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NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$58.00

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CANBY OAKS PERFORMANCE SUBDIVISION**

THIS DECLARATION is made on the date hereafter set forth by STEVENS BUILDING COMPANY, a North Carolina corporation, (hereinafter referred to as "Declarant", "Developer" or "Owner") and is joined by CANBY OAKS HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation (hereinafter referred to as the "Association") for the purposes hereinafter stated;

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property in New Hanover County, North Carolina, known as all the lots in **CANBY OAKS PERFORMANCE SUBDIVISION**, which is shown on a plat (the "Plat") recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 66, Page 49, to which reference is made for a more particular description (the "Property"); and,

WHEREAS, the Association is the owner of that certain parcel known as "Active & Passive Recreational Area" and all private rights of way, which is shown on a subdivision plat, entitled "Canby Oaks Performance Subdivision", recorded in Map Book 66, Page 49, of the New Hanover County Registry, to which reference is made for a more particular description; and,

WHEREAS, the Association desires to join in this Amendment for the purpose of consenting and agreeing to the terms and conditions provided herein.

NOW, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes as well as the following easements, restrictions, covenants, and conditions.

ARTICLE I.

DEFINITIONS

In addition to other terms defined herein, the following capitalized terms shall have the following meanings as used herein:

SECTION 1. Additional Property shall mean and refer to any lands, in addition to the above described Property, annexed to and made a part of the Planned Community, whether such lands are now owned or hereafter acquired by Declarant or others, and whether developed by Declarant or others.

SECTION 2. Allocated Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

SECTION 3. Association shall mean and refer to Canby Oaks Homeowners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns, the owners' association organized pursuant to the Act for the purposes set forth herein.

SECTION 4. Common Elements shall mean and refer to all lands and easements within or appurtenant to the Planned Community owned or enjoyed by the Association, other than a Lot, and intended for the common use and enjoyment of the Owners, including, without limitation, any private roads, pedestrian easements and storm water retention ponds within the Planned Community. Common Elements shall also include any areas designated on any plats for the Planned Community as "Open Space" whether passive or active, "Common Area", "Common Element", "Recreation Area", "Amenity Area", "conservation area(s)", or other similar designation.

SECTION 5. Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

SECTION 6. Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise.

SECTION 7. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to Stevens Building Company, its successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right.

SECTION 8. Declarant Control Period shall have the meaning set forth in Article III hereof.

SECTION 9. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 10. Executive Board or Board shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this Declaration or otherwise to act on behalf of the Association.

SECTION 11. Limited Common Elements shall mean areas and facilities within any Lot which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration. The Limited Common Elements shall consist of **NONE**. (if none, so state).

SECTION 12. Lot(s) shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner.

SECTION 13. Lot Owner or Owner shall mean any Person who owns a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 14. Master Association means a master association as defined in the Act.

SECTION 15. Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

SECTION 16. Planned Community shall mean and refer to the Property plus any Additional Property made a part of the Planned Community by the exercise of any Special Declarant Right.

SECTION 17. Purchaser means any Person, other than the Declarant or a Person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than twenty (20) years, or (ii) as security for an obligation.

SECTION 18. Reasonable Attorneys Fees means attorneys fees reasonably incurred without regard to any limitations on attorneys fees which otherwise may be allowed by law.

SECTION 19. Special Declarant Rights means rights reserved for the benefit of the Declarant including without limitation the right (i) to complete improvements intended or planned by Developer for the Property or Additional Property; (ii) to exercise any development or other right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain within the Planned Community sales offices, management offices, construction offices/trailers, signs advertising the

Planned Community, and models; (iv) to use the Common Elements for the purpose of making improvements within the Planned Community; (v) to make the Planned Community part of a larger planned community or group of planned communities; (vi) to make the Planned Community subject to a Master Association; (vii) to appoint or remove any officer or Executive Board member of the Association or any Master Association during the Declarant Control Period or (viii) to permit other land to be annexed to and made part of the Planned Community in accordance with the terms of this Declaration.

SECTION 20. Stormwater Permit shall mean Permit No. SW8 170809, as issued by the State of North Carolina Division of Water Quality ("Division") under NCAC 2H.1000.

ARTICLE II.

PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners including the right to make permanent and temporary assignments of parking spaces and to establish rules and regulations concerning parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Property which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Executive Board.

(b) The Association may grant a security interest in or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least eighty percent (80%) of the Members, excluding the Developer; provided, however, that the Association may without the consent of the Owners grant easements, leases, licenses and concessions through or over the Common Elements. No conveyance or encumbrance of Common Elements shall deprive any Lot of its rights of access or support.

SECTION 2. Easements in Favor of Declarant and the Association. The following easements are reserved to Declarant and the Association, their agents, contractors, employees, successors and assigns:

(a) easements as necessary in the lands constituting the Common Elements and the front ten and side ten feet and such other areas of each Lot designated on the Plat for storm drainage, public utility sewer easement, or otherwise, for the installation and maintenance of utilities and drainage

facilities (including the right to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of the county where the Planned Community is located; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the Owner of such Lot. No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. These easement areas (whether or not shown on the recorded plats for the Planned Community) but not the improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

(b) easements over all private streets, if any, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress, to and the installation of utilities for any Additional Property.

(c) an easement of unobstructed access over, on, upon, through and across each Lot and the Limited Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Limited Common Elements required by this Declaration.

SECTION 3. Other Easements. The following additional easements are granted by Declarant:

(a) an easement to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties.

(b) in case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the immediate right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners.

(c) the Association is granted an easement over each Lot for the purposes of providing Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Planned Community, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

ARTICLE III.

HOMEOWNERS' ASSOCIATION

SECTION 1. Formation of Association. The Association shall be incorporated no later than the date the first Lot in the Planned Community is conveyed. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and Bylaws. In addition, the Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority granted to it by the Non-profit Corporations Act or otherwise.

SECTION 2. Membership. Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

SECTION 3. Voting Rights. The Association shall have two classes of voting Membership.

Class A. Class A Member shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) 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 they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

Class B. The Declarant shall be a Class B Member and shall be entitled to ten (10) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

(a) when the total vote outstanding in the Class A Membership equals the total vote outstanding in the Class B Membership, provided, however, the Class B Membership shall be reinstated if thereafter, and before December 31, 2029, Additional Property is added to the Planned Community sufficient to give Class B Membership a total number of votes to exceed those of the Class A Membership; or

(b) on December 31, 2029; or

(c) upon the voluntary surrender of all Class B Membership by the holder thereof.

The period during which there is Class B Membership is sometimes referred to herein as the "Declarant Control Period". During the Declarant Control Period, the Declarant shall have the right to designate and select the Executive Board of the Association and the right to remove any person or persons designated and selected by the Declarant to serve on the Executive Board, and to replace them for the remainder of the term of any person designated and selected by the Declarant to serve on the Executive Board who may resign, die, or be removed by the Declarant.

SECTION 4. Government Permits. After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

SECTION 5. Common Elements. The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element within the Planned Community from the date of completion of its construction or improvement by the Developer, whether or not (i) such Common Element has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Element has been transferred from the Declarant to the Association or assumed by the Association. If the Declarant is required by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within thirty (30) days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special Assessment within thirty (30) days of receipt of such bill to cover the amount thereof if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment.

SECTION 6. Insurance. The Executive Board on behalf of the Association, as a Common Expense, may at all times keep the Common Elements and other assets of the Association, if any, insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. At a minimum, the Executive Board shall maintain the insurance coverages required by the Act. Furthermore, the Board of Directors, after control of the Association is no longer controlled by the Declarant, in accordance with Article III herein, shall procure and maintain Directors and Officers liability insurance.

SECTION 7. Architectural Control Committee. The Executive Board shall perform all duties of the Architectural Control Committee if no such committee is appointed by it, subject, however, to the Special Declarant Rights. Any Architectural Control Committee appointed by the Executive Board shall consist of at least three (3) members.

ARTICLE IV.

COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Except as hereinafter provided, each Lot Owner covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

- (a) Annual Assessments;
- (b) Special Assessments;
- (c) Insurance Assessments;
- (d) Ad Valorem Tax Assessments; and
- (e) Working Capital Assessments.

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal 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 the Owner's successors in title unless expressly assumed by them.

SECTION 2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Planned Community and for the maintenance, repair, improvement and replacement of the Common Elements and any Limited Common Elements. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Operations, maintenance and improvement of the Common Elements, and any Limited Common Elements, including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization or Master Association or other association of which the Association is a member; and in addition, doing any other things necessary or desirable as determined by the Executive Board to keep the Common Elements and Limited Common Elements in good operating order and repair.

SECTION 3. Annual Assessments. The Executive Board shall adopt a proposed annual budget at least 90 days before the beginning of each fiscal year of the Association. Within thirty (30) days after adoption of the proposed budget for the Planned Community, the Executive Board shall provide to all of the Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The date in each Fiscal Year upon which the Annual Assessment shall become due and payable shall be established by the Executive Board. The Executive Board shall have the authority to require the Assessments to be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. The Board of Directors shall be entitled to raise the Annual Assessments by a rate of ten percent (10%). However, in the event the Board of Directors shall desire to raise the Annual Assessments by greater than ten percent (10%), an approval of two-thirds (2/3) of the Lot Owners shall be required.

SECTION 4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the following purposes:

(a) To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements and any Limited Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

(b) Without a vote of the Members, to provide funds to reimburse the Declarant as provided for in Article III, Section 5, hereof.

SECTION 5. Insurance Assessments. All premiums on insurance policies purchased by the Executive Board 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 Owners equally an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

SECTION 6. Ad Valorem Tax Assessments. All ad valorem taxes levied against the Common Elements, if any, shall be a common expense, and the Association may at any time

of year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay ad valorem taxes not included as a component of the Annual Assessment.

SECTION 7. Working Capital Assessments. At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of Two Hundred and No/100 Dollars (\$200.00) to the Association as working capital to be used for operating and capital expenses of the Association. Such amounts paid for working capital are not to be considered as advance payment of the Annual or any other Assessments.

SECTION 8. Rate of Assessment. The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

SECTION 9. Commencement of Assessments. Except as hereinafter provided, assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

SECTION 10. Effect Of Nonpayment of Assessments And Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

SECTION 11. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of thirty (30) days or longer.

(c) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 of the Act are enforceable as Assessments.

(d) The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed

of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

(e) The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

(f) Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(g) Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

(h) A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

Section 12. Declarant and Builders. Notwithstanding any other provisions of this Declaration, (i) no assessments shall be paid by the Declarant and (ii) assessments shall be waived for the initial six (6) month period of ownership of any Owner who is conveyed a Lot by the Declarant who is a general contractor that intends to resell the Lot for his own account and who does not otherwise rent the lot or occupy it for his own use during such 6 month period.

ARTICLE V.

RIGHTS OF DEVELOPER

The Declarant shall have, and there is hereby reserved to the Declarant, the Special Declarant Rights as herein defined and the following rights, powers and privileges which shall be in addition to the Special Declarant Rights and any other rights, powers and privileges reserved to the Declarant herein:

SECTION 1. The Architectural Control Committee/Executive Board. All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property. The Declarant shall be entitled during the Declarant Control Period to appoint and remove the officers and members of the Executive Board.

the allocated planned, platted, or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter or re-designate road, utility and drainage facilities and easements and to change, alter or re-designate such other present and proposed amenities, Common Elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts or Lots shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract or Lot (any Lot resulting from such recombination shall be treated as one Lot for purposes of Assessments); to eliminate from this Declaration or any plats of the Planned Community Lots that are not otherwise buildable or are needed or desired by Declarant for access or are needed or desired by Declarant for use as public or private roads or access areas, whether serving the Planned Community or other property owned by the Declarant or others, or which are needed for the installation of utilities, Common Elements or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Elements. The Declarant need not develop, or develop in any particular manner, any lands now owned or hereafter acquired by the Declarant, including any lands shown on plats of the Planned Community as "Future Development". Any such lands shall not be subject to this Declaration unless Declarant expressly subjects them hereto by filing of a supplemental declaration in the Register of Deeds office of the county where the Planned Community is located. Declarant is required to state herein the maximum allowed built-upon area for all lots which Declarant has planned to develop within the Planned Community. By listing the maximum built-upon area herein for all such lots, Declarant does not obligate itself to develop in any manner or for any particular uses any lands now owned or hereinafter acquired by Declarant which are not shown on the recorded plats referenced herein.

SECTION 3. Amendment of Declaration by the Declarant. This Declaration may be amended without Member approval by the Declarant, or the Board of the Association, as the case may be, as follows:

(a) In any respect, prior to the sale of the first Lot, and after the first sale of the first Lot, provided such amendment does not have a materially adverse effect on title or marketability to any Lot not owned by Declarant.

(b) To the extent this Declaration applies to Additional Property.

(c) To correct any obvious error or inconsistency in drafting, typing or reproduction or otherwise carry out and effectuate the orderly development of the Property as intended by the Declarant.

(d) To qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.

(e) To incorporate or reflect any platting change as permitted by this Article or

otherwise permitted herein.

(f) To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. The Declarant may at any time amend this Declaration without Lot Owner approval to change the maximum allowable built-upon area as permitted by the Division or to otherwise comply with any other Division requirements. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.

SECTION 4. Annexation of Additional Property. Declarant may annex to and make a part of the Planned Community any other real property, whether now owned or hereafter acquired by Declarant or others, and whether developed by the Declarant or others. Annexation of Additional Property to the Planned Community shall require the assent of sixty-seven percent (67%) of the Class A Members who are voting in person or by proxy at a meeting called for this purpose; provided, however, Additional Property may be annexed to the Planned Community without the assent of the Members so long as the Additional Property is used for residential purposes, roads, utilities, drainage facilities, amenities, and other facilities not inconsistent with residential developments. Subdivisions from Additional Property need not have the same name as prior portions of the Planned Community.

ARTICLE VI.

USE RESTRICTIONS. ARCHITECTURAL CONTROL AND MAINTENANCE

SECTION 1. Approval of Plans for Building and Site Improvements. No dwelling, wall or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the

Architectural Control Committee. If the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and full compliance with this Article will be deemed to have occurred. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Architectural Control Committee for its records. The Architectural Control Committee shall not be responsible for any structural or other defects in plans and specifications submitted to it or in any structure erected according to such plans and specifications.

SECTION 2. Minimum Standards for Site Improvements.

(a) The exterior of all dwellings and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency, natural calamities, or the complexity of design and construction.

(b) All service utilities, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. Mail and newspaper boxes shall not be allowed on any Lot (the Declarant is providing centralized mailboxes). Design of mail and newspaper boxes shall be furnished by the Architectural Control Committee. Fences shall be permitted on any Lot; provided, however, that the design, placement, and materials of any fence are approved by the Architectural Control Committee. Clotheslines are not permitted on any Lot.

(c) All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be clear, white or non-frost lights or bulbs.

SECTION 3. Use Restrictions.

(a) Land Use And Building Type. No Lot shall be used for any purpose except for residential purposes, subject, however, to the rights of the Declarant contained herein. All numbered Lots are restricted for construction of one single-family dwelling (plus, a detached garage, if there is not one attached to the residence, and such other accessory buildings as may be approved by the Architectural Control Committee). No single-family dwelling shall be erected or allowed to remain if the main structure, exclusive of open porches, decks and garages, contains less than One Thousand Eight Hundred (1,800) square feet of heated floor area.

(b) Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly,

unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area. All Lot Owners expressly waive any claims against Declarant related to any obnoxious or offensive activity conducted upon any Lot or relating to anything done upon any Lot which may be or may become an annoyance or nuisance to the neighborhood, except to the extent that the alleged obnoxious or offensive activity is conducted by the Declarant or the Declarant's agent.

(c) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Architectural Control Committee.

(d) Vehicles/Boats. No boat, motor boat, personal water craft, camper, trailer, motor or mobile homes, tractor/trailer, construction equipment or similar type vehicle/equipment, shall be permitted to remain on any Lot or on any street at any time, without the written consent of the Association. No inoperable vehicle or vehicle without current registration and insurance will be permitted on any Lot, street or Common Element. All lawn maintenance equipment shall be stored, when not in use, in a method so as not to be visible from the street. The Association shall have the right to have all such vehicles boats or equipment towed away at the owner's expense. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street.

(e) Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that domesticated dogs, domesticated cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed or under the control of their owner in compliance with (i) all laws and ordinances of the State of North Carolina and the County of New Hanover relating thereto; and (ii) such rules and regulations pertaining thereto as the Executive Board may adopt from time to time, which rules and regulations, may, among other things, restrict the number, type and size of domestic pets.

(f) TV Satellite Dishes and Outside Antennas. No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Architectural Control Committee; provided, however, one satellite dishes not over 18" in diameter which cannot be seen from the street are permitted.

(g) Construction in Common Elements. No Person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

(h) Signs. No signs (including "for sale" or "for rent" signs) shall be permitted on any Lot or in the Common Elements without permission of the Executive Board; provided, however, the Declarant may, so long as Declarant owns any Lot, maintain for sale signs on Declarant's Lots and