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NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

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**MASTER DECLARATION OF PROTECTIVE COVENANTS  
FOR COTTAGE GROVE**

Prepared by: & *Returned to:*  
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310 North Front Street, Suite 200  
Wilmington, North Carolina 28401

**NORTH CAROLINA**

**NEW HANOVER COUNTY**

THIS MASTER DECLARATION OF PROTECTIVE COVENANTS FOR COTTAGE GROVE (these "Protective Covenants") is made this 26TH day of FEBRUARY, 2016, by LOGAN DEVELOPERS, INC., a North Carolina corporation ("Declarant").

Declarant is the developer of the real property described in Exhibit A, which is attached hereto and incorporated by reference. These Protective Covenants are being executed and recorded by Declarant in order to facilitate the development of the Property as a planned community to be known as "Cottage Grove" and to fix and establish certain covenants, conditions and restrictions upon and subject to which the Property shall be improved, held, leased, sold and/or conveyed. These Protective Covenants impose restrictions upon the Property (as defined in Article 1 herein) under a general scheme of development for the mutual benefit of the owners of the Property.

Declarant hereby declares that all of the property described in Exhibit A, shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following easements, restrictions, covenants, conditions, obligations and limitations, all of which are declared to be in furtherance of a plan of the improvement of the described property, which shall run with the real property subjected to these Protective Covenants, and to the provisions of the North Carolina Planned Community Act. These Protective Covenants shall be a burden and benefit to, and binding on, the Declarant, its successors and assigns, and any person or entity acquiring or owning any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns.

ARTICLE 1  
DEFINITIONS

The terms used in these Protective Covenants shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

- 1.0 "Cottage Grove": the development created or to be created on the Properties.
- 1.1 "Articles of Incorporation" or "Articles": the Articles of Incorporation of Cottage Grove Homeowners Association, Inc., which have been filed with the North Carolina Secretary of State, and as may be amended from time to time.
- 1.2 "Association": Cottage Grove Homeowners Association, Inc., a North Carolina nonprofit corporation, formed by the Declarant as a property owners association for Lot owners in the Residential Community, all of whom shall be members of the Association.
- 1.3 "Board of Directors" or "Board": the board governing the Association and managing the affairs of the Association.
- 1.4 "Builder" or "Approved Builder": Any Person who has been approved by the Declarant, and who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers.
- 1.5 "Business" and/or "Trade": shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration.
- 1.6 "By-Laws": the By-Laws of Cottage Grove Homeowners Association, Inc., as they may be modified or amended from time to time. The initial By-Laws are attached hereto as **Exhibit B**.
- 1.7 "Class "B" Control Period": the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3.
- 1.8 "Committee": the Architectural Review Committee, as described in Article 10 herein.
- 1.9 "Common Area": all real and personal property which the Association owns, holds an easement interest in, or leases, or which is designated as "Common Area," "Private ROW" or "Active Open Space," "Passive Open Space," "Stormwater Management Pond," or words of similar import, on any plat of the Property (or any portion thereof) recorded by Declarant, and which is held or maintained for the common use and enjoyment of the Members. Without limiting the generality of the foregoing, the Common Area shall be deemed to include all private roadways and rights of way located within the Property which are installed by Declarant for the general use of Owners and their guests for access (excluding driveways and other roadways located within the boundaries of any Lot), and any structures, or other improvements of whatever nature and kind, within the right of way of any of the private roadways.
- 1.10 "Common Expenses": the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including any reasonable reserve and actual and estimated expenses of maintaining and operating the Common Areas (including, without limitation, private access roads and rights of way, drainage ponds, ditches and swales), conservation and

buffer areas, and landscaped areas within road rights of way, as the Board may find necessary and appropriate pursuant to these Protective Covenants, the By-Laws, and the Articles of Incorporation, including the following:

- (a) All sums lawfully assessed by the Association against its Members;
  - (b) Expenses of administration, maintenance, repair or replacement of the Common Areas, the stormwater system, mailbox bank, street lights, utility easements, and any other items or systems within the Residential Community that are for the benefit of some or all Owners;
  - (c) Expenses declared to be Common Expenses by the provisions of these Protective Covenants or the By-Laws;
  - (d) Expenses agreed by the Members to be Common Expenses of the Association;
- and
- (e) Any ad valorem taxes and public assessments levied against the Common Area.

Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class "A" votes of the Association.

1.11 "Community-Wide Standard": the standard of conduct, maintenance, or other activity generally prevailing throughout the Residential Community. Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee.

1.12 "Declarant": Logan Developers, Inc., a North Carolina corporation, together with such successors or assigns of Declarant and those who are specifically assigned or granted Declarant's rights hereunder.

1.13 "Design Guidelines": the architectural design guidelines and procedures set forth in Article 10 and/or adopted by the Architectural Review Committee pursuant to Article 10 and applicable to all Lots within the Property.

1.14 "Individual Assessment": assessments levied in accordance with Section 9.6 of these Protective Covenants.

1.15 "Lot": shall mean one of the subdivided and numbered parcels of land depicted on the Map of Subdivision for Cottage Grove recorded in Map Book 11 Page 211 of the New Hanover County Registry. The term shall include a portion of the Property, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family.

1.16 "Master Assessment": assessments levied on all Lots subject to assessment under Article 9 to fund Common Expenses for the general benefit of all Lots.

1.17 "Member": a Person entitled to membership in the Association, as provided in Section 3.2.

1.18 "Mortgage": a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.19 "Mortgagee": a beneficiary or holder of a Mortgage.

1.20 "Mortgagor": any Person who gives a Mortgage.

1.21 "Owner": 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 having such interest merely as security for the performance of an obligation.

1.22 "Person": a natural person, a corporation, a partnership or limited partnership, a limited liability company or partnership, a trustee, association, or any other legal entity.

1.23 "Planned Community Act": the North Carolina Planned Community Act (N.C.G.S. §47F-1-101 et seq.), as same may be amended from time to time.

1.24 "Property": the real property described in Exhibit A.

1.25 "Protective Covenants": shall mean this instrument as it may from time to time be amended or supplemented.

1.26 "Residential Community": the residential development created or to be created on the Property.

1.27 "Rules and Regulations": the rules and regulations adopted by the Board governing land use, individual conduct and uses or actions upon the Property pursuant to Article 11 hereof.

1.28 "Service Assessment": assessments levied in accordance with Section 9.13 of these Protective Covenants.

1.29 "Special Assessment": assessments levied in accordance with Section 9.5 of these Protective Covenants.

## ARTICLE 2 PROPERTY RIGHTS

2.1 Right to Use and Enjoyment of Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, and for ingress and egress to and from the Common Area, which shall be appurtenant to and pass with the title to every Lot, subject to the following provisions:

(a) These Protective Covenants, the Articles, the By-Laws, the Rules and Regulations and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area and any improvements thereon to occupants of Lots and their guests and rules

limiting the number of guests who may use the Common Area; and the right of the Board to establish penalties for any infractions thereof,

(d) The right of the Board to suspend the voting rights and the right to use the Common Areas by an Owner (i) for any period during which any charge against such Owner's Lot remains unpaid, and (ii) for a period not to exceed sixty (60) days for a single violation, or for a longer period in the case of any continuing violation, of these Protective Covenants, any applicable Supplemental Declaration, the Articles, the By-Laws, the Design Guidelines or the Rules and Regulations, after notice and a hearing pursuant to the By-Laws;

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7;

(f) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts inclined, subject to the approval requirements set forth herein and the rights of such Mortgagees in said properties shall be subordinate to the rights of the Lot Owners hereunder;

(g) Easements as provided in Article 12; and

(h) Declarant's rights as provided in Article 14.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the duration of the lease, to the exclusion of the leasing Owner, and any such lessee shall abide by all the restrictions contained herein. Any such lease shall not release the owner from his liability for damage to the Common Area caused by said lessee.

### ARTICLE 3 ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

3.1 Function of Association. The Association shall be the entity responsible for management, maintenance, ownership, operation and control of the Common Area owned or leased by the Association within the Properties. The Association shall be the primary entity responsible for enforcement of these Protective Covenants and such reasonable rules regulating use of the Common Areas owned or leased by the Association as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural design guidelines and controls set forth in these Protective Covenants and in the Design Guidelines. The Association shall perform its functions in accordance with these Protective Covenants, the By-Laws, the Articles and applicable North Carolina law.

3.2 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of that membership. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association, provided that only one person (and such person's immediate family members with respect to membership rights other than voting) may be designated to act in such capacity for such an Owner at any particular time.

3.3 Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A." Class "A" Members shall be all Owners of Lots except the Class "B" Member, if any. Class "A" Members shall have one vote for each Lot in which they hold the interest required for membership under Section 3.2; there shall be only one vote per Lot.

(b) Class "B." The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under these Protective Covenants and the By-Laws, are specified elsewhere in the Protective Covenants and the By-Laws. The Class "B" Member may appoint the members of the Board during the Class "B" Control Period, as specified herein. After termination of the Class "B" Control Period, the members of the Board shall be selected as provided in the By-Laws.

During the Class "B" Control Period, the Class "B" Member shall be entitled to fifteen (15) votes for each platted Lot in the Residential Community. The total number of planned Lots in the Residential Community is currently twenty-four (24), although the actual number of Lots may be more or less, and the Class "B" Member makes no representation whatsoever regarding the actual number of Lots to be included in the Residential Community. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of one of the following events, whichever occurs earlier:

- (i) when the Declarant owns no Lots in the Residential Community,
- or
- (ii) on January 1, 2046, or
- (iii) when, in its discretion, Declarant so determines and declares in an instrument recorded in the New Hanover County Registry of Deeds.

(c) Exercise of Voting Rights. In any situation in which a Member is entitled personally to exercise the vote for his or her Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such Co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

3.4 Subordinate Associations and Declarations. No declaration, restrictive covenants, or property owner's association shall be established upon or be binding upon or applicable to the Property unless approved in writing by Declarant.

#### ARTICLE 4 RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area. The Association, subject to the rights of the Owners set forth in these Protective Covenants, shall manage and control the Common Area and all improvements thereon (as defined in other sections herein including, without limitation, private roads, private road rights of way, lighting, equipment, and common landscaped areas), and shall keep it and them in good repair and in a clean, attractive, sanitary condition consistent with these Protective Covenants and the Community-Wide Standard.

4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the

Association improved or unimproved real estate located within the Residential Community, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth herein and in the deed.

4.3 Rules. The Association, through its Board, may make, revoke, amend and enforce reasonable rules governing the use of the Property, in addition to further defining or limiting, and, where specifically authorized hereunder, creating exceptions to, those covenants and restrictions set forth in these Protective Covenants. Such rules shall be binding upon all Owners, occupants, invitees, lessees, guests and licensees.

4.4 Enforcement. The Association may impose sanctions for violations of these Protective Covenants, the By-Laws, or Rules and Regulations, including reasonable monetary fines and suspension of the right to vote. In addition, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Lot of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. The Board may assess the reasonable monetary fines authorized by this Section as an Individual Assessment authorized by Section 9.6 of these Protective Covenants,

4.5 Implied Rights; Board Authority. The Association may exercise any other right or privilege given to it expressly by these Protective Covenants or the By-Laws, by the Planned Community Act or Chapter 55A of the North Carolina General Statutes, and as reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in these Protective Covenants, the By-Laws, Articles, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.6 Indemnification. To the maximum extent allowed by North Carolina law, the Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be party by reason of being or having been an officer, director or committee member. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 Dedication of Common Areas. The Association may dedicate portions of the Common Areas to any local, state, or federal governmental entity, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association.

4.8 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. NEITHER THE ASSOCIATION NOR THE DECLARANT (OR ANY SUCCESSOR TO DECLARANT) SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. EACH PERSON USING THE PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS RESULTING FROM ACTS OF THIRD PARTIES.

4.9 Management and Administration. The management and administration of the Common Areas and Amenities shall be the sole right and responsibility of the Association. The management shall be

carried out in accordance with the terms and conditions of these Protective Covenants, the Articles, By-Laws and Rules and Regulations, but they may be delegated to Manager(s) or a management service.

4.10 Assignment to Association. Declarant has obtained certain permits and installed various permitted systems within the Residential Community during the course of developing the Property including but not limited to (i) Stormwater Management Permit Number SW8 140814, issued by the North Carolina Division of Environment and Natural Resources ("NCDENR") under NCAC2H.1000, (ii) NCDOT Permit #D-065-14-024, and any modifications or amendments to each. Declarant shall assign, and the Association shall assume all such permits and systems including but not limited to land use, stormwater permits and systems and utility permits, agreements and easements between Declarant and any governmental agency or department or public or private utility company, whether or not specifically listed hereinabove. The Association shall, within ten days of a request by Declarant, accept the assignment and assume such permits and systems. Such obligation to accept assignment of such Permits and systems shall not be subject to the results of any inspections, analyses or reports. After such an assignment, the Association shall be responsible for and assume all duties, obligations, and rights and privileges of the Declarant under such permits, agreements and easements, including all maintenance responsibility, even if part of the land use, stormwater system or utility areas covered by the permits, agreements and easements are not located within the Property.

Each Lot Owner, by his, her or its acceptance of his, her or its Deed to a Lot acknowledges this disclosures and agrees to accept his, her or its Lot subject thereto, and further to fully comply with each of the terms of all applicable Permits. The Permits shall be available for review by any Lot Owner upon reasonable request.

4.11 Common Area. Unless such conveyance or encumbrance is permitted under the Planned Community Act, the Common Area shall not be mortgaged, conveyed or encumbered without the consent of eighty percent (80%) of the Lot Owners, except that Declarant shall not require the consent of Owners to mortgage, convey or encumber the Common Area during the Class "B" Control Period. In addition, during the Class "B" Control Period, any such mortgage, conveyance or encumbrance shall also require the consent of Declarant.

## ARTICLE 5 MAINTENANCE

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Areas, which may include, but need not be limited to:

(a) all landscaping and other flora, parks, and signage for the Residential Community situated upon the Common Area; structures and improvements situated upon the Common Area, including any private roads, streets, rights of way and islands within their streets and cul-de-sacs; ponds, lakes, drain ways, and sidewalks within or upon the Common Area; the entrance to the Residential Community; picnic areas, shelters, and any other Amenities designated for the common use of Owners within the Property;

(b) any other Common Area designated by the Board or the Declarant from time to time in an Amendment to this Declaration.

(c) all trees located in the common areas and the rights of way shall be the responsibility of the Association and shall be protected from cutting to the same extent that trees

on individual Lots are protected by the Architectural Review Committee, in accordance with this Declaration.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Lot and all structures, parking areas, landscaping (including trees) and other improvements comprising or located upon the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is specifically assumed by or assigned to the Association. Any fencing which is not maintained by the Association shall be maintained and kept in good condition and repair by the Owner of the Lot on which such fencing is located (at such Owner's cost and expense). Each Owner upon whose Lot there is constructed a fence, a berm or a landscaped buffer, or a landscape easement, shall be responsible for maintaining such fence, berm, landscaping, or easement consistent with the Community-Wide Standard and these Protective Covenants. Owner shall not, however, be allowed to add or remove any landscaping or cut any trees without the prior approval of the Architectural Review Committee. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may, but is not required to, perform such maintenance responsibility and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 9.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Maintenance of Lots. Each Owner shall maintain his or her Lot and all landscaping and improvements comprising the Lot in a manner consistent with the Community-Wide Standard and these Protective Covenants, the Articles, the By-Laws, the Rules and Regulations and any other applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any declaration of covenants applicable to such Lot. If, in the opinion of the Association, any Owner shall fail to maintain any Lot owned by him in a manner which is reasonably neat and orderly and as is required by Article 12 herein 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 a majority of the members of the Board of Directors, and following ten (10) days written notice to Owner, 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, pressure washing structures or walks, cutting of grass, pruning of shrubbery, weeding and items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. The reasonable cost incurred by the Association in rendering all such services, plus a service charge of thirty percent (30%) of such cost plus attorney's fees, shall be added to and become an Individual Assessment to which such Lot is subject as provided in Article 9 herein.

5.4 Maintenance of Private Access Roads. The Association shall be obligated to repair and maintain any private access roads/rights of way which constitute Common Area hereunder to standards consistent with those required for maintenance of public roads by the North Carolina Department of Transportation. The costs of such repairs and maintenance shall be deemed Common Expenses hereunder.

5.5 Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as other duties, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

ARTICLE 6  
INSURANCE AND CASUALTY LOSSES

The Association shall maintain adequate and appropriate insurance coverage on all Common Areas, as provided in the By-Laws of the Association and as required by the Planned Community Act.

ARTICLE 7  
SUBDIVISION

No Lot or Lots shall be subdivided except to enlarge an adjoining Lot, but any Lot so enlarged cannot be improved with more than, or used for any purpose other than, one single family dwelling. An Owner of a Lot and a portion or all of an adjoining or contiguous Lot or Lots may construct a dwelling or other structure permitted hereunder upon and across the dividing line of such adjoining and contiguous Lots. The number of Lots shall remain the same and shall be treated for all purposes under these Protective Covenants as two (2) or more Lots. Notwithstanding the preceding provisions of this Article 7 to the contrary, Declarant shall be entitled to revise and move lot lines of any Lots owned by Declarant as long as the total number of Lots remains the same.

ARTICLE 8  
ANNEXATION AND WITHDRAWAL OF PROPERTY

This Article shall not be amended without the prior written consent of Declarant during the Class "B" Control Period.

ARTICLE 9  
ASSESSMENTS

9.1 Creation of Assessments.

(a) The Association is hereby authorized to levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time as more particularly provided in this Article 9. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property is deemed to covenant and agree to pay these assessments.

(b) All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by North Carolina law), late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 9.9. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage or any individual obtaining title by or through a foreclosure shall be personally liable for unpaid assessments which accrued prior to such acquisition of title. In the event of any transfer of title to a Lot, the lien of the assessments shall not be extinguished.

(c) No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Lot, or any other means. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

9.2 Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant shall not be obligated to pay any regular assessments on its unsold Lots. Until the end of the Class "B" Control Period, all Common Expenses shall be borne by the Owners of Lots sold by Declarant to unaffiliated third parties (and assessments on Declarant's unsold Lots will only be payable to the extent needed to cover any shortfall not otherwise payable by assessments under this Article 9). After the expiration of the Class "B" Control Period, any unsold Lots owned by Declarant shall be subject to assessment on the same terms as all other Lots.

9.3 Computation of Master Assessment. On or before the end of each calendar year, the Board shall prepare and distribute to the Members a budget covering the estimated Common Expenses during the coming year (including, without limitation, a capital contribution to establish a reserve fund in accordance with a budget prepared as provided in Section 9.4) as and to the extent required in the Planned Community Act.

9.4 Capital Reserve Budget. The Board shall annually prepare a capital reserve budget for maintenance and replacement of capital improvements which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

9.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover capital improvements or unbudgeted expenses (including, without limitation, expenses required to complete repair, maintenance and/or clean-up which the Board deems necessary or advisable after a storm, hurricane or other casualty event) or other expenses in excess of those budgeted. The Board may establish the amount of the Special Assessment if it is Two Hundred Fifty Dollars (\$250.00) or less in any assessment year for each Member. All other Special Assessments shall require the affirmative vote of sixty-seven percent (67%) of Members present and voting in person or by proxy which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.6 Individual Assessments. The Board shall have the power to levy Individual Assessments against a particular Lot or Lots constituting less than all Lots within the Property as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover costs including overhead and administrative costs and reserves incurred for maintenance, repair and replacement of any private roads, signs, mail boxes, fences and berms which are constructed for the benefit of certain specified lots;

(c) to cover costs incurred in bringing the Lot into compliance with the terms of these Protective Covenants, including, without limitation, Sections 5.2 and 5.3, any applicable Amendments, the Articles, the By-Laws, Rules and Regulations, or Design Guidelines or costs incurred as a consequence of the conduct of the Owner or occupant of the Lot, their lessees, licensees, invitees, or guest; provided, the Board shall give the Lot Owner prior written notice and

an opportunity for a hearing before levying an Individual Assessment under this subsection (c); and

9.7 Working Capital Assessment. Upon the conveyance of title to any Lot to anyone other than an Approved Builder, the acquiring Owner shall contribute to the Association, as working capital, a working capital assessment equal to one year of the then budgeted annual assessment for such Lot. Such funds shall be used for operating and capital expenses of the Association, including but not limited to, prepaid insurance, supplies, utilities and equipment, capital improvements and repairs, reserves, etc. Amounts paid into the working capital fund are not to be considered advance payment of regular assessments. All working capital funds shall become part of the general operating funds of the Association.

9.8 Date of Commencement of Master Assessments and Due Dates. The Master Assessments provided for herein shall commence on the date of conveyance of each Lot to an Owner other than Declarant, and regardless of whether developed or undeveloped. The due dates shall be established by the Board of Directors.

9.9 Lien for Assessments.

(a) All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied until paid. Such lien shall secure not only sums due the Association on the date of filing as set forth in Section 9.9 (b) below, but also any sums due t the Association after the date of filing. Further, the lien shall secure payment of interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including reasonable attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge of any recorded first Mortgage made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

(b) The Association may record notice of the claim of lien in the Office of the Clerk of Superior Court of New Hanover County or file a suit to collect such delinquent assessments and charges. The Association may file Notice of *Lis Pendens*, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property, or utilize any other remedy provided under North Carolina law. No Owner may waive or otherwise escape liability for the assessments provided for herein.

(c) Upon foreclosure of the lien referenced in this Section 9.9, the Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged to such Lot, had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

9.10 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 a rate not to exceed the maximum legal rate allowed in the State of North Carolina per annum and in addition, a late fee shall be assessed in such amount as may be determined by the Board of Directors. The Association may bring an action against the Owner personally obligated to pay the same,

or foreclose the lien against the property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and, in either event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments.

9.11 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Master Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

9.12 Exempt Property. The following property shall be exempt from payment of Master Assessments, Service Assessments and Special Assessments:

- (a) all Common Areas;
- (b) any property dedicated to and accepted by any governmental authority or public utility;
- (c) any Lot which is not approved by any governmental agency for residential use; and
- (d) any Lot or property owned of record by the Declarant, its successors or assigns, except as otherwise provided in Section 9.2.

9.13 Service Assessments. The Board shall have the power to levy Service Assessments against a particular Lot or Lots constituting less than all Lots within the Properties to cover the costs, including overhead and administrative costs, of providing specialized maintenance and/or landscaping services to such Lots and the occupants thereof (unless such maintenance is part of the services provided by the Association to Owners generally, in which case the cost of such maintenance shall be included in the Master Assessment). Such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.

9.14 Surplus Funds. Any excess of Association income over Common Expenses (as defined in Section 1.10 herein and which shall include reasonable reserves) shall be applied against the subsequent tax year's general assessments.

## ARTICLE 10 DESIGN GUIDELINES

### 10.1 General.

(a) No structures, buildings, improvements or construction, which shall include within its definition, clearing, grading, tree removal, excavation and other site work, shall be commenced, erected, or maintained upon any Lot or the Property, nor shall any exterior addition to or change or alteration therein (including, without limitation, any change of color) be made to any Lot, except in compliance with this Article and the Design Guidelines, nor shall any such work commence until the plans and specifications showing the nature, kind, shape, heights, materials, 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 Committee according to the provisions of Section 10.2. Structures, buildings and improvements shall include, but not be limited to, any dwelling, garage, fence, wall, sidewalk, hedge, tree, mass planting, change in grade or slope, drainage pipe, drainage canal, ditch, swale, catch basin, swimming pool, treehouse, playhouse, sign, flag pole, antenna, satellite dish, exterior illumination, monument or marker, outdoor statuary, exterior lights, security lights, storm door, well utility facility, patio, deck, screening for outdoor trash cans or other purposes, sprinkler or irrigation system, driveway, outdoor decorative objects, shrubbery or landscaping.

(b) Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval. Approval of the Committee shall, however, be required to repaint the exterior of a structure even in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(c) This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Areas by or on behalf of the Association.

(d) During the Class "B" Control Period, this Article may not be amended without the Declarant's written consent.

(e) Any trees within the Common Areas and rights of way, regardless of whether they are on an individual Lot Owner's Lot, shall not be removed pursuant to the New Hanover County Technical Review Committee approval of the Preliminary Plan for Cottage Grove.

#### 10.2 Architectural Review.

(a) Architectural Review Committee (herein "Committee"). The Committee shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all construction on any portion of the Property. For as long as Declarant or an Approved Builder owns any Lot within the Property, the Declarant retains the right to appoint all members of the Committee who shall serve at the Declarant's discretion. After the sale of the last Lot owned by Declarant or the Approved Builder to a third party, the Board shall be entitled to appoint the members of the Committee, who shall serve and may be removed in the Board's discretion.

(b) Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the Committee as described in section 10.4 below. The members of the Committee need not be Members of the Association and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid prior to review.

10.3 Guidelines and Procedures. The Declarant shall prepare the initial Design Guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Property. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, and intended use. The Committee shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them subject to the approval of the Board of Directors. The Committee shall make the Design

Guidelines available to Owners who seek to engage in development or construction within the Property and all such Persons shall conduct their activities in accordance with such Design Guidelines,

10.4 Submission of Plans and Specifications.

(a) No construction or improvements, as specified in Section 10.1(a), shall be commenced, erected, placed or maintained on any Lot, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening shall have been submitted to and approved in writing by the Committee. The Design Guidelines shall set forth the procedure for submission of the Plans. A reasonable fee for the review of said plans may be required by the Committee, in which case such fee shall be submitted along with said Plans and any other supporting documents required by Committee. The Board or the Committee may also require an additional security deposit to be posted prior to the commencement of any construction or work, which sum shall be used to collect any fees, fines or penalties incurred during construction or work. If such a security deposit is required, any portion of the security deposit remaining upon the completion of construction shall be returned to the Owner.

(b) In reviewing each submission, the Committee may consider (but is not required to consider or limited to considering) visual aesthetics, natural platforms and finish grade elevations, harmony of external design with surrounding structures and environment, and location in the relation to surrounding structures and plant life. The Committee may require relocation of native plants within the construction site as a condition of approval of any submission. Location of any driveways shall be subject to the approval of the Committee.

(c) The Association shall have the right to refuse to approve any plans and specifications or grading plans which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons. In so approving such plans, specifications and grading plans, the Association shall consider the suitability of the proposed building, improvements, structure, or landscaping and the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, and the effect thereof on the adjacent or neighboring property.

(d) No bulldozing or clearing of trees or excavation of lakes or ponds shall be commenced until the plans, specifications and grading plans showing the nature, kind, shape and location of work to be done shall have been submitted to and approved in writing by the Association and a copy thereof, as finally approved, filed permanently with the Association.

(e) The Committee shall, within forty-five (45) days after receipt of each submission of the Plans, advise the party submitting the same in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with these Protective Covenants and/or the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the Committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have given at the time of delivery.