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FOR REGISTRATION REGISTER OF DEEDS  
REBECCA T CHRISTIAN  
NEW HANOVER COUNTY NC  
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INSTRUMENT # 2003003635

**DECLARATION OF RESTRICTIVE COVENANTS OF AVALON OAKS**

Drawn by Murchison, Taylor & Gibson, LLP  
16 North Fifth Avenue, Wilmington, NC 28401

**RETURNED TO**

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

These Restrictive Covenants, made this the 20 day of November, 2002 by AVALON OAKS, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of North Carolina, its successors and assigns, hereinafter referred to as "DECLARANT"

W I T N E S S E T H

WHEREAS, DECLARANT is the owner of certain property in New Hanover County, North Carolina, which is commonly described as AVALON OAKS which property is Lots 1 - 4, Phase 1, Avalon Oaks, and Lots 4A - 4C, Phase 2, Avalon Oaks, as the same is more particularly described on maps recorded in Map Book 43, Page 237 and Map Book 43, Page 239, of the New Hanover County Registry; (the "Property") and

WHEREAS, DECLARANT desires to subject said Property to certain Restrictive Covenants, conditions, restrictions, liens and charges as hereinafter set forth for the mutual benefit of DECLARANT and succeeding property Owners and desires that said Restrictive Covenants, conditions, restrictions, liens and charges run with the land and be binding upon the DECLARANT, its successors and assigns;

NOW, THEREFORE, DECLARANT hereby declares that all of the Properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability and attractiveness of the Property, and which shall run with the Property and shall be binding on all parties having any right, title, or interest in the described Property or any part thereof, and shall inure to the benefit of each owner thereof

ARTICLE 1

Definitions

Section 1 Association shall mean and refer to Avalon Oaks Homeowners' Association, Inc, a North Carolina non-profit corporation, its successors and assigns.

Section 2 Board of Directors or Executive Board means those persons elected or appointed and acting collectively as the Directors of the Association

Section 3 Boat Slip shall be used interchangeably with "docking space" and shall mean the space in and above the water (including boat lifts and associated equipment) adjacent to the Atlantic Intracoastal Waterway for the docking of a boat as shown on map thereof recorded or to be recorded in the New Hanover County Registry. The boat slips shall exist only if DECLARANT is able to obtain all required permits and permissions to construct the pier and boat

docks facility and decides in the exercise of its sole discretion to construct the boat slips.

Section 4 Building shall mean and refer to a home and associated garage constructed or erected on a Lot shown on a recorded map of the Property

Section 5 Bylaws means the Bylaws of the Association as they now or may hereinafter exist

Section 6 Common Elements Shall mean and refer to all land within the Property or adjacent to the Property owned by or dedicated for use by the Association, along with facilities and improvements erected or constructed thereon, and subject to the easements thereon, for the use and enjoyment of the Members of the Association. In addition, all private streets, except Windy Hills Drive which is a private street over which Lot Owners have a right of way easement for ingress and egress, community access areas, open space, amenities area, pier and docking facility, if constructed by DECLARANT, are declared to be Common Elements. Said Common Elements shall be maintained by the Association as set out hereinafter. Lot Owners in the original Windy Hills Subdivision have a right of access over Windy Hills Drive owned by the Charleston Landing at Windy Hills CSA, Inc. and which shall be maintained by the Charleston Landing at Windy Hills CSA, Inc. and the Avalon Oaks Homeowners' Association, Inc.

Section 7 Common Expenses shall mean and include

- a) All sums lawfully assessed by the Association against its members;
- b) Expenses of administration, permit renewals, maintenance, repair or replacement of the Common Elements, private streets, alleys, sidewalks, accent lighting, any easement access associated with the pier and boat docking facility, landscape easement area, shoreline and/or marsh line of Common Elements, non-residential irrigation lines and systems, the storm water system, any disposal system serving Common Elements, the pier and boat docking facility and the maintenance dredging of this facility, if applicable. Specifically included as a common expense are the expenses of maintenance and repair of the gate across from Lot 1 on Windy Hills Drive and Windy Hills Drive over which the association members and others have an easements for ingress and egress and which has been conveyed in total to Charleston Landing at Windy Hills CSA, Inc. as Common Element but which is subject to use by persons who do not contribute to the maintenance of the drive and are not members of either Association as set forth hereinafter
- c) Expenses declared to be common expenses by the provisions of these Restrictive Covenants or the Bylaws,
- d) Liability for such insurance premiums as the Restrictive Covenants or Bylaws may require the Association to purchase,
- e) Expenses agreed by the Members by affirmative vote of 67% of members to be common expenses of the Association,
- f) Any ad valorem taxes and public assessments levied against the Common Elements

Section 8 Common Profits shall mean and refer to the balance of all income, rents, profits and revenues of the Association remaining after the deduction of the common expenses or reserves therefor. Common profits shall not mean or include any sums lawfully assessed against members by the Association

Section 9 DECLARANT shall be and refer to Avalon Oaks, LLC, their successors and assigns to whom the rights of DECLARANT are expressly transferred

Section 10 Home shall mean and refer to a detached, free-standing home or place of residence and attached or detached garage constructed upon a Lot within the Property

Section 11 Lot shall mean and refer to those lots and plots of land, other than the Common Elements, designated on that map recorded in Map Book 43, Page 237.23, of the

New Hanover County Registry, and in subsequent recorded maps thereof.

Section 12 Member shall mean and refer to every person who is an Owner of a Lot subject to these Restrictive Covenants

Section 13 Misconduct shall have the meaning set forth in Chapter 47F of the North Carolina General Statutes

Section 14 Owner shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation

Section 15 Person shall mean and refer to an individual, corporation, partnership, association, trustee or other legal entity

Section 16 Pier and Boat Dock Facility shall mean the boat docking structure including pier, dock, floating dock gear and appurtenances that DECLARANT may construct adjacent to Avalon Oaks Subdivision. If DECLARANT can obtain the necessary permits and permission and does in fact construct the pier and boat dock facility in the exercise of its sole discretion, the facility shall be Common Area and shall be shown as such and delineated on a map thereof. No individual piers or docks are permitted on any individual Lot without the written consent of the DECLARANT

Section 17 Property shall mean and refer to that certain real property described as AVALON OAKS, in that map recorded in Map Book 43, Page 237 of the New Hanover County Registry and in subsequent recorded maps thereof.

Section 18 Restrictive Covenants shall mean this instrument as it may be from time to time amended or supplemented

## ARTICLE 2

### Covenant Rights

Section 1 Owners' Easements of Enjoyment Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions

- a. The right of the Association to limit the number of guests of Members,
- b. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and facilities and in aid thereof to mortgage said Property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the Lot Owners hereunder
- c. The right of the Association to suspend the voting rights and right to use the Common Elements and the facilities (except streets) by a member, or any person to whom he has delegated his voting right, during any period which any assessment against his Lot remains unpaid and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations,
- d. The right of the Association to exercise the powers and authority set over the Common Elements
- e. The right of the Association to formulate, publish and enforce rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements and the right of the Association to establish penalties for any infraction thereof.
- f. Easements as provided in Article 9 herein

Section 2. Delegation of Use Any Owner may delegate, in accordance with the ByLaws, his right of enjoyment to the Common Elements to the Members of his family, his tenants, or contract purchasers, provided, every such delegatee shall reside on the Property

Section 3 Title to Common Area The DECLARANT hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Elements owned by Declarant and located as shown upon the recorded map referred to above including private streets, except for Windy Hills Drive, to the Association, at the time of the conveyance of the last Lot in the subdivision or prior to said conveyance if the DECLARANT desires upon condition that such area as shall be designated "common area" and shall be for the sole and exclusive use and benefit of members, so long as such area is maintained in conformity with the requirements of this Declaration, the Bylaws, and the Articles of Incorporation of the Association, at the sole expense of the Association, subject, however, to easements described in Article 9 The Association shall accept conveyance of these Common Elements Title to the common area shall be subject to certain easements retained by DECLARANT and/or granted to certain Lot Owners as set forth in a Declaration of Annexation to be recorded by DECLARANT annexing the Property into and making it subject to the Declaration and Annexation for Avalon Oaks

Section 4. Parking Rights and Restrictions In addition to garage parking, off-street parking shall be provided by the Owner of each Lot for the parking of at least two automobiles and all other vehicles owned or controlled by such Owner, members of the Owner's family, guests or domestic employees of the Owner and tenants. Owners (including family members and tenants) of the Lots covenant and agree not to park their automobiles, trucks, boats, trailers and other vehicles on the streets or Common Elements located on the Property No trucks, boats, trailers or commercial vehicles shall be stored, housed or parked on the Property except within an enclosed garage

### ARTICLE 3

#### DECLARANT'S Rights

Section 1 Right to Annex. The DECLARANT hereby reserves the right to annex and subject to these restrictions real property owned by Declarant, including Avalon Subdivision, which is located adjacent to Avalon Oaks and is contiguous with Avlon Oaks and as described in deed recorded in Book ~~3372~~<sup>3766</sup>, Page ~~691~~<sup>1011</sup>, of the New Hanover County Registry, in order to extend the scheme of these Restrictive Covenants to other property to be developed and thereby bring such additional Properties within the jurisdiction of the Association and to provide for additional funding for the Common Elements and maintenance of Windy Hills Drive. Specifically included in this annexation is the right of use of the Common Elements of the Association as described hereinafter

Section 2 Right to Alter. The rights reserved by DECLARANT in Section 1 and all annexed Sections include the right to change, alter or designate Lot(s), roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment of the DECLARANT, be necessary or desirable The rights reserved in this Section specifically include the right of DECLARANT to redesignate, change, or alter any platted Lot(s) into road(s)

Section 3 Right to Change or Redesignate In order to mitigate problems which occur during the course of development, DECLARANT reserves the right in Avalon Oaks and all annexed sections or areas, if any, to change, alter or designate roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment of the DECLARANT, be necessary or desirable. Retention of this right is not intended to affect the overall development as set forth herein. DECLARANT's obligation to furnish certain amenities or facilities including boat slips and pier and docking facility is subject to its ability to obtain the required permits for construction of these facilities from the appropriate governmental entities If DECLARANT is unable to obtain these permits DECLARANT's obligations to the Lot Owners, if any, to furnish these facilities shall be terminated with no obligation or claim being vested in any Lot Owner

## ARTICLE 4

### Association

Section 1. Purpose An Association named AVALON OAKS HOMEOWNERS' ASSOCIATION, INC has been or will be formed pursuant to the requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina. Its purposes are to own, manage, maintain and operate the Common Elements and facilities located upon the Common Elements, the stormwater runoff system, sign easements areas, and other property maintained by the Association, to enforce the Restrictive Covenants contained herein, and to make and enforce rules and regulations governing the Owners' use and occupation of Lots.

Section 2. Membership Every person who is record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of the Association. Ownership of such interest shall be the sole qualification for such membership, there shall be only one vote per Lot in such Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The Executive Board may make reasonable rules regarding proof of ownership.

Section 3. Voting Rights The Association shall have the following two classes of voting membership:

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

b. Class II. Class II Member(s) shall be the DECLARANT and it shall be entitled to two (2) votes for each Lot owned. The Class II membership shall cease and be converted to Class I membership on the happening of either of the following events, whichever occurs earlier:

(1) When DECLARANT owns twenty-five percent (25%) or less of the planned residential lots in the subdivision, including any property which may be annexed to the subdivision,

(2) When the DECLARANT turns control of the Association over to the Class I Members; or

(3) On December 31, 2009.

Section 4. Right to Appoint and Remove Officers The DECLARANT shall have the right to appoint and remove the members and officers of the Executive Board until (i) December 31, 2009, or (ii) the DECLARANT turns control of the Association over to the Class I Members; or (iii) DECLARANT owns twenty-five percent (25%) or less of the planned residential lots in the subdivision, whichever first occurs.

Section 5. Powers The Association shall have the following powers:

a. Adopt and amend bylaws and rules and regulations;

b. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from Lot Owners;

c. Hire and discharge managing agents and other employees, agents, and independent contractors,

d. Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community.

- e Make contracts and incur liabilities;
- f Regulate the use, maintenance, repair, replacement and modification of Common Elements,
- g Cause additional improvements to be made as a part of the Common Elements;
- h Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to applicable law,
- i Grant easements, leases, licenses, and concessions through or over the Common Elements,
- j Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Lot Owners,
- k Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of 30 days or longer;
- l Impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to lots) for reasonable periods for violations of the Restrictive Covenants, Bylaws, and Rules and Regulations of the Association,
- m Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to these Restrictive Covenants or statements of unpaid assessments,
- n Provide for the indemnification of and maintain liability insurance for its officers, Executive Board, directors, employees and agents,
- o Assign its right to future income, including the right to receive common expense assessments,
- p Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association, and
- q Exercise any other powers necessary and proper for the governance and operation of the Association

Section 6 Common Elements. The Common Elements may be mortgaged or conveyed as required or permitted by law.

Section 7 Management and Administration. The management and administration of the Common Elements of the Subdivision and the Association shall be the sole right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of these Restrictive Covenants, the Articles of Incorporation and Bylaws of the Association, but may be delegated or contracted to manager(s) or a management service

Section 8. Assignment to Association. All water, sewer, land use, stormwater system, and utility permits, agreements and easements between DECLARANT and any municipal or governmental agency or department or public or private utility company shall be assumed by the Association upon the assignment of all such permits, agreements and easements to the Association by DECLARANT. The Association shall thereafter be responsible for and assume all duties, obligations, and rights and privileges of DECLARANT under such permits, agreements and easements, including all maintenance responsibilities

## ARTICLE 5

### Covenants for Assessments

Section 1 Creation of the Lien and Personal Obligation of Assessments. The DECLARANT, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- a. General annual assessments or charges,
- b. Special assessments for capital improvements; and
- c. Individual assessments against specific Lot(s) or property, in the event an Owner fails to comply with the provisions of these Restrictive Covenants, the Articles, By-laws or Rules and Regulations of the Association. The Association, through its Board of Directors, may perform such required task or remedy such matter, or assess a fine for such failure to comply and may levy the cost of such fine, performance, or remedy against the Owner(s) and the Owner's Lot or property as an individual assessment, and

Such assessments shall be fixed, established and collected from time to time as hereinafter provided

The general, special and individual assessments, together with fees, charges, late charges, fines, other charges, permitted hereunder or under Chapter 47F of the North Carolina General Statutes, interest, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to any successors in title unless specifically assumed by them.

Section 2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety and welfare of the residents and the Property, for enforcing these Restrictive Covenants and the rules of the Association; for providing the services and facilities for the purposes of or related to the maintenance, use and enjoyment of the Common Elements and facilities including all insurance premium coverages; for the purpose of payment of Common Expenses; and for the maintenance and upkeep of all the easement areas associated with the pier or boat docking facility, if constructed, for maintenance of private roadways, alleys and sidewalks and for maintenance of the pier and boat dock facility if constructed including maintenance dredging. The Association shall maintain and repair as a common area the pier and boat dock facilities and shall assess the Owners who have boat slip assignments under the general annual assessment an amount sufficient to pay said expenses. However, only those Owners who have been assigned a boat slip shall be assessed for maintenance of the boat slip with the result that all Lot Owners are assessed for maintenance and capital improvements to the pier and boat docking facility but only those Owners who have assigned boat slips shall be assessed for boat slip maintenance and capital improvements. In the event the pier or dock or boat slip including boat lift and associated equipment is damaged by an Owner or anyone renting from an Owner or a guest of an Owner, the Association shall have the right to assess that Owner for the cost of repairs. This assessment shall constitute a lien against the owner's Lot in favor of the Association for the full amount of the cost of repair including collection costs and shall be due and payable within 30 days after the Owner is billed. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens all as set forth herein.

### Section 3 General Annual Assessment.

a. Initial General Annual Assessment. The initial general annual assessment, due and payable to the Association, shall be prorated and paid at the time of closing of the purchase of a Lot by an Owner, so that all payments thereafter shall be due annually on July 1 of each year. The due date(s) may be changed by the Board of Directors as is more fully set forth in Section 8 of this Article. All general annual assessments shall be fixed to a uniform rate for all Lots.

b Criteria for Establishing General Annual Assessment In proposing the general assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts and reserves for future needs.

c Lots Owned by DECLARANT Notwithstanding anything in this ARTICLE 5 to the contrary, all Lots owned by DECLARANT shall be exempt from assessments until such time as DECLARANT conveys said Lot to an Owner

Section 4. Special Assessments for Capital Improvements In addition to the general assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repairs or replacement of a described capital improvement including the pier and boat dock facility upon the Common Elements, including easement areas, the necessary fixtures and personal property related thereto, within the project provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose), written notice of which, setting forth the purpose of the meeting, shall have been sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. Special assessments for the maintenance of the drainage system, as required by government permits or regulations, may be assessed by the Board of Directors without a vote of the members. All special assessments shall be fixed at a uniform rate for all lots except that only those Lot Owners who are assigned boat slips shall be charged maintenance assessment for the boat slips.

Section 5. Working Capital Assessment At the time title is conveyed to an Owner by DECLARANT, each Owner shall contribute to the Association as working capital an amount equal to three (3) months of the general assessment. Such funds shall be used for initial operating and capital expenses of the Association, such as prepaid insurance, supplies, and the maintenance of Common Elements and facilities, furnishings, and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. All working capital funds shall become part of the general operating funds of the Association.

Section 6. Uniform Rate of Assessment. Both general annual and special assessments must be fixed at a uniform rate for all Lots, on a per Lot basis, and may be collected as determined by the Board of Directors

Section 7 Notice and Quorum for any Action Authorized Under Section 4 Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty (50%) percent of the votes of each class of membership shall constitute a quorum. At subsequent called meetings, fifty (50%) percent of the votes of each class of membership shall constitute a quorum. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting

Section 8 Date of Commencement of General Assessments and Due Dates The general assessments provided for herein shall commence on the date of conveyance of each Lot to an Owner other than DECLARANT. The first general assessment shall be adjusted according to the number of months remaining in the calendar year. The Executive Board shall fix the amount of the general assessment against each Lot at least thirty (30) days in advance of each general assessment period. The budget shall be presented to the Members in accordance with N.C.G.S. §47F-3-103(c). Written notice of each general assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Executive Board. The Executive Board shall require the general assessments to be paid at least annually, but may require the general assessments to be paid more often. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid

Section 9 Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the maximum rate allowed by law, costs of collection, court costs, late charges, charges for reasonable attorney's fees and other charges permitted by statute, including fees,

charges and fines, shall constitute a lien against the Lot upon which such assessments are levied upon filing of record notice of the same in the office of the Clerk of Superior Court of New Hanover County. The claim of lien filed under this Section shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed. The Association may file a suit to collect such delinquent assessments and charges. The Association may file Notice of Lis Pendens, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Elements or abandonment of his Lot or for any other reason. Costs and reasonable attorney's fees shall be awarded to the prevailing party in any action brought pursuant to this Article. An action brought to enforce a lien pursuant to this Article must be instituted within three (3) years after the docketing of the claim of lien in the Office of the Clerk of Superior Court of New Hanover County.

The Association, upon receipt of written request, shall furnish to a Lot Owner or the Lot Owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a Lot. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board, and every Lot Owner. The Executive Board may establish a reasonable charge for preparing the statement required in this Section.

Section 10 Subordination of the Lien to Mortgages and Ad Valorem Taxes  
The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any first mortgage and ad valorem taxes on such Lot. The sale or transfer of any Lot shall not affect the assessment lien, however, the sale or transfer of any Lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Surplus Funds Any excess of association income over Common Expenses, shall be applied against the subsequent tax year's general assessments.

## ARTICLE 6

### Maintenance and Landscaping

Each Lot Owner shall be responsible for the exterior maintenance of each home, the walkways, driveway to the home and the landscaping on the Lot and agrees to maintain the home in a good and acceptable manner. If, in the opinion of the Association, any Owner shall fail to maintain any home owned by him/her in a manner which is reasonably neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the sole opinion of the Association, the Association in its discretion, by the affirmative vote of a majority of the Members of the Board of Directors, and following thirty (30) days written notice by the Owners, may enter upon and make or cause to be made repairs to such improvements and perform such maintenance on the Lot as the removal of trash, cutting of grass, pruning of shrubbery, weeding and items of erosion control. The Association shall have an easement onto and over each Lot for the purpose of accomplishing the foregoing. The reasonable cost incurred by the Association in rendering all such services, plus a service charge of fifteen (15%) percent of such cost, shall be added to and become a part of the assessment to which such Lot is subject.

## ARTICLE 7

### Boat Slips

The boat slips are located within a common area to be designated as such and delineated on a map. The DECLARANT shall assign a boat slip to each Owner (member) who acquires a boat slip from DECLARANT by an Assignment of Boat Slip letter at the time of sale of each Lot or a reasonable time thereafter. The Assignment shall not be recorded, but shall entitle the Owner (member) to the exclusive use and enjoyment of the boat slip so assigned, subject to the Declaration, Bylaws and such rules and regulations as may be established by the Association, all

Federal, State and municipal regulations, but no Owner (member) may transfer or sell his membership and boat slip except as an incident to the sale of his Lot in Avalon Oaks Subdivision. The boat slips so assigned may not be rented separately from the rental of the corresponding Lot except that the boat slip may be rented to another Lot Owner within Avalon Oaks Subdivision or within the original Avalon Oaks. The slip and/or any vessel docked therein may not be used for any commercial purpose. This provision shall not be effective unless DECLARANT is able to obtain all necessary permits and permissions to construct the pier and boat docking facility described herein and does in fact construct such facility. DECLARANT makes no representation or covenant or warranty that it will in fact construct a pier and docking facility and boat slips. No individual piers or docks are permitted on any individual Lot without the written consent of the DECLARANT.

## ARTICLE 8

### Use Restrictions

Section 1 Rules and Regulations The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area.

Section 2 Use of Property Each Lot, building, the home thereon and the Common Elements shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the Bylaws.

(a) All Lots, buildings and the Common Area including boat slips, if available, shall be used solely for single family residential purposes and for purposes incidental or accessory thereto.

(b) No commercial use shall be permitted on any Lot. No structure shall be erected, placed or permitted to remain on any Lot other than one (1) detached, single family residence dwelling not to exceed three stories in height above floor or piling level and such outbuildings as are usually accessory to a single family residence dwelling, including a private enclosed garage.

Any dwelling constructed on a Lot subject to these RESTRICTIVE COVENANTS shall contain not less than 2,500 square footage of fully enclosed and heated floor space all devoted to living purposes (exclusive of roofed or unroofed porches, breezeways, terraces, porches, steps, garages and any outbuildings).

(c) All Lots shall be well maintained and no accumulation of rubbish or debris shall be permitted. The Owners of all unbuilt upon Lots in the Subdivision shall clear their Lots of underbrush at least one time each year. If the Owners do not clear their Lot as required by this paragraph, the Association shall have the authority to clear any such Lot of underbrush and separately assess the cost of such work against each Owner. Such charge shall be an individual assessment against the Owner and his Lot(s) and may be enforced in accordance with the provisions of Article 6 herein.

(d) No mobile home, trailer, tent, or temporary house, temporary garage or other temporary outbuildings shall be placed or erected on any Lot, provided, however, that the DECLARANT may grant permission for temporary structures for storage of materials during construction.

(e) During construction of improvements on any Lot, adequate portable sanitary toilets must be provided for the construction crew.

(f) Construction activity on a Lot shall be confined within the boundaries of said Lot. Each Lot Owner shall have the obligation to collect and dispose of all rubbish and trash resulting from construction on his Lot.

(g) All dwellings and permitted structures erected or placed on any Lot shall be constructed of material of good grade, quality and appearance, and all construction shall be performed in good workmanship manner and quality. The covering for all roofs shall be shingles.

or materials approved by the DECLARANT or its designee. Materials and colors for the exterior of all dwellings and permitted structures must be approved by the DECLARANT or its designee. No used structures shall be relocated or placed on any Lot and no structures shall have an exterior constructed of asbestos or asphalt siding, aluminum siding, paper composition, or concrete blocks, it being intended that only wood siding, manufactured lap siding, brick, claybrick, or stucco exteriors be constructed on Lots subject to these Restrictive Covenants. Modular and prefabricated homes may not be erected or placed on any Lot

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

Outdoor, uncovered living areas should be constructed with materials and colors that are compatible with the exterior materials and detailing of the house. Railings should be consistent with the architectural character of the house. Patio and terrace surfacing materials should be concrete, stone, or pavers.

Lighting sources shall not be directly seen. Illumination of surfaces such as walls, walks, and decks is permissible. Porch lighting, for example, may include wall washers and recessed fixtures that illuminate the entry surface, but the source of lighting should not be in view. Floodlights are restricted to the rear of the house.

(h) Any dwelling or improvement on any Lot that is destroyed in whole or in part by fire or other casualty shall be either rebuilt or torn down and all debris removed and the Lot restored to a slightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three (3) months. A temporary privacy wall or fence must be built to screen the property from view within seven (7) days and such fence or wall must be approved in advance by DECLARANT or Architectural Control Committee.

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

(j) No outdoor poles, clotheslines and similar equipment shall be erected or located upon any Lot.

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

(l) Each Lot in the Subdivision shall have only one (1) mailbox and one (1) paper box which shall be mounted on a single post and all such boxes must be approved by the DECLARANT or the Architectural Control Committee. Such mailboxes or paper boxes may be provided by the DECLARANT or builder. Any boxes provided by the DECLARANT or builder shall be considered an improvement and must remain with the Lot and must be maintained by the Lot Owner. Boxes damaged beyond repair shall be replaced by the Lot Owner.

(m) No outside antennas or satellite dishes shall be erected on any Lot or structure unless and until permission for the same has been granted by the Committee or DECLARANT. Any such antennas or satellite dishes shall be screened from view by adjoining property Owners and the users of any street or recreation area or Common Area. The design and location of the screening shall be approved by the DECLARANT or the Architectural Control

## Committee

(n) All dwelling connections for all utilities, including, but not limited to, water, electricity, gas, telephone, and television shall be run underground from the proper connecting points to the dwelling structure in such manner as may be acceptable to the appropriate utility authority. The cost for such underground service shall be shared by the Owner and utility company in conformity with existing utility company policy, if any.

(o) No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed and personally escorted or confined to Owner's Lot and shall not become a nuisance or bother to other Owners. No animals, livestock or poultry of any kind may be raised, bred or kept in any Common Area. Pets must be restrained or confined within the Lot. Owners must promptly remove any and all animal excrement from any and all Common Elements and Lot(s) and keep such area(s) clean and free of pet debris. All animals must be properly tagged for identification.

(p) No fence shall be erected or hedge grown on any Lot unless approved by the DECLARANT or its designee. All fences constructed hereunder shall be maintained in its original condition by the Lot Owner.

(q) No Lot or Lots shall be subdivided or its boundary lines changed except with the prior written consent of the DECLARANT during the period of DECLARANT'S control of the Association and, thereafter, by the Executive Board.

(r) Owners shall be responsible for any damage done to any streets, roadways, accessways, Common Elements or property of other Owners within the Subdivision which may be caused by any Owner, his agents, employees, guests, licensees or invitees. The Association shall have the authority to assess any Owner for such damage and such charge shall be an individual assessment against the Owner and his Lot(s) and may be enforced in accordance with the provisions of Article 5 herein and N C G S 47F-3-115.

(s) The dwelling and other improvements (including landscaping) to be constructed on a Lot shall be completed within twelve (12) months of the date of a Building Construction Application and Agreement entered into between the Lot Owner and/or his builder and the Association. In the event such improvements are not completed within such time period, and no extension of completion time has been granted by the Association, the Association may impose a daily fee for each day such improvements have not been completed. Such fees, if unpaid, shall be the personal obligation of the Owner of the Lot, and shall be added to and become a part of the Common Expense assessment applicable to such Owner's Lot, enforceable pursuant to the provisions of Article 5 of this Declaration. The determination as to whether or not improvements have been completed for the purposes of this Section and of the established amount of the daily fee for incomplete improvements shall be made by the Architectural Control Committee of the Association, in its sole discretion.

(t) No vehicle of any type shall be parked on any street in the Property. No truck nor other vehicle in excess of a three-quarter (3/4) ton capacity, boat, vessel, motorboat, camper, trailer, motor or mobile home, or similar type vehicle or apparatus shall be parked or kept overnight or longer, on any street or on any Lot unless it is stored in an enclosed garage and in such a manner as to not be visible to the Owners of other Lots or the users of a street or Common Area. All tools or other materials stored in vehicles for overnight parking shall be kept out of sight. No customized vehicles which are unsightly in appearance as determined by the Board of Directors or the DECLARANT shall be allowed.

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

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

(v) No yard sales or garage sales shall be permitted upon any Lot in this Property without written consent of Declarant or its successor or designee.

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

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

(y) The Common Areas shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the homes, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws

(z) All equipment, including basketball goals, outdoor play equipment, bicycles, toys, grills and other similar objects must be stored when not in use so as not to be visible by the Owners of other Lots or the users of any street or recreation area.

(aa) No waste shall be committed on any portion of the Common Elements

(bb) All garbage receptacles, containers and enclosures shall be located so as not to be unsightly and said locations shall be as designated or constructed by DECLARANT or its designee

(cc) Nothing shall be done in or to any home or garage or in, to or upon any of the Common Elements which will impair the structural integrity of any building, home, garage or portion of the Common Elements or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in these Restrictive Covenants.

(dd) Except as may be required by municipal ordinance, no Owner shall display, or cause or allow to be displayed to public view any sign, placard, poster, billboard or identifying name upon any home, building or any portion of the Common Elements.

(ff) Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitation shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(gg) Signs No sign, billboard, or other advertising of any kind, including without limitation professionally prepared "for sale" and "for rent" signs, shall be placed or erected on any Lot, right-of-way or Common Area until after January 1, 2005. Thereafter, a professionally prepared "for sale" or "for rent" sign not to exceed four (4) square feet in size. Although approval by the Architectural Committee is not required prior to the display of such signs, the Architectural Committee may itself remove, have removed, or require the removal of such sign which in its opinion would not otherwise be allowed under this Declaration. A valid easement shall exist on any Lot for such removal by the Architectural Committee or its agents. Provided, however, nothing shall prohibit or limit in any manner "construction" signs

designating the job site and builder which may be placed upon a Lot during the period of the construction of a residential dwelling on the Lot but must be immediately removed upon final completion of such construction. Notwithstanding the above, any additions to the Project Property in the Development area may be further limited in regard to signs, billboards or advertising as set out in any Supplemental Declaration. Nothing herein shall prohibit any sign erected by the DECLARANT or its assigns.

(hh) Driveways/Parking All driveways constructed on any Lot shall be paved with either concrete, stamped concrete, colored concrete in earthtone colors, pea gravel concrete, oyster shell concrete, or brick pavers. Any dwelling shall include an attached or detached two car garage approved by the Architectural Control Committee. An Owner shall provide a minimum of two (2) paved off-street parking spaces, excluding garage space(s) and shall provide at least one per automobile or other vehicle owned and regularly used at the Lot. On street parking is prohibited except for temporary, short gatherings.

(ii) Trees In order to maintain the rural, wooded character of the subdivisions

(a) Except as to development or construction by DECLARANT, or as may be approved by the DECLARANT or its designee., no tree six (6") in diameter at any location on said tree or ten feet (10') in height shall be cut, removed or intentionally damaged on any Lot unless first approved by DECLARANT or its designee.

(b) Fallen trees, dead trees and live trees less than six (6") inches in diameter may be removed from the Lot at any time.

(c) Trees may be removed from the area of construction as permitted by DECLARANT or its designee.

(jj) Swimming Pools Outdoor swimming pools, hot tubs, Jacuzzi, and other similar facilities may be located on a Lot only after the DECLARANT or its designee's approval, and shall be screened and fenced. All such improvements shall be subject to approval and compliance with all governmental laws and regulations.

(kk) Fence Minimum Requirements. Architectural review requirements must be met prior to construction of any fence. No fences over 4 feet in height shall be constructed on any Lot, except as originally installed by the DECLARANT. No fence shall be erected between the rear line of any building and the street right-of-way. Any portion of any fence which can be viewed from the street right-of-way shall be of an ornamental nature. The term fence shall include but not be limited to, a wall, fence, landscaping, berm, or hedge which act as a fence or privacy or security inducing structure.

Fences should be compatible with the architectural style of the house and should be used primarily for screening and defining outdoor space. Fencing or landscape materials are required to screen HVAC equipment and trash receptacles. Perimeter fencing around the entire Lot is not permitted. Fences should maintain a reasonable scale to the house and not block desirable views and vistas or negatively impact adjacent lots. Walls are not permitted. Split rails, chain link or welded wire fencing are not allowed.

(ll) Compliance with Wetlands Regulations It shall be the responsibility of each Owner, prior to alteration of any Lot, to determine if any Lot shall have been determined to meet the requirements for designation as a regulatory wetland. Any subsequent fill or alteration of this wetland shall conform to the requirements of state and federal wetland rules adopted by the State of North Carolina and U.S. Army Corps of Engineers in force at the time of the proposed alteration. The intent of this deed restriction is to prevent additional wetland fill, so the property Owner should not assume that a future application for fill will be approved. No buildings or site improvements shall be permitted within the wetlands areas; provided, however, piers, walkways and other structures erected on pilings are permitted provided the pilings do not result in fill as defined by Regulation or Statute. Site improvements shall include denuding, grassing, or altering the existing grade of any wetlands area. Site improvements shall not include hand clearing of trees, limbs, brush or other plants provided such clearing does not result in a denuded or barren area. No fill may be placed in any wetlands area.

Section 3 Boat Restrictions In order to help preserve the water quality of the Myrtle Grove Sound and the Atlantic Intracoastal Waterway, all boats or vessels must comply with all governmental rules and regulations concerning operation, dockage, seaworthiness, gear and appurtenances, environmental matters and all rules and regulations established by the Association and the terms and conditions of all permits for the pier and docking facility issued by any department or agency of the United States, the State of North Carolina and the County of New Hanover. In addition, all boats and vessels berthed in the boat docking facility shall not exceed 30 feet in total length, excluding engines and engine mounting brackets, pulpits, bowsprits or the equivalent.

Section 4 Lease of Homes No home shall be leased for transient or hotel purposes, nor may any Owner lease less than the entire home, nor shall any such lease be for any period of less than six (6) months. Any lease must be in writing and provide that the terms of the lease and occupancy of the unit shall be subject in all respect to the provisions of the Declaration and Annexation, these Restrictive Covenants and Bylaws of the Association and any failure by a lessee to comply with the terms of such documents shall be a default under the lease. A copy of each lease must be furnished to the Association Board of Directors.

## ARTICLE 9

### Easements

Section 1 Walks, Drives, Parking Areas, Alleys and Utilities. All of the Property, including lots and Common Elements, shall be subject to a perpetual non-exclusive easement or easements in favor of all Owners of lots for their use and the use of their immediate families, guests, invitees, tenants or lessees for all proper and normal purposes and for ingress, egress and regress in and to such easements for private streets, driveways, walkways, pedestrian access areas, alleys, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, antenna lines and other public utilities as shall be established prior to subjecting the Property to these Restrictive Covenants by the DECLARANT or its predecessors in title. The Association shall have the power and authority to grant and to establish in, over, upon and across the Common Areas, and over driveways located on Lots, such further easements as are requisite for the convenient use and enjoyment of the Property.

Section 2 Reservation to DECLARANT DECLARANT reserves the right to subject the Property to a contract with Carolina Power & Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or continuing monthly payment to Carolina Power & Light Company for the Owner of each Lot. However, no mercury lights or dawn-to-dusk lights shall be permitted without the written consent of DECLARANT.

Section 3 Emergencies Every Lot and Home shall be subject to an easement for entry by the Association for the purpose of correcting, repairing or alleviating any emergency condition which arises upon any Lot or within any home and which endangers any building or portion of the Common Elements. The Association shall also have an easement of entry for the purpose of correcting or alleviating any emergency condition which endangers any of the Common Elements subject to the Associations' jurisdiction.

Section 4 General Easements An easement is hereby established over all Lots and Common Elements for the benefit of applicable governmental agencies for the setting, removing and reading of water, gas and electric meters, maintaining and replacing water, drainage and drainage facilities, maintaining and replacing gas and electric facilities, fire fighting, law enforcement, garbage collection and the delivering of mail.

Section 5 DECLARANT'S Access Easement An exclusive easement is hereby established in favor of DECLARANT over all Common Elements for access to adjacent properties for the purposes of future development and the installation of streets and public utilities.

Section 6 Landscaping and Maintenance Easement An easement is hereby established in favor of the DECLARANT and the Association, their agents and assigns over all lots for the purpose of providing and maintaining landscaping, for installation and maintenance of