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304 BY AIR MAIL TO: **Waynard E. Tiggs**  
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**Charlotte, NC 28209**

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RECORDED AND VERIFIED  
**REBECCA P. TUCKER**  
REGISTER OF DEEDS  
NEW HANOVER CO. NC

Apr 24 10 40 AM '90

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR AVENEL**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR AVENEL (the "Declaration") made as of this 24th day of April, 1990, by PORTLAND PARTNERS LIMITED PARTNERSHIP, a North Carolina limited partnership (hereafter referred to as "Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of that certain real property comprising that residential subdivision known as or to be known as AVENEL, and as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and;

WHEREAS, Declarant desires to insure the attractiveness of the Property and to preserve the values and amenities thereof; to establish a general plan of development as herein set out; to restrict the use and occupancy of the Property; and to provide for a method for the maintenance, repair, replacement and operation of the Common Area (as defined below);

NOW THEREFORE, Declarant hereby declares that the Lots (as defined below) and other property comprising the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions and easements set forth in this Declaration which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be binding on all parties owning any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**PROPERTY SUBJECT TO THIS DECLARATION  
ADDITIONS THERETO**

**Section 1. Existing Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, irrespective of whether there may be additions thereto as hereinafter provided, is located in New Hanover County, North Carolina, and is more particularly described on Exhibit "A" attached hereto and incorporated herein (the "Existing Property").

**Section 2. Additions to Existing Property.** Additional property adjacent to or adjoining the Existing Property may be brought within the scheme of this Declaration and the jurisdiction of the Association (as defined below) by Declarant without the consent of the Association or its Members (as hereinafter defined); provided, however, that said annexations, if any, must occur with fifteen

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(15) years after the date of filing of this Declaration. Declarant shall not be obligated to subject any additional property to this Declaration. Such additions shall be made by filing a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property in the New Hanover County, North Carolina, Public Registry, which shall extend the scheme of this Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein.

## ARTICLE II

### DEFINITIONS

Section 1. "Association" means Avenel Homeowners Association, Inc., its successors and assigns.

Section 2. "Boat Facility" means the Pier, the Boat Slips, all improvements and facilities appurtenant to the Pier and Boat Slips, and the area immediately surrounding the Pier and the Boat Slips.

Section 3. "Boat Facility Access Area" means those portions (if any) of those Lots having frontage on Little Creek and/or the Intracoastal Waterway which are hereafter subjected by Declarant to an easement in favor of the Boat Slip Owners, the Boat Facility Association, and the Association.

Section 4. "Boat Facility Association" means all of the Boat Slip Owners acting as a group, whether organized as a profit or non-profit corporation, or as an unincorporated association.

Section 5. "Boat Slip" means a space adjacent to the Pier designed to be utilized for the mooring of a single pleasure craft.

Section 6. "Boat Slip Owner" means an Owner who has purchased a license to utilize a Boat Slip.

Section 7. "Common Area" means any real property and property rights owned by the Association for the common use and enjoyment of the Owners and/or designated as "Common Area" on the Map of the Property, together with all improvements and facilities installed upon or used in connection with such real property and property rights. The Common Areas shall include, without limitation, the Association's rights (if any) in and to the Boat Facility Access Area, and the Private Streets.

Section 8. "Declarant" means PORTLAND PARTNERS LIMITED PARTNERSHIP, and any successor thereof so designated as a Declarant hereunder, which successor has purchased all remaining Lots not theretofore sold by Portland Partners Limited Partnership (or any successor Declarant) to third party purchasers. At any time, there shall be only one Declarant hereunder. At any time, and from time

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to time, Declarant may relinquish any one or more of the rights granted to or reserved in favor of Declarant in this Declaration by written instrument recorded in the New Hanover County Public Registry, and from and after the recording of any such instrument, the Association shall thereafter have the power to exercise such right and shall thereafter be responsible for all obligations and liabilities with respect to such right. At such time as Declarant becomes a "Class A Member" of the Association as provided for in the Bylaws of the Association, or ceases to be a Member of the Association, whichever shall earlier occur, all rights granted to or reserved in favor of Declarant shall be deemed transferred to and exercisable by the Association, and the Association shall from and after such time be liable for all actions taken in the exercise of such rights, with the exception of the right of architectural control provided for in Article III of this Declaration, which shall be relinquished by Declarant only in the manner and at the time set forth in such Article.

Section 9. "Lot" means any plot of land, with delineated boundary lines, shown upon the Map and any other subdivision map of the Property recorded after the Map is recorded. In the event any Lot is increased or decreased in size by resubdivisions or through recordation of new subdivision plats, any such newly plotted lot shall thereafter constitute a Lot for the purpose of this Declaration.

Section 10. "Map" means that certain map of the Existing Property as recorded in Map Book 31 at Page 36 in the New Hanover County, North Carolina, Public Registry, and the map(s) of any additions to the Existing Property which may be recorded by Declarant in the New Hanover County, North Carolina, Public Registry.

Section 11. "Member" means every person or entity who holds membership in the Association.

Section 12. "Mortgage" means any mortgage or deed of trust constituting a recorded first lien on a Lot.

Section 13. "Mortgagee" means the owner and holder of a Mortgage at the time such term is being applied.

Section 14. "Owner" means the record owner, whether one or more person or entity, of fee simple title to any Lot which is a part of the Property, including contract sellers and owners of any equity of redemption, but excluding those having such interest in a Lot solely as security for the performance of an obligation.

Section 15. "Pier" means the improvements, if any, including any fixed piers, docks, floating ramps, and similar facilities, constructed by Declarant as part of the Boat Facility, adjacent to the Boat Facility Access Area.

**Section 16.** "Private Streets" means Avenel Drive, Portsmouth Place, Banyan Trail, Avocet Court (and any extension thereof up to the Avenel westerly boundary), Halcyon Lane, Meridian Terrace, and any other streets designated by Declarant as Private Streets and/or marked as such on any Map of the Property; and shall further include the road leading from Edgewater Club Road to the southerly terminus of Avenel Drive as shown on the Map. The Private Streets shall include all paved portions of such streets, adjoining curbs and gutters, irrigation systems, all storm drains, sanitary sewer lines, and other utility facilities installed therein or thereunder, all landscaped medians therein, and adjoining landscaped areas within the full width of the rights-of-way of the Private Streets as shown on any Map or as designated in writing by Declarant.

**Section 17.** "Property" means the "Existing Property" described in Article I, Section 1 hereof, and any additions thereto, as are or shall become subject to this Declaration and any Supplementary Declaration under the provisions of Article I, Section 2 hereof.

### ARTICLE III

#### ARCHITECTURAL CONTROL

**Section 1. Duration of Control.** Because Declarant may develop areas adjoining the subdivision and bring same within the scheme of this Declaration, Declarant shall retain the right of architectural control as provided for in this Article III for fifteen (15) years from the date of filing of this Declaration even though the Declarant at the time of any exercise of such control may own no Lot. However, the Declarant may, at its sole option, surrender such right of architectural control at any time by a duly recorded written instrument, and, at such time, the Association shall have the power through an additional duly recorded written instrument to appoint an architectural review board (the "Architectural Review Board"), which Architectural Review Board, if so appointed, shall have the right of architectural control as described in this Article, and shall retain such right until said Architectural Review Board is terminated by a duly recorded written instrument executed by the Association.

**Section 2. Extent of Control.** No building, garage, fence, wall, sidewalk, hedge, mass planting, change in grade or slope, site preparation, swimming pool, tree house, children's play house, sign, exterior illumination, monument or marker, driveway, septic system or other utility facility, mailbox, well, tennis court, patio, deck, shrubbery, landscaping, or any other structure or improvement ("Improvements") shall be commenced, erected or maintained upon any Lot nor shall any exterior addition, change or alteration therein (including change of color) be made without the prior written approval of Declarant in its sole discretion. The

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areas over which Declarant shall have control shall include, but shall not be limited to, the size and plan of the principal residential structure, the location of the principal residential structure on the Lot, the size and plan of any attached or unattached garage or other building, the location and manner of construction of any driveway, swimming pool, septic system or other utility facility, patio, mailbox, driveway and landscaping monuments and markers or any other exterior improvements, the composition and color of all material used on the exterior of any structure and the location and type of any shrubbery. Declarant shall also have control over the removal of any tree or other vegetation from any Lot and no party shall grade, excavate upon or otherwise alter the topography of any Lot or remove any tree or other vegetation therefrom without obtaining the prior written approval of Declarant in accordance with its general plan of development. The Declarant reserves the right to control absolutely and solely and decide the precise site and location of any house or dwelling or other structure upon all Lots, provided however, that such locations shall be determined only after reasonable opportunity is afforded the Lot Owner to recommend a specific site.

**Section 3. Procedure.** Any party requiring approval of any proposed Improvements to any Lot shall submit to Declarant plans and specifications showing in such detail and manner as Declarant shall require the nature, shape, height, color, material and location of any such Improvements. Declarant, in its sole and absolute discretion, may require in particular instances that such plans and specifications be accompanied by a plat prepared by a registered surveyor showing the location of the proposed Improvements on the Lot. All decisions by Declarant shall be based on Declarant's discretionary determination as to whether any particular Improvement is suitable and harmonious with the development of the Property. Declarant's approval or disapproval of any proposed Improvement shall be in writing. In the event that Declarant fails to approve or disapprove any such proposed Improvement within thirty (30) days after plans and specifications in such detail as Declarant may require have been received by it, such plans and specifications shall be deemed approved. Subsequent to the approval of any plans and specifications, the Owner shall have the responsibility for making such Improvements in accordance with the plans and specifications as approved. Approval by Declarant of any proposed Improvements shall not constitute or be construed as approval of the structural stability, design, or quality of any Improvement or the compliance of any such Improvement with applicable laws and codes. Refusal or approval of plans, specifications or location may be based upon any grounds, including purely aesthetic considerations, which in the opinion of and the sole and uncontrolled discretion of Declarant shall be deemed sufficient.

The exterior of all houses and other structures, and site work and landscaping, must be completed within one (1) year after the

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construction of said Improvements shall have commenced except where completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergencies or natural calamities. In the event no construction of Improvements has commenced within one (1) year following the date of closing on the Lot, then the Owner of the Lot, other than Declarant, shall clear and thereafter maintain its Lot by keeping it free of rubbish and debris; by keeping all vegetation neatly trimmed; by removing dead or dying trees, shrubs, and other plantings; and by taking such other actions as are necessary to keep such Lot's appearance consistent with a first class residential development.

In the event any Owner violates the terms of this Section, Declarant or its duly appointed agent shall, after thirty (30) days written notice to Owner to cure such violation and failure of Owner to so cure, be entitled to enter upon the Lot(s) of Owner and cure such defect including the removal of any Improvements built in violation hereof, all at the cost and expense of Owner. Any costs and expenses incurred by Declarant or such duly appointed agent in connection with the cure of any such violation shall be a lien upon such Lot(s), and upon the failure of such Owner to reimburse Declarant or such agent for such costs and expenses upon demand, Declarant or such agent may enforce such lien against such Lot(s) in the same manner as is provided for enforcement of the Association's lien for non-payment of assessments as provided for in Article VII, Section 8, hereinbelow. This right of the Declarant or its agent shall be in addition to all other general enforcement rights which the Declarant may have for a breach or violation of the terms of this Declaration and shall not be deemed a trespass by Declarant or its agent. Declarant reserves the right for reasonable needs, but shall not be obligated, to waive in writing any violation of this provision.

#### ARTICLE IV

##### COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

Section 1. Subdivision of Lots. No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the Map, except by and with the written consent of the Declarant and provided same is also permitted under applicable governmental regulations and private restrictions affecting said Lot.

Section 2. Right of First Refusal Respecting Unimproved Lots. Before any unimproved Lot may be sold or resold to any person, firm or corporation by any Owner thereof except Declarant or its successors, the Owner of such Lot first shall offer in writing to sell the Lot to Declarant, or its successors, at a price and on terms designated by said Owner. If Declarant, or its successors, does not accept or reject in writing said offer of sale within seven (7) days of its receipt of the same, then the Owner of such Lot shall have the right to sell the Lot to any third party;

provided, however, the sale of said Lot to such third party shall be at a price and on the terms and conditions not less favorable to said Owner than the offer made to Declarant, and the closing of the sale of such Lot must occur within six months after the offer by Owner to sell the Lot to Declarant. Any sale of a Lot at a price or on terms and conditions less favorable to said Owner than the offer made to Declarant, or which closes more than six months after the offer made by such Owner to Declarant, will require separate compliance with the foregoing provisions of this Article IV, Section 2.

Section 3. Transfer to Declarant. In the event that Declarant exercises its right of first refusal pursuant to Section 2 hereof, the closing of the conveyance of such Lot shall occur within sixty (60) days after receipt by the Owner of written notice from Declarant that it elects to exercise its right of first refusal with respect to such Lot. At the closing, Declarant shall make such payments in cash, by a promissory note, or otherwise to the Owner as described in the offer to sell submitted by Owner to Declarant. Owner shall deliver to Declarant a general warranty deed conveying the Lot free and clear of all exceptions except as may be set forth in the written offer and subject to this Declaration. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as the Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of said Lot.

Section 4. Reserved Easements. The Declarant reserves for itself, and its successors and assigns, a permanent easement in and the right at any time in the future to grant a permanent right of way over, under and along an area uniformly ten (10) feet in width along the rear and five (5) feet in width along the front and side lines of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary or useful for furnishing electrical power, gas, water, sewer, telephone service and other utilities, as well as within those areas shown as easements on the Map. Within such areas no structures, plantings, fences or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage channels in such areas. The area of each Lot containing the easement and all improvements thereon shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or utility company is responsible. In the event that any Lot is subdivided pursuant to Section 1 hereof, an easement uniformly ten (10) feet in width shall exist both along the rear and five (5) feet in width along the front and side lines of the Lot both as shown on the Map and

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along the rear, front and side lines as exist upon the Lot as so subdivided; provided, however, that upon request by the Owner of the subdivided Lot the Declarant may release the easement reserved along the rear, front or side line of the Lot if doing so would not interfere with the installation or maintenance of any utilities or the drainage within the Property. In the event two or more Lots are combined into one Lot with the residence to be constructed over the common interior Lot lines, the side line easements reserved along the common interior Lot lines shall be released provided that the easements have not previously been used for the installation of utilities and their release shall not interfere with the drainage within the Property. If required by any governmental entity or otherwise, for the benefit of all or any portion of the Property, or any adjoining property, Declarant shall have the right to reserve easements over a street or streets or unsold Lots for future use as a public street or roadway. Further, the Declarant reserves the right, at its option, to subject the Property, or any portion thereof, to a contract with Carolina Power and Light Company for the installation of street lighting, which requires a continuing monthly payment to Carolina Power and Light Company by the Association. The easements reserved in this Section are for the sole and exclusive use of Declarant, or its assigns. Such easements shall be paramount to any Owners' easements in Article VI or otherwise and no third party(ies) shall have any vested interest whatsoever therein.

Section 5. Easements Reserved for the Association. The Association is hereby granted an easement for the installation and maintenance of all of the Common Areas, as shown on the Map.

Section 6. Minimum Size of Dwelling. Single family dwellings shall contain not less than a minimum of two thousand two hundred (2200) square feet of finished ground floor area for single level dwellings, and not less than two thousand five hundred (2500) square feet of finished floor area, with a minimum of one thousand two hundred (1200) square feet of finished ground floor area, exclusive of garage, carport, unheated storage areas and non-living space, for multi-level dwellings. The minimum finished ground floor area herein referred to shall not include basements, attached or detached garages, unheated areas, carports or open porches of any type. Each single family dwelling must include a two-car attached or detached garage.

Section 7. Building Restrictions. No building on a Lot shall be located nearer to either side line of such Lot or nearer to the rear line thereof or nearer to the front thereof than the building setback lines approved by Declarant in accordance with Article III hereinabove. For the purposes of this covenant, eaves and stoops shall not be considered as a part of a building; provided, however, this shall not be construed to be deemed to permit encroachment of any improvement onto another Lot. No fence located on any Lot shall exceed six (6) feet in height other than a fence enclosing

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a tennis court, which fence shall not exceed ten (10) feet in height. No tennis court built on a Lot shall be lighted so as to permit night play. No swimming pool on any lot shall be located nearer than twenty (20) feet from the side or rear lot lines. No above ground swimming pool shall be allowed.

**Section 8. Building Line Requirements.** The minimum setback lines described hereinabove are not intended to create uniformity of setback. They are meant to create a sense of spaciousness and to avoid monotony. For such purposes it is the Declarant's intent that setback lines may be staggered where appropriate. The Declarant reserves the right to select the precise site location of each house or other structure on each Lot and to arrange the same in such manner and for such reasons as the Declarant deems sufficient, provided, however, the Declarant shall make such determination so as to insure that the development of the Lots subject to this Declaration is consistent with the provisions set forth herein.

**Section 9. Outbuilding and Similar Structures.** No trailer, camper or other structure of a temporary nature shall be erected or allowed to remain upon any Lot and no trailer, camper, shack, tent, garage, barn, or other structure of a similar nature shall be used as a residence either temporarily or permanently upon any Lot; provided, however, that this Section not shall be construed to prevent the Declarant from permitting any party building a structure upon any Lot to erect temporary structures during construction.

**Section 10. Nuisances and Unsightly Materials.** No noxious, offensive, or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance to the neighborhood. No rubbish, trash, leaves, tree branches or other debris shall be burned on a Lot at any time. No person may keep any animal upon any part of the Lot except that any Owner then occupying a residence upon a Lot may keep customary household pets upon such Lot provided that such pets are not kept, bred or maintained for any commercial purposes or in such a manner as to become a nuisance to the other Owners or residents of the subdivision. No hunting for any bird or animal shall be permitted on any part of the Property.

**Section 11. Maintenance of Lots.** Each Owner shall keep his Lot in an orderly condition and shall keep the Improvements thereon in a first class and suitable state of repair promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever or for the storage of any property or thing that will cause any noise that will disturb the peace and quiet of the occupants of surrounding Lots, and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to

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remain on any Lot outside an enclosed structure; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish or other debris for collection by governmental or other similar garbage and trash removal units. Each Owner shall provide suitable receptacles for trash, rubbish, garbage or ashes, and such receptacles shall be located in a screened area not generally visible from the road, the adjoining Lots or from Common Areas. In the event that any Owner fails or refuses to comply with any of the foregoing, the Declarant may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address specified in his contract to purchase such Lot and by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Declarant may enter and correct the same at Owner's expense. Each Owner, by acquiring a Lot(s) subject to these restrictions, agrees to pay such cost promptly upon demand by Declarant. Such cost shall be a lien upon such Owner's Lot(s), and upon the failure of such Owner to pay such cost to Declarant upon demand, Declarant may enforce such lien against such Lot(s) in the same manner as is provided for enforcement of the Association's lien for non-payment of assessments as provided for in Article VII, Section 8, hereinbelow. No such entry as provided herein shall be deemed a trespass.

**Section 12. Signboards.** No signboard, billboard, or advertising sign of any description shall be displayed upon or above any Lot by Owner, any building contractor or other party with the exception of the following signs, none of which may be fixed to a tree:

- a. Signs stating "For Rent" or "For Sale" which signs shall not exceed two feet by three feet in dimension, shall refer only to the Lot on which displayed and shall be limited to one sign per Lot, and
- b. Signs stating the name of the resident of any Lot and the street address, the design of which shall be furnished to Declarant and shall be subject to approval by Declarant.
- c. During the period of construction, the general contractor's sign, but no subcontractor's sign, shall be allowed.

**Section 13. Antennae.** No satellite dishes or similar structure nor any radio or television aerial or antenna or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot or elsewhere upon any Lot or within the Property without the prior written approval of Declarant, which approval Declarant may withhold in its sole and absolute discretion.

**Section 14. Construction.** No party shall be employed as a general contractor for the construction of Improvements on any Lot without

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the prior written approval of Declarant. Each Owner shall cause its approved general contractor, and all subcontractors, suppliers, and materialmen, to abide by the terms and provisions of this Declaration and by such rules and regulations regarding construction activities as are imposed by Declarant. No building construction on any Lot shall commence prior to 8:00 o'clock a.m. on weekdays or 9:00 o'clock a.m. on Saturdays. No construction shall be permitted on Sundays. Declarant reserves the right, but shall not be obligated, to waive in writing any violation of the foregoing requirement. No rubbish, trash or debris shall be allowed to accumulate at any construction site and no rubbish, trash, debris or mud shall be allowed to accumulate on any street adjoining a construction site, and each contractor will maintain a trash dumpster on site until the completion of construction. No building materials or other construction material shall be stored on a Lot nearer a property line of such Lot than the building setback lines and side lines shown on the Map. No rubbish, trash, leaves, tree branches or other debris shall be burned on a Lot at any time. The construction site shall be maintained on a daily basis in a neat and orderly fashion, and no loud music shall be permitted. A \$500.00 refundable construction deposit must be submitted by each Owner to Declarant at the time the final plans and specifications for the construction of improvements on the Lot are returned to the Owner approved by the Declarant. Such deposit shall be utilized, after written notice to the Owner, to repair any damage caused by construction personnel or equipment to adjacent property, roadways, drives, structures or amenities, or to maintain the construction site in a clean condition if not so maintained by the Owner or its contractor. Owner will be held responsible for any sums expended by the Declarant in excess of the \$500.00 deposited. Any funds not used as above provided will be returned to the Owner upon completion of construction.

Section 15. Lease of Homes. No dwelling unit on any Lot shall be leased for transient or hotel purposes, nor may any Owner lease less than the entire dwelling unit, nor shall any lease be for any period of less than thirty (30) days. Any lease must be in writing and provide that the terms of the lease and occupancy of this dwelling shall be subject in all respects to the provisions of the Declaration and the Bylaws of the Association and that any failure of any lessee to comply with the terms of such documents shall constitute a default under the lease.

Section 16. Parking Rights and Restrictions. Adequate off-street parking shall be provided by the Owner of each Lot for automobiles and other vehicles owned and controlled by such Owner, members of the Owner's family or guests and invitees of the Owner. Each dwelling unit constructed on a Lot shall include a two car enclosed garage. No automobiles, trucks, boats, trailers or other vehicles shall be parked on the streets or the yards, including front, side and back yards of the Lots, and all such vehicles and other

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property shall be required to be parked within the designated driveway and parking areas.

Section 17. No Private Boat Docks or Piers. No Owner of any Lot having riparian water access shall be allowed to construct on such Lot any private boat dock or boat pier.

#### ARTICLE V

##### THE ASSOCIATION

Section 1. Association Membership. Every Owner of a Lot shall be a Member of the Association which Declarant may organize at a time of his choosing. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Property as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees, and insurers and guarantors of Mortgages, upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

#### ARTICLE VI

##### COMMON AREA

##### PROPERTY RIGHTS AND OBLIGATIONS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right of easement of enjoyment in and to all Common Areas, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to and in accordance with the terms and provisions of this Declaration, including without limitation the following provisions:

(a) the right of the Association to suspend the voting rights and enjoyment rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least a majority of the votes appurtenant to all Lots agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that this subsection shall not preclude the

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Board of Directors of the Association from granting easements for the installation and maintenance of sewerage, utilities and drainage facilities upon, over, under and across the Common Area without the assent of the membership when such easements, in the opinion of said Board, are requisite for the convenient use and enjoyment of the Property.

(c) the right of the Association, with the assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant all Lots, to mortgage, pledge, deed in trust, or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

**Section 2. Delegation of Use.**

(a) **Family.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by any members of the Owner's family who occupy the residence of the Owner within the Property as their principal residence in New Hanover County, North Carolina.

(b) **Tenants or Contract Purchasers.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Property, as their principal residence in New Hanover County, North Carolina.

**Section 3. Private Streets.** As is indicated hereinabove, the Private Streets shall be part of the Common Area. The Private Streets have been initially constructed by Declarant and are intended for the use and benefit of all Owners, their guests, employees, tenants and invitees for the purpose of ingress, egress and regress from portions of the Property to public streets by vehicle or otherwise. Neither the inclusion of the Private Streets on the Map nor the dedication of the Private Streets for the use and benefit of the Owners shall be construed to be an offer to dedicate the Private Streets for public use. The Association shall, at its own expense, operate, repair, maintain, and reconstruct the Private Streets, including all paved portions thereof, all curb and gutter, all irrigation systems, and all storm drains, sanitary sewer lines, and other utility facilities installed therein or thereunder, all street signs and related improvements, and all landscaped medians therein. The Association shall have the right to establish rules and regulations governing the use of the Private Streets, including establishing speed limits thereon.

That portion of the Private Streets lying between the southernmost terminus of Avenel Drive, as shown on the Map, and Edgewater Club Road, may be subject to the rights of other parties who are not Owners to use that road for ingress and egress to their properties. The Association shall use its best efforts to require

any such parties to contribute to the cost of operation, maintenance, repair and reconstruction of such portion of the Private Streets, but the Association shall have the sole responsibility to pay the costs of such operation, repair, maintenance and reconstruction if such third parties fail to contribute.

At some future date, upon the request of New Hanover County (or other applicable governmental authority), the right of way for Avocet Court may have to be extended from the existing terminus of its cul-de-sac across portions of Lots 61 and 62 to the westerly subdivision boundary of Avenel if required in order to provide a street connection between Avocet Court and a street which is then being constructed on the adjoining property to the west. If such a request is made, Declarant, or the Association as successor in interest to Declarant, shall comply and dedicate the required right of way and construct a paved street thereon up to the Avenel boundary line in accordance with applicable governmental standards. If the Association is then in control of the Common Area and is required therefore to build the said connector street, Declarant shall reimburse the Association for the reasonable costs of construction.

#### ARTICLE VII

##### COVENANT 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, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal or corporate obligation of the person(s), firm(s), or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Property and in particular for the operation and maintenance of the Common Areas. The assessments shall also be used for the acquisition, improvement and maintenance of properties, services, utilities and facilities related to the use and enjoyment of the Property, the Lots and in particular, the

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Common Areas, including, but not limited to: the cost of all repair, replacement and additions thereto; the cost of operating and maintaining the Private Streets; the cost of labor, including the cost for providing a guard for a guardhouse if a guardhouse is built by or for the Association as a capital improvement with a special assessment as provided in Section 4 hereof; equipment, materials, management and supervision thereof; the payment of taxes assessed against the Common Areas; the procurement and maintenance of insurance as permitted or required under the terms of this Declaration or the Bylaws, including without limitation casualty insurance on the Common Area, or any portion thereof, general liability insurance with respect to the Property, and directors' and officers' liability insurance for the directors and officers of the Association, any or all of which coverages the Association is hereby expressly authorized to obtain and maintain in such amounts as the Board of Directors shall deem prudent and reasonable; the employment of attorneys to represent the Association when necessary; payments of principal and interest on funds borrowed for Association purposes; and such other needs as may arise.

**Section 3. Maximum Annual Assessment.**

(a) Until January 1st of the calendar year following the conveyance of the first Lot by the Declarant to another Owner, the maximum annual assessment shall be \$ 180.00 per Lot. The maximum annual assessment may be increased by the Board of Directors effective January 1st of each calendar year following the conveyance of the first Lot by the Declarant to another Owner, without a vote of the membership, by an amount of ten percent (10%) per year over the previous year.

(b) From and after January 1st, 1991, the maximum annual assessment may be increased without limitation if such increase is approved by no less than a majority of the votes of the Members of the Association, cast in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, and any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by said Board.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual 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, repair, or replacement of any common amenities, private utility facilities, or capital