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TAMMY THEUSCH BEASLEY

BY: MATTHEW EMERSON

REGISTER OF DEEDS

DEPUTY

CANE GARDEN
HOA DECLARATION

PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION PURSUANT TO THE NORTH CAROLINA UNIFORM ARBITRATION ACT, § 15-48-10, S.C. CODE OF LAWS OF 1976 AS AMENDED.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CANE GARDEN HOMEOWNERS ASSOCIATION, INC.**

THIS DECLARATION is made this the 30th day of April, 2019, by **HOKE DEVELOPERS 3, LLC**, a North Carolina limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property more particularly described on Exhibit "A" attached hereto, which property is more particularly described in Article I below; and

WHEREAS, Declarant desire to create thereon an exclusive residential community of single family detached residential lots to be named Cane Garden; and

WHEREAS, Declarant anticipates that the single family detached residential lots will be developed in a single neighborhood; and

WHEREAS, Declarant desires to ensure the attractiveness of the community, to prevent any further impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all property within the community and to provide for the maintenance and upkeep of all residential units as provided herein, the Common Areas as hereinafter defined; and to this end, desires to subject the real properties described herein below in Article I, to the coverage of the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said properties described below, and each owner thereof; and

WHEREAS, Declarant has incorporated or will incorporate under North Carolina law, **CANE GARDEN HOMEOWNERS ASSOCIATION, INC.**, as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Article I, Section One below, and such additions thereto as may be hereafter made pursuant to Article I, Section Two hereof, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the values and desirability of, and which shall run with, the real properties and be binding upon all parties having any right, title or interest in the described properties or any party thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
PROPERTIES SUBJECT TO THIS DECLARATION

Section One: Properties. The property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association is located in New Hanover County, North Carolina, and is described as follows:

All that certain piece, parcel or tract of land lying and being in New Hanover County, North Carolina, and being more particularly described in **Exhibit "A"**, which is attached hereto and incorporated herein by reference.

Section Two: Additions to Existing Property. Additional property may be brought within the scheme of this Declaration provisions in the following manner:

- (a) Additional land described in **Exhibit "B"** which is attached hereto and incorporated herein by reference may be annexed to the existing property under Section One by Declarant, in future stages of development, without the consent of any other Lot Owner(s) or any mortgagee, provided that said annexations must occur within Ten (10) years after the date of this instrument.
- (b) The additions authorized under Article I, Section Two shall be made by filing or record a Supplement to Declaration of Covenants, Conditions and Restrictions with respect to the additional properties, which shall extend the scheme of this Declaration to such properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein, or in the alternative, create an additional declaration for any portion of the additional properties.
- (c) The Declarant reserves the right to add additional covenants and easements with respect to the land owned by the Declarant described herein in **Exhibit "B"**. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting property to this Declaration or in a separate Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

ARTICLE II
DEFINITIONS

Section One. "Association" shall mean and refer to **CANE GARDEN HOMEOWNERS' ASSOCIATION, INC.**, its successors and assigns and a copy of the Articles of Incorporation and By-Laws of the Association are attached hereto as **Exhibits "C" & "D"** respectively and incorporated herein by reference.

Section Two. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee or fee interest in any Lot which is a part of the Properties, including contract

sellers, but excluding those having any interest merely as security for the performance of an obligation.

Section Three. “Properties” shall mean and refer to that certain real property hereinbefore described in Article I, Section One and such additions thereto from the property described in Article I, Section Two, as may hereafter be brought within the jurisdiction of the Association and be made subject to this Declaration.

Section Four. “Lot” shall mean and refer to any plot of land shown upon an approved site plan or any recorded subdivision map of the Properties covered under Article I, Section One, or additional thereto, with the exception of the Common Area, and shall include all improvements thereon.

Section Five. “Declarant” shall mean and refer to **HOKE DEVELOPERS 3, LLC**, a North Carolina limited liability company, its successors and assigns, if such successors or assigns should acquire all of the Declarant’s interest in the Properties.

Section Six. “Master Association” shall mean and refer to the master association for Cane Garden Homeowners Association, Inc. created by the Master Declaration.

Section Seven. “Master Declaration” shall have the meaning set forth in Article III Section Six.

Section Eight. “Common Area” shall mean all real property owned by the Association and all other improvements for the common use, benefit and enjoyment of the Owners. Common Areas, with respect to the property subject to this Declaration, shall be shown on the various plats recorded or to be recorded in the New Hanover County Public Registry and designated thereon as “Common Areas”, but shall exclude all Lots as herein defined, and all publicly dedicated streets, if any. “Common Area” shall include all private roads and drives shown on said plats as now recorded and as shall be hereinafter recorded in the New Hanover County Public Registry covered under Article I, Section One.

Section Nine. “Board of Directors” shall mean and refer to the Board of Directors of the Association.

Section Ten. “Member” shall mean and refer to an Owner who holds membership in the Association pursuant to this Declaration.

Section Eleven. “New Hanover County Public Registry” shall mean and refer to the Office of the Register of Deeds for New Hanover County, North Carolina.

Section Twelve. “Building” shall mean a residential structure constructed or to be constructed on a Lot; provided it is specifically understood that a Building shall be treated as the personal property of, or a betterment to the Lot, by an Owner.

Section Thirteen. “Builder” shall mean and refer to residential homebuilders who purchase Lots from the Declarant for the construction of residential homes to be sold to Owners. H &H Constructors, Inc. and H & H Constructors of Fayetteville, LLC are expressly considered a builder for the purpose of this definition.

ARTICLE III
PROPERTY RIGHTS

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

- (a) Any rights of assessment under the Master Declaration and other fees for the use of any facilities situated upon property owned by the Master Association;
- (b) The right of the Association to charge a reasonable admission and other fees for the use of the Common Area and any recreational facility situated thereon;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the Members;

No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Members agreeing to such dedication or transfer has been recorded;

- (d) The right of individual owners to the exclusive use of driveways and parking spaces as provided in this Article;
- (e) The right of the Association to limit the number of guests of Members;
- (f) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area facilities and in aid thereof to mortgage said properties, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners and respective mortgagees hereunder;
- (g) The right of the Association to adopt, publish, and enforce reasonable rules and regulations as provided in Article IX;
- (h) The right of the Association to enter any Lot and Common Area in order to perform and maintenance, alteration, or repair required herein to be performed by the Association, and the Owner of such Lot shall permit the Association or its representative to enter for such purpose at reasonable times and with reasonable advance notice;
- (i) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate;
- (j) The easement rights of the Declarant reserved in Article X of this Declaration;
- (k) The rights of the Declarant reserved in Article XI of this Declaration.

Section Two. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area depicted on such maps of any property subjected to the terms of this Declaration, to the extent the same are from time to time recorded in the Office of the Register of Deeds for New Hanover County, North Carolina in the Association, free and clear of all encumbrances and liens, except those set forth in this Declaration and any easements of record. Following the conveyance of Common Area to the Association, Declarant shall be entitled to proration credit for all expenses of the Association incurred by the Declarant (including insurance and real estate taxes) which have not theretofore been reimbursed to Declarant. The Common Area shall be conveyed without any express or implied warranties, which warranties are hereby expressly disclaimed by Declarant.

Section Three. Status of Title of Property; Property Subject to Master Declaration. The Declarant represents to the Association and all the Owners that, as of the effective date hereof, the Declarant has marketable, fee simple title to the Land and that the rights and interest of all Owners in and to the Property are subject only to (i) liens for real estate taxes for the current year and subsequent years; (ii) existing and/or recorded easements, conditions, covenants, declarations, reservations and restrictions including, without limitation, those set forth in this Declaration; (iii) easements and use rights, if any, reserved by the Declarant hereunder; (iv) applicable governmental regulations, including zoning laws, which may be imposed upon the Property from time to time; and (v) the existing Mortgages of the Project Lender encumbering portions of the Property.

The Master Declaration provides a method and easement for the shared use by the Owners of Lots, and their permitted guests, of certain parking, and certain other amenities, as more particularly set forth in the Master Declaration.

Section Four. Limited Warranty From Declarant. FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF COMPLETION OF CONSTRUCTION (BEING THE LATER OF SUBSTANTIAL COMPLETION UNDER THE CONSTRUCTION CONTRACT, OR THE DATE A CERTIFICATE OF OCCUPANCY IS ISSUED THEREFOR), THE DECLARANT SHALL AT NO COST TO THE ASSOCIATION REPAIR OR REPLACE (IN THE DECLARANT'S DISCRETION) ANY PORTIONS OF THE COMMON AREAS (EXCEPT FIXTURES, ACCESSORIES AND APPLIANCES COVERED BY SEPARATE WARRANTIES OF THEIR RESPECTIVE MANUFACTURERS) WHICH ARE DEFECTIVE

AS TO MATERIALS OR WORKMANSHIP. THIS LIMITED WARRANTY IS IN PLACE OF ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND THE DECLARANT DISCLAIMS ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, THE LIABILITY OF THE DECLARANT SHALL BE LIMITED TO SUCH REPAIR OR REPLACEMENT AND THE DECLARANT SHALL NOT BE LIABLE FOR DAMAGES OF ANY NATURE, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, REGARDLESS OF WHETHER SUCH DAMAGES ARE CLAIMED TO ARISE OUT OF THE LAW OF CONTRACT, TORT OR OTHERWISE, OR PURSUANT TO STATUTE OR ADMINISTRATIVE

REGULATIONS. Each Owner, in accepting a deed from the Declarant or any other party to a Lot, expressly acknowledges and agrees that this Section Four establishes the sole liability of the Declarant to the Association and the Owners related to defects in the Common Areas and the remedies available with regard thereto. At the end of the one (1) year warranty period referred to

hereinabove in this Section Four, the Declarant will assign to the Association in writing all of its rights, claims, causes of action and demands which it has or which may thereafter accrue against all other people who may be responsible for the design and/or construction of the Common Areas. THIS LIMITED WARRANTY RELATES SOLELY TO THE COMMON AREAS, THE BUILDING CONSTRUCTED UPON EACH LOT IS SUBJECT TO A SEPARATE LIMITED WARRANTY PURSUANT TO THE REAL ESTATE PURCHASE AGREEMENT THEREFOR BETWEEN THE OWNER AND THE DECLARANT.

ARTICLE IV **MEMBERSHIP AND VOTING RIGHTS**

Section One. Every Owner and Builder shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section Two. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of a Lot 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 shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership, on the happening of either of the following events, whichever occurs later:

- (a) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; or
- (b) Ten years from the date of recording of this Declaration or any Supplement adding additional land under Article I, whichever is later.

Section Three. Declarant shall be entitled to appoint the entire Board of Directors while Class B membership exists.

ARTICLE V **COVENANT FOR ASSESSMENTS**

Section One. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments, such assessments to be established and collected as hereinafter provided, and (3) specific assessments against a Lot(s) as provided in this Declaration. The annual, special and specific assessments, together with interest, late charges, costs and reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon the properties against which each such assessment is made. Each such assessment, together with interest, late charges, costs and reasonable attorney fees, shall also be the personal obligation of the Owner. If a lien has been properly filed in the New Hanover

County Public Registry, it may be foreclosed as further described hereafter in Article V, Section Ten.

Section Two. Any expenses incurred by the Association for the benefit of less than all of the Lots may be specially assessed equitably among all of the Lots which are benefitted according the benefit received. Any Association expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots, or by the licenses or invitees of any such Lots, may be specifically assessed against the Lots whose occupant, licensee or invitee occasioned any such Association expenses. To the extent not inconsistent with the Act, any Association expenses which significantly disproportionately benefit all Lots may be assessed equitably among all Lots according the benefit received.

Section Three. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties, including the following: (1) the improvement, repair and maintenance of the Common Areas; (2) the maintenance, repair and reconstruction of private water and/or sewer lines (and any meters of lift stations associated therewith), private drives, driveways, walks, and parking areas situated on the Common Area; (3) the cutting and removal of weeds and grass, the removal of trash and rubbish, or any other maintenance of the Common Areas; (4) the payment of taxes and public assessments assessed against the Common Areas; (5) the procurement and maintenance of insurance in accordance with this Declaration; (6) the employment of attorneys and accountants to represent the Association when necessary; (7) the provision of adequate reserves for the replacement of capital improvements, including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and (8) such other needs as may arise.

Section Four. Maximum Annual Assessments. The Assessments against the Lots shall be based upon annual estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of the Association's obligations under this Declaration. Such estimated expenses may include, among other things, the following: expenses of management; taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees, including fees for a Manager (if any); utility charges, legal and accounting fees; any deficit remaining from a previous period; creation of reasonable contingency reserves, surplus, and/or sinking funds; and any other expenses and liabilities which may be incurred by the Association under or by reason of this Declaration. Such expenses shall constitute the Common Expenses. Until January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum annual assessment shall be \$3,000.00 per Lot (except that pursuant to Section Eight of this Article, the maximum annual assessment for Lots owned by Declarant which are not occupied as a resident shall be \$300.00 per Lot).

(a) From and after January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board of Directors effective January 1 of each year without a vote of the Membership, but subject to the limitation that any such increase shall not exceed the greater of twenty (20%) percent or the percentage increase in the Consumer Price Index (published by the Department of Labor, Washington, DC) for all cities over the preceding twelve (12) month period which ended on the previous October 1.

(b) From and after January 1 of the year immediately following the conveyance of the

first Lot to an Owner, or until increased as provided for in (a) above or (c) below, whichever last occurs, the maximum annual assessment may be increased above the increase permitted in Section 4(a) above by a 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 this purpose.

(c) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum annual assessment.

EACH OWNER FURTHER ACKNOWLEDGES THAT THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY TO PREPARE ANY BUILDING FOR AN IMPENDING HURRICANE OR STORM, INCLUDING, BUT NOT LIMITED TO, INSTALLING AND REMOVING STORM SHUTTERS. THE RESPONSIBILITY FOR COSTS AND EXPENSES OF WHICH ARE SOLELY THOSE OF THE OWNER.

Section Five. 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 supplying adequate reserve funds for the replacement of capital improvements; defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any part of the improvements and Properties under this Declaration; obtaining appropriate insurance; and paying any unusual, unforeseen and non-recurring expenses of the Association. Should the Association, by and through its elected or appointed Board of Directors, as the case may be, at any time determine, in the sole discretion of said Board of Directors, that the annual assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Association, whether it be having reserve funds for the repair, maintenance or replacement of capital improvements or otherwise, said Board of Directors shall have the authority to levy such special assessments as it shall deem necessary.

Section Six. Annual Budget. The annual assessments shall be determined on a calendar year basis. On or before December 1 of each year, the Association shall prepare or cause to be prepared an operating budget for the upcoming calendar year. The budget shall itemize the estimated expenses of the Association for such calendar year, anticipated receipts (if any), and any document for the assessments for the upcoming fiscal year and as the major guideline under which the Association shall be operating during such annual period.

Section Seven. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas and those other portions of the Properties which the Association may be obligated to maintain, repair or replace. Such reserve fund is to be established, insofar as is practicable, out of regular assessments for Common Expenses.

Section Eight. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate of all similar Lots and shall be collected on a monthly basis. Provided, however, that the annual and special assessments for Lots owned by Declarant which have not been transferred to non-related third parties and are not occupied as a residence, shall at all times be ten percent (10%) of the annual or special assessments for other Lots. Instead of paying ten percent (10%) of all assessments, Declarant shall have the option, in its sole discretion, of funding the deficiency in the operating budget of the Association.

It is the intention of this Declaration that all Lots shall have substantially equal assessments since all Lots require essentially the same maintenance and reserves, and all Lots shall have equal rights to use and enjoy the Common Areas.

Section Nine. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each Lot on the date of the month on which such Lot is conveyed by Declarant. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors 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 of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section Ten. Effect of Nonpayment of Assessments; Remedies of the Association. The payment of any assessment or installment thereof due to the Association shall be in default if such assessment, or any installment thereof, is not paid to the Association on the due date for such payment. A late charge of Fifty (\$50.00) Dollars shall be added to any assessment not paid within fifteen (15) days after the due date, together with interest from the due date at eight (8%) percent per annum. The late charge penalty will be added for each month a payment is delinquent.

In the event of non-payment by an Owner of assessments, the Association is granted a lien upon the Lot, which shall secure all monies due for all assessments now or hereafter levied and which shall also secure interest payments, late penalties, and costs and expenses, including a reasonable attorneys fee, which may be incurred by the Association in enforcing the lien.

The lien granted to the Association may be foreclosed in the same manner as mortgages may be foreclosed in the State of North Carolina, and in any suit or foreclosure of said lien, the Association shall be entitled to rental from the Owner of a Lot from the date on which the payment of any assessment became delinquent and shall be entitled to the appointment of a receiver to collect said rents.

No Owner may exempt himself or herself from liability for any assessments levied against such Owner and his or her Lot by waiver of the use or enjoyment of the Common Area or by abandonment of his or her Lot or in any other manner.

The Association in the event of any default hereunder by an Owner may proceed to enforce and collect the assessment against the Owner in any manner provided herein, including the right of foreclosure and sale. In any action instituted by the Association to enforce the provisions of this Declaration, including but not limited to, non-payment of assessments, the offending or defaulting Owner shall be responsible for all the costs of collection, including a reasonable attorneys fee incurred by the Association.

Section Eleven. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, including

but not limited to a deed-in-lieu of foreclosure given to any institutional mortgage lender or the development lender or their respective successors and assigns, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or form the lien thereof.

Section Twelve. Working Capital Fund. At the time of closing of the sale of each Lot to a purchaser who is not a Builder, a sum equal to Five Hundred and No/100 (\$500.00) Dollars for each Lot shall be collected from the Purchaser and transferred to the Association to be used for working capital. The purpose of said capital is to ensure that the Association will have adequate cash available to meet unforeseen expenses and to acquire additional equipment or services deemed necessary or desirable. Amounts paid shall not be considered advance payment of any assessments.

Section Thirteen. Taxes. Taxes assessed against a Lot shall be the responsibility of the Owner but taxes separately assessed against the Common Areas shall be an expense of the Association and shall be paid by the Association.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

Section One. Owner's Property Insurance. Each Owner shall procure and maintain in full force and effect property insurance covering the Building constructed upon any Owner's Lot, as well as all other improvement, fixtures and equipment thereon, in an amount equal to one hundred (100%) percent of the then current replacement cost thereof. Each Owner shall at the original issuance thereof and at each renewal provide to the Association a certificate of insurance for such Owner's Building. The exclusive authority to negotiate, settle and otherwise deal in all respects with a Building's insurer and to adjust losses under the Building's insurance policy provided for herein shall be that of the Owner and the Owner's Mortgagee, if said Mortgagee is to entitled. The cost of the insurance premium for the property insurance under this Article VI, Section One shall be the sole and exclusive obligation of the Owner. Each Owner, at his own expense, may obtain on his Lot, or the improvements thereon, or the contents thereof, title insurance, homeowner's liability insurance, theft and other insurance covering improvements, betterment and personal property damaged and lost. In addition, risk of loss with respect to any improvements made by an Owner upon his Lot, shall be that of the Owner. Betterments coverage or "improvements insurance" shall be secured solely by an Owner wishing such coverage of his risk of loss, and the Association shall have no liability therefor.

Section Two. The Association's Property Insurance.

- (a) If the Common Areas include any insurable property, the Association will obtain, maintain and pay the premiums, as a Common Expense, upon a "master" or "blanket" type policy of policies of property insurance covering the Common Areas, except
- (i) land, foundation, excavation, or other items normally excluded from coverage;
 - (ii) all Buildings constructed upon Lots and all other improvements and betterments made to Lot by Owners at their expense; and (iii) personal property of Owners and lessees of Owners, their families, invitees and guests. Such coverage will also insure supplies, equipment and other personal property of the Association. The policy will be in an amount equal to one hundred (100%) percent of the current replacement cost of the Common Areas, exclusive of land, foundations, excavation, and other items normally excluded from

coverage. A reasonable "deductible amount" not to exceed five percent (5%) of the policy face amount may be included at the discretion of the Board of Directors if available and if a material savings, as determined by the Board in its sole discretion, in premium cost results therefrom, but the deductible amount will be considered a Common Expense and borne by the Association as a whole, without regard to the number of Owners directly affected by a loss that is later incurred, and reserves will be established for the deductible.

(b) The name of the insured under the Association policy will be substantially as follows: "Cane Garden Homeowners' Association." Loss payable provisions will be in favor of the Association and the Trustee, as a trustee for each Owner, and each such Owner's Mortgagee as the interests of such parties may appear. Each Owner and his respective Mortgagee, if any, will be beneficiaries of the policy in a percentage equal to the Percentage Interest attributable to the Lot owned by such Owner. All Association policies will contain a standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by Institutional Mortgage investors in the area in which the Property is located, and which appropriately names all Institutional Mortgage holders or their servicers in such form as requested by such Institutional Mortgage holders of their servicers.

(c) All Association policies will be written with a company holding a general policyholder rating of "A" or better by Best's Insurance Reports and in a financial category of Class VI or better in Best's Key Rating Guide. Policies are unacceptable where (i) under the terms of the insurance carrier's charter, Bylaws or policy, contributions or assessments may be made against the Association, Owner's Mortgagee or the designees of Mortgagees; or (ii) by the terms of the carrier's charter, Bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members. Association policies may not be cancelable or substantially modified by any party without at least ten (10) days prior written notice to the Association.

(d) The Association will provide to Owners and/or Mortgagees requesting the same in writing a certificate of insurance, or a copy of the certificate of insurance, for the Association, for which the Association may charge reasonable copying costs.

Section Four. Association's Liability Insurance. The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a policy of comprehensive general liability coverage covering at a minimum all of the Common Areas. Coverage limits will be in amounts generally required by private Institutional Mortgage holders for projects similar in construction, location and use to the Property; provided, however, that such coverage will be for at least One Millions and 00/100 (\$1,000,000.00) Dollars for bodily injury, including death of persons, and property damage arising out of a single occurrence. Coverage under this policy will include, without limitation, legal liability to the insured for property damage, bodily injury and death of persons in connection with the operation, maintenance and use of the Common Areas and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. If the policy does not include "severability of interest" in its terms, an endorsement will be included which precludes the insurer's denial of the claims of an Owner because of the negligent acts of the Association or another Owner. Such policy must provide that it cannot be canceled or substantially modified, by any party, without at least thirty (30) days prior written notice to the Association and each holder of an Institutional Mortgage listed as a scheduled holder of an Institutional Mortgage in the insurance policy.

Section Five. Association's Fidelity Bonds and Other Insurance. The Association may, but shall not be required to, obtain, maintain and pay the premiums, as a Common Expense, upon a blanket fidelity bond for all officers, directors, trustees and employees of the Association and other persons handling or responsible for funds belonging to or administered by the Association, including any professional management company assisting with the administration of the Association. The total amount of the fidelity bond coverage required will be based upon the best business judgment of the Board of Directors. Any fidelity bond that the Association shall, in its sole judgment, determine to secure will meet the following requirements: the Association will be named as an obligee; the bonds will contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and the bond will provide that it may not be canceled or substantially modified (including cancellation for nonpayment of a premium) without at least ten (10) days prior written notice to the Association and each holder of an Institutional Mortgage listed as a scheduled holder of an Institutional Mortgage in the fidelity bond.

The Association will obtain, maintain and pay the premiums, as a Common Expense, on a policy of directors and officers liability insurance in such amounts as determined by the Board of Directors.

The Board of Directors will be authorized on behalf of the Association to obtain and maintain such other and further insurance as the Board of Directors may determine from time to time.

Section Six. Authority to Adjust Association Loss. The exclusive authority to negotiate, settle and otherwise deal in all respects with insurers and adjust all losses under policies provided for the Association will be vested in the Board of Directors or its duly authorized agent for the benefit of all Owners and Mortgagees; provided, however, that all Owners and Mortgagees having an interest in such loss will be advised in advance of all actions anticipated to be taken of a material nature related to the adjustment of the loss. Each Owner, in accepting a deed to a Lot, expressly appoints the directors, and each of them, his due and lawful attorneys-in-fact, with full power of substitution, to act on behalf of the Owner as fully as the Owner could act in person on all matters related to the authority granted in this Article VI, Section Six, including executing all documents required in connection therewith on behalf of the Owner.

Section Seven. Association Insurance Trustee.

(a) The Board of Directors may, from time to time, designate a third party Trustee hereunder. The Trustee, whether the Board of Directors acting in said capacity, or a third-party designated by the Board, will serve the Association and the Owners and their Mortgagees (as their interests may appear) as provided herein. Any third-party Trustee, but not the Board of Directors acting in such capacity, will be entitled to receive reasonable compensation for services rendered which will be a Common Expense of the Association.

(b) All insurance policies obtained by the Association will name the Association and the Trustee as loss payees. Immediately upon the receipt by the Association of any insurance proceeds, the Association will endorse the instrument by means of which such proceeds are paid and deliver the instrument to the Trustee. The Trustee will not be liable for payment of premiums, for the renewal or the sufficiency of

the policies or for the failure to collect any insurance proceeds. Nor will the Trustee have any obligation to inspect the Property to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person.

(c) Among other things, the duties of the Trustee will be to receive proceeds delivered to it, hold such proceeds in trust for the benefit of the Owners and their Mortgagees, and disburse the proceeds as hereinafter provided.

(d) Proceeds of insurance policies received by the Trustee will be disbursed as follows:

(i) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purposes, will be disbursed in payment for such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs will be paid to the Association for the benefit of all Owners and their Mortgagees, if any;

(ii) If it is determined, as provided in Section Nine below, that the damage or destruction for which the proceeds are paid will not be repaired or reconstructed, such proceeds will be disbursed to such persons as therein provided; and

(iii) Any and all disbursements of funds by the Trustee for any purpose whatsoever will be made pursuant to and in accordance with a certificate of the Association signed by the President and attested by the Secretary directing the Trustee to make the disbursements.

(e) The Trustee will not incur liability to any Owner, Mortgagee or other person for any disbursements made by it in good faith to and in accordance with the foregoing requirements.

Section Eight. Damage or Destruction to a Lot's Building. Each Owner covenants and agrees that in the event of damage in or destruction of the Building or other structures on his or her Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the Declarant during the Transition Period, and thereafter are approved by the Board of Directors. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition approved by the Declarant during the Transition Period, and thereafter approved by the Board of Directors. Should the Owner fail to clear the Lot of all debris and ruins and restore the Lot with attractive landscaping in keeping with the Common Element, the Association shall have the right to have such work performed and to specially assess such Owner for the cost thereof. Such amount owed shall be lien against the Lot. The Owner shall pay any costs which are not covered by insurance proceeds.

Section Nine. Damage and Destruction to Association Common Areas.

(a) Immediately after all or any part of the Property covered by Association insurance is damaged or destroyed by fire or other casualty, the Board of Directors or its duly authorized agent will proceed with the filing and adjustment of all claims arising under

such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section Nine, means repairing or restoring the damaged Common Areas to substantially the same conditions in which it existed prior to the fire or other casualty.

(b) Any such damage or destruction will be repaired; provided, however, that should more than seventy-five percent (75%) of the Common Areas consisting of the Amenities, roads and other improvements be destroyed and the Members holding one hundred percent (100%) of the Total Percentage Interest vote to disapprove the rebuilding of the Common Areas voting in person or by proxy at a meeting at which a quorum is present, duly called, in whole or in part, for the purpose of disapproving such repair or reconstruction, then such reconstruction of the Common Areas shall not occur. If Common Areas are not reconstructed, all insurance proceeds will be delivered to the Association. Except as otherwise provided, any such damage or destruction in the Common Areas, will be repaired and reconstructed as promptly as practicable. No Mortgagee will have any right to restrict the use of insurance proceeds otherwise available for repair, reconstruction or rebuilding.

Section Ten. Insufficient Proceeds to Repair Damage to Association Property.

(a) If the damage or destruction for which Association insurance proceeds are paid to the Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, or if no insurance proceeds exist with respect to such damage or destruction, the Board of Directors will levy an Assessment against the Owners in sufficient amounts to provide funds to pay costs in excess of insurance proceeds for repair or reconstruction. Additional Assessments may be made at any time during or following the completion of any repair or reconstruction.

(b) Any and all sums paid to the Association under and by virtue of those Assessments provided for in subsection (a) of this Section Ten will be deposited by the Association with the Trustee. Such proceeds from insurance and Assessments, if any, received by the Trustee will be disbursed as provided in Section Seven above.

ARTICLE VIII
CONDEMNATION

Section One. General. Whenever all or any part of the Property will be taken by any authority having the power of condemnation or eminent domain, each Owner will be entitled to notice thereof and shall have the right to negotiate, settle and otherwise deal in all respects with the condemning authority as to the taking of such Owner's Lot and the improvements thereon; provided, however, that the exclusive right to negotiate, settle and otherwise deal in all respects with the condemning authority as to the taking of the Common Areas and/or Common Elements will be vested in the Board of Directors or its duly authorized agent on behalf of the Association. Each Owner, in accepting a deed to a Lot, expressly appoints the directors, and each of them, his due and lawful attorneys-in-fact, with full power of substitution, to act on behalf of the Owner as fully as the Owner could act in person in all matters related to the authority granted in this Article VIII, Section One, including executing all documents required in connection therewith on behalf of the Owner. The award made for such taking will be payable to the Trustee. Unless otherwise required by law at the time of such taking, any award made therefore will be disbursed by the Trustee, as hereinafter provided in this Section One.