

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

PROTECTIVE COVENANTS OF  
DEER CROSSING  
PHASE 1 SECTION 1

THESE PROTECTIVE COVENANTS, made this the 10 day of December, 2001, by Home Life, Inc., a North Carolina corporation, its successors and assigns, whether one or more, hereinafter referred to as "DECLARANT".

WITNESSETH:

WHEREAS, DECLARANT is the owner of certain real property in New Hanover County North Carolina, which is more particularly described as DEER CROSSING, Phase 1, Section 1 according to the plat thereof, recorded or to be recorded in the office of the Register of Deeds of New Hanover County, reference to which is hereby made for a more particular description (herein the "Phase 1, Section 1, Deer Crossing plat").

NOW, THEREFORE, DECLARANT hereby declares that all of the properties described above shall be held, sold and conveyed subject to the Planned Community Act, set forth in Chapter 47F of the North Carolina General Statutes and 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 the 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 benefit of each Owner thereof.

#### ARTICLE 1

##### Definitions

Section 1. Articles shall mean the Articles of Incorporation of DEER CROSSING OWNERS ASSOCIATION, INC.

Section 2. Association shall be used to mean and refer to DEER CROSSING, OWNERS ASSOCIATION, INC., a private non-profit corporation formed or to be formed by the DECLARANT primarily as a Homeowners' Association for the Lot Owners in DEER CROSSING, all of whom shall be Members of the Association.

Section 3. Bylaws means the Bylaws of DEER CROSSING OWNERS ASSOCIATION, INC.

Section 4. Common Elements shall mean all real property and facilities owned by the Association for the common use and enjoyment of the Owners, including, without limitation, Deer Hill Drive and all other streets within the property to be developed, now or hereafter shown on any recorded plat of Deer Crossing, and all areas designated as "Open Space" upon any recorded plat of Deer Crossing. Provided however, that it is the intent of the Declarant, and Declarant reserves the right, without the consent of the Association to convert

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any streets into public streets by complying with applicable requirements prescribed by the State of North Carolina.

Section 5. Common Expenses means and includes actual and estimated expenses of maintaining and operating the Common Elements, Stormwater Facilities, Conservation and Buffer Areas and landscaped areas within road right of ways and operating the Association for general purposes, including any insurance, reasonable reserve and utilities, as may be found necessary and appropriate by the Executive Board pursuant to these Protective Covenants, the Bylaws and the Articles of Incorporation of the Association, 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 Elements and the stormwater system;
- c. Expenses declared to be Common Expenses by the provisions of these Protective Covenants or the Bylaws;
- 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 Elements.

Section 6. DECLARANT shall be and refer to Home Life, Inc., a North Carolina corporation, its successors and assigns, if such successors or assigns should acquire more than one, undeveloped Lot from the DECLARANT for the purpose of development.

Section 7. Executive Board shall be the elected Executive Board governing the Association and managing the affairs of the Association.

Section 8. Limited Common Elements shall mean that certain real property and facilities intended for the exclusive use or primary benefit of one or more but less than all of the Lots as shown and designated on any maps of sections of the Subdivision which are or may be recorded in the New Hanover County Registry or which may be designated in any amendment to the Protective Covenants annexing additional properties.

Section 9. Limited Common Expenses shall mean and include actual and estimated expenses of maintaining, operating, repairing, and replacing the Limited Common Elements, including insurance, reasonable reserves and utilities as may be found necessary and appropriate by the Executive Board pursuant to these Protective Covenants, the Bylaws and the Articles of Incorporation of the Association for the benefit of the Limited Common Elements. The maintenance of the water areas of Stormwater Facilities will be a Common Expense, rather than a Limited Common Expense.

Section 10. Lot shall mean and refer to any of the numbered Lots as shown on the plat of DEER CROSSING, Phase 1, Section 1, recorded as aforesaid, in the New Hanover County Registry together with the single family structure or dwelling, and any other numbered lots which may be shown on maps which may be recorded in the future showing additional phases and sections of DEER CROSSING and which are annexed into the Subdivision in accordance with Article 3, Section 1 and Article 11.

Section 11. Member shall mean and refer to each and every person and entity who or which owns a Lot in DEER CROSSING SUBDIVISION.

Section 12. Misconduct shall have the meaning set forth in Chapter 47F of the North Carolina General Statutes and in addition shall also include violations of Article 6, Section 1c.; Article 8; Article 9; Article 10, Sections 6, 7 and 8b.; and Article 12 herein.

Section 13. 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, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. Person shall mean and refer to an individual, corporation, limited liability company or partnership, partnership or limited partnership, association, trustee, or other legal entity.

Section 15. Properties shall mean and refer to that certain real property which is described as DEER CROSSING, Phase 1, Section 1, in that map recorded or to be recorded in the New Hanover County Registry and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 16. Protective Covenants shall mean this instrument as it may be from time to time amended or supplemented.

Section 17. Subdivision means all of that real property known collectively as DEER CROSSING, Phase 1, Section 1 recorded or to be recorded in the New Hanover County Registry, and all maps which may be recorded in the future showing additional phases and sections of DEER CROSSING and which are annexed into the Subdivision in accordance with Article 3, and Article 11.

## ARTICLE 2

### Property Rights

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements and every Owner whose Lot has assigned to it a Limited Common Element shall have a right and easement of enjoyment in and

to the Limited Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right to the Association to limit the number of guests of Members;
- b. The right of the Association to suspend the voting rights and right to use the Common Elements and the Limited Common Elements and the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations in accordance with that procedure set forth in Article 12;
- c. The right of the Association to dedicate or transfer all or part of the Common Elements and the Limited Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association;
- d. The right of the Association to formulate, publish and enforce rules and regulations for the use and enjoyment of the Common Elements and the Limited Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements and the Limited Common Elements and the right of the Association in accordance with the procedure set forth in Article 4 to establish penalties for any infractions thereof.
- e. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and the Limited Common Elements and carrying out its maintenance responsibilities and in aid thereof to mortgage said property, and the rights of such mortgages in said properties shall be subordinate to the rights of the Lot Owners hereunder.
- f. Easements as provided in Article 4 hereof

Section 2. Delegation of Use. Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Elements and, if applicable, the Limited Common Elements to the Members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Common Elements. Except as otherwise provided in ARTICLE 1, Section 4, and ARTICLE 3, Section 4; the Common Elements cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the Owners; excluding DECLARANT.

### ARTICLE 3

#### DECLARANT'S Rights

Section 1. The DECLARANT hereby reserves the right to annex and subject to these restrictions the real property which is located within a 1 mile radius of, and is adjacent to and contiguous with that property described in The Phase 1, Section 1, Deer Crossing plat in order to extend the scheme of these Protective Covenants to other property to be developed and thereby bring such additional Properties within the jurisdiction of the Association. Each additional parcel or tract of land, with the improvements thereon, or to be placed thereon, which is subject to these Protective Covenants shall be designated consecutively as "Section 2", "Section 3", etc, of Phase 1 and such other similar designations for any additional phases added.

Section 2. The rights reserved by DECLARANT in Phase 1, Section 1 and all annexed Phases and Sections include the right to change, alter or designate Lot(s), roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment of the DECLARANT, be necessary or desirable. The rights reserved in this Section specifically include the right of DECLARANT to redesignate, change, or alter any platted Lot(s) into road(s).

Section 3. Among other things, the DECLARANT reserves the right to develop additional properties into multifamily units and place separate restrictive covenants on those units.

Section 4. The DECLARANT reserves the right to withdraw from the Common Elements and convert into buildable lots or units, any lands shown upon any recorded plat of Deer Crossing as "OPEN SPACE", provided that such open space complies with governmental requirements for a buildable lot or lots

### ARTICLE 4

#### Easements

Section 1. Easements are reserved as necessary in the Common Elements and the Limited Common Elements for installation and maintenance of underground utilities and drainage facilities.

Section 2. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, shall have a perpetual easement over and upon the Common Elements within the Subdivision for each and every purpose or use to which such Common Elements were intended as determined by their type, or for which such Common Elements generally are used, including,

but not limited to, easement of access, maintenance, repair or replacement of the Common Elements. Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Subdivision, whether or not specifically included in a deed thereto. Every Owner of a lot within the Subdivision which is assigned to a Limited Common Elements, as an appurtenance to such lot, shall have a perpetual easement over and upon such Limited Common Elements for each and every purpose or use to which such Limited Common Elements is intended by its type, or for which such Limited Common Elements is generally used, including, but not limited to, easement of access, maintenance repair or replacement of such Limited Common Elements. Such easements shall be appurtenant to and shall pass with the title to every Lot assigned to such Limited Common Elements, whether or not specifically included in the deed thereto.

Section 3. The Association hereinafter may grant easements for utility purposes for the benefit of the Subdivision and the Lots now or hereafter located thereon, over, under, along and through the Common Elements and the Limited Common Elements. Provided, however that no such grant of easement shall have a material adverse effect on the use, enjoyment or value of any Lot.

Section 4. Any Owner may delegate, in accordance with the rules and regulations, his right of enjoyment to the Common Elements and, if applicable, to the Limited Common Elements, to the members of his family, his tenants, and contract purchasers who reside on the property.

Section 5. Easements and rights of way over and upon the rear, front and side ten (10) feet of each Lot for drainage and the installation and maintenance of utilities and services are reserved to DECLARANT and its successors and assigns for such purposes as DECLARANT may deem incident, and appropriate to its overall development plan. The easements and right of way areas reserved by DECLARANT on each Lot pursuant hereto shall be maintained continuously by the Owner, but no structures or plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Improvements within such areas also shall be maintained by the respective Owner except those for which a public authority or utility company is responsible. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary in the opinion of the DECLARANT to provide an economical and safe installation. The DECLARANT shall have no maintenance responsibilities for such easement areas.

Section 6. Every Owner shall have a right and easement of enjoyment in and to any and all other Common Elements which are owned or leased by the Association for the enjoyment of the Owners; this right and easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot.

Section 7. The rights reserved by DECLARANT in Article 3 and all annexed Phases and Sections reserve the right to change, alter or designate Lots, roads, utility and drainage facilities and Easements, and to change, alter or redesignate such other present and proposed amenities or Facilities as may in the sole judgment of the DECLARANT, be necessary or desirable. Except as allowed in Article 3, the DECLARANT shall have no right to change, alter or redesignate the character of the use of the Lots within the Subdivision.

Section 8. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the Lots, Common Elements and Limited Common Elements in the performance of their duties.

Section 9. The real property in this Subdivision is subject to a contract with Carolina Power and Light Company for the installation of underground electrical utilities which may require an initial contribution and/or the installation of street lighting, which will subject each Owner to a continuing monthly payment to Carolina Power and Light Company.

Section 10. An easement is hereby established over all Lots, Common Elements and Limited Common Elements for the benefit of applicable governmental agencies for the setting, removing and reading of water meters, maintaining and replacing water, drainage and drainage facilities, fire fighting, law enforcement, garbage collection and the delivering of mail.

Section 11. An exclusive easement is hereby established in favor of DECLARANT over all Common Elements and Limited Common Elements for access to adjacent properties for the purposes of future development and the installation of streets and public utilities.

Section 12. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on all undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the benefit of and be binding on the undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in these Protective Covenants.

Section 13. An easement is hereby granted to the Association for maintenance of the water surfaces of Stormwater Facilities.

## ARTICLE 5

### Association

Section 1. Purpose An Association named DEER CROSSING OWNERS ASSOCIATION, INC. has been or will be formed pursuant to the requirements of the Nonprofit

Corporation Act (Chapter 55A) of the General Statutes of North Carolina. Its purposes are to own, manage, maintain and operate the Common Elements and facilities located upon the Common Elements, and Limited Common Elements and facilities located upon the Limited Common Elements, Conservation, Buffer Areas, areas with similar designations and landscaped areas within road right of ways; the stormwater runoff system; sign easements areas, and fences or other property maintained by the Association to enforce the Protective Covenants contained herein, and to make and enforce rules and regulations governing the Owners' use and occupation of Lots.

Section 2. Membership. Every person who is record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of the Association. Ownership of such interest shall be the sole qualification for such membership; there shall be only one vote per Lot in such Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The Executive Board may make reasonable rules regarding proof of Ownership.

Section 3. Voting Rights. The Association shall have two classes of voting memberships.

- a. Class "A". Class A Members shall be all Owners with the exception of the DECLARANT and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. If only one of the multiple owners of a Lot is present at a meeting of the Association, the Owner who is present is entitled to cast all the votes allocated to that Lot. If more than one of the multiple owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners. Majority agreement is conclusively presumed if any one of the multiple owners casts the votes allocated to that Lot without protest being made to the person presiding over the meeting by any of the other Owners of the Lot.
- b. Class "B". Class B Member(s) shall be the DECLARANT and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
  - (1) When the DECLARANT owns twenty-five percent (25%) or less of the planned residential lots in the

subdivision, including any property which may be annexed to the subdivision, or

(2) On December 31, 2021.

Section 4. Only those Lot Owners subject to assessments under Article 6 Section 1.c.(1) or (2) shall vote on issues affecting such assessments or property subject to such assessments. The number of votes required on any issue shall be the same as required for comparable votes on issues affecting general assessments or Common Elements.

Section 5. The DECLARANT shall have the right to appoint and remove the members and officers of the Executive Board until (i) December 31, 2021, or (ii) the DECLARANT turns control of the Association over to the Class A Members; or (iii) DECLARANT owns twenty-five percent (25%) or less of the planned residential lots in the subdivision, whichever first occurs.

Section 6. The Association shall have the following powers:

- a. Adopt and amend bylaws and rules and regulations;
- b. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from Lot Owners;
- c. Hire and discharge managing agents and other employees, agents, and independent contractors;
- d. Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community.
- e. Make contracts and incur liabilities;
- f. Regulate the use, maintenance, repair, replacement and modification of Common Elements.
- g. Cause additional improvements to be made as a part of the Common Elements;
- h. Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to applicable law;
- i. Grant easements, leases, licenses, and concessions through or over the Common Elements;
- j. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Lot Owners;

- k. Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, 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 30 days or longer;
- l. Impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to lots) for reasonable periods for violations of the Protective Covenants, Bylaws, and Rules and Regulations of the Association;
- m. Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to these Protective Covenants or statements of unpaid assessments;
- n. Provide for the indemnification of and maintain liability insurance for its officers, Executive Board, directors, employees and agents;
- o. Assign its right to future income, including the right to receive common expense assessments;
- p. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and
- q. Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 7. Common Elements. The Common Elements and Limited Common Elements may be mortgaged or conveyed as required or permitted by law.

Section 8. Management and Administration. The management and administration of the Common Elements and Limited Common Elements of the Subdivision and the Association 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 of Incorporation and Bylaws of the Association, but may be delegated or contracted to manager(s) or a management service.

Section 9. Assignment to Association. All water, sewer, land use, stormwater system, and utility permits, agreements and easements between DECLARANT and any municipal or governmental agency or department or public or private utility company shall be assumed by the Association upon the assignment of all such permits, agreements and easements to the Association by DECLARANT. The Association shall thereafter be responsible for and assume all duties, obligations, and rights and privileges of DECLARANT under such permits,

agreements and easements, including all maintenance responsibilities.

## ARTICLE 6

### Covenants for 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 of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. General assessments or charges for Common Expenses, including maintenance of the Stormwater Facilities and
- b. Special assessments for capital improvements, or special assessments as established by the Executive Board, and
- c. Individual assessments against a specific Lot or Lots or Property, as follows: (1) for the payment of Limited Common Expenses associated with the maintenance, repair, replacement of a Limited Common Elements as defined in ARTICLE 1 herein against the Lot or Lots to which that Limited Common Elements is assigned; or (2) any common expense or portion thereof benefiting fewer than all of the Lots; or (3) to cover the costs incurred in bringing the Lot into compliance with the terms of these Protective Covenants, the Articles, Bylaws or Rules and Regulations of the Association caused by the failure of Owner to comply with such provisions. The Association, through its Executive Board, may perform such required tasks or remedy such matter, or assess a fine for such failure to comply and may levy the cost of such fine, performance, or remedy against the Owner(s) and the Owners' Lot or property as an individual assessment. Individual Assessment levied under (1) and (2) herein shall be equal as to all Lots subject to such assessment.

The general, special and individual assessments, together with fees, charges, late charges, fines, other charges, permitted hereunder or under Chapter 47F of the North Carolina General Statutes, interest, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to any successors in title unless specifically assumed by them.

PROVIDED, the DECLARANT and any appointed Exclusive Builder shall pay one-half

of the general assessment for any unsold Lots from the date of recording of each plat of Lots for each section in DEER CROSSING in the New Hanover County Registry. Two years after DECLARANT begins paying one-half of the general assessments for the lots in each section as outlined above, the DECLARANT shall begin to pay the full assessment for each lot, prorated to date for the initial billing period.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvements and maintenance of the Common Elements, Stormwater Facilities and Limited Common Elements and to pay the taxes and other municipal charges or fees of the Common Elements, Stormwater Facilities and Limited Common Elements.

Section 3. Initial General Assessment. The initial general assessment, due and payable to the Association, shall be prorated and paid at the time of closing of the purchase of a Lot by an Owner, so that all payments thereafter shall be due on January 1 of each year or the due date(s) which may be set by the Executive Board as is more fully set forth in Section 6 of this Article. All general assessments shall be fixed to a uniform rate for all Lots.

Section 4. Special Assessments for Capital Improvements. In addition to the general assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including easement areas, fixtures, and personal property related thereto provided that any such assessment shall have the assent of the majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Special assessments for the maintenance of sewer lines and other Elements of the sewer system, the drainage and stormwater runoff systems, and other utility systems, as required by government permits or regulations, may be assessed by the Executive Board without a vote of the members. All special assessments for capital improvements shall be fixed to a uniform rate for all Lots.

In addition to the general assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon a Limited Common Elements, including easement areas, fixtures, and personal property related thereto provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of those Members whose Lots are assigned to the Limited Common Elements who are voting in person or by proxy at a meeting duly called for this purpose. Special assessments for the maintenance of sewer lines and other elements of the sewer system, the drainage and stormwater runoff systems, and other utility systems located in a Limited Common Elements as required by government permits or regulations, may be assessed by the Executive Board without a vote of the Members. All special assessments for capital improvements to such Limited Common Elements shall be fixed to a uniform rate for all Lots assigned to the Limited Common Elements.

Section 5. Working Capital Assessment. At the time title is conveyed to an Owner by

DECLARANT, each Owner shall contribute to the Association as working capital an amount equal to the amount of one year's general assessment. Such funds shall be used for initial operating and capital expenses of the Association, such as prepaid insurance, supplies, and the Common Elements, furnishings, and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. All working capital funds shall become part of the general operating funds of the Association.

Section 6. Notice and Quorum for any Action Authorized Under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 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 membership shall constitute a quorum. The required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of General Assessments and Due Dates. The general assessments provided for herein shall commence on the date of conveyance of each Lot to an Owner other than DECLARANT. The first general assessment shall be adjusted according to the number of months remaining in the calendar year. The Executive Board shall fix the amount of the general assessment against each Lot at least thirty (30) days in advance of each general assessment period. The budget shall be presented to the Members in accordance with N.C.G.S. §47F-3-1 03(c). Written notice of each general assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Executive Board. The Executive Board shall require the general assessments to be paid at least annually, but may require the general assessments to be paid more often. 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. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the maximum rate allowed by law, costs of collection, court costs, late charges, charges for reasonable attorney's fees and other charges permitted by statute, including fees, charges and fines, shall constitute a lien against the Lot upon which such assessments are levied upon filing of record notice of the same in the office of the Clerk of Superior Court of New Hanover County. The claim of lien filed under this Section shall set forth the name and address of the Association, the name of the record owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed. The Association may 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 in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Elements, the Limited Common Elements or abandonment of his Lot or for any other reason. Costs and reasonable attorney's fees shall be awarded to the prevailing party in any action brought pursuant to this Article. An action brought to enforce a

lien pursuant to this Article must be instituted within three (3) years after the docketing of the claim of lien in the Office of the Clerk of Superior Court of New Hanover County.

The Association, upon receipt of written request, shall furnish to a Lot Owner or the Lot Owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a Lot. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board, and every Lot Owner. The Executive Board may establish a reasonable charge for preparing the statement required in this Section.

Section 9. Subordination of the Lien to Mortgages. The lien under this Article 6 is prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens. Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such Lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from the Lot Owners including such purchaser, its heirs, successors and assigns. Unless otherwise provided herein, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof; shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Surplus Funds. Any excess of association income over Common Expenses, which expenses are defined in ARTICLE 1, Section 5 and which shall include reasonable reserves, shall be applied against the subsequent tax year's general assessments.

## ARTICLE 7

### Architectural Control

Section 1. No structures, buildings, or improvements shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, including change of color, 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 DECLARANT, or by an architectural committee composed of three (3) or more representatives appointed by the DECLARANT. Structures, buildings and improvements shall include, but not be limited to any dwelling, garage, fence, wall, sidewalk, hedge, mass planting, change in grade or slope, drainage pipe, drainage canal, ditch, swale, catch basin, swimming pool, treehouse, playhouse, sign, flag pole, exterior illumination, monument or marker, outdoor statuary, exterior lights, security lights, storm door, well utility facility, mailbox, patio, deck, screening for outdoor trash cans or other purposes, sprinkler system, driveway, outdoor decorative objects, shrubbery or landscaping. In the event said DECLARANT, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after complete plans and specifications have been received by it, and notification of receipt of plans and specifications has been sent to the submitting Owner(s), approval will not be required and this Article will be deemed to have been fully complied with. DECLARANT shall notify Owner if complete plans and specifications have not been received. DECLARANT, subject to the provisions of Section 2 hereinafter, may assign these duties to the Executive Board of the Association or to an architectural committee composed of three (3) or more representatives appointed by the Executive Board.

Section 2. All duties and responsibilities conferred upon the Executive Board or the Architectural Control Committee by these Protective Covenants or the Bylaws of the Association may be exercised and performed by the DECLARANT or its Designee at its discretion, so long as DECLARANT shall own any Lot in the Properties or any additions annexed thereto by Supplemental Protective Covenants or Amendment to these Protective Covenants.

Section 3. In addition to its duties of review and approval of external harmony and design, the Committee shall monitor the compliance with all use restrictions, design and architectural control provisions and conditions and other restrictions. The Committee shall report such violations as may come to its attention to the DECLARANT or the Association for appropriate actions of enforcement.

Section 4. The Committee shall be composed of a minimum of three members of the Association. Until such time as the Committee has been established, the DECLARANT shall perform the functions as outlined above and elsewhere herein. Where the term "The Declarant" or "The Committee" have been used, this term shall be construed to mean that only one of the two entities will perform the duties and function, and when the Committee is established, that Committee will perform the duties and functions as outlined above. Upon the appointment and organization of the Committee, the Committee shall adopt such administrative procedures as will insure the submission, review and approval of any and all buildings and/or improvements constructed.

Section 5. No construction, which term shall include within its definition clearing, excavation, grading and other site work, shall take place except in strict compliance with this Article, and until the approval of the Committee or DECLARANT has been obtained.

Section 6. Since the establishment of standard inflexible building setback lines in location of homes on Lots tends to force construction of homes directly to the side of other