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Prepared by and returned after recording to: Weatherspoon & Voltz LLP  
P.O. Box 10324  
Raleigh, NC 27605

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR BELLA SERA VILLAS AT  
VINEYARD PLANTATION**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this "Declaration") is made as of the 4<sup>th</sup> day of April, 2006, by **WHITE PARTNERS, LLC** ("Declarant"), a North Carolina limited liability company with offices in Raleigh, North Carolina.

**BACKGROUND STATEMENT**

Declarant is the owner of a parcel of real property containing approximately 21.47 acres of land, located in the Town of Wilmington, New Hanover County, North Carolina, such parcel bordering on Futch Creek Road with access to Highway 17. (the "Entire Parcel"). The Entire Parcel is more particularly described on Exhibit A attached hereto. Declarant has constructed or plans to construct on the Phase I Parcel (as defined below) the first phase of a residential Villa development consisting of Building Numbers 21 through 35 inclusive, with a total of 15 townhouse units (the "Villa(s)"), together with certain common areas and facilities. This development (the "Project"), with an anticipated total of 47 residential Villas, shall be known as **Bella Sera Villas at Vineyard Plantation**.

The initial phase of the Project is being constructed on a portion of the Entire Parcel containing approximately 10.42 acres of land (the "Phase I Parcel"). The Phase I Parcel is more particularly described on Exhibit B attached hereto. An initial subdivision plat of the Phase I Parcel (the "Phase I Plat") is recorded in Map Book 49 at Page 228 in the New Hanover County Public Registry.

In creating the Project, Declarant desires to develop a residential villa community, with certain common areas and facilities, including but not limited to private roads for access to

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public highway, walkways, parking lots, driveways, a lake, a swimming pool, a clubhouse, a putting green, walking trails, and various landscaped areas to be used for the benefit of the owners of Villas within the Project. Declarant desires to provide for the preservation of the values and amenities within the Project and for the maintenance of the common areas and facilities in the Project, and therefore desires to subject the Phase I Parcel to the covenants, restrictions, easements, charges and liens described in this Declaration, all for the benefit of the Phase I Parcel and each owner of any part of the Phase I Parcel. As subsequent phases of the Project are constructed on other portions of the Entire Parcel, Declarant shall have the right to subject such phases to the covenants, restrictions, easements, charges and liens described in this Declaration in accordance with ARTICLE II.

Declarant has deemed it herein desirable to create a nonprofit, incorporated association which will be delegated and assigned powers of maintaining and administering the common areas and facilities of the Project, of performing exterior and structural maintenance of the Villas, of administering and enforcing the covenants and restrictions created in this Declaration, of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of the Villas and to promote the recreation, health, safety and welfare of the owners of the Villas within the Project. In order to accomplish the foregoing, Declarant is entering into this Declaration.

## **STATEMENT OF DECLARATION**

**NOW, THEREFORE**, in consideration of the premises and for the purposes stated, Declarant hereby declares that all of the Phase I Parcel and all property subsequently added from the Entire Parcel to combine with the Phase I Parcel to form Bella Sera Villas are hereby submitted to the provisions of Chapter 47F of the General Statutes of North Carolina, known as the North Carolina Planned Community Act, and as it may be amended or supplemented from time to time (herein "Planned Community Act" or "Act"), except as permitted within the Act to be controlled by provisions of this Declaration, and shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions (all of which are collectively referred to in this instrument as "restrictions"), which restrictions shall be construed as covenants running with the land and shall be binding on all parties having any covenants running with the land and shall be binding on all parties having any right, title or interest in the described real property or any part thereof, and their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I DEFINITIONS**

The following words, when used in this Declaration or any supplement or amendment hereto, shall have the following meanings (unless the context shall prohibit).

**Section 1.1.** "Agency" shall mean and refer to any one of the following entities (or their successors) that holds or insures a Mortgage: the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, the Government National Mortgage Association, and the United States Department of Housing and Urban Development.

**Section 1.2.** “Association” shall mean and refer to Bella Sera Villas at Vineyard Plantation Association, Inc., a North Carolina non-profit corporation, and its successors and assigns.

**Section 1.3.** “Board” shall mean and refer to the Executive Board of the Association.

**Section 1.4.** “Bylaws” shall mean the bylaws of the Association.

**Section 1.5.** “Committee” shall mean and refer to the architectural control committee established pursuant to Article VIII hereof.

**Section 1.6.** “Common Area” shall mean and refer to all real property, real property interests and personal property owned by the Association, and the easements granted to the Association for the common use and enjoyment of the Owners. The Common Area to be owned in fee simple by the Association at the time of the conveyance of the first Lot by Declarant to an Owner is all of the Phase I Parcel outside of the boundaries of individually platted Lots, as designated on the Phase I Plan, including specifically the Clubhouse as reflected thereon. The Common Area may expand in accordance with Article II herein.

**Section 1.7.** “Declarant” shall mean and refer to White Partners, LLC, a North Carolina limited liability company, and its successors or assigns in ownership of all of the Entire Parcel which at the time of the conveyance is not part of the Property.

**Section 1.8.** “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

**Section 1.9.** “Entire Parcel” shall mean and refer to the real property described on Exhibit A attached hereto.

**Section 1.10.** “Lot” shall mean and refer to any numbered plot of land, with the exception of the Common Area, appearing on any recorded subdivision map of the Property.

**Section 1.11.** “Member” shall mean and refer to every individual, corporation, partnership, limited liability company, association, trustee or other legal entity that is a member of the Association.

**Section 1.12.** “Mortgage” shall mean and refer to a mortgage or deed of trust constituting a first lien on a Villa.

**Section 1.13.** “Mortgagee” shall mean and refer to an Institutional Lender holding a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Villa. Such notice shall be deemed to include a request that the Mortgage be given the notice and other rights described in Article XIII.

**Section 1.14.** “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (as defined herein) which is a part of the Property, but excluding those parties who have such interest merely as a security for the performance of any obligation.

**Section 1.15.** “Phase I Parcel” shall mean and refer to the property described in Exhibit B attached hereto, and being all of the property shown on the Phase I Plat, other than the areas labeled “Future Development”.

**Section 1.16.** “Phase I Plat” shall mean and refer to the subdivision map of the Phase I Parcel, which is recorded in Map Book 49 at Page 228 in the New Hanover County Public Registry.

**Section 1.17.** “Project” shall mean and refer to the residential Villa project located on the Property, which initially shall be known as Bella Sera Villas at Vineyard Plantation.

**Section 1.18.** “Project Documents” shall mean and refer to this Declaration, the Articles of Incorporation of the Association, and its Bylaws, and the Rules and Regulations promulgated by the Association governing the use of the Property, as the forgoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

**Section 1.19.** “Property” shall mean and refer to the Phase I Parcel, and any other portion of the Entire Parcel which is subjected to this Declaration under the provisions of Article II below.

**Section 1.20.** “Rules and Regulations” shall mean reasonable Rules and Regulations for the use of Common Area and conduct of Owners with Bella Sera Villas at Vineyard Plantation as determined and published for Owners by the Board.

**Section 1.21.** “Villa Owner” shall mean the initial purchaser of a Lot from Declarant and all successive Owners.

**Section 1.22.** “Villa” shall mean and refer to an attached or semi-attached residential townhome constructed upon a Lot.

## ARTICLE II EXPANSION OF PROJECT

**Section 2.1. General.** Declarant may, but shall not be required to, construct the Project in phases on the Entire Parcel. Only the Phase I Parcel is being subjected to the operations of this Declaration as of the date of the initial execution and recording of this Declaration. Additional portions of the Entire Parcel and improvements thereon, including Common Areas, may be subjected to the provisions of this Declaration and the other Project Documents in the manner provided in this Article II.

**Section 2.2. Additions by Declarant.** Declarant reserves an option, until the tenth (10<sup>th</sup>) anniversary of the date of recording of this Declaration, to subject to this Declaration additional land located within the Entire Parcel, in accordance with provisions of this Article II. Any additional land so subjected must be contiguous to the Property, and must be shown on a recorded subdivision plat. Declarant may exercise this right within the seven (7) year period specified above, without the consent or approval of the Association, or any other Owner or Mortgagee, by executing and recording a Supplementary Declaration in the manner provided in Section 2.3 below.

**Section 2.3. Supplementary Declaration.** In order to exercise any right to subject other portions of the Entire Parcel to this Declaration, Declarant shall execute and record an amendment to this Declaration (a "Supplementary Declaration"). Any Supplementary Declaration executed and recorded by Declarant shall automatically amend Exhibit B attached to this Declaration, legally expanding the Property that is then subjected to the operations of the Declaration. Any such Supplementary Declaration also may contain such additions to the provisions of this Declaration, and may contain such complimentary additions and modifications of this Declaration as may be necessary or convenient, in the sole judgment of Declarant, all such additions and modifications as may be necessary to reflect the different character of the new Villas created by Declarant, so long as such additions are not inconsistent with the overall scheme of the Declaration, and provided that such additions shall not alter the Lot size or Villa construction as conveyed by Declarant prior to recordation of such Supplementary Declaration.

**Section 2.4. Conveyance of Common Area.** Following the recording of each Supplementary Declaration, Declarant shall convey to the Association the Common Area located within the additional property being subjected to this Declaration, as provided in Section 3.2.

**Section 2.5. Amendments and Revisions to Existing Record Plats.** Declarant reserves the right to amend and revise existing Recorded Plats at any time without joinder of Lot Owners or the Association so long as any such amendment or revisions does not affect Lots previously conveyed by Declarant.

**Section 2.6. Access Easement Reserved.** The Declarant reserves unto itself for the benefit of Declarant, its successor and/or assigns, a perpetual, non-exclusive and alienable easement and right of ingress, egress and regress over and across all private streets and roads within the Bella Sera Villas at Vineyard Plantation for access to and from other real property of Declarant or its successors and/or assigns. Any damage caused by Declarant, its agents, successors and/or assigns to the private streets and roads within the Bella Sera Villas at Vineyard Plantation when exercising its rights created by this Section 2.6 shall be repaired at the expense of Declarant, its successors and/or assigns. In addition, an easement and right of ingress, egress and regress over and across all private streets and roads and Common Areas within the Bella Sera Villas at Vineyard Plantation, if any, is hereby granted to any applicable government agency, for the purpose of fulfilling their duties, including, without limitation, law enforcement; fire protection; emergency service; garbage collection; delivery of the mail; installing, removing and reading water meters; maintaining and replacing water and sewer facilities and fire lines; and any other service related to public safety and preserving the general welfare.

### ARTICLE III COMMON AREA

**Section 3.1. Owners' Easement of Enjoyment.** Every Owner shall have a non-exclusive perpetual right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the terms of this Declaration and the powers of the Association, including but not limited to all provisions enumerated under §47F-3-102 of the Act. The foregoing easement rights include, without limitation, a non-exclusive easement over that portion of the Property shown as "Private Street" on the Plat, and a non-exclusive easement over all other streets, driveways, walkways and parking areas within the Common Area, for the purpose of vehicular and pedestrian access, ingress and egress to each Lot over the Common Area. The access easements described in the preceding sentence shall survive

the expiration or earlier termination of this Declaration, and shall continue as a burden running with the Common Area unless and until such reasonable access, ingress and egress is provided by the dedication of a public street or by the conveyance in fee or by the grant of a perpetual easements in one or more strips of land adequate for that purpose.

All easements over the Common Area created by this Section 3.1 shall be deemed appurtenant to each Lot, shall inure to the benefit of each Owner and his tenants, family members, guests, invitees and agents, and are granted subject to the following conditions and reservations:

(a) The right of the Association, in accordance with the provisions of Section 3.5 and the Project Documents, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;

(c) The right of the Association, as provided in the Project Documents, to suspend the voting rights of any Member and the enjoyment rights of any Member in the Common Area, except the right of pedestrian or vehicular access to the Member's Lot and the right of access to utility services for such Lot, for any period during which any assessment remains unpaid, or as a result of any infraction of its published Rules and Regulations;

(d) The right of the Association, in accordance with the provisions of Section 3.5 and the Project Documents, to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

(e) The right of Declarant, prior to the conveyance of the Common Area to the Association, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of utility facilities, as provided in ARTICLE IX;

(f) The other easements reserved by Declarant over the Common Area described in ARTICLE IX;

(g) The right of the Association to limit the number of guests of Members as to the use of any facilities situated upon the Common Area or any other property of the Association; and

(h) The right of the Association to establish reasonable Rules and Regulations for the use of any of the facilities situated upon the Common Area by members or their tenants, family members, guests, invitees and agents, as provided in Article X.

**Section 3.2. Title to Common Area.** Declarant covenants for itself, its successors and assigns, that it shall convey fee simple title to the common Area with the Phase I Parcel to the Association, and upon such conveyance the Association shall accept prior to or simultaneously with the date of recordation of the first deed conveying the first Lot to an Owner other than Declarant. As subsequent portions of the Entire Parcel are subjected to this Declaration, as provided in Article II, Declarant shall convey fee simple title to the Common Area within such property, as designated on the Plat showing such property, to the first Lot in that phase to an Owner other than Declarant. Each such conveyance shall be free and clear of all liens and encumbrances, except the rights, restrictions, and easements set forth in this Declaration, including the reserved easements referenced in ARTICLE IX, other public and private access, utility and drainage easements, easements to governmental authorities, and ad valorem taxes for the year in which such conveyance occurs (which taxes shall be prorated as of the date of conveyance and paid when due by the Association).

**Section 3.3. Delegation of Use.** Any Owner may delegate, in accordance with the Project Documents, his rights of enjoyment to the Common Area to members of his family, tenants or contract purchasers who reside on the Property, or to such other persons as may be permitted by the Association.

**Section 3.4. Maintenance of Common Area.** The Association shall be responsible for the maintenance and repair of the Common Area and all improvements located thereon, which includes maintenance of all private streets within the Project. Notwithstanding the foregoing, the Association shall not be responsible for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner.

**Section 3.5. Conveyance of Common Area.** While the Property remains subject to this Declaration, no conveyances of (including dedications) or security interests or liens of any nature shall arise or be created against the Common Area without the prior written consent of at least two-thirds (2/3) of all Owners, including at least two-thirds (2/3) of all Owners other than Declarant, and at least two-thirds (2/3) of all Mortgages. In addition, so long as Declarant is a Class B Member in the Association, any dedication of all or any part of the Common Area to public use shall require the prior approval of any Agency holding or insuring a Mortgage. Any grant of a mortgage or security interest in the Common Area shall expressly be subject to the rights and easements created by this Declaration. Every agreement for the performance of labor or the furnishing of materials to the Common Area, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration.

**Section 3.6. Easement for Use Reserved.** The Declarant reserves unto itself for the benefit of Declarant, its successors and/or assigns, a perpetual, non-exclusive and alienable easement and right to use of the Common Areas within Bella Sera Villas for residents of adjacent properties as currently owned and as developed by Declarant. Use of the clubhouse and swimming pool by such adjacent property residents may include a reasonable annual fee as determined by the Declarant prior to the sale of all Lots in Bella Sera, or by the Association thereafter.

**ARTICLE IV  
THE ASSOCIATION**

**Section 4.1. Automatic Membership.** All Owners shall automatically be members of the Association, and shall enjoy the privileges and be bound by the obligations contained in the Project Documents, including the obligation to pay assessments. Ownership of any fee or undivided interest in any Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. The Board may make reasonable rules regarding proof of ownership.

**Section 4.2. Voting Rights.** There shall be two classes of Lots and Members with respect to voting rights in the Association.

(a) Class A Lots shall be all Lots in the Project transferred to a Villa Owner. The Owner (or group of Owners) of each Class A Lot shall be entitled to one (1) vote in the Association. If a Lot is owned by more than one person or entity as tenants in common or tenants by the entirety, then each such person or entity shall be deemed an Owner and a Member of the Association, but shall designate one person or entity to exercise the voting rights appurtenant to that Lot. In no event shall more than one (1) vote in the Association be cast with respect to each Class A Lot.

(b) Declarant currently plans to develop 47 Lots in the Project. Class B Lots shall be all Lots in the Project calculated by subtracting from 47 (or the revised total of Lots to be sold within the Project at the sole discretion of the Declarant) all Class A Lots. The Declarant shall be the Class B Member and shall be entitled to three (3) votes in the Association for each Class B Lot owned by it. The Class B Lots shall cease to exist and be converted to Class A Lots upon the earlier to occur of the following: (1) when the total votes outstanding in the Class A membership exceeds the total votes outstanding in Class B Lots; (2) the date ten (10) years from the date of recording of this Declaration; or (3) the effective date of Declarant's written notice of or written consent to termination.

**Section 4.3. Directors Appointed by Declarant.** The initial Board shall consist of not less than three (3) persons appointed by Declarant. These persons may or may not be employees of Declarant, and need not own or occupy a Lot. Until these persons are replaced by elected Board members at the first annual meeting of Members, they shall constitute the Board of the Association and exercise all powers and duties granted to the Board in the Bylaws. The initial directors are specifically authorized to fix the annual assessments for periods through December 31, 2006, and to enter into a Management Agreement for the Association, subject to the limitations set forth in Section 4.18.

**Section 4.4. Creation of the Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges of the Association, (2) insurance assessments equal to the Villa's share of the master insurance policies, and (3) special assessments of the Association as provided in Section 4.7, such assessments to be established and collected as hereinafter provided. Each annual and special assessment, together with interest, costs and

reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title (other than as a lien on the Lot) unless expressly assumed by them.

**Section 4.5. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and other residents of the Property and in particular for the acquisition, improvement, maintenance and operation of the Common Area; services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to maintenance, landscaping, operation of the private streets, Clubhouse, pool, and lakes, and security services; payment of taxes and governmental assessments on the Common Area; payment of insurance premiums for the insurance policies maintained by the Association in accordance with the Project Documents; payment of water and sewer fees for water supplied and sewer services provided to the individual Villas through any metering device serving the Project unless such service(s) are separately metered to each Villa; payment of management fees to a property manager in accordance with Section 4.18; the provision of a reserve fund for repair and replacement of Association responsibilities relating to the Villas; the employment of attorneys and accountants to represent the Association when appropriate; the cost of utilities and fuel used in operating facilities in the Common Area; the maintenance and upkeep of all private streets and roadways in the Property; and the exterior maintenance of Lots and Villas, as provided in Article VII.

**Section 4.6. Maximum Annual Assessment.** Until December 31, 2006, the maximum annual assessment for each Class A Lot (the "Assessment Cap") shall be One Thousand Six Hundred Twenty Dollars (\$1,620.00) paid in quarterly installments; except as otherwise provided below:

(a) From and after December 31, 2006, the Assessment Cap may be increased by the Board, without a vote of the membership, so long as the amount of the increase does not exceed fifteen percent (15%) per annum, calculated on a cumulative basis.

(b) From and after December 31, 2006, the Board maintains the rights specified in Section 4.6(a); provided, however, the Assessment Cap may be increased above the increase allowed in Section 4.6(a) by a vote of two-thirds (2/3) of the Members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board shall fix the annual assessment for each assessment year at an amount not in excess of the Assessment Cap for that year.

**Section 4.7. Special Assessments.** 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: (a) the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including but not limited to fixtures and personal property related thereto; (b) the cost of paying special governmental assessments; or (c) any other cost or expense, payment of which through special

assessment is approved by two-thirds (2/3) of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for this purpose. Furthermore, all premiums on insurance policies purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may at any time levy against the members to which it applies an insurance assessment in addition to the Annual Assessments, which shall be in an amount sufficient to pay the cost of all deductibles and insurance premiums not included as a component of the Annual Assessments. The insurance assessment shall be treated the same as all other special assessments herein. There shall be no limit on the amount of any such special assessments.

**Section 4.8. Special Individual Assessments.** In addition to the regular annual Assessments and the Special Assessments for capital improvements described above, the Association may levy, from time to time, on a particular Lot or Villa rather than on all Lots or Villas, special individual Assessments, immediately due and payable, consisting of any fines assessed by the Association under authority contained in the Bylaws for an Owner's violation of the terms and conditions of this Declaration, the provisions of the Rules and Regulations, any liquidated damages or summary charges imposed under authority contained herein or in the Bylaws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association incidental to the enforcement thereof, or the collection of Assessments (both annual and special) or the collection of damages or charges arising under the Bylaws, all of the foregoing of which shall comprise "Special Individual Assessments."

**Section 4.9. Uniform Rate of Assessments.** Both annual and special assessments levied by the Association must be fixed at a uniform rate for each Lot, but such rates may be based on the occupiable or heated area within each Villa (in the case of utility charges), the replacement value or assessed value of each Villa (in the case of insurance premiums), or some other reasonable criteria. Notwithstanding the foregoing, Declarant shall not have a requirement for Class B Lots as defined in Section 4.2(b); provided, however, from and after the date of conversion of Class B Lots to Class A Lots, Declarant shall pay twenty-five percent (25%) of the rate for Class A Lots for Lots owned by Declarant.

**Section 4.10. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments levied by the Association shall commence as to each Lot upon the date of closing for each Villa Owner. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board, and unless otherwise determined by the Board, annual assessments shall be collected monthly with 1/12 of the annual assessment due and payable on the first day of each calendar month.

**Section 4.11 Effect of Nonpayment of Assessments; Remedies of the Association.** If any annual or special assessment, or monthly installment thereof, is not paid within fifteen (15) days after its due date, the Board may, at its option, declare the entire unpaid assessment, both annual and special, immediately due and payable, and such unpaid assessment shall bear interest from and after the due date at the rate of eighteen percent (18%) per annum, not to exceed, however, the maximum rate permitted by law. In that event, the Association may file a notice of lien in the Office of the Register of Deeds for New Hanover County; thereby creating a lien on that Lot in accordance with the procedures set forth in N.C.G.S. §47C-3-116, and the

Association may bring an action at law against the Owner personally obligated to pay the assessment or foreclose the lien against his Lot to collect said assessment. In addition, interest, reasonable attorneys' fees not to exceed fifteen percent (15%) of the amounts due, and costs of such action or foreclosure shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. Any such foreclosure shall be accomplished in an action brought in the name of the Association in the manner that a foreclosure of a mortgage or deed of trust would be brought, or as otherwise expressly provided by law, and each Owner grants to the Association a power of sale in connection with any such charge or lien. The lien provided for in this Section 4.11 shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on any Lot and to acquire and hold, lease, mortgage and convey the same. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREA OR ABANDONMENT OF HIS LOT.

During any period in which an Owner is in default in the payment of any installment of an annual, special or other assessment levied by the Association, the voting rights of the Owner in the Association and the right to the use of the Common Area or any other services or facilities which is provided by the Association (except the right of access to the Owner's Lot and the right of access to utility service for such Lot) may be suspended by the Association until such assessment is paid. In the event of violation by an Owner of any Rules or Regulations duly established by the Association, such Owner's voting and use rights may be suspended by the Board after a hearing for a period not to exceed sixty (60) days. Such hearing shall only be held by the Board after giving such Owner ten (10) days' prior written notice specifying each alleged violation and setting the time, place and date of the hearing, determination of the violation and the time of suspension shall be made by a majority vote of the Board.

**Section 4.12. Subordination of the Lien to Mortgages.** The lien of the assessments provided of herein shall be subordinate to the lien of any Mortgage on any Lot, and shall be subordinate to any tax lien or special assessment on a Lot made by a lawful governmental authority. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot by foreclosure of any Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such unpaid assessments shall be deemed to be expenses of the Association assessable against and collectible from all Owners, including the Owner of the Lot acquired as a result of foreclosure of the Mortgage, his heirs, successors and assigns. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 4.13. Exempt Property.** The following parts of the Property shall be exempt from assessment liens of the Association: (a) the Common Area; and (b) any part of the Property dedicated to and accepted by a local public authority (the recording of this Declaration shall in no way be deemed a dedication of, or offer to dedicate, any part of the Property to any public authority).

**Section 4.14. No Obligation to Provide Funds.** Declarant shall have absolutely no obligation to make payments to or for the Association for any purpose except for its obligation to make periodic payment of assessments levied on Lots which Declarant may from time to time own. Declarant may, as its discretion: (1) advance funds to the Association from time to time as

required, which advances shall be applied against future assessments, if any, due by Declarant, or (2) lend funds to the Association, which loans shall be repayable with interest at a rate no higher than the prime rate of interest listed in the "Money Rates" table of The Wall Street Journal, and with a maturity date no more than one (1) year from the date of advancement of funds.

**Section 4.15. Capital Contribution and Reserve Funds.** At the time of the Closing of each Lot and Villa from Declarant to the initial Villa Owner, such Villa Owner shall pay to the Association as an initial capital contribution, the sum of two (2) months of the then monthly assessments, currently \$270.00, which shall be deposited into the reserve fund herein defined. From and after the recording of this Declaration, the Association may establish and maintain a reserve fund or funds for replacement and maintenance of the improvements located on the Common Area or the Property. In that event, the Association shall allocate revenues from assessments to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board. During the first year of the Association, the Association may use the reserves to establish an operating budget for the Association. Thereafter, the reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any facilities owned by the Association, and for such other purposes as may be determined by the Board.

**Section 4.16. Association to Maintain Books and Records.** The Association shall maintain at all times current copies of all Project Documents, all Rules and Regulations concerning the Property, as well as its own books, records and financial statements, and same shall be available for inspection by Owners or Mortgagees during normal business hours upon at least three (3) business days' prior written notice to the Association. The Association shall also make available to each Owner or Mortgagee making written request therefor an annual financial report and, upon either the (i) the affirmative vote of majority of the votes cast by the Owners present at a duly called meeting of the Association, or (ii) the written request of the Owners possessing twenty-five percent (25%) or more of the total number of votes of any class of Members of the Association, shall have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Owner making written request therefore. In any event, the Association shall conduct an audit at least every five (5) years and present the results of such audit at the annual meeting of the Association.

**Section 4.17. Voluntary Conveyance Estoppels.** Except as provided in Section 4.11, the lien for assessments of the Association created in this Article IV shall not be affected by any conveyance of a Lot, and shall remain a continuing charge on that Lot and a continuing lien which may be foreclosed as provided in Section 4.11. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in that statement.

**Section 4.18. Management and Other Agreements.** The Association shall have the right to enter into management and other agreements for the Property with any individual, firm or entity that the Association deems appropriate and in the best interest of the Project. A copy of

all such agreements shall be made available to each Owner and Mortgagee upon request. Any management and other agreements entered into by the Association shall provide that such agreements may be cancelled, with or without cause, upon no more than ninety (90) days' notice and without penalty at any time. The property manager shall at all times be answerable to the Association and subject to its discretion.

**Section 4.19 Failure of Association to Pay Taxes and Special Assessments on Common Area.** If the Association, contrary to its obligation to do so, fails to pay the ad valorem taxes or any special governmental assessments on the Common Area on or before the date one hundred eighty (180) days after such taxes or assessments become delinquent, then such taxes or assessments, together with any interest and penalties thereon, shall be and become a lien, on a pro rata basis, upon all Lots. Such liens may be foreclosed by the governmental authority in the same manner as provided for foreclosure of liens for ad valorem taxes and assessments for public improvements.

## **ARTICLE V PARTY WALLS**

**Section 5.1. General Rules of Law to Apply.** To the extent not inconsistent with the provisions of this Article V, the general rules of law regarding party walls and liability for property damage resulting from negligence or willful acts or omissions shall apply to each party wall or party fence which is built as a part of the original construction upon each Lot and any replacement thereof. If any portion of any structure originally constructed by Declarant, including any party wall, any extension of a party wall, or any common fence, protrudes over an adjoining Lot, or into the Common Area, such structure, wall or fence, protrudes over an adjoining Lot, or into the Common Area, such structure, wall or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall or fence, nor any action for damages. If there is a protrusion as described in the immediately preceding sentence, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the encroaching structure, wall or fence. The foregoing provision also shall apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant. The provisions of this Section 5.1 shall be perpetual in duration and shall not be affected by an amendment of this Declaration.

**Section 5.2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who own such party wall in proportion to their ownership, to the extent such maintenance is not the responsibility of the Association under Article VII.

**Section 5.3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 5.4. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5.5. Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 5.6. Easement and Right of Entry for Repair, Maintenance, and Reconstruction.** Every owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

**Section 5.7. Certification With Respect to Contribution.** If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this article request of the adjoining Owner or Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefore.

**Section 5.8. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article V, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all such arbitrators shall be binding upon the Owners, who expressly agree to submit to and be bound by such arbitration procedure and decision. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore, the Board shall select an arbitrator for the refusing party. All arbitrators chosen shall be either architects, engineers, general contractors or attorneys licensed as such in North Carolina.

## ARTICLE VI INSURANCE AND RECONSTRUCTION

**Section 6.1. Association Insurance.** The Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions.

(a) **Property Insurance.** The Association shall obtain and maintain at all times a policy or policies of property insurance (ISO special form or its equivalent) covering all buildings and improvements located on the Property, including all Villas and all improvements located in the Common Area, in an amount not less than one hundred percent (100%) of the replacement cost of such improvements at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the costs of excavation, paving, foundations and footings, with a commercially reasonable deductible not in excess of \$10,000.00. Each policy shall show the Association as the named insured, but shall provide

that each Owner is an insured person with respect to his Villa, and the Association is an insured person with respect to the Common Area, shall contain clauses providing for waiver of subrogation against any Owner, and any Owner's employees or agents, shall provide that it may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and all Mortgagees; shall provide that no act or omission by any Owner will preclude recovery upon such policy; and shall provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each policy shall contain an inflation guard endorsement and a construction code endorsement, if available. Each policy shall provide that adjustment of loss shall be made by the Association as insurance trustee, and shall provide for the issuance of certificates or mortgagee endorsements to all Mortgagees.

(b) Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance in such limits as the Association may, from time to time, determine, covering each member of the Board, the property manager, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Area; provided, however, that in no event shall the limits of such policy ever be less than \$1,000,000.00 per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and all Mortgagees. The Association shall review such limits annually.

(c) Fidelity Insurance. The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers, managers and employees of the Association and any other persons who handle or are responsible for the handling of funds of the Association. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Association, but in no event less than one-half the annual budgeted amount of annual assessments, or the amount required by any Mortgagee, whichever is greater.

(d) Other Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain and maintain in effect such other insurance coverages as may be required by any Agency (as same may be amended or modified from time to time), and such other insurance coverages as the Board shall determine from time to time to be desirable, specifically including, without limitation, directors and officers liability insurance, performance bonds, payment on labor and material bonds and maintenance bonds. In addition, the Association shall maintain flood insurance on any Villa located within a "special flood hazard area," as designated on a Flood Insurance Rate Map published by the Federal Emergency Management Association, or if otherwise required by any Agency.