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NEW HANOVER COUNTY,

MORGHAN GETTY COLLINS

REGISTER OF DEEDS

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ELECTRONICALLY RECORDED

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DEEP CREEK RUN

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DEEP CREEK RUN**

THIS DECLARATION is made on the date hereinafter set forth by DJM-NC, LLC, a North Carolina limited liability company having an office in New Hanover County, North Carolina, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of New Hanover, State of North Carolina, which is more particularly described in Schedule "A-1," attached hereto and incorporated herein by this reference.

WHEREAS, it is the intent of the Declarant hereby to cause the above-described property to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, such real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. It is the intent of Declarant that the provisions of this Declaration in all respects conform and comply to the requirements set forth in the North Carolina Planned Community Act. To the extent any provision contained herein does not conform or comply with the North Carolina Planned Community Act, the provisions of the Act shall control.

ARTICLE I

DEFINITIONS

SECTION 1. Additional Property. "Additional Property" shall mean and refer to any property located adjacent to and/or within one-half mile radius of the Properties. For the purpose of determining whether property is adjacent to the Properties, the rights of way of public roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise adjacent property.

SECTION 2. Appropriate Local Governmental Authority. "Appropriate Local Governmental Authority" shall mean and refer to New Hanover County or other appropriate local governmental authority having jurisdiction over the Properties.

SECTION 3. Association. “Association” shall mean and refer to Deep Creek Run Property Owners Association, Inc., its successors and assigns.

SECTION 4. Common Elements or Common Area. The Plat established and/or reserved those certain easements described as: (i) “Proposed 34’ Access and utility Easement” and (ii) “Proposed 35’ Access and utility Easement”, as shown on the Plat (the “Prior Easements”). The Prior Easements were intended to be Common Elements for the benefit of the Lots and the Declarant has determined that the Prior Easements are no longer necessary for their intended purpose and desires to abandon and terminate them upon the filing of this Declaration. The Prior Easements are hereby abandoned and terminated in their entirety and shall no longer be of any force or effect, and all rights, privileges, and obligations associated with the Prior Easements are hereby be extinguished.

Upon the filing of this Declaration, Common Elements” or “Common Area” shall mean all real property owned or leased by or allocated to the Association (whether owned in fee or by way of license or easement) as shown on and more particularly described in the “Common Element Map. The Common Elements established herein and allocated to the Association as of the time of the conveyance of the first Lot is described as follows:

All of the land designated as “Private Landscape, Wall, Gate & Sign Easement – 3,207 S/F. (within Access & Utility Easement” and “Private Access & Public Utility Easement 27,885 S.F and Private Access and Drainage Easement 27,885 S.F”, as shown on the Common Element Map.

Declarant reserves the right, in its sole discretion, to convey or cause to be conveyed to, or established for, the Association from time to time and without the consent of the Association or its Members, additional property to the Association, which property may include any portion of the Properties, including any Additional Property annexed by Declarant pursuant to Article X, Section 4 hereof. The Association shall accept any such conveyance of property together with any local, state or federal governmental permits relating to such property, including, without limitation, any stormwater, erosion control or wetlands permits, and thereafter such property shall be held and maintained by the Association as Common Elements. Declarant may construct or cause to be constructed (**BUT SHALL NOT BE OBLIGATED TO CONSTRUCT**) a gate, wall, landscaping, signage and related facilities on any such Common Elements. Other improvements, which may include, but shall not be limited to, roadways, drainage facilities or erosion control devices, may be located on any such Common Elements. Except as otherwise provided in Section 47F-3-113 of the Planned Community Act, the Association shall be required to promptly repair and replace any portion of the Common Elements for which the Association is required to maintain casualty insurance pursuant to the Bylaws of the Association which is damaged or destroyed. All Common Elements are established herein and allocated to the Association in their “as is” condition without any express or implied warranty. [DECLARANT HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE COMMON ELEMENTS.]

The Association also may acquire additional Common Elements with the consent of the Members of the Association entitled to cast at least four-fifths (4/5) of the votes of each class of Members of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during Declarant's Development Period no such action shall be effective without Declarant's consent and approval. For such a conveyance to be effective, the deed or instrument conveying to the Association additional Common Elements must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the instrument on behalf of the Association that the requisite owner and Declarant approval has been obtained and is evidenced by written acknowledgments signed by the owners approving the amendment and if required, Declarant, and that such acknowledgments are made a part of the minute book of the Association; and (3) be properly recorded in the New Hanover County Registry.

SECTION 5. Common Element Map. "Common Element Map" shall mean and refer to that plat entitled "Easement Survey - Lots 1-5 Deep Creek Run - Map Book 70, Page 137" recorded in Map Book 75, Page 396, in the Office of the Register of Deeds of New Hanover County, North Carolina.

SECTION 6. Declarant. "Declarant" shall mean and refer to DJM-NC, LLC, a North Carolina limited liability company, as well as its successors and assigns, pursuant to an express assignment or conveyance of any special declarant rights hereunder to such successor or assign, all of which rights, including Declarant's voting, easement and development rights, shall be assignable and may be apportioned on a lot-by-lot basis.

SECTION 7. Declarant's Development Period. "Declarant's Development Period" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, New Hanover County, North Carolina, and continuing for so long as Declarant shall have the right to annex any portion of the Additional Property pursuant to the provisions of Article X, Section 4 hereof or Declarant or any affiliate of Declarant shall own any portion of the Properties.

SECTION 8. Lot or Lots. "Lot" or "Lots" shall mean and refer to Lots 1, 2, 3, 4 and 5 on the Plat, and any other separately numbered plot of land shown upon any now or subsequently recorded subdivision plat of the Properties intended for single family residential purposes and shall include any improvements constructed thereon and "Lots" shall refer to all such lots collectively. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant and to thereby create additional Lots, eliminate existing Lots or create additional Common Elements; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted by the Appropriate Local Governmental Authority, nor shall any Lot within the Properties contain fewer square feet than the minimum number of square feet from time to time required by the Appropriate Local Governmental Authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a

“Lot” as defined in this Declaration and each newly configured lot shown on the revised plat shall be a “Lot” as defined in this Declaration.

SECTION 9. Member. “Member” shall mean and refer to every person or entity who holds Membership with voting rights in the Association.

SECTION 10. Owner. “Owner” shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 11. Period of Declarant Control. “Period of Declarant Control” shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, New Hanover County, North Carolina, and continuing for so long as Declarant or any affiliate of Declarant shall own any portion of the Properties. In the event that Declarant ceases to own any of the Properties but thereafter annexes Additional Property to this Declaration, the Period of Declarant Control shall be reinstated until Declarant shall again cease to own any of the Properties.

SECTION 11. Permit. “Permit” shall mean North Carolina Stormwater Management Permit No. SW8241209 issued for real property and any additional North Carolina Stormwater permits applicable to the Properties, and any amendments, additions or replacements thereto.

SECTION 12. Planned Community Act. “Planned Community Act” shall mean and refer to the provisions of Chapter 47F of the General Statutes of North Carolina.

SECTION 13. Plat. “Plat” shall mean and refer to that plat entitled “Minor Subdivision Plat - 1950 and 1970 Deep Creek Run” recorded in Map Book 70, Pages 137-138, in the Office of the Register of Deeds of New Hanover County, North Carolina.

SECTION 14. Properties. “Properties” shall mean and refer to all of the property hereby or hereafter made subject to the terms, covenants and conditions of this Declaration, as amended from time to time.

SECTION 15. Stormwater Management Facilities. “Stormwater Management Facilities” shall mean all areas consisting of ditches and swales, retention ponds and other drainage and infiltration improvements which are constructed pursuant to, and regulated by, the Permit.

ARTICLE II

PROPERTY RIGHTS

SECTION 1. AMENITIES WHICH MAY BE LOCATED IN THE COMMON ELEMENTS. Declarant hereafter may construct or cause to be constructed (**BUT SHALL NOT BE OBLIGATED TO CONSTRUCT**) roadways, gates, signage and landscaping on a portion of the Common Elements. Declarant does not contemplate the construction of any other improvements or amenities within the Common Elements.

During Declarant's Development Period, Declarant or its affiliate shall have the right to require the exclusive (or, at the discretion of Declarant or its affiliate, non-exclusive) use of all or certain portions of any Common Elements for events promoting the sale of lots or homes in Deep Creek Run; provided, however, no such use by Declarant or its affiliate shall unreasonably interfere with or obstruct ingress, egress and regress to or from the Lots.

SECTION 2. MAINTENANCE OF WATERSHED IMPROVEMENTS. The Association shall maintain any rip rap and other drainage or erosion control devices located on the Common Elements now established or hereafter conveyed to the Association by Declarant that are required to be maintained by the governmental office(s) having jurisdiction for watershed protection as directed by such governmental office(s) or as otherwise required by applicable law. In the event the Association is dissolved or otherwise defaults on its obligation to maintain any such drainage or erosion control device, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of such drainage or erosion control device.

SECTION 3. RULES AND REGULATIONS. The Association may establish reasonable rules and regulations concerning the use of the Common Elements and improvements located thereon. Such rules and regulations may prohibit or restrict the use of the Common Elements. The Association may impose reasonable monetary fines and other sanctions for the violation of established rules and regulations and for the violation of any of the covenants and conditions contained in this Declaration, which monetary fines and sanctions shall be assessed and collected pursuant to the provisions of Article X hereof. All such rules and regulations shall be binding upon the owners, their families, tenants, guests, invitees and agents until and unless such regulation, rule or requirement shall be specifically overruled, canceled, or modified by the Association or by the Members of the Association entitled to cast at least four-fifths (4/5) of the votes of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action.

SECTION 4. OWNERS EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Elements, subject to the following provisions:

(a) the easements herein reserved by Declarant or created in favor of the Association, including, without limitation the easements set forth in Article VIII hereof;

(b) the right of the Association to suspend the voting rights by the Owner(s) of any Lot for any period during which any assessment against such Lot remains unpaid and for any period during which such Lot or any Owner or occupant thereof is in violation of the terms of this Declaration or the published rules and regulations of the Association and for a period not to exceed sixty (60) days after any such violation;

(c) the right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Elements for such purposes and

subject to such conditions as may be agreed to by the Association's Executive Board; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded;

(d) the right of the Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association to dedicate or transfer fee title to all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances;

(e) the right of the Association to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements, and specifically including the right to establish rules and regulations concerning vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Properties which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Executive Board;

(f) the right of the Association to borrow money for the purpose of improving the Common Elements and facilities thereon and, with the assent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association); provided, however, during Declarant's Development Period, Declarant must also consent to such action, and further provided that no such mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances; and

(g) the right of the Association to convey to Declarant portions of the Common Elements for the purpose of correcting erroneous conveyances of Common Elements or eliminating unintentional encroachments of dwellings or other improvements onto portions of the Common Elements or for the purpose of enhancing the utility of the Common Elements to be retained by the Association; provided, however, no such conveyance shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances.

SECTION 5. DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, such Owner's rights of enjoyment of the Common Elements and facilities to the members of such Owner's family, tenants or contract purchasers who reside on the Lot of such Owner.

SECTION 6. LEASES OF LOTS. Any lease agreement between an Owner and a lessee for the lease of such Owner's Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and Bylaws of the Association and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. All leases of Lots shall be in writing and shall have a term of not less than six (6) months.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. MEMBERSHIP. Every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including Declarant and any affiliated entity, shall be a voting Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Such Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Except as otherwise provided in Section 2 below, on all matters which the Membership shall be entitled to vote, the Member(s) owning each Lot shall be entitled to one (1) vote. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

SECTION 2. CLASSES OF MEMBERSHIP. The Association shall have two classes of voting membership:

Class A: The Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant or any affiliated entity during any Period of Declarant Control. Class A Members shall be entitled to one (1) vote for each Lot owned. In the event that a Lot is owned by more than one Class A Member, the Owners of such Lot, collectively, shall be allocated not more than one (1) vote and the vote allocated to such Lot shall be cast as such Owners may agree between or among themselves.

Class B: Declarant shall be the Class B Member and Declarant shall be entitled to ten (10) votes for each Lot as developed or to be developed which has not been conveyed by Declarant or any affiliated entity to a Class A Member. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or,
- (b) ten (10) years from the date this Declaration is recorded in the Office of the Register of Deeds, New Hanover County, North Carolina; or
- (c) upon Declarant's voluntary surrender of all Class B Membership.

SECTION 3. DECLARANT RIGHT TO REPRESENTATION ON THE EXECUTIVE BOARD OF THE ASSOCIATION. During any Period of Declarant Control, Declarant shall have the right to designate and select all of the Members of each Executive Board of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Executive Board of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Executive Board and to replace such person or persons with another person or other persons to act and serve in the place of any member or members of the Executive Board so removed for the remainder of the unexpired term of any member or members of the Executive Board so removed. Any Executive Board member designated and selected by Declarant need not be a resident of the Properties. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Executive Board which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

ARTICLE IV

COVENANT FOR MAINTENANCE AND ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay: (a) to the Association: (i) annual and other assessments and charges provided for herein, together with interest, and late fees, costs and reasonable attorney's fees; (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority to the extent such Common Elements are taxed separately from a Lot: (i) a pro rata share of ad valorem taxes levied against the Common Elements; and (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Elements if the Association shall default in the payment of either or both for a period of six (6) months. The Declarant shall not be obligated to pay any annual or special assessments for any Lot owned within the Properties. All assessments and charges provided for herein, together with interest, and late fees, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made when a claim of lien is filed of record in the Office of the Clerk of Superior Court, New Hanover County, North Carolina. Each such assessment and charge, together with interest, any late fees, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at

the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

SECTION 2. PURPOSE OF ASSESSMENTS.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements or the Lots, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of any taxes and assessments assessed against the Common Elements and any improvements thereupon to the extent such Common Elements are taxed separately from a Lot; the maintenance of the grounds of each Lot as provided in Article VI; the procurement and maintenance of insurance in accordance with the Bylaws; the maintenance of roadways, drainage facilities or erosion control devices, if any, located within the Common Elements; the performance of any other maintenance or repair obligations of the Association under this Declaration; the erection, maintenance and repair of signs, entranceways, walls, gates, landscaping and lighting within easements provided therefor or the Common Elements, road medians and islands; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Elements; the employment of attorneys and other agents to represent the Association when necessary; 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 such other needs as may arise. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Elements and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

(b) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and Common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer such Owner's Membership interest therein, except as an appurtenance to such Owner's Lot. When any Owner shall cease to be a Member of the Association by reason of such Owner's divestment of ownership of such Owner's Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties.

SECTION 3. ADOPTION OF BUDGET AND FIXING OF ANNUAL ASSESSMENTS; MAXIMUM ANNUAL ASSESSMENT.

(a) At least thirty (30) days in advance of each annual assessment period, the Executive Board shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. Within thirty (30) days of the adoption of any proposed budget, the Executive Board shall provide to all of the Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Executive Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting the Owners of a majority of the Lots reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

(b) Until December 31 of the year of the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Thousand and No/100 Dollars (\$3,000.00) per Lot, and may be collected in monthly installments of Two Hundred and Fifty and No/100 Dollars (\$250.00) per Lot. The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter shall be established by the Executive Board and may be increased by the Executive Board without approval by the Membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year. The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased without limit by a vote of the Members entitled to cast at least four-fifths (4/5) of the votes of each class of Members of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action.

(c) The Executive Board may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of Section 6 of this Article.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Members entitled to cast at least four-fifths (4/5) of the votes of each class of Members of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, during the Declarant's Development Period, Declarant must also consent to such action. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of all the votes of each class of Members of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. The required quorum shall continue to be reduced by fifty percent (50%) at subsequent meetings until a quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. RATE OF ANNUAL ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or annual basis, except that the Declarant shall not be obligated to pay any annual or special assessments for any Lot owned by Declarant within the Properties.

SECTION 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the date such Lot is conveyed to an Owner other than Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due dates shall be established by the Executive Board. 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 8. WORKING CAPITAL ASSESSMENTS. In addition to the annual assessments authorized above, at the time of the closing of the first sale of each Lot to a purchaser (other than Declarant or a successor declarant), the purchaser(s) thereof shall pay to the Association an amount equal to One Thousand and No/100 Dollars (\$1,000.00). Such funds shall be used by the Association to establish a Working Capital Fund, the purpose of which is to help insure that the Association will have sufficient monies available to meet its initial operational needs, unforeseen expenditures or long-term capital improvements and repairs to the Common Elements. No such payments made into the Working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of the Declaration and these Bylaws.

SECTION 9. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate from time-to-time established by the Association not to exceed eighteen percent (18%) per annum. In addition, the Association may charge a reasonable late fee, the amount of which shall be established from time to time by the Executive Board of the Association [but which shall not exceed the greater of Twenty Dollars (\$20.00) per month or ten percent (10%) of any assessment unpaid], for assessments not paid within thirty (30) days after the due date. In addition after notice and an opportunity to be heard, the Association may suspend privileges or services provided by the Association (except rights of access to Lots)

during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer, which suspension may continue without further hearing until the delinquency is cured. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner that real estate deeds of trust and mortgages may be foreclosed under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, and in any suit for the foreclosure of said lien, the Association shall be entitled to interest, any late fees, costs and reasonable attorneys' fees, subject to the limitations set forth in this paragraph. Notwithstanding any of the foregoing, the Association may not foreclose an assessment lien under power of sale if the debt securing the lien consists solely of fines imposed by the Association, interest on unpaid fines, or attorneys' fees incurred by the Association solely associated with fines imposed by the Association, but such a lien may be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes. An Owner may not be required to pay attorneys' fees and court costs until the Owner is notified in writing of the Association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, the mailing address for the Owner in the Association's records. The notice shall (i) set out the outstanding balance due as of the date of the notice, (ii) state that the Owner has fifteen (15) days from the mailing of the notice to pay the outstanding balance without the attorneys' fees and court costs, and (iii) inform the Owner of the opportunity to contact a representative of the Association to discuss a payment schedule for the outstanding balance and provide the Owner the name and telephone number of such representative. If the Owner pays the outstanding balance within this period, then the Owner shall have no obligation to pay the attorneys' fees and court costs. If the Owner does not contest the collection of debt and enforcement of a lien after the expiration of the fifteen (15) day period, then reasonable attorneys' fees shall not exceed One Thousand Two Hundred Dollars (\$1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remains uncontested as long as the Owner does not dispute, contest, or raise any objection, defense, offset or counterclaims as to the amount or validity of the debt and lien asserted or the Association's right to collect the debt and enforce the lien. The attorneys' fee limitation shall not apply to judicial foreclosures. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Elements or abandonment of such Owner's Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

SECTION 10. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Elements or assessments for public improvements to the Common Elements, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, such Owner's heirs, devisees, personal representatives and assigns,

and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

SECTION 11. PRIORITY OF LIEN. The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the Office of the Clerk of Superior Court of New Hanover County, North Carolina, in the manner provided herein, which claim shall state the description of the Lot encumbered thereby, the name of the record owner(s), the amount due and the date when due and the name and address of the Association. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, it shall be satisfied of record.

SECTION 12. EXEMPT PROPERTY. All property dedicated to, and accepted by, a public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V

Intentionally deleted.

ARTICLE VI

EXTERIOR MAINTENANCE

SECTION 1. MAINTENANCE TO BE PERFORMED BY THE ASSOCIATION. The Association shall maintain the Common Elements, open spaces, sidewalks and streets within the Common Elements which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-way within the Properties), streets and sidewalks that have been dedicated to public use but have not been accepted for public maintenance and street lights erected by the Association or Declaration in the rights-of-way of streets (whether public or private) or in any other easement provided for such purpose within the Properties unless a Secondary Association shall be responsible for such maintenance. Without limiting the foregoing, the Association shall maintain any roadways, Stormwater Management Facilities or erosion control devices located on the Common Elements now or hereafter conveyed to the Association by Declarant that are required to be maintained by the governmental office(s) having jurisdiction for watershed protection as directed by such governmental office(s). In the event the Association is dissolved or otherwise defaults on its obligation to maintain any such drainage or erosion control device, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of such pond or erosion control device.

SECTION 2. MAINTENANCE TO BE PERFORMED BY THE OWNERS. Each Owner shall be responsible for the exterior maintenance of such Owner's dwelling and Lot,

including, without limitation, the following: painting, replacement and care of roofs, gutters, downspouts, exterior building surfaces, lawn, trees, shrubs, landscaping, driveways, steps, walks and other exterior improvements. Each Owner shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all Stormwater Management Facilities located on their Lot which do not constitute Common Elements, utility lines, fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to such Owner's Lot which are not publicly maintained. Any construction undertaken by an Owner in any portion of the Common Elements in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with the access and utility rights any other Owners and their invitees, customers, agents, employees, licensees and guests. The Owner undertaking such work shall with due diligence repair, at its sole cost and expense, any and all damage caused by such work and restore the affected portion of the Common Elements upon which such work is performed to a condition which is substantially similar to the condition which existed prior to the commencement of such work. No structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of the Stormwater Maintenance Facilities located within the Common Elements on a Lot.

In the event that an Owner neglects or fails to maintain such Owner's improved Lot, including, but not limited to Stormwater Management Facilities located on their Lot which do not constitute Common Elements, and/or the exterior of such Owner's dwelling in a manner consistent with other improved Lots and dwellings within the Properties or fails to maintain such Owner's improved Lot in a safe condition and free of debris, the Association may provide such maintenance and repair; provided, however, that the Association shall first give written notice to the Owner of the specific items of maintenance or repair the Association intends to perform and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such maintenance by such Owner. The determination as to whether an Owner has neglected or failed to maintain such Owner's Lot and/or dwelling in a manner consistent with other Lots and dwellings within the Properties may be made by the Declarant and/or Executive Board of the Association, in its sole discretion. In the event the Association performs such maintenance, repair or replacement, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article.

ARTICLE VII

RESTRICTIONS

SECTION 1. LAND USE. No Lot shall be used except for single-family residential purposes; provided, however, Declarant, or any affiliated entity may use any Lot owned or leased by Declarant or any affiliated entity as a temporary sales office and/or model for the purposes of carrying on business related to the development, improvement and sale of the Properties or the Additional Property. No buildings shall be erected, placed or permitted to