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MARY SUE OOTS
REGISTER OF DEEDS
NEW HANOVER CO. NC

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STATE OF NORTH CAROLINA

DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
OF

COUNTY OF NEW HANOVER

EMERALD COVE TOWNHOUSES, PHASE 2

000009

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS,
made this the 8th day of January, 1997, by SANCO OF WILMINGTON
SERVICE CORPORATION, herein referred to as "Developer";

000144

WITNESSETH:

Whereas, Developer is the developer and owner of certain
property located in Harnett Township, New Hanover County, North
Carolina, as hereinafter described in Exhibit A hereto attached and
incorporated herein by reference.

Now, therefore, Developer hereby declares that all of the
property hereinafter described and any other property which shall
be specifically made subject to this Declaration 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.

1. **SCOPE OF DECLARATION** This Declaration of Covenants,
Conditions, and Restrictions shall apply to all lots in **EMERALD
COVE TOWNHOUSES, PHASE 2**, as shown upon a map recorded in Map Book
36 at Page 241 of the New Hanover County Registry.

2. **LOT USE** No lot located within the subdivision shall ever be
used for business, manufacturing, commercial, or professional
purposes, it being intended that all lots shall be used for
residential purposes only; provided, however, that the Developer
may convert any lots or any other property subject to these
restrictions to use as a roadway. Developer reserves the right to
construct apartments, duplexes, triplexes, or any other type of
multi-family residential development as allowed by law.

3. **SETBACK REQUIREMENTS** Since the establishment of standard
inflexible building setback lines for the location of units on lots
tends to force construction of units directly to the side of other
units with detrimental effects on privacy, views, preservation of

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important trees and other vegetation, ecological, and related considerations, no specific setback lines are established by these restrictions. In order to assure, however, that the foregoing considerations are given maximum effect, the Developer reserves the right to control and approve absolutely the site and location of any structure upon any lot.

4. **TEMPORARY STRUCTURES AND OTHER STRUCTURES** Except as herein provided, no structure of a temporary character, trailer, basement, tent, shack, garage apartment, barn, or other outbuilding shall be erected on any lot or used as a residence thereon. This restriction shall not be applicable to a temporary construction trailer used by a builder while a residence is being built on the lot, so long as such trailer is not used as a residence or living quarters.

A storage building, not to exceed eight feet by ten feet in size, and one story in height, may be constructed directly behind the main residence on any lot, and an easement is herein granted over and upon the common areas adjacent to such residence for the placement of such storage building. Such storage building must be of the same design, materials, and color as the main residence adjacent to the building, and the design, construction materials, and color of such building must first be approved by the Developer or the Emerald Cove Homeowners' Association, or their authorized agent. No part of such storage building may be placed in any side yard or front yard, and may not be visible from the front of the main residence.

5. **BUILDING DESIGN** The design of all buildings erected or moved onto any lot shall be subject to the approval of the Developer, or of some person or persons designated by the Developer to pass upon said designs. Upon written request of a lot owner for approval of plans, the Developer or its duly authorized agent shall have ten days within which to approve or disapprove such plans. In the event of failure to approve or disapprove such plans within ten days, such approval will not be required; but the design of the proposed building must be in harmony with the existing structures in this subdivision.

6. **BUILDING CONSTRUCTION** All dwellings must be of brick veneer and/or of vinyl siding. No exterior colors may be changed without the written permission of the Developers, or of such person or entity as shall be authorized by the Developers to approve a change of the exterior colors. It is the expressed intention of the Developers to maintain a uniform plan of development with respect to design, size, type, cost, and general appearance of all structures upon the lots in the subdivision.

7. (a) **MAINTENANCE OF LOT, NUISANCES** It shall be the duty of each homeowner to keep his or her property in a neat and tidy condition, well maintained, with no unsightly debris or litter or the like in view. No homeowner shall place on his lot, or cause or allow to be placed on his lot, any kind of statue, sculpture, "object d'art", yard decoration, artificial wildlife, or any other similar type of object. No noxious or offensive trade or activity shall be carried on or maintained on any lot, nor on any street within the subdivision, nor shall any activity be conducted on any lot or on any street within the subdivision which constitutes an annoyance or nuisance to the neighborhood.

(b) **PARKING** No more than three motor vehicles shall be parked on any lot within the subdivision nor on the street in front of the lot. No motor vehicles may be parked on any lawns or other common areas other than in parking spaces specifically set aside within the subdivision, and no motor vehicle may be parked in such a manner as to block any street or other roadway.

(c) **INOPERABLE CARS/TRACTOR TRAILERS/MAINTENANCE WORK** Junk cars, blocked-up cars, inoperative cars or other inoperative vehicles or machinery, and similar eyesores shall not be placed on or be permitted to remain on any lot, street, or other common area, and no tractor-trailers will be permitted on any lot, street, or common area within the subdivision. No mechanical or maintenance work shall be performed on cars, trucks, or other vehicles, machinery or equipment in the front or side yards of any home, or in the street in front of any home, or on any other common area within the subdivision.

(d) **OIL AND CHEMICAL SPILLS** Any oil or chemical spill or drip onto driveways, parking areas, or common areas must be removed or cleaned up by the owner of the motor vehicle causing such spill or drip, or by such lot owner or tenant who caused the spill or drip, or by such lot owner or tenant of whom such a vehicle owner was a guest or invitee. In the event that such spill or drip is not removed by the lot owner or the tenant of such owner, the Declarant or the Association shall cause such spill or drip to be cleaned up and the cost of such cleanup shall be assessed against the lot owned by the person or leased by the tenant causing such spill or drip.

(e) **LAWN FURNITURE, TRASH CANS, TOYS** All lawn furniture, toys, sports equipment, and similar equipment, furnishings, and personal property shall not be stored or be allowed to remain in the yard areas, common areas, limited common areas, and streets. All such property, except when in use, must be stored inside the fenced areas provided on each lot.

(f) **TRASH CONTAINERS** All trash cans and containers shall be stored inside the fenced areas provided on each lot except on trash pickup days.

(g) **BOATS** No boats shall be placed or stored on any lot, common area, limited common area, or street within the subdivision except in bona fide emergencies such as hurricanes, storms, or other disasters, and then only for a three-day period. No lot owner or occupant may stack such three-day storage periods together by removing such stored boat for a short period of time followed by another three-day storage period. During such three-day storage period, no maintenance, repair, or other work may be conducted on such boat.

8. **ANIMALS** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot in the subdivision, except that dogs, cats, or other household pets may be kept for the purpose of providing companionship for the private family. Animals are not to be raised, bred, or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of any lot so that no person shall quarter on said lots cows, horses, bees, hogs, sheep, goats, guinea fowls, chicks, geese, rabbits, chickens, turkeys, skunks, snakes, or any other animal that may interfere with the quietude, health, or safety of the community. No more than four (4) household pets will be permitted on any lot. Pets must be restrained or confined inside a fenced area or within the house. It is the pet owner's responsibility to keep their lot clean and free of pet debris. All animals must be properly tagged for identification, and further, must be kept on a leash unless such animal is confined within a fenced area. When such animals are not confined within a fenced area of the owner's yard, it is the pet owner's responsibility to remove any pet debris left by their pet upon any of the lots or common areas within the subdivision. Any costs incurred by the other lot owners or the Association as hereinafter set out, for the removal of pet debris left by the pet of a lot owner upon any lot or upon any part of the common areas shall be a charge against the pet owner's lot and shall be assessed against that individual lot owner as a special assessment and subject to the regulations regarding liens and assessments as hereinafter set forth.

9. **FENCED AREAS AND LIMITED COMMON AREAS** Developer may construct a fenced area adjacent to some of the houses or units for the use of the owner of that house or unit. Depending on the final architectural layout of the houses and/or units as constructed, some of these fenced areas may be located within the boundaries of the lot conveyed to the adjacent house or unit owner, while some of the fenced areas may be located on common areas owned by the Association as hereinafter described. In the event that such fenced areas shall be constructed on common areas, such areas shall become

"Limited Common Areas" which shall mean such common areas, although owned by the Association, shall be reserved solely for the use of the owner of the adjacent unit or house, to the exclusion of the owners of the other units or houses within the subdivision. The fences surrounding these areas shall be maintained by the Association as hereinafter described, however, maintenance of the areas within the fences shall be the responsibility of the owner of the adjacent unit or house.

10. **OTHER FENCING** Developer may construct additional fencing on the lots subject hereto, or on any of the common areas, and such fencing shall be maintained by the Owners' Association.

11. **UTILITY EASEMENTS** The Developer reserves for itself, its successors, and assigns, an easement in and right at any time in the future to grant a right of way under, over, and along the side, rear, and front property lines of each and every lot in the Subdivision, for the installation and maintenance of poles, lines, conduits, pipes, and other equipment necessary to or useful for furnishing electric, power, gas, telephone service, cable television, or other utilities including water and sewer service. Also, easements for drainage and utilities are reserved as shown on the recorded plat of the Subdivision. Developer reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing improvements.

12. **LOT GRADING** The general grading, slope, and drainage plan of a lot may not be altered without the express written approval of the New Hanover County authorities and Developer, and other appropriate agencies having authority to grant such approval.

13. **EXTERIOR MAINTENANCE** Each lot owner shall maintain the exterior of all buildings, walls, and other improvements on his lot in good condition and repair, and shall replace worn and rotten parts and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, or other exterior portions of the improvements to deteriorate in an unattractive manner. The maintenance referenced herein shall be supervised and regulated by the EMERALD COVE OWNERS ASSOCIATION, INC. In the event that the lot owner shall fail to comply with these maintenance requirements, the Association is hereby expressly authorized, and the lot owner hereby expressly agrees, that said maintenance and/or repair may be effected by the said Association with the expenses incurred for the same to be assessed against the individual lot owner as a special assessment and subject to the regulations regarding liens and assessments as herein set forth.

The owners of each house or unit shall be responsible for the repair and replacement of the roof on that owners' house or unit, and the Association shall not be required to provide such repair or replacement. In the event that there are two or more units served by a single roof structure, the owners of the units served by such single roof structure shall be jointly responsible for such roof repair or replacement. If the areas of the roof serving two or more units are not equal in size for each unit thereby served, then the costs of the roof repair or replacement shall be divided pro rata based on the actual roof area serving each unit in relation to the roof area of the entire structure.

14. LANDSCAPING MAINTENANCE All front, side, and backyard areas not otherwise fenced in shall be maintained by the EMERALD COVE OWNERS ASSOCIATION, INC. No landscaping other than that provided by the Developer and/or the Association shall be allowed.

15. DIRECTIONAL SIGNS, "FOR SALE SIGNS", "FOR RENT SIGNS", OTHER SIGNS The Developer reserves for itself, its successors and assigns, a temporary easement to place directional signs upon any of the lots in said Subdivision, in order to assist prospective purchasers in locating other lots or houses which are for sale in the Subdivision, or in other future subdivisions coming out of adjoining lands. The right to place and maintain such signs shall terminate five (5) years from the date of this instrument.

Except for signs placed by the Developer, or with the express written permission of the Developer or the Association (after control of the Association is turned over to the owners pursuant to this Declaration), no "For Sale" or "For Rent" signs, or any other sign shall be allowed on any lots, or in or on any houses, or on any of the common areas or limited common areas within the subdivision.

16. STREET LIGHTING The Developer reserves the right to subject the real property in this Subdivision to a contract with Carolina Power & Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power & Light Company by the owner of each lot.

17. MAILBOXES AND NEWSPAPER BOXES Each lot in the Subdivision shall have one (1) mailbox and one (1) newspaper box, and these boxes shall be maintained in a cluster box arrangement, which will be provided by the Developer. The maintenance of such boxes shall be the responsibility of the Owners' Association as hereinafter provided.

18. **WINDOW COVERINGS** To insure consistency and attractiveness within the Subdivision, white mini-blinds must be installed in all of the windows of all homes within ten (10) days of occupancy, such that the total view of all windows from the outside of the house is white mini-blinds. Window treatments inside of the house and not visible from the outside of the house or unit are in the discretion of the homeowner.

19. **EXTERIOR ANTENNAE, SATELLITE DISHES, ETC.** Television antennas, television or radio satellite dishes, and radio antennas may be erected on each lot in the subdivision only with specific, prior written approval of the Developer. Developer must approve the location, design, and specifications of such apparatus, and such approval may be revoked in the event that the location, design, or specifications are changed after such approval by the Developer. Developer may transfer such approval rights and duties to **EMERALD COVE OWNERS ASSOCIATION, INC.**

20. **CLOTHESLINES** The outdoor drying or airing of clothes and the erection of outdoor clotheslines or similar devices on any lot in the Subdivision shall be subject to the approval of the Developer, and then only when thoroughly concealed or screened from public view within a fenced yard area.

21. **FUEL TANKS AND STORAGE RECEPTACLES** No fuel tanks or similar storage receptacles located on any lot may be exposed to public view. Any such receptacles must be installed only within a fenced area adjacent to the house or unit within the Subdivision.

22. WATER, SEWAGE AND IRRIGATION SYSTEMS

(a) Water service shall be provided by wells located within the development and such wells are to be designated as "Common Areas". The operation and maintenance of the wells shall be the responsibility of the Owners' Association as hereinafter provided.

(b) Sewage disposal systems shall be only into the New Hanover Hanover County sewage collection system.

(c) The Developer shall install lawn irrigation systems within the development, the maintenance of which shall be a responsibility of the Owners' Association as hereinafter provided.

23. ACCESS, MAINTENANCE, AND CONSTRUCTION EASEMENTS

(a) The Association, acting through its officers, agents, servants, and/or employees shall have the right of unobstructed

access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance provided for by this Declaration.

(b) Easements are reserved over those portions of the Common Areas and Limited Common Areas and facilities that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the Common Areas or Limited Common Areas, or the air and light space above such Common Areas.

(c) Each lot or unit and all Common Areas and facilities and Limited Common Areas are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation, or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage, or other Common Areas and facilities, whether or not the cause of any or all of those activities originates on the lot or unit in which the work must be performed.

(d) Each lot or unit, and the property included in the Common Area shall be subject to an easement for encroachments created during construction, by settling, and by overhangs for all buildings, structures, and improvements constructed by Developer, including, but not limited to, sidewalks, walks, paths, patios, decks, fences, parking areas and parking pads, driveways, outbuildings, and other similar appurtenances. A valid easement for such encroachments and for the maintenance of same, so long as such encroachments stand, shall and does exist. In the event that any structure containing two or more townhouses is partially or totally destroyed and then rebuilt, the owners of the townhouses so affected and other adjacent units agree that minor encroachments of or on parts of the adjacent townhouse units or Common Areas due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

(e) In the event that ingress or egress to any lot or unit is through or across any common areas, such common areas are hereby subjected to an access easement for such owners' ingress, egress, and regress to and from such lot or unit.

(f) All easements and rights described herein are easements appurtenant, running with the land, and shall be binding on the Developer, 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 this Declaration.

24. OWNERS ASSOCIATION

(a) To provide for the maintenance, repair, upkeep and replacement of the subdivision streets, subdivision sign, water and irrigation systems, mail and paper boxes, street signs, walkways, parking areas, stormwater facilities, other amenities, common areas, and, except as herein provided, the yard areas of the lots in the Subdivision, the Developer has formed the **EMERALD COVE OWNERS ASSOCIATION, INC.**, a non-profit corporation organized pursuant to Chapter 55A of the General Statutes of North Carolina. The Association shall also be responsible for providing any necessary liability insurance. The Articles of Incorporation for said corporation are recorded in Book _____, at Page _____ of the New Hanover County Registry. The By-Laws for said corporation are attached hereto as Exhibit "B", and are incorporated herein by reference.

(b) Every owner of a fee simple title to a lot within the Subdivision shall be deemed to own, possess and have accepted:

(1) A Class "A" membership(s) in the **EMERALD COVE OWNERS ASSOCIATION, INC.**, (Association), appurtenant to his lot(s);

(2) An undivided equal interest with all other owners, for each membership in the Association owned, in the Association and all of its assets;

(3) A right and easement of access and enjoyment, equal to that of all other owners, in, to, over and across the streets, common areas and amenities, which is appurtenant to the title to each lot, subject to the right of the Association to dedicate or transfer all or any part of the common areas and amenities, for such purposes and subject to such conditions as the Association may determine, acting by and pursuant to the provisions of its duly enacted By-Laws.

(4) The duty of complying with and abiding by all of the provisions of these Articles, the By-Laws of the Association and the Rules and Regulations of the Association, including the payment of dues and assessments as provided elsewhere herein.

(c) The Association shall have two classes of voting membership:

(1) Class "A". Class A members shall be all lot and unit owners with the exception of the Developer and shall be entitled to one vote for each lot or unit owned. When more than one person holds an interest in any lot or unit, all such persons shall be members. The vote for such lot or unit 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 or unit.

(2) Class "B". The Class B member shall be the Developer, and Developer shall be entitled to three (3) votes for each lot or unit 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:

- A. When 75% of the units are deeded to the homeowners, or
- B. On December 31, 2006.

25. LIENS AND ASSESSMENTS The Association has heretofore been given the authority to administer the operation and management of the common areas and the amenities of the property, it being recognized that the delegation of such duties to one entity is in the best interests of the owners of all lots subject hereto to properly administer the operation and management of the common areas and amenities. The Association will incur, for the mutual benefit of all the owners of such lots, costs and expenses sometimes herein referred to as "common expenses". To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make, levy and collect assessments against the members of the Association and their lots. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation of, the management of, and for capital improvements to the common areas, which for the purposes of these By-Laws shall be deemed to include, but not be limited to, the common areas, limited common areas, streets, and amenities, and all other improvements, the following shall be operative and binding upon the owners of all lots:

(a) The owner of any lot subject hereto, with the exception of the Developer, 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:

(1) annual assessments or charges; and

(2) special assessments for capital improvements or special assessments as established by the Board of Directors of the Association, such assessments to be established and collected as hereinafter provided.

(b) The annual and special assessments, together with the interest, costs, and reasonable attorney's fees, if any, shall be a charge on the lots and shall be a continual lien upon each lot against which they are levied. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person or entity who is the owner of

such lot at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to any successor in title unless expressly assumed by him.

(c) The Developer shall not be required to pay regular annual assessments on any lot owned by it prior to its sale.

(d) 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, maintenance, and repair of all streets, easements, utilities, stormwater facilities, including ponds, wells and water systems, irrigation systems, subdivision signs, mail and paper boxes, yard areas, parking areas, walkways, and the other common areas, as herein provided. The funds arising from said assessments or charges may be used for any or all of the following purposes: Maintenance, repair, and improvement of the common areas, wells and water systems, irrigation systems, drainage and utility easements, stormwater facilities (including ponds), and rights of ways; maintenance of the streets, parking areas, walkways, and yard areas as herein provided, enforcing these restrictions, and, in addition, doing any other things necessary, proper, 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 the owners and residents of the subdivision.

(e) The annual assessments for each calendar year shall be established by the Board of Directors, and may be increased by the Board of Directors for any calendar year without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year. The maximum annual assessment for any calendar year may be increased without limit by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting called for this purpose.

(f) In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement located throughout the common areas, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed to the uniform rate for all lots and may be collected on a monthly basis.

(g) Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 21(e) or Paragraph 21(f) set forth above shall be sent to all members not less than ten (10) days nor more than (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 votes of the

membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(h) The annual assessments provided for herein shall be collected on a quarterly basis and shall commence as to all lots in the subdivision on the first day of the month following recordation of the Declaration of Restrictions for the subdivision. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Upon the closing of a lot subject hereto, there shall be an assessment due for the remainder of the quarter in which the closing occurs, plus the amount of the assessment due for the following quarter.

(i) At the time title is conveyed to an Owner, each Owner shall contribute to the Association a working capital reserve an amount at least equal to a two months' estimated common area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies, and the common areas and facilities furnishings and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

(j) Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of fourteen percent (14%) per annum from the date due until paid. The Association may bring an action at law against the other owner personally obligated to pay the same or foreclose the lien against the lot and interest, costs, and reasonable attorney's fee of such action or foreclosure shall be added to the amount of such assessment.

(k) The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the public records of New Hanover County, North Carolina, which claim shall state the description of the lot encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, and attorney's fees thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien provided for herein

shall be subordinated to the lien of any first mortgage or Deed of Trust and any person, firm, corporation or other entity acquiring title to any lot by virtue of any foreclosure, deed in lieu of foreclosure or judicial sale, shall be liable and obligated only for assessments as shall accrue and become due and payable subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a lot by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all owners of all lots as part of the common expenses, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

(l) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any lot or unit shall not affect the assessment lien. However, the sale or transfer of any unit 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 or unit from liability for any assessments thereafter becoming due or from the lien thereof.

(m) Mortgagees are not required to collect assessments, and the failure of the owner to pay assessments shall not constitute a default under a mortgage.

(n) Upon the sale of seventy-five percent (75%) of all of lots in all sections of the Subdivision, the Developer will turn over control of the Owner's Association to the Board of Directors to be elected by the membership in accordance with the By-Laws of the Association. Until such time, however, the Developer shall elect the Board of Directors of the Association.

26. **CONVEYANCE OF COMMON AREAS TO ASSOCIATION** Prior to HUD insuring the first mortgage in each phase of the subdivision, the Developer shall convey to the Association, free and clear of all encumbrances, the common areas and limited common areas as shown on the plat of that phase as recorded in the New Hanover County Register of Deeds.

27. **CONVEYANCE, MORTGAGE, AND DEDICATION OF COMMON AREAS** The common areas and limited common areas may not be conveyed, mortgaged, or dedicated without the consent of at least two-thirds of the lot owners (excluding the Developer).

28. **RIGHTS OF ELIGIBLE MORTGAGE HOLDERS** To the extent permitted by law, an Eligible Mortgage Holder, that is, a holder of a first mortgage or lien on a lot or unit who has requested notice of certain matters from the Association, upon written request to the Association, identifying the name and address of the owner and holder, will be entitled to timely written notice of:

(a) Any condemnation, loss, or casualty loss which affects a material portion of the project or any units on which there is a mortgage held by such Eligible Mortgage Holder.

(b) Any delinquency in payment of assessments or charges owed by an owner of the unit subject to a first mortgage held by such Eligible Mortgage Holder which remains uncured for a period of sixty days.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

(e) In addition to the foregoing rights, the Eligible Mortgage Holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina General Statutes as they now exist or as they may be amended from time to time.

(1) Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of at least 51% of the votes of the owners of the units or lots subject to Eligible Mortgage Holders.

(2) Unless otherwise provided in the Declaration or Bylaws, no reallocation of interest in the common areas resulting from a partial condemnation or partial destruction of the project may be affected without the prior approval of Eligible Mortgage Holders holding mortgages on all remaining units or lots whether existing whole or in part, and which have at least 51% of the votes of such remaining lots or units subject to Eligible Mortgage Holders.

29. **INSURANCE** It shall be the individual responsibility of each lot owner to maintain casualty and liability insurance on his lot or unit, including the exterior. It shall be the duty of the Association to maintain in effect casualty and liability insurance on all common areas as follows:

(a) Amount and Scope of Insurance: All insurance policies upon the common areas shall be secured by the Board of Directors or its

designee on behalf of the Association with full authority, which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, for projects similar in construction. However, such liability coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the common areas and legal liability arising out of lawsuits relating to employment contracts of the Association. The foregoing shall not preclude the Board from obtaining insurance coverage on all or a portion of the limited common areas and facilities.

(b) Insurance Provisions. The Board of Directors shall make diligent effort to ensure that said insurance policies provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent, or employee of the Association, the lot owners, and their employees, agents, tenants, and invitees.

(2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.

(3) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured.

(4) Coverage will not be prejudiced by act or neglect of the lot owners when said act or neglect is not within the control of the Association.

(5) The policy on the common areas cannot be canceled, invalidated, or suspended on account of the conduct of any one or more individual lot owners.

(6) The policy on the common areas cannot be canceled, invalidated, or suspended on account of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association.

(c) Premiums. All insurance premiums on the common areas for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the owners equally, as an additional annual assessment, herein called "Insurance Assessment" which shall be in addition to