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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

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RECORDED AND VERIFIED  
INDEXED SUBJECTS  
DECLARATION OF COVENANTS, DEEDS  
CONDITIONS AND RESTRICTIONS FOR NC  
BIRKDALE AT LANDFALL

THIS DECLARATION, made this 25<sup>th</sup> day of July, 1996, by BIRKDALE LIMITED PARTNERSHIP, a North Carolina Limited Partnership, ("Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of certain Property in New Hanover County, North Carolina, known as BIRKDALE AT LANDFALL, as the same is more particularly shown on a plat thereof recorded in Map Book 36 at Pages 53-54 of the New Hanover County Registry (the "Property"); and

WHEREAS, Declarant desires to subject said Property to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth for the mutual benefit of Declarant and succeeding property owners and desires that said covenants, conditions, restrictions, liens and charges run with the land and be binding upon the Declarant, its successors and assigns.

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

ARTICLE I

Definitions

Section 1: "Association" shall mean and refer to Birkdale Homeowners' Association, a North Carolina non-profit corporation, its successors and assigns.

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

Section 3: "Building" shall mean and refer to a home and associated garage constructed or erected on a lot shown on a recorded map of the Property.

Section 4: "By-Laws" mean the by-laws of the Association as they now or may hereinafter exist.

*David Huffine*

Section 5: "Home" shall mean and refer to a detached, free-standing dwelling or place of residence and attached or detached garage constructed upon a lot within the Property.

Section 6: "Common Areas" shall mean and refer to all land within the Property owned by the Association, along with facilities and improvements erected or constructed thereon, for the use and enjoyment of the members of the Association as shown on the map of Birkdale at Landfall recorded in Map Book \_\_\_\_\_ at Page \_\_\_\_\_ of the New Hanover County Registry. In addition, all private streets, water lines located outside public rights-of-way and individual lots, all sewer lines located outside public rights-of-way, public sanitary sewer easements and individual lots, which water or sewer lines serve the Property are declared to be common area. Said common area shall be maintained by the Association unless and until portions thereof are turned over to the Council, as hereafter defined, pursuant to the terms and conditions of the Declaration and Annexation. Declarant reserves the right to alter and amend the recorded Map to amend, delete or relocate common areas and facilities as Declarant, in its sole discretion, deems appropriate.

Section 7: "Common Expenses" shall mean and include:

- a. All sums lawfully assessed by the Association against its members;
- b. Expenses of administration, maintenance, repair or replacement of the common areas, private streets, ponds and bulkheads; and not paid as a part of the Shared Common Expenses, as hereafter defined;
- c. Expenses declared to be common expenses by the provisions of this Declaration or the By-Laws;
- d. Liability for such other insurance premiums as the Declaration or By-Laws may require the Association to purchase;
- e. Expenses agreed by the members to be common expenses of the Association including but not limited to the maintenance and landscaping of yards and other areas which may be included within a lot;
- f. Any ad valorem taxes and public assessments levied against the Common Areas.
- g. Shared Common Expense assessments imposed by the Council as set forth in Paragraph 7 of the Declaration and Annexation.

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

Section 9: "Council" shall mean The Landfall Council of Associations, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 10: "Declarant" shall mean and refer to BIRKDALE LIMITED PARTNERSHIP, a North Carolina Limited Partnership, its successors and assigns to whom the rights of Declarant are expressly transferred, or if such successors or assigns should acquire more than one undeveloped lot or undeveloped acreage for the purpose of development, or acquire title to the Property under a deed in lieu of foreclosure, judicial foreclosure, or foreclosure under power of sale contained in any deed of trust or anyone otherwise denominated a "Declarant" thereby shall be deemed Declarant.

Section 11: The "Declaration and Annexation" shall mean the Declaration of Covenants, Conditions and Restrictions and Annexation to Master Cross-Access Easement and Maintenance Agreement dated as of December 22, 1993 which is recorded in Book 1732, Page 912 of the New Hanover County Registry, as it may be amended from time to time.

Section 12: "Delegation" shall mean the Delegation of Powers and Authority dated as of March 16, 1992 which is recorded in Book 1594, Page 1476 of the New Hanover County Registry, as it may be amended from time to time.

Section 13: "Lot" shall mean and refer to those 53 plots of land, other than the common area, designated on the recorded subdivision map referred to above and upon which a home has been or may be constructed. The number of lots may be increased or decreased as determined by the Declarant in accordance with the provisions of this Declaration.

Section 14: "Master Easement" shall mean the Master Cross-Access Easement and Maintenance Agreement dated as of October 22, 1990 which is recorded in Book 1515, Page 1583 of the New Hanover County Registry, as amended from time to time.

Section 15: "Member" shall mean and refer to every person who is a member of the Association.

Section 16: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, including contract sellers, but excluding those who have such interests merely as security for the performance of any obligation.

Section 17: "Person" shall mean and refer to an individual, corporation, partnership, association, trustee or other legal entity.

Section 18: "Property" shall mean and refer to that certain real property shown on that plat referred to above.

Section 19: "Shared Common Areas" shall mean the areas, facilities and services defined as Shared Common Areas and Facilities in the Master Easement.

Section 20: "Shared Common Expenses" shall mean those expenses defined and identified as Shared Common Expenses in the Master Easement.

## ARTICLE II

### Property Rights

Section 1: **Owner's Easements of Enjoyment:** Every Owner shall have a right to and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every designated lot, subject to each of the following provisions:

- a. The right of the Association to limit the number of guests of members.
- b. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage said Property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the lot owners hereunder.
- c. The right of the Association to suspend the voting rights and rights to the use of the Common Areas and facilities (except streets) by a member, or any person to whom he has delegated his voting right, for any period not to exceed sixty (60) days for an infraction of its published rules and regulations.
- d. Those easements as provided in ARTICLE IX hereon.
- e. The right of the Council to exercise the powers and authority set out in the Delegation as to lots and Common Areas.

Section 2: **Delegation of Use:** Any owner may delegate in accordance with the By-Laws, his right of enjoyment of the Common Areas to the members of his family, his tenants, or contract purchasers, provided, every such delegatee shall reside on the Property.

Section 3: **Maintenance of Common Areas:** The Declarant hereby covenants for itself, its successors and assigns, that maintenance of certain of the Common Areas, shall be transferred to the Council pursuant to the terms and conditions of the Declaration and Annexation. The Association shall be responsible for any Common Areas not maintained by the Council.

Section 4: **Parking Rights and Restrictions:** Adequate off-street parking shall be provided by the owner of each lot for the parking of automobiles and other vehicles owned or controlled by such owner, members of the owner's family or employees of the owner and tenants, and owners (including family members and tenants) of the lots covenant and agree not to park their automobiles, trucks, boats, trailers and other vehicles on the streets or Common Areas located on the Property. No trucks, boats, trailers or commercial vehicles shall be stored, housed or parked on the Property except within an enclosed garage.

### ARTICLE III

#### Membership

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

### ARTICLE IV

#### Voting Rights

Section 1: **Classes:** The Association shall have the following two classes of voting membership:

a. Class A: Class A members shall be all owners, with the exception of the Declarant. Class A members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot all such persons shall be members. The vote for such

lot shall be exercised as the owners thereof determine, but in no event shall more than one vote be cast with respect to any lot, and no fractional vote may be cast with respect to any lot.

b. Class B: The Class B member shall be the Declarant, and it shall be entitled to three (3) votes for each lot in which it holds a fee or undivided fee interest, provided that the Class B membership shall cease and shall be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership;

(2) The fourth anniversary of recordation of this Declaration.

## ARTICLE V

### 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 every other Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- a. Annual assessments or charges;
- b. Special assessments for capital improvements.

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

The annual and special assessments, together with such interest thereon, costs of collection thereof, and reasonable attorneys' fees as may be established by the Association, shall be a charge on the land and shall be a continuing lien upon the lot and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the lot at the time the assessment became due. The personal obligations of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them and then only with the consent of the Association. All assessments shall be shared equally by the owners of each lot.

Section 2: **Purpose of Assessments:** The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety and welfare of the residents and

the Property; for enforcing these covenants and the rules of the Association; for providing the services and facilities for the purposes of or related to the maintenance, use and enjoyment of the common area and facilities; for the purpose of payment of common expenses; and for the maintenance and upkeep of all water lines and systems as well as for payment of all sums due for water service to the premises; for the maintenance of all ponds and bulkheads within or abutting the project; and for maintenance of private roadways.

**Section 3: Amount of Annual Assessment:**

a. **Maximum Annual Assessment:** Until January 1, 1998, the maximum annual assessment shall not exceed EIGHT HUNDRED FIFTY AND NO/100 DOLLARS (\$850.00) per lot, the exact amount of which shall be determined from time to time as hereinafter provided.

b. **Increase by Association Board of Directors:** From and after the date specified in subparagraph (a) above, the annual assessment which may be established effective January 1 of each year by the Board of Directors, may not be increased by more than twenty percent (20%) of the prior year's assessment without a vote of the members as provided below.

c. **Increase by Members:** From and after the date specified in subparagraph (a) above, the annual assessment may be increased by more than twenty percent (20%) only by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose. Written notice of said meeting, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitation herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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

e. **Lots Owned by Declarant:** Notwithstanding anything in this ARTICLE V to the contrary, all lots owned by Declarant shall be exempt from assessments until such time as Declarant conveys said lot to a purchaser.

**Section 4: Special Assessments for Capital Improvements:** In addition to the annual assessment 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 costs of construction or reconstruction, repairs or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, and specifically including the water lines and systems within the project provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall have been sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

**Section 5: Uniform Rate of Assessment:** Both annual and special assessments must be fixed at a uniform rate for all lots, on a per lot basis, and may be collected on a monthly, quarterly or annual basis as determined by the Board of Directors.

**Section 6: Quorum for an Action Authorized under Sections 3 and 4:** At a meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 3 and 4 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7: Date of Commencement of Annual Assessment: Due Dates:** The annual assessments provided for herein shall be paid in advance in monthly, quarterly or annual installments as determined by the Board of Directors and the payment of such shall commence as to each lot on the day of the conveyance of lot by the Declarant. Assessments shall be prorated for any partial month. The Board of Directors shall fix the amount of the annual assessment against each lot at least ten (10) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date shall be established by the President. The Association, upon demand and at any time, shall furnish a certificate in writing signed by a member of the Association setting forth whether the assessments

on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

**Section 8: Effect of Nonpayment of Assessments: Remedies of the Association:**

Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the Property, and, in either event, interest, costs and reasonable attorney's fees incurred in the prosecution of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Areas or abandonment of the lot.

**Section 9: Subordination of the Lien to Mortgages and Ad Valorem Taxes:**

The lien of the assessments provided for herein on any lot shall be subordinate to the lien of any first mortgage and ad valorem taxes on such lot. The sale or transfer of any lot shall not affect the assessment lien; however, the sale or transfer of any lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

**ARTICLE VI**

**Section 1: Shared Common Expense Assessments Payable to The Landfall Council**

**of Associates, Inc.:** In addition to the assessments provided in ARTICLE V above, each owner shall be responsible for paying the Shared Common Expense assessments imposed by the Council, its successors in interest and its designees as set forth in Paragraph 7 of the Declaration and Annexation. At the option of the Council, such Shared Common Expense assessments may be billed by the Council directly to the individual lot owners or billed through the Association. Any Shared Common Expense assessments or portion thereof which are not paid within thirty (30) days after the due date shall be the personal obligation of the owners of that lot, may result in a lien against such lot and may result in the imposition of a late fee in an amount to be determined by the Council. Such liens will be subject to the provisions of Article V, Section 9 hereof.

Landfall Associates subjected the Property to the terms and conditions of the Declaration and Annexation, and such terms and conditions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof. Any conflicts or inconsistencies between this document and the Declaration and Annexation shall be resolved in favor of the Declaration and Annexation.

## ARTICLE VII

### Maintenance and Landscaping

The Association shall contract for the landscaping, irrigation and maintenance of all lots located within Birkdale. The expense of providing such services shall be deemed a common expense and shall be shared equally by all lot owners as provided in ARTICLE V above. Each lot owner shall be responsible for the exterior maintenance of each dwelling and agrees to maintain the dwelling in a good and acceptable manner.

If, in the opinion of the Association, any owner shall fail to maintain any dwelling owned by him in a manner which is reasonably neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the sole opinion of the Association, the Association in its discretion, by the affirmative vote of two-thirds (2/3) of the members of the Board of Directors, and following ten (10) days written notice by the Owners, may enter upon and make or cause to be made repairs to such improvements and perform such maintenance on the lot as the removal of trash, cutting of grass, pruning of shrubbery, weeding and items of erosion control. The Association shall have an easement onto and over each lot for the purpose of accomplishing the foregoing. The reasonable cost incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such cost, shall be added to and become a part of the assessment to which such lot is subject.

## ARTICLE VIII

### Use Restrictions

Section 1: **Rules and Regulations:** The Board of Directors of the Association and the Council shall each have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yards of each lot and common area. Any

rules and regulations formulated by the Association, along with all policy resolutions and policy actions taken by the Board of Directors of the Association, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours. In the case of any conflicts between the rules adopted by the Board of Director and those adopted by the Council, the rules of the Council shall prevail.

Section 2: **Use of Property:** Each lot, building, the home thereon and the Common Areas shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the By-Laws:

- a. All lots, buildings and the Common Areas shall be used solely for single family residential purposes and for purposes incidental or accessory thereto, except as otherwise expressly provided in the Declaration and Annexation.
- b. No lot may be subdivided.
- c. Declarant may use up to four (4) homes at any given time for offices and/or for sales or display purposes.
- d. Nothing shall be kept and no activity shall be carried on in any building or home or on the Common Areas which will increase the rate of insurance, applicable to residential use, for the surrounding Property or the contents thereof.
- e. No owner shall do or keep anything, or cause or allow anything to be done or kept, in his home or in the Common Areas which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation.
- f. No waste shall be committed on any portion of the Common Areas.
- g. All garbage receptacles, containers and enclosures shall be located so as not to be unsightly and said locations shall be as originally designated or constructed by Declarant or as approved by the Architectural Control Committee of the Council.
- h. No immoral, improper, offensive or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed.

i. Nothing shall be done in or to any home or garage or in, to or upon any of the common area which will impair the structural integrity of any building, home, garage or portion of the Common Areas or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

j. No industry, business, trade, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained or permitted on any part of the Property, except that the Declarant or its agents may use up to four (4) homes at any given time for sales or display purposes and except that Landfall Associates or its agents may use up to two homes at any given time for overnight housing for prospective purchasers of properties within the Landfall Subdivision.

k. Except as may be required by municipal ordinance, no owner shall display, or cause to allow to be displayed to public view any sign, placard, poster, billboard or identifying name or number upon any home, building or any portion of the Common Areas.

l. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Areas except at the direction of and with the express written consent of the Association.

m. The Common Areas shall be used only for the purposes for which they are intended and reasonably suited and which are incidental to the use and occupancy of the homes, subject to any rules or regulations that may be adopted by the Association pursuant to its By-Laws.

n. No building shall be erected on a lot unless the same contains at least 2,000 square feet exclusive of porches, decks and garages.

o. No more than fifty-five percent (55%) of the total square footage of any lot shall be impervious surface area. Notwithstanding the foregoing, all owners shall comply with any and all storm water runoff regulations or other such regulations which may be applicable to each individual lot.

Section 3: **Animals:** No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and

provided further that they are kept in the home of the owner or in such other area as is approved by the Architectural Control Committee of The Landfall Council of Associations, Inc.

Section 4: **Lease of Homes:** No home shall be leased for transient or hotel purposes, nor may any owner lease less than the entire unit, nor shall any such lease be for any period of less than six (6) months, except that the Declarant or its agents may use up to four (4) homes at any given time for offices and/or for sales or display purposes and except that Landfall Associates or its agents may use up to four (4) homes for overnight housing for prospective purchasers of properties within Landfall Subdivision. Any lease must be in writing and provide that the terms of the lease and occupancy of the unit shall be subject in all respect to the provisions of the Declaration of Covenants, Conditions and Restrictions and By-Laws of the Association and any failure by a lessee to comply with the terms of such documents shall be a default under the lease.

#### ARTICLE IX

##### Easements

Section 1: **Walks, Drives, Parking Areas and Utilities:** All of the Property, including lots and Common Areas, shall be subject to a perpetual non-exclusive easement or easements in favor of all owners of lots for their use and the use of their immediate families, guests, invitees, tenants or lessees for all proper and normal purposes and for ingress, egress and regress in and to such easements for private streets, driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declarant or its predecessors in title. The Council and the Association shall have the power and authority to grant and to establish in, over, upon and across the Common Areas conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

Section 2: **Reservation to Declarant:** Every lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a lot to an owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected lot or lots to as near the original condition as practicable.

Further, Declarant reserves the right to subject the Property to a contract with Carolina Power & Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or continuing monthly payment to Carolina Power & Light Company by the owner of each lot.

**Section 3: Emergencies:** Every lot and home shall be subject to an easement for entry by the Association for the purpose of correcting, repairing or alleviating any emergency condition which arises upon any lot or within any home and which endangers any building or portion of the Common Areas. The Council shall also have an easement of entry for the purpose of correcting or alleviating any emergency condition which endangers any of the Shared Common Area subject to the Council's jurisdiction.

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

**Section 5: Owner's Easement for Repair and Reconstruction:** If any dwelling is located closer than five (5) feet from its lot line, the owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the owner shall restore the adjoining lot as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

**Section 6: Developers Access Easement:** An exclusive easement is hereby established in favor of Declarant over all common areas for access to adjacent properties for the purposes of future development and the installation of streets and public utilities.

**Section 7: Landscaping and Maintenance Easement:** An easement is hereby established in favor of the Declarant and the Association, their agents and assigns over all lots for the purpose of providing and maintaining landscaping, for installation and maintenance of irrigation lines and facilities and for other activities reasonably relating to the maintenance of the premises, including ponds and bulkheads.

**Section 8: Appurtenance Easements:** An easement is hereby established in favor of the Declarant and the owner of any lot for the existence and maintenance for any appurtenance extending from a dwelling which may encroach upon an adjoining lot, including but not limited to roofs, steps and heating and air conditioning units. That easement provided in Section 5 hereof shall be applicable to the maintenance or reconstruction of such appurtenances.

## ARTICLE X

### Rights of Institutional Lenders

**Section 1:** The prior written approval of each institutional holder of a first deed of trust on lots in the Property will be required for the following:

- a. The abandonment or termination of the planned unit development except for abandonment or termination as provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- b. Any material amendment to the Declaration or to the By-Laws of the Association.

**Section 2:** Upon written request, any institutional holder of a first deed of trust on a lot will be entitled to:

- a. Inspect the books and records of the Association during normal business hours;
- b. Receive an annual financial statement of the Association within 90 days following the end of any fiscal year; and,
- c. Written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

**Section 3:** a. In the event of substantial damage or destruction of any lot or any part of the Common Areas, the institutional holder of any first mortgage on a lot will be entitled to timely written notice of any such damage or destruction.

b. If any lot or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first mortgage on a lot will be entitled to timely written notice of any such proceeding or proposed acquisition.