owner, but the Executive Board shall act on behalf of the Association in connection therewith and no member or Owners shall have any right to participate in the proceedings incident thereto. The award made for such Taking shall be payable to the Association, to be disbursed as follows: if the Taking involves a portion of the Common elements on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on another portion of the Common Elements, to the extent land is available therefor, in accordance with plans approved by the Executive Board, unless within sixty (60) days after such Taking the Declarant (during the Development Period) or the members by a sixty-seven percent (67%) vote of all classes (after the Development Period) shall otherwise agree. The provisions of

Article 11 hereof regarding the disbursement of funds following damage or destruction shall apply.

ARTICLE 15

AMENDMENT, EXTRAORDINARY ACTIONS

Section 15.1. Amendment by the Declarant. During the Development Period, the Declarant may amend any provision of this Declaration to: (1) make non-material changes; (2) satisfy the requirements of any government, governmental agency, including, without limitation, the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association and Federal Home Loan Mortgage Corporation or Mortgagee; and (3) depict the assignment of Limited Common Elements as required by Section 3.10 hereof.

Section 15.2. Amendment by the Association.

(1) Subject to Section 15.4 hereof, the Association may amend this Declaration by at least a sixty-seven percent (67%) vote of all classes of the members.

(2) An amendment shall not be effective until certified by the President as to compliance with the procedures set forth herein, executed and acknowledged by the President and attested by the Secretary or Assistant Secretary of the Association, and recorded in the office of the Register of Deeds of New Hanover County.

Section 15.3. FHA/VA Approval. Notwithstanding the provisions of Section 15.1., during the Development Period if Declarant desires that the Property be eligible for loans made, guaranteed or insured by the Federal Housing Administration or the Veterans Administration, the following actions will require prior approval of the Federal Housing administration or the Veterans Administration: Annexation of properties other than set forth on Exhibit B, mortgaging the Common Elements, dedication of Common Elements and amendment of this Declaration.

Section 15.4. Prerequisites. Written notice of any proposed amendment under Section 15.2 shall be sent to every member and Owner at least thirty (30) days before any action is taken. No amendment shall be made to the Declaration during the Development Period without the prior written consent of the Declarant. No amendment shall increase the financial obligations of an Owner in a discriminatory manner or further restrict development permitted on a Lot. No amendment to the Declaration shall diminish or impair the rights of the Declarant, including voting or veto rights, under the Declaration without the prior written consent of the Declarant. No amendment to the Declaration shall diminish or impair the express rights of the Mortgagees under the Declaration without the prior written approval of at least fifty-one (51%) of the Mortgagees. No amendment may modify this Article or the rights of any Person hereunder. Except as specifically provided in the Declaration shall be construed to grant to any Owner or to any other Person any priority over any rights of Mortgagees.

Section 15.5. Extraordinary Actions of the Association. Unless the members by at least a sixty-seven percent (67%) vote of classes have given their prior approval, the Association shall not, by act or omission: (i) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (except for making dedications or granting easements for utilities or other public purposes consistent with the intended use of such Common Elements); (ii) change the method of determining the obligations, assessments or other charges which may be levied against an Owner or voting rights of any members; provided, however, that such provisions shall not be changed with respect to any class of members representing a specific type of Lot without a Majority Vote of such class of members; (iii) abandon architectural control or requirements for Upkeep of the Property; (iv) fail to maintain fire and extended coverage on insurable Common Elements on a current

replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost), in accordance with Section 10.2 hereof; (v) use hazard insurance proceeds for losses to the Common Elements for any purpose other than repair, replacement or restoration of such Common Elements substantially in accordance with the Association Documents and the original plans and specifications; or (vi) add or amend any material provisions of the Association Documents, except for amendment adding Additional Real Estate with respect to real estate being added, which establish, provide for, govern or regulate any of the following: (1) voting procedures, (2) assessment liens or subordination of such liens; (3) reserves for maintenance, repair and reconstruction of the Common Elements; (4) insurance or fidelity bonds; (5) rights to use of the Common Elements; (6) maintenance responsibility; (7) boundaries of any Lot; (8) leasing of Lots; (9) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey such Owner's Lot; (10) expansion or contraction of the Property or the addition, annexation or withdrawal of real estate to or from the Property; or (11) the convertibility of Lots into Common Elements or vice versa.

Any amendment to the Association Documents shall not be considered material if only for the purpose of according technical reports or for clarifications. The provision of this section shall not be construed to reduce the vote that must be obtained from members where a larger vote is required by other provisions of the Association Documents.

Section 15.6. Application of Future Statutory Law Governing Property Owners Associations. To the extent permitted by law, the Association may elect by a Majority Vote of the members to become subject to all or any portion of any future statute pertaining to property owners associations or planned developments.

Such election shall be evidenced by an instrument recorded in the office of the Register of Deeds of New Hanover County and executed and acknowledged in the same manner as amendments to this Declaration by the Association.

ARTICLE 16

TERMINATION

Section 16.1. Termination by the Association. Subject to Section 15.4 hereof, the Association may terminate this Declaration only by a vote of the members entitled to cast at least eight percent (80%) of the total number of votes as certified by the president or with the written approval of members entitled to cast at least eight percent (80%) of the total number of votes. In either case the termination shall not be effective until certified by the President as to compliance with the procedures set forth herein, executed and acknowledged by the President and Secretary of the Association and recorded in the office of the Register of Deeds of New Hanover County.

Section 16.2. Prerequisites. Written notice of the proposed termination shall be sent to every member, Owner and Mortgagee at least sixty (60) days before any action is taken. The Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. Such termination shall not affect any permanent easements or other permanent rights or interests relating to the Common Elements created by or pursuant to the Association Documents. To the extent necessary, the termination agreement shall provide for the transfer or assignment of the easements, rights or interests granted to the Association therein to a successor entity which is assuming the Association's maintenance and regulatory responsibilities. Any lien which has arisen pursuant to the provisions of the Declaration shall remain in full force and effect despite termination of the Declaration until the amount secured thereby are paid in full.

Upon termination of the Declaration and the dissolution of the Association, the Association shall dispose of or distribute the real and personal property owned by the Association to such nonprofit corporation as may have been established upon termination to hold and administer the real and personal property formerly owned by the Association or public body or agency which shall perform the same functions.

ARTICLE 17

PARTY WALLS AND FENCES

Section 17.1. Beale's Rule; Laws of North Carolina to Apply; Easement. All matters arising in connection with any wall which would constitute a party wall at common law shall, to the extent consistent with the provisions of this Article, be subject to Beale's Rule and the common law of North Carolina as modified by statute from time to time and as modified by this Article. If the centerline of a party wall now or hereafter fails to coincide with the boundary between the Lots it serves, an easement for any resulting encroachment is granted in accordance with Section 3.5 hereof.

Section 17.2. Upkeep. The Owners of Lots served by a party wall shall provide for the Upkeep of party walls and shall share equally the cost of its Upkeep except as otherwise provided in this Article. No Owner shall impair the structural integrity of any party wall nor diminish the fire protection afforded by any party wall.

Section 17.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the following procedures shall be followed in order to restore such party wall.

(1) Either Owner served by the party wall shall notify the other Owner served by the party wall of any proposal to repair the wall. If within ten (10) days after such notice (or in an

emergency, within twenty-four (24) hours after such notice or a bona fide attempt to give such notice) the other Owner has not responded to the notice, then the Owner giving notice may proceed with the repairs. Such repairs must be substantially similar to the original construction and installation and of first class qualify, but may be made with contemporary materials.

(2) If the other Owner served by the party wall responds to the notice, the Owners shall act together to repair the party wall. If the Owners are unable to agree upon the action to be taken, they shall submit the issue to arbitration in accordance with Section 17.5 hereof.

(3) If any Owner restores a party wall in accordance with this section, then the other Owner shall contribute one-half (1/2) of the cost thereof. An Owner may, however, demand a larger contribution from the other Owner or refuse to contribute one-half (1/2) of such costs, under any rule of law or equity regarding liability for negligent or willful acts or omissions.

(4) To the extent that any failure to repair a party wall affects the use and enjoyment of the Common Elements, the Association may participate in the repair of the party wall and, in an emergency situation threatening life or property, make such repair without notice to the Owners. The Association may assess the cost of such repair against the Owners responsible for the damage or benefiting from the repair pursuant to Subsection 12.1(1) hereof.

Section 17.4. Liability. Any Owner who by a negligent or willful act or omission causes or permits a party wall to be damaged shall pay the cost of restoring such party wall to its condition prior to such damage.

Section 17.5. Arbitration. In the event of any dispute between Owners concerning a party wall, the Owners on each side shall select one arbitrator, and the arbitrators thus selected

shall select one additional arbitrator. Arbitrators shall be qualified by experience and education to serve as such. Once selected, the arbitrators shall promptly agree upon and notify the parties of the discovery procedures and rules of evidence to be used in the arbitration. The arbitrators shall be requested to reach a decision within twenty (20) days after their appointment. The decision of a majority of the arbitrators shall bind the Owners and their successors in interest. The cost of arbitration shall be paid by the losing party unless the arbitrators determine that the cost should be otherwise allocated between the parties, in which case that allocation shall be binding.

Section 17.6. Fences and Other Barriers. The provisions of this Article pertaining to party walls shall also govern any fence, other barrier or shared improvement originally installed by the Declarant (except for fences or barriers installed in connection with construction activities) and to any replacement thereof authorized by the Executive Board or the Covenants Committee. Otherwise, the Upkeep of any fence, other barrier or improvement shall be the responsibility of the Owner installing such fence, barrier or improvement unless different arrangements are agreed to by the adjoining Owners.

Section 17.7. Right to Contribution Runs with Land. Rights and duties of contribution set forth in this Article and any such rights and duties arising under the laws of North Carolina shall run with the land and bind successors in interest. This Article shall not prejudice any right of a successor in interest to recover any amount from a predecessors in title for which such predecessor was liable. Any rights or contribution set forth in this Article shall constitute a lien in favor of any Owner entitled to contribution against any Owner obligated to pay such contribution. Until fully paid and satisfied, the lien shall apply to and encumber all of the Lots that were owned, as of the date

when payment was due, by the Owner from whom payment was due, and shall also apply to and encumber any and all Lots thereafter acquired by that Owner from the time such Owner becomes the Owner thereof. The lien created by this section shall be prior to all liens and encumbrances, except mortgages, real estate taxes and other charges levied by governmental authority made superior by law and the Association's lien established pursuant to Section 12.2 hereof.

Southland Associates, Inc., as Trustee and Central Carolina Bank and Trust Company join in the execution of this Declaration for the sole purpose of acknowledging their consent to the imposition of the covenants, restrictions, reservations, easements, servitudes, liens and charges hereby placed upon that portion of the Submitted Property as is more particularly described in those Deeds of Trust recorded in Book 2129, at Page 27 and Book 2314, at Page 678 in the office of the Register of Deeds of New Hanover County, North Carolina.

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

CARLETON ASSOCIATES, INC.

By: Jere M Blanton Jr., President

Grace Blanton, Secretary

BOOK PAGE

2352 0429

SOUTHLAND ASSOCIATES, INC., TRUSTEE

By: Spence H. Broadhurst
Vice, President

ATTEST:

Kim N. Pope
Assistant, Secretary

CENTRAL CAROLINA BANK AND TRUST COMPANY

By: Spence H. Broadhurst
Sr. Vice President

ATTEST:

Kim N. Pope
Assistant Secretary/Cashier

BOOK	PAGE
2352	0430

DIAMOND LAND COMPANY

By: _____
Jonathan W. Washburn, President

ATTEST:

_____
Veritas Washburn, Secretary

BOOK PAGE

2352 0431

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Angelia R. Simons, a Notary Public in and for said County and State, do hereby certify that on the 23rd day of April, 1998, before me personally appeared Jesser M. Blanton, Jr. with whom I am personally acquainted, who, being by me duly sworn, says that he is _____ President and that Grace Blanton is _____ Secretary of CARLETON ASSOCIATES, INC., the corporation described in and which executed the foregoing instrument; that she knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the corporation was subscribed thereto by the said _____ President; that the said _____ President and _____ Secretary subscribed their names thereto and the said common seal was affixed, all by authority of the Board of Directors of said corporation; and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 23rd day of April, 1998.

Angelia R. Simons
Notary Public

My Commission Expires:

My Commission Expires June 24, 1998

ANGELIA R. SIMONS NOTARY PUBLIC NEW HANOVER COUNTY, N.C.

BOOK PAGE

2352 0432

STATE OF NORTH CAROLINA
COUNTY OF New Hanover

I, Linda C Robinson, a Notary Public in and for said County and State, do hereby certify that on the 22nd day of April, 1998, before me personally appeared Spence M. Broadhurst with whom I am personally acquainted, who, being by me duly sworn, says that he is Vice President and that Lisa M. Pope is Asst. Secretary of SOUTHLAND ASSOCIATES, INC., TRUSTEE, the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the corporation was subscribed thereto by the said Vice President; that the said Vice President and Asst. Secretary subscribed their names thereto and the said common seal was affixed, all by authority of the Board of Directors of said corporation; and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 22nd day of April, 1998.

LINDA C. ROBINSON NOTARY PUBLIC NEW HANOVER CO., NC

Linda C. Robinson
Notary Public

My Commission Expires:

4-28-99

BOOK PAGE

2352 0433

STATE OF NORTH CAROLINA
COUNTY OF New Hanover

I, Linda C Robinson, a Notary Public in and for said County and State, do hereby certify that on the 22nd day of April, 1998, before me personally appeared Spence H. Broadhurst with whom I am personally acquainted, who, being by me duly sworn, says that he is Sr. Vice President and that Lisa H. Pope is Asst. Secretary/~~Cashier~~ of CENTRAL CAROLINA BANK AND TRUST COMPANY, the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the corporation was subscribed thereto by the said Sr. Vice President; that the said Sr. Vice President and Asst. Secretary/~~Cashier~~ subscribed their names thereto and the said common seal was affixed, all by authority of the Board of Directors of said corporation; and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 22nd day of April, 1998.

LINDA C. ROBINSON NOTARY PUBLIC NEW HANOVER CO., NC

Linda C. Robinson
Notary Public

My Commission Expires:

4-28-99

9TWRE0019(A)
WILMAIN/21481.01

BOOK PAGE

2352 0434

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, CHERI M. McNEILL, a Notary Public in and for said County and State, do hereby certify that on the 22nd day of APRIL, 1998, before me personally appeared JONATHAN W. WASHBURN with whom I am personally acquainted, who, being by me duly sworn, says that he is President and that VERITAS S. WASHBURN is Secretary of DIAMOND LAND COMPANY, the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the corporation was subscribed thereto by the said President; that the said President and Secretary subscribed their names thereto and the said common seal was affixed, all by authority of the Board of Directors of said corporation; and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 22nd day of APRIL, 1998.

Cheri M. McNeill
Notary Public

My Commission Expires:

September 13, 1998

CHERI M. McNEILL NOTARY PUBLIC NEW HANOVER COUNTY, N.C.

STATE OF NORTH CAROLINA
New Hanover County

The Foregoing/ Annexed Certificate(s) of
Angelia R. Simmons, Linda C. Robinson & Cheri M. McNeill

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

This the 23 day of April 1998
Mary Sue Oots, Register of Deeds
by Patricia Barnes
Deputy/~~Assistant~~

EXHIBIT A

SUBMITTED PROPERTY

All that certain tract or parcel of land lying and being situate in New Hanover County, North Carolina, and being more particularly described as follows:

Beginning at an existing iron pipe control corner in the southern right-of-way line of Carleton Drive, said point being located South 70° 36′ 57" East 196.63 feet from an existing iron pipe marking the intersection of the southern right-of-way line of Carleton Drive and the eastern right-of-way line of College Acres Drive. THENCE, FROM SAID POINT OF BEGINNING, SO LOCATED, continuing along and with the southern right-of-way line of Carleton Drive, South 70° 55′ 57" East 257.61 feet to a new iron pipe corner; thence, South 19° 04′ 03" West 382.99 feet to a new iron pipe corner; thence, North 70° 55′ 57" West 109.52 feet to a point; thence, South 19° 04′ 03" West 31.68 feet to a point; thence, North 70° 55′ 57" West 148.09 feet to a new iron pipe in the eastern line of Lot 47A as shown on a map of College Acres Subdivision recorded in Map Book 7, at Page 28 in the office of the Register of Deeds of New Hanover County; thence, continuing along and with the eastern lines of Lots 47A, 50, 52, 54 and 56 as shown on the above-referenced and identified map of College Acres Subdivision, North 19° 04′ 03" East 414.67 feet to an existing iron pipe control corner in the southern right-of-way line of Carleton Drive, the point or place of beginning.

The Submitted Property is more particularly shown on that certain map or plat entitled "CARLETON PLACE TOWNHOMES SECTION 1, PHASE 1" recorded in Map Book 37, at Page 389 in the office of the Register of Deeds of New Hanover County.

The above-tract is a portion of that conveyed to Carleton Associates, Inc. by deed recorded in Book 2129, at Page 24 in the office of the Register of Deeds of New Hanover County.

EXHIBIT B

ADDITIONAL PROPERTY

All that certain tract or parcel of land lying and being situate in New Hanover County, North Carolina as is more particularly described in that certain deed to Carleton Associates, Inc. recorded in Book 2129, at Page 24 in the office of the Register of Deeds of New Hanover County, reference to said deed being hereby made for a more particular description of the Additional Property.

SAVING AND EXCEPTING from the above-described Additional Property all of the Submitted Property more particularly described on Exhibit A of this Declaration.