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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
ELLIOTT PLACE

THIS DECLARATION made the 12 day of MAY, 1993, by DAVID E. TAYLOR hereinafter referred to as "Declarant" (whether one or more persons, firms, or corporations). The designation Declarant as used herein shall include said party, its heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

**STATEMENT OF PURPOSE**

Declarant is the owner of certain property in New Hanover County, North Carolina, which is more particularly described on maps recorded in Map Book 33 at Pages 83 through      in the New Hanover County Registry ("NHCR") upon which Declarant desires to create an exclusive single family residential community to be named **ELLIOTT PLACE**.

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Declarant desires to insure the attractiveness of the **ELLIOTT PLACE** and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within **ELLIOTT PLACE** and to provide for the maintenance and upkeep of all common areas in **ELLIOTT PLACE**. To this end the Declarant desires to subject the real property described herein, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

Declarant further desires to create a non-profit organization to be incorporated as **ELLIOTT PLACE HOA, INC.** to which will be delegated and assigned the powers of owning, maintaining and administering the common areas in **ELLIOTT PLACE**, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect and enhance the values and amenities in **ELLIOTT PLACE** to insure the residents' enjoyment of the specific rights, privileges and easements in the common area, and to provide for the maintenance and upkeep of the common area.

**NOW, THEREFORE,** Declarant hereby declares that all of the Properties 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 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 and assigns, and shall inure to the benefit of each owner thereof.

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**DEFINITIONS**

**SECTION 1.** "Association" shall mean and refer to **ELLIOTT PLACE HOA, INC.**, a North Carolina non-profit corporation, its successors and assigns, the owners association organized for the mutual benefit and protection of the Properties. All property owners of lots in **ELLIOTT PLACE** and any adjoining areas hereafter developed and subjected to this Declaration, if any, shall be members of the Association, which membership shall be appurtenant to and may not be separated from the ownership of such single family lot.

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**SECTION 2. "Common Area"** shall mean and refer to all real property (including improvements thereon) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot shall be all the area labeled as "Common Area" on the plat of ELLIOTT PLACE, and all roads and streets (except for public streets).

**SECTION 3. "Declarant"** or "Developer" shall be used interchangeably to mean and refer to DAVID E. TAYLOR, and also shall mean and refer to any person, firm or corporation to which or to whom DAVID E. TAYLOR shall transfer his development rights and designate as "Declarant".

**SECTION 4. "Development"** shall mean and refer to ELLIOTT PLACE, a single-family residential development proposed to be developed on the Properties by the Declarant.

**SECTION 5. "Lot"** shall mean and refer to any numbered lot shown upon the recorded plat of any section of ELLIOTT PLACE.

**SECTION 6. "Map and Plat"** shall be used interchangeably to mean and refer to the map of ELLIOTT PLACE, or any addition thereto recorded in the NHCR.

**SECTION 7. "Member"** shall mean and refer to every person or entity who has a membership in the Association.

**SECTION 8. "Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot including the Declarant if its owns any Lots and interest merely as security for the performance of an obligation.

**SECTION 9. "Properties"** shall mean and refer to the "Existing Property" described in Article II, Section 1 hereof, and such additions thereto as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF ELLIOTT PLACE HOA, INC.

**SECTION 1. Existing Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association is located in New Hanover County, North Carolina, and is more particularly described in the preambles of this Declaration and shown on the Map.

#### **SECTION 2. Additions to Existing Property.**

(a) Additional land which is contiguous to the Existing Property may be brought within the scheme of this Declaration and the jurisdiction of the Association by Declarant, in future stages of development, without the consent of the Association or its Members.

(b) The additions authorized under subsection (a) above shall be made by filing Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the additional properties in the New Hanover County, North Carolina, Public Registry which shall extend the scheme of this Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to the benefits, properties and thereby subject such additions to the benefits, agreements restrictions and obligations set forth herein, including, but not limited to, assessments as herein determined.

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**ARTICLE III**  
**PROPERTY RIGHTS**

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**SECTION 1. Ownership of Common Areas.** After the completion of all improvements to the Common Areas, Declarant shall convey the Common Areas to the Association. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Areas (including the Common Area streets and roads) shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

**SECTION 2. Owner's Rights to Use and Enjoy Common Areas.** Each Owner shall have a right and easement to use and enjoy the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and privileges 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 the published rules and regulations;

(b) The right of the Association to mortgage or convey the Common Areas, or to dedicate or transfer all or part of the Common Area, if any, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective until approved by vote of at least two-thirds (2/3) of the members, excluding the developer, as indicated in an instrument executed by the corporation and recorded in the New Hanover County Registry.

(c) The right of the Association to impose regulations for the use and enjoyment of the Common Area, if any, and improvements thereon, which regulations may further restrict the use of the Common Area.

**SECTION 3. Owner's Easements for Ingress and Egress.** Every Lot shall be conveyed with a perpetual, non-exclusive right to use any roadway which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot.

**SECTION 4. Delegation of Use.** Any owner may delegate, in accordance with the Bylaws and such rules and regulations as may be established by the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his guests, his tenants, or contract purchasers who reside on his Lot.

**ARTICLE IV**  
**EASEMENTS**

**SECTION 1.** Perpetual, alienable easements are reserved as necessary in the Properties and the Common Areas thereof for the installation and maintenance of underground utilities and drainage facilities.

**SECTION 2.** Declarant hereby reserves unto itself, its successors and assigns, perpetual, alienable easements over all streets and common areas as necessary to provide access, ingress and egress, to the property adjoining **ELLIOTT PLACE** to the North or South, in the event the Declarant, its successors or assigns should acquire or develop any property adjoining **ELLIOTT PLACE** and annex the same to this development as herein provided.

**SECTION 3.** Declarant also reserves on behalf of the Association, the right, but not the obligation, to construct an entrance way structure and fence extending from the entrance to the subdivision southwardly along the perimeter of the subdivision. For this purpose, if an entranceway structure and/or fence is constructed, the same shall be maintained by the Association, as a common expense, and there is hereby created a perpetual easement in favor of the Association along lots 1, 2, 3 and 4, as shown on the recorded map of the subdivision for the maintenance and repair of such facilities.

**SECTION 4.** 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 and common area in the performance of their duties.

**SECTION 5.** In case of any emergency originating in or threatening any Lot or the common areas, regardless whether any Lot Owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners, and such right of entry shall be immediate.

**SECTION 6.** The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right, on, over and under the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each lot and such other areas as are shown on the plat of the Properties recorded or to be recorded in the office of the Register of Deeds of New Hanover County; provided further, that the Declarant may cut drainways for surface water whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. It further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or on any residential lot now or subsequently designated for such use or to locate same upon any lot with the permission of the owner of such lot. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

**SECTION 7.** The Declarant reserves unto itself, its successors and assigns, the right to subject the real property in this Subdivision to a contract with Carolina Power and Light Company for the installation of street lighting, which contract requires a continuing monthly payment to Carolina Power and Light Company by each residential customer for street lighting service.

**SECTION 8.** All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its heirs 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 this Declaration.

## ARTICLE V

**MEMBERSHIP, VOTING RIGHTS AND CONTROL  
OF THE ASSOCIATION**

**SECTION 1. Membership.** Every Owner of a lot in the Properties shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

**SECTION 2. Number of Votes.** Each member shall be entitled to one vote in the affairs of the Association for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

**SECTION 3. Management of the affairs of the Association** shall be the right and responsibility of its Board of Directors in accordance with the Declaration and the By-Laws; **PROVIDED, HOWEVER,** that all of the powers and duties of the Board of Directors may be exercised by the Declarant until such time as 90% of the lots in Elliott Place and 90% of the undeveloped property in adjoining sections owned by Declarant have been sold and conveyed by the Declarant to purchasers or until December 31, 2001, whichever occurs first. Management and control may be transferred to the lot owners at any time but in all events, no later than 120 days after the happening of the earlier of the above events.

## ARTICLE VI

**COVENANT FOR MAINTENANCE 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 therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided;
- (c) Insurance assessments; and
- (d) To the appropriate governing taxing authority, a pro rata share of ad valorem taxes levied against the Common Area, if any.

The annual, special and insurance assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**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 improvement and maintenance of all easements, utilities and the Common Areas. The funds arising from said assessments or charges, may be used for any or all of the following purposes:

(a) to maintain all roads constructed within the Common Areas to the standard of maintenance which would be required by the State of North Carolina before it would accept such roads for maintenance; provided that this provision does not require that the width of the road rights-of-way be the width required as set forth before such roads would be accepted by the State of North Carolina for maintenance;

(b) to maintain all access easements, and footbridges in the Common Areas in an easily passable condition, free from fallen trees, undergrowth, and other obstructions; and to keep all dead, diseased or decaying trees, shrubs and bushes removed from such areas and to replace such items with new trees, shrubs and bushes;

(c) to maintain all drainage easements in the Common Areas and to keep the drainage easements free of pollution and natural debris.

(d) to keep all amenities in the Common Areas clean and free from debris and to maintain all amenities in an orderly condition, and to maintain the landscaping therein in accordance with the highest standards for private residential community including any necessary removal and replacement of landscaping;

(e) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals;

(f) to pay all ad valorem taxes levied against the Common Areas and any property owned by the Association;

(g) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the Bylaws;

(h) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;

(i) to accumulate and subsequently maintain a contingency reserve equal to 10% of the sum of the amounts described in subsections (a) through (j) above in order to fund unanticipated expenses of the Association;

(j) to enforce these restrictions; and

(k) to do any other things necessary or desirable in the opinion of the Association to keep the property in neat and good order and to provide for the health, welfare and safety of Owners and residents of ELLIOTT PLACE.

**SECTION 3. Annual Assessments.** Annual assessments shall be in an amount to be fixed from year to year by the Board of Directors which may establish different rates from year to year as it may deem necessary for the purposes set forth in Section 2. above. The amount of the annual assessment against each lot for any given year shall be fixed at least 30 days in advance of the annual assessment period; provided, however, that the first annual assessment shall be set prior to the conveyance of the first lot to an Owner and written notice to the Owners to be subjected thereto shall be delivered to the Owners at or prior to the closing of their lots. Written notice of each annual assessment thereafter shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership, except as herein provided.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum; provided that the Board of Directors may increase the amount of the annual assessment to a maximum of Seven Hundred Twenty (\$720.00) per lot notwithstanding the provisions of subparagraphs A and B above, and thereafter the limitations set forth in said subparagraph shall apply to any annual increase.

**SECTION 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto and the roads or streets serving the development, provided that any such assessment shall have the assent of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

**SECTION 5. Assessment Rate.** Both annual and special assessments must be fixed at a uniform rate for all Lots.

**SECTION 6. 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 and 4 shall be sent to all members not less than thirty (30) 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 sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. The required quorum at the 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 Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance to the Association of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

**SECTION 8. Effect Of Nonpayment Of Assessments And Remedies Of The Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been established by the Board of Directors of the Association to defray the costs arising because of late payments. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

**SECTION 9. Subordination Of The Lien To Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or

transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became 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.

## ARTICLE VII

### DESIGN AND ARCHITECTURAL CONTROL

**SECTION 1. Developer's Rights.** All duties and responsibilities conferred upon the Architectural Control Committee (the "Committee") by this Declaration or the By-laws of the Association shall be exercised and performed by the Declarant or its Designee, so long as Declarant shall own any lot (not including any lot used or occupied by Declarant as his residence) in the Properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

**SECTION 2. Definitions.** For purposes of this Article VII, the following terms shall have the following meanings unless the context clearly requires a different meaning:

(a) "accessory building" means every detached garage, carport, tool shed, storage or utility building, wellhouse, guest quarters, detached servants' quarters or other similar building constructed on a Lot which is not a dwelling;

(b) "buildings" means accessory buildings and dwellings;

(c) "dwelling" means a building constructed for single-family residential use but excluding servants' quarters and guest quarters; and

(d) "improvements" or "structures" mean buildings and all walls, fences, bulkheads, decks, patios, planters, terraces, mail receptacles, swimming pools, tennis courts or anything else constructed or placed on a Lot.

### **SECTION 3. General Guidelines.**

(a) **Reservations:** The Declarant reserves the right to change, alter, or redesignate: roads, utility and drainage facilities, plus such other present and proposed amenities or facilities as may, in the sole judgement of the Declarant be necessary or desirable.

(b) **Variances:** The Committee shall be empowered to allow adjustments of the conditions and restrictions stated herein in order to overcome practical difficulties and prevent unnecessary hardships in the application of the regulations contained herein, provided, however, that such is done in conformity to the intent and purposes hereof, and provided, also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood. Variances and adjustments of height, size, and setback requirements may be granted hereunder.

(c) **Development Concept:** It is the express intention of the Declarant to maintain in this residential community a uniform plan of development that will blend with and not detract from the natural environment with respect to design, type and general appearance of the structures to be erected on the lots. Property owners are encouraged to have their architects contact the Committee prior to any costly design work for conceptual guidelines pertaining to the residential community.

(d) **Approval of Plans:** The proposed Site and Grading Plans; Building Plans and Specifications; Exterior Colors and Finishes; and Construction Schedule must be approved by the Committee. One (1) copy of all plans and related data shall be furnished to the Committee for its records. Until all of the above listed prerequisite plans are approved no improvements or structures shall be erected, placed, or altered on any residential lot. The material used, as well as the design, shall be subject to the prior written approval of the Committee. Neither the Declarant nor the Architectural Control Committee shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

The Site and Grading Plans should show the proposed location of each building, structure, driveway, parking area, other improvements, and proposed alterations to the physical characteristics of the site. The grade, elevation, or physical characteristics (including but not limited to slopes and tree growth) of any such lot shall not be altered in any way whatsoever without prior written approval of the Committee based upon a Site or Grading Plan.

The Committee encourages the planting of flowering shrubs and trees; however, all tree removal or planting of trees, bushes, shrubs, grasses, or other vegetation whatever, shall be based upon a Site Plan, Landscaping Plan, or Planting Plan which has been submitted to and received written approval from the Committee.

Upon the written request of a lot owner for approval of plans, the Committee shall have ten days within which to approve or disapprove plans. In the event of failure to approve or disapprove within 10 days, such approval will not be required provided the design of proposed building is in harmony with the existing structures in this area. If the Committee approves the construction of such improvements, it shall issue a certificate evidencing such approval.

Refusal or approval of any such plans or specifications may be based by the Committee upon grounds, including purely aesthetic and environmental considerations, that in the sole and absolute discretion of the Committee shall seem sufficient.

Without the prior written consent of the Committee, no changes or deviations in or from such plans or specification as approved shall be made. No alterations in the exterior appearance of any building or structure, or in the grade, elevation, physical characteristics of any lot shall be made without like approval by the Committee.

Upon completion of approved construction, the Committee shall inspect the construction to insure that the approved Plans and samples were complied with by the Owner. No structure may be occupied or used until the issuance by the Committee of a certificate of compliance. The certificate of compliance shall be issued by the Committee without fee; provided, however, that in the event that the Committee's first inspection of the construction reveals deviations or deficiencies from the approved Plans and samples, the Committee may charge a fee of \$50 for every subsequent inspection which is necessary to insure compliance with the approved Plans and samples. Any such fee must be paid before the issuance of the compliance certificate.

If the finished building or other structure does not comply with the submitted plans and specifications, the Committee retains the right to make the necessary changes at owner's expense, and the further right to file under the North Carolina lien laws notice of liens for any costs incurred.

(e) No house plans will be approved unless the proposed house shall have a minimum of 2600 square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas; provided, further, that shed type porches, even though attached to the house are specifically excluded from the definition of the aforesaid term "enclosed dwelling area".

**SECTION 4. Site Improvements.**

(a) Building Setback Guidelines and Requirements: The front building setback line shall be a minimum of forty (40) feet from the front of each lot (ie, the boundary line which runs with the margin of the right-of-way of the road on which the Lot fronts). The side building setback line shall be a minimum of twenty (20) feet from each side of each lot. The rear building setback line shall be thirty (30) feet from the rear of each lot or such other set back line as may be required or approved by applicable governmental authority.

Since the establishment of standard inflexible building setback lines for location of houses on lots tends to force construction of houses both directly behind and directly to the side of other homes with detrimental effects on privacy, view of the water, preservation of land contour, important trees, and other vegetation, ecological and related considerations, variances for these specific setback guidelines are established by these Restrictions in Section 3(b) hereinabove. In order to assure, however, that the foregoing considerations are given maximum effect, the Committee reserves the right to control and approve absolutely the site and location of any house or dwelling or other structure upon any lot.

(b) Use of Fill and Changes in Elevation: No changes in elevations of the land shall be made on any lot, nor any fill placed within the common easement areas or within the regulatory setback lines; nor shall any lot be increased in size by filling in the waters on which it abuts without prior written approval of the Committee plus state and federal agencies.

(c) Adequate Drainage Requirement: It shall be the obligation of the Lot Owner to provide adequate drainage of his or her lot to the end that the property or properties adjacent to said lot shall not be subjected to other than the natural flow of drainage presently existing. It shall also be the obligation of the lot owners to provide, install and maintain adequate culvert or drainage pipe beneath his or her driveway as it crosses the street right-of-way in order that the natural flow of drainage will not at any time be blocked along the street right-of-way. The size of such drainage pipe shall be determined by the Committee.

(d) Off Street Parking: Each lot owner shall provide space on his lot for off street guest parking for not less than three (3) passenger automobiles prior to the occupancy of any single family dwelling constructed on said lot. Said parking areas and driveways thereto shall be in accordance with reasonable standards and shall be constructed of concrete, brick, asphalt, or any other material approved by the Committee in writing as provided for in Section 3(d) hereinabove. No parking on any street in the subdivision will be permitted at any time.

(e) Underground Utility Sewer Requirements: All electric transmission or service lines within the perimeter bounds of any lot or common easement shall be installed beneath the surface of the ground.

(f) Driveway Location: The Committee has the right to decide in its sole and absolute discretion the precise site and location of any driveway; provided, however, that the owner shall be given the opportunity to recommend a specific site for such improvements.

(g) **Built Upon Area:** No more than 13,000 square feet of any lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials. The common area shall not have more than 4,590 square feet of structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials. This covenant is intended to insure continued compliance with the current stormwater runoff rules adopted by the State of North Carolina and therefore benefits may be enforced by the State of North Carolina.

**SECTION 5. Structural Improvements:**

(a) **Residential Use:** No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any residential lot other than a detached single family dwelling. However, a garage or small accessory building (which may include a poolhouse, servants' quarters, or guest facilities) is permitted provided the use of such dwelling or accessory building does not in the opinion of the Committee overcrowd the site, and provided, further, that such buildings are not used for the activities normally conducted as a business. Such accessory building may not be construed prior to the construction of the main building. No building or other structure, or part thereof, at any time situated on such residential lots shall be used as a professional office, charitable or religious institution, business or manufacturing purpose, or for any use whatsoever other than residential and dwelling purposes as aforesaid; and no duplex residence or apartment house shall be erected or placed on or allowed to occupy such residential lots and no building shall be altered or converted into a duplex residence or apartment unit thereon.

(b) **Building Materials:** All structures constructed or placed on any lot shall be built of substantially new materials. Any structure erected on the lots shall be of wood, stone, brick, veneer, tiles, or concrete and stucco. Any accessory buildings or structures shall be constructed of the same material as the main dwelling, or from other suitable material specifically approved in writing by the Committee.

(c) **Square Footage of Enclosed Dwelling Area:** No house plans will be approved unless the proposed dwelling shall contain a minimum of 2600 square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas; provided, further, that shed type porches, even though attached to the house are specifically excluded from the definition of the aforesaid term "enclosed dwelling area". Provided, however, dwellings with more than one story shall have a minimum of 1800 square feet on the ground floor.

(d) **Enclosed Garage:** All homes shall be required to have an enclosed parking garage for at least 2 cars, serving the main house structure. The opening of said enclosed parking facility or garage shall not be visible from the front of the lot nor be visible from any common easement area servicing the premises.

(e) **Screening or Refuse Receptacles:** Each lot owner shall provide receptacles for ashes, trash, rubbish, or garbage on his lot in a screened area not generally visible from the road, other lots, or from common easement areas; or provide underground receptacles (or similar facility) in accordance with reasonable standards established by the Committee.

(f) **Mailboxes and Newspaper Receptacles:** No mail box, paper box, or other receptacle of any purpose shall be erected or located in the road right-of-way or on any building lot unless and until the size, location, design and type of material, for said box or receptacle shall have been approved by the Committee in accordance with Section 3(d) herein.

(g) Irrigation System: An irrigation system approved by the Committee suitable to provide an adequate water supply for all landscaping on each lot shall be installed and maintained by each lot owner.

(h) Fuel Tanks and Similar Storage Receptacles: No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within an accessory building with a screened area (so as not to be generally visible from the road, adjoining lots, or common areas) or buried underground; provided, however, that nothing contained herein shall prevent the Committee from erecting, placing or permitting the placing of tanks, or other apparatus, on the property for uses related to the provision of utility or other service.

(i) Clotheslines or Drying Yards: Clotheslines or drying yards shall be located as not to be visible from the street, common easement areas serving the premises, or from the waterfront.

(j) Fences and Walls: No fence, bulkhead, or wall of any kind shall be erected or located on any building lot or common area unless and until the plans and specifications showing the nature, shape, height, materials, and location for said fence or wall shall have been approved by the Committee in accordance with Section 3(d) herein. Provided however, that no fence or wall of any kind shall be erected nearer the front lot line of a lot than the front face of the dwelling located on such lot. This paragraph shall not apply to the subdivision entrance way or boundary fence if erected by Declarant or the Association.

(k) Sewage Disposal: Prior to the occupancy of a residence on any lot, proper and suitable provision shall be made for the disposal of sewage by connection to the New Hanover County Sewer System, if available, or, if not available, such disposal shall be made by means of a septic tank or tanks constructed on such lot for the disposal of all sewage, and all sewage shall be emptied or discharged into such main or tanks. No sewage shall be emptied or discharged into the marsh, river or shorelines thereof. No sewage disposal system shall be permitted on any lot, nor may any sewage disposal system be used unless such system is designed, located, constructed and maintained in accordance with the requirements, standards and recommendations of the appropriate public health authority. Approval of such system shall be obtained from such authority after completion of said system and prior to the use of said system. All lots shall be connected to the New Hanover County Sewer System at the lot owner's expense, as soon as such sewer service becomes available.

(l) Water Service: Until such time as water supply service becomes available through a public or community water system, each individual lot owner shall be responsible to provide potable water for each lot through the installation and maintenance of a private well located on such lot and designed, located, approved, and installed in accordance with the applicable public health authority rules and regulations.

## ARTICLE VIII

### USE RESTRICTIONS

**SECTION 1. Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof. It shall be the responsibility of each lot owner to prevent the development

of any unclean, unsightly or unkept condition of buildings or grounds on such lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

**SECTION 2. Lot Maintenance.** In the event that any Lot Owner shall fail or refuse to keep such premises free from weeds, underbrush or refuse piles, or unsightly growth or objects, then, after thirty days notice from the architectural control committee, the Association or its designee shall enter upon such lands and remove the same at the expense of the Owner, and such entrance shall not be deemed a trespass, and in the event of such removal a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Lot, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens.

**SECTION 3. Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be placed, stored, used as a residence either temporarily or permanently, or permitted to remain on any lot or the common area, at any time, without the written consent of the Association or its designee. Provided, however, that this shall not prevent the Declarant, its designees or assigns from maintaining a construction trailer or office on any lot or in the common area until the construction of dwellings on all lots in the project is completed.

**SECTION 4. Recreational Vehicles.** No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle, shall be permitted to remain on any lot or on any street in the properties at any time, without the written consent of the Association or its designee.

**SECTION 5. Animals.** No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed or under the control of their owner and do not become a nuisance to the neighborhood.

**SECTION 6. TV Satellite Dishes And Outside Antennas.** No TV satellite signal receiving dishes will be permitted on any lot and no outside radio or television antennas shall be erected on any lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its Architectural Control Committee.

**SECTION 7. Window Coverings.** All drapes, curtains or other similar materials hung at windows, or in any manner as to be visible from the outside, of any building erected upon any lot shall be of a white or neutral background material.

**SECTION 8. Exterior Lights.** All light bulbs or other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white or non-frost lights or bulbs.

**SECTION 9. Junk Vehicles And Tractor Trailers.** No inoperable vehicle or vehicle without current registration and insurance, and no tractor-trailers will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

**SECTION 10. Vehicle Repairs.** No repairs to any vehicle may be made in driveways, only in garages and not visible from the street. No inoperable or immobile vehicle, whether or not containing current registrations, shall be permitted to remain in any driveway or on any street.

**SECTION 11. Signs.** No "For Sale" signs or any other signs shall be permitted on any Lot or in the common areas without permission of the Board of Directors, except that a sign conforming to New Hanover County Sign Ordinance may be displayed by Declarant on any unsold Lot so long as Declarant owns any Lot in the Properties.

**SECTION 12. Alterations.** No person shall undertake, cause, or allow any alteration of construction in or upon any portion of the Common Areas except at the direction or with the express written consent of the Association.

**SECTION 13. Subdividing.** No lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board. However, the Declarant hereby expressly reserves unto itself, its successors and assigns, the right to replat any two (2) or more lots shown on the plat of any subdivision of the Property in order to create one or more modified lots; to further subdivide tracts shown on any such subdivision plat into two or more lots; to recombine one or more tracts or lots or a tract and lots to create a larger tract; to eliminate from this Declaration lots that are not otherwise buildable or are needed for access to any area of the Property or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such replatted lots or tracts suitable and fit as a building site or access area or roadway, said steps to include, but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted lots.

## ARTICLE IX

### HABITABILITY PROVISIONS

#### SECTION 1. Maintenance Standards.

(a) Preservation of Well-kept Buildings and Grounds: Each lot owner shall prevent the development of any unclean, unsightly or unkept conditions of any buildings or grounds on his lot which would tend to substantially decrease the beauty of any of the property or diminish or destroy the enjoyment of other lots by the owners thereof. This restriction includes, but is not limited to, a prohibition against storage on any lot of anything unclean, unsightly or unkept.

(b) Pre-Construction Maintenance of Lots: Prior to commencement of the erection of any residence on each lot, the owner of such lot, shall from time to time cut, or cause to be cut, and keep cut or cause to be kept cut, all weeds and brush on such lot and shall remove any resulting debris, to comply with Section 1.a. hereof. Should such owner fail to do so the Committee may do so, and the reasonable expenses thereof shall be paid by such owner to the Committee within thirty (30) days thereafter. In the event of a failure of such owner to pay the Committee as above provided, the Committee shall have the right to file a notice of lien in the office of the Clerk of the Superior Court of New Hanover County, North Carolina, and from and after the filing of such notice of lien, the Committee shall have a lien on such lot for the payment of such sum, with interest at the rate of 12% per annum, all in like manner as if the Committee had performed such work at the instance and request of such owner. Any such lien, however, shall be subordinate and inferior to any mortgage then or thereafter encumbering such lot.

(c) Reconstruction. Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must with reasonable promptness be rebuilt or all debris from such destruction removed and the Lot restored to the condition it was in prior to commencement of construction of such building. Any such reconstruction must be commenced within six (6) months from the date of

such destruction. All ~~debris~~ <sup>1672</sup> must be ~~removed~~ <sup>1087d</sup> and the Lot restored to its prior condition within three (3) months of such destruction.

(d) Vegetable Gardens: Vegetable gardens may be maintained by owners of lots in the subdivision provided said gardens are located to the rear of the dwelling and located on the lot within a screened area so as not to be generally visible from adjoining lots or common easement areas.

(e) Leasing: No building on any Lot may be leased except in accordance with rules and regulations promulgated by the Association.

(f) Interval Ownership: No Owner may lease, deed, sell, convey, or otherwise transfer his Lot under any time-sharing or interval ownership agreement.

(g) Hazardous Activities: Nothing shall be done or kept on any Lot or in the Common Area which shall increase the rate of insurance on the Common Area or any other Lot without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept on his Lot or in the Common Area which would result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law.

(h) Trash and Garbage Collection: All trash and garbage collection services shall be provided by a single company to be selected or approved by the Declarant or the Association, as applicable. All charges for such service shall be paid for by individual lot owners for their respective lots.

## ARTICLE X

### COMMON AREAS AND COMMON EASEMENTS

**SECTION 1. Easements Reserved by Declarant.** Declarant reserves easements for the installation and maintenance of driveways, walkways, parking areas, water lines, telephone and electric power lines, cable television lines, sanitary sewer and storm drainage facilities, pumping and lift stations, drainage ditches and for other utility installations over the Properties as provided in Article III, Section 2(d) of this Declaration. Each Owner, by his acceptance of a deed to a Lot, and the Association by its acceptance of a deed to the Common Areas, acknowledges such reservation and the right of Declarant to transfer such easements to the Association or to such utility companies as Declarant may chose. The easements reserved by the Declarant include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development.

The easements reserved by the Declarant are shown on the Maps. Declarant further reserves the right to locate wells, pumping stations, lift stations and tanks within any Common Areas or any residential Lot designated for such use on any Map permission of the Owner of such adjacent Lot.

Within any such easement, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewerage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition, the Declarant and the Association shall have the continuing right and easement to maintain all sewer and water lines located on the Lots, including the right to go into dwellings and disturb the structure and floors thereof in order to maintain those lines located within or under said dwelling.