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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

RECORDED AND VERIFIED  
MARY SUE OOTS  
REGISTER OF DEEDS  
NEW HANOVER CO. NC

DECLARATION OF COVENANTS AND RESTRICTIONS  
FAIRWAY COMMONS TOWNHOMES

THIS DECLARATION, made this 20<sup>th</sup> day of October, 2000,  
by PORTERS NECK COMPANY, INC., a corporation qualified to do  
business in the State of North Carolina, hereinafter called  
"Developer."  
000149

W I T N E S S E T H:

WHEREAS, Developer is the owner of the real property described  
in Article II of this Declaration and desires to create therein a  
residential community with open spaces and other common facilities  
for the benefit of the said community; and

WHEREAS, Developer desires to provide for the preservation of  
the values and amenities in said community and for the maintenance  
of said open spaces and other common facilities; and, to this end,  
desires to subject the real property described in Article II,  
together with such additions as may hereafter be made thereto, to  
the covenants, 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; and

WHEREAS, Developer has deemed it desirable for the efficient  
preservation of the values and amenities in said community, to  
create an agency to which should be delegated and assigned the  
powers of maintaining and administering the community properties  
and facilities and administering and enforcing the covenants and  
restrictions and collecting and disbursing the assessments and  
charges hereinafter created; and

WHEREAS, Developer has incorporated or will incorporate under  
the laws of the State of North Carolina, as a nonprofit  
corporation, Fairway Commons Townhome Association, Inc., for the  
purpose of exercising the functions aforesaid;

NOW, THEREFORE, Developer declares that the real property  
described in Article II hereof, is and shall be held, transferred,  
sold, conveyed and occupied subject to the covenants, restrictions,  
easements, charges and liens (sometimes referred to as "covenants  
and restrictions") hereinafter set forth.

Returned To

DRAWN BY Doug Fox

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Act" shall mean the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes) as the same may be amended from time to time.

(b) "Association" shall mean and refer to the Fairway Commons Townhome Association, Inc.

(c) "Common Properties" shall mean and refer to those areas of land now or hereafter shown on any recorded subdivision plat of the Properties or hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the Owners of the Properties, except that no area within a Lot shall be a Common Property.

(d) "Garage Lot" shall mean that portion of a Lot designated with its alpha component "B", such as "1B."

(e) "Limited Common Properties" shall mean a portion of the Common Properties allocated by this Declaration for the exclusive use of one or more but fewer than all of the Lots.

(f) "Living Unit" shall mean and refer to any portion of a building situated upon a Lot within the Property designed and intended for use and occupancy as a residence by a single family, whether as Owners or tenants, and including garages on Garage Lots.

(g) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Properties as heretofore defined, and each such Lot shall be designated numerically as such on a recorded plat of the Property. Said designation may include more than one tract of land, each beginning with the same numerical designation (e.g. 1A and 1B).

(h) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.

(i) "Mortgagee" shall include the noteholder or cestui que trust secured by a deed of trust.

(j) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon the Properties but, notwithstanding any applicable theory of the deed of trust, shall not mean or refer to the Trustee or cestui que trust unless and until there has been

a transfer of title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(k) "Plat" shall mean that recorded plat of the subdivision prepared by McKim & Creed, recorded in Book 40, Page 87, New Hanover County Registry.

(l) "Properties" shall mean and refer to the real property described in Article II made subject to this Declaration.

## ARTICLE II

### Property Subject To This Declaration; Additions Thereto

Section 1. Properties. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, which property is more particularly described as Phase 1 on the Plat, and includes all of said property (Lots and Common Area).

### Section 2. Additions to Existing Property.

(a) By Declarant. Without approval of any third party, Declarant may subject any or all of the property described on Exhibit A attached hereto to the jurisdiction of the Association just as though a part of the Properties, by filing a Supplemental Declaration describing such property in the office of the Register of Deeds of New Hanover County. This right shall expire December 31, 2005.

(b) Other Additions. Property not described on Exhibit A may be annexed upon request of the owner of said property upon approval in writing of the Association pursuant to a vote of not less than sixty seven (67%) percent of its Members. The owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplemental Declaration in the Office of the Register of Deeds of New Hanover County, North Carolina, which Supplemental Declaration shall be executed by the Association, and which Supplemental Declaration shall give particular legal description of the properties to be added.

(c) Mergers. Mergers shall be governed by the Act.

## ARTICLE III

### Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Living Unit or undeveloped and undesignated land which is subject

by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

Section 2. Voting Rights. The Association shall have one class of voting membership. The Owner(s) of each Lot shall be entitled to one vote. Voting procedures shall be governed by the Act.

#### ARTICLE IV

##### Property Rights in the Common Properties

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article IV, every Member shall have a right and easement of enjoyment in and to the Common Properties, including rights of access, ingress and egress to and from public streets and walkways and the right to park a motor vehicle in areas specifically designated for such purposes; such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit. In addition, every Member shall have the exclusive right and privilege of using the designated driveway and parking spaces for the benefit of his or her Living Unit. Any designated parking space which, on the Plat, is denoted for use by the Owner of a designated Lot shall be Limited Common Properties.

Section 2. Title to Common Properties. The Developer shall relinquish the legal title to Common Properties to the Association for any portion of the Common Properties shown on the Plat prior to the assumption of the maintenance and upkeep obligations for such portion of the Common Properties by the Association. The Common Properties may be transferred by the Developer to the Association in two or more phases.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association, as provided in the Act, to suspend the voting rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;

(b) the legal right of an Owner of property shown on the Plat to include portions of the Common Properties as may be necessary for said Owner to qualify under governmental requirements such as setback lines, open space, parking or other aspects which may be needed for issuance of a building permit to be secured to rebuild a damaged Living Unit; and

(c) the right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or entity for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast not less than sixty seven (67%) of the votes of the membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken.

#### ARTICLE V

##### Covenant for Assessments

Section 1. Creation of the Lien and Personal Obligations of Assessments. Except as hereinafter specifically provided, each Owner of any Lot or Living Unit, by the acceptance of title thereto, shall be deemed to covenant and agree to pay to the Association assessments as outlined in this Declaration of Covenants and Restrictions. Each assessment must be classified as a (A) "Regular Assessment" or a (B) "Special Assessment." These assessments are to be fixed, established and collected from time to time as hereinafter provided.

The Regular and Special Assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made.

Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance (1) of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and (2) of the Lots and Living Units situated upon the Properties. Without limitation, such uses shall include satisfaction of the Association's obligations regarding the Common Properties to pay hazard and liability insurance, ad valorem taxes, the payment of governmental assessments for public and private capital improvements made to or for the benefit thereof, the repair, replacements and additions thereto, for the cost of labor, equipment, materials, management and supervision thereof, and for all costs of building maintenance as are required of the

Association. Unless designated as a Special Assessment, all assessments shall be Regular Assessments.

Section 3. Basis for Computing Assessments. Except as required by the Act, and subject to the provisions of Sections 4 and 5 of this Article, all assessments shall be made in equal amounts against each Lot. The Board of Directors shall fix the Regular Assessment no less frequently than annually, with no approval required by the Members except as may be required by law.

Section 4. Special Assessments. In addition to the Regular Assessments authorized by this document, the Association may levy, in an assessment year, a Special Assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of any improvement upon the Common Properties including fixtures and personal property related thereto, provided that any such assessment shall have the assent of not less than sixty seven (67%) percent of the votes of members who are voting in person or proxy at a meeting duly called for this purpose. Special Assessments without assent of the Owners may be levied in a given year if the amount of Regular Assessments collected is inadequate to allow the Association to carry out its required functions and activities. Special Assessments may also be levied in accordance with Article IX of this Declaration.

Section 5. Date of Commencement of Assessments; Due Dates. The Regular Assessment provided for herein shall commence, as to those Lots which are immediately adjoined by Common Properties which have been conveyed by Declarant to the Association, on the first day of the month following such conveyance of Common Property, but in no event later, as to each Lot, than the date upon which a Certificate of Occupancy for a completed Living Unit is issued on a Lot. Notwithstanding any other provisions of these Covenants, the Regular Assessment for each Lot which does not include a completed Living Unit thereon shall equal, until such time as a Certificate of Occupancy is issued for a Living Unit on such Lot, an amount equal to twenty percent (20%) of the Regular Assessment levied against a Lot with a Living Unit completed thereon.

The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the

Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto; failure to provide a written notice shall indicate that the assessment is unchanged from the previous assessment.

Section 7. Effect of Nonpayment of Assessment; Personal Obligation of the Owner; Liens; Remedies of Association. If the assessments are not paid on the date when due (being the dates determined in accordance with Sections 5 and 6 of this Article V), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligations of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date or a written arrangement for payment consented to by the Association, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or to foreclose the lien against the property, and there shall be added to the amount of such assessment the maximum charge allowed by the Act, as well as attorney fees expended by the Association in exercising its rights hereunder.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a deed of foreclosure under power of sale or any other transfer in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments which thereafter become due, nor from the lien of any such subsequent assessment.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article I, Section 1, hereof.

Section 10. Porters Neck Homeowner's Association, Inc. The Owner of each Lot and Living Unit shall be a member of the Porters Neck Homeowner's Association, Inc., as required by the terms, provisions and conditions contained within the Protective Covenants of Porters Neck Plantation. As members therein, the Owner of each Lot and Living Unit shall be required to pay assessments to said association, in addition to assessments payable to the Association as set out herein. The Board of Directors of the Association shall have authority, but shall not be required, to enter into an agreement with the Porters Neck Homeowner's Association, Inc. whereby dues and assessments payable to Porters Neck Homeowner's Association, Inc. shall be collected by the Association, and remitted to the Porters Neck Homeowner's Association, Inc.

Section 11. Insurance. Insurance on Common Properties shall be maintained by the Association as required by the Act. In addition, the Association shall maintain as an expense of the Association standard form hazard insurance policies insuring for the benefit of the Association and the owner of each Lot and each Living Unit the full, insurable replacement costs for all improvements on each Lot, subject to a reasonable deductible determined from time to time by the Association. The Association may maintain for the benefit of the owner of each Lot individual insurance policies for each Living Unit, or may purchase "group" or "blanket" policies for all or any groupings of Living Units. The Association shall act as insurance trustee for the benefit of the owner of each and every Lot, and the holder of each mortgage thereon, and, upon payment of any claim, the Association may, at its sole discretion, deliver the proceeds therefrom to the owner of a Living Unit damaged, or may maintain such funds with disbursement agreements as may be deemed prudent by it to insure the reconstruction of improvements damaged or destroyed. Flood insurance need not be maintained by the Association, but may be maintained if elected by the Association. If not maintained by the Association, the owner of each Lot may maintain such insurance at his sole discretion and cost.

#### ARTICLE VI

##### Rights of First Mortgagees

Section 1. Inspection of Books and Records. First mortgagees shall have the right, upon request and during normal business hours, to examine the books and records of the Association.

Section 2. Notice of Default. Upon its written request, the holder of a first mortgage upon a Lot or Living Unit shall be entitled to written notification of any default by the Owner of said Lot or Living Unit in the performance of his obligations pursuant to these Covenants or the By-Laws of the Association, if such default is not cured within thirty (30) days.

Section 3. Payments by First Mortgagees. One or more first mortgagees of Lots or Living Units may, jointly or singly, in respect to the Common Properties, pay taxes or other charges which are in default and have or may become a charge against same, pay overdue hazard insurance premiums or secure new hazard insurance coverage after policy lapse. The parties making such expenditures shall be entitled to immediate reimbursement from the Association to the extent such payment was an obligation of the Association.

Section 4. Prohibitions. Without having first received written approval from at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgagee) of the Lots or Living Units, the Association may not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the real property which is owned, directly or indirectly, by the Association; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause;

(b) change the method of determining obligations, assessments, dues or other charges which may be levied against the Owner of a Lot or Living Unit;

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties; or

(d) use hazard insurance proceeds from losses to any Common Properties for other than the repair, replacement or reconstruction of such improvements.

## ARTICLE VII

### Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Living Units upon the Properties and placed substantially on the dividing line between two Lots shall constitute a party wall, and to the extent

not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall, to the extent not allocated to the Association, shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall must restore it as a party wall unless the other Owner agrees to the contrary in advance, and the other Owners thereafter making use of the wall shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one impartial arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

Section 7. Building Envelope. As more fully set out hereinafter, each Lot is a building envelope, and the buildings constructed (or to be constructed) thereon may not, as to their perimeter, coincide exactly with the perimeter boundaries of each Lot designated on the Plat. Notwithstanding any other provision of this Declaration, the wall joining two (2) Living Units, no matter whether located precisely along the contiguous Lot line or not, shall be for purposes of this Declaration and for all other purposes considered a party wall, and, to the extent that the party wall is located on a Lot, as opposed to centered on the Lot line, the party utilizing said party wall located on an adjoining Lot shall be, and hereby is, specifically granted for himself, and his heirs, successors and assigns an easement in perpetuity for the purpose of utilizing said party wall, and all of the Lot located

between such party wall and the joint Lot line. Said easement shall allow full and exclusive utilization of the property burdened by said Easement, and the party benefited by said easement shall be responsible for the full maintenance and upkeep of any portion of any Living Unit located thereon, to the extent that Living Unit is a part of the Living Unit which is located predominately upon the Lot of the Owner benefited by said easement.

ARTICLE VIII

Aesthetics Committee

Section 1. Review by Committee. No building, fence, wall or other structure nor any planting or landscaping change (including removal of any tree) shall be commenced, erected or maintained upon the Properties by other than the Developer or a Contractor selected by Developer, which Contractor has agreed in writing with Developer to construct one (1) or more Living Units in accordance with plans and specifications developed by or approved by Developer (including landscape plans) nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an aesthetics committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been complied with fully. The Association shall have the right to bring an action to enjoin any activity taken in violation of this Article.

No such improvement or change shall be approved by the Association unless the following specific findings are made by the Association:

(a) That the approved improvement will not increase the impervious surfaces on the Common Properties or on any Lot contrary to any rule or regulation of any governmental authority;

(b) That the proposed improvement is aesthetically compatible with the other Living Units on the Property, and landscaping associated therewith; and

(c) That the proposed improvements will not add any significant expense to the maintenance obligations of the Association.

Notwithstanding any other provision contained in this Article VIII, the Declarant and a Contractor selected by Declarant, as more fully specified in this Article VIII, shall be entitled to construct and

landscape Living Units for initial occupancy without any approval by the Association or any committee thereof.

Section 2. Delegation of Rights. The rights reserved under Section 1 of this Article VIII may be assigned by either the Developer, as to rights reserved to the Developer, or by the Association, as to rights reserved to the Association or to a committee appointed by the Association, to the Porters Neck Homeowner's Association, Inc., or a committee appointed by the Porters Neck Homeowner's Association, Inc. Any such assignment must be by written instrument which shall specify the particular rights being so assigned.

#### ARTICLE IX

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Properties, the Association shall provide exterior maintenance upon each Lot and Living Unit which is subject to assessment under Article V hereof as follows: paint, repair, replace and care for roofs, gutters, down-spouts, exterior building surfaces (other than windows, screens and glass doors), trees, shrubs, grass, walks and other exterior improvements. The Owner of each Living Unit shall specifically be responsible for full repair and maintenance of all exterior doors (including screen doors and garage doors) and windows. The Owner of such Living Units shall maintain doors (including screen doors) and windows (including sky lights) in a good, sound and sightly condition at all times. All repairs and maintenance undertaken other than upon Common Properties shall be charged as a Special Assessment by the Association to the benefitted Owners, to include a 10% markup for administrative supervision. It is understood that the Association is acting as agent for the Owners in causing such work to be performed.

The Owner of each Living Unit shall further be responsible for replacing all exterior light bulbs in light fixtures attached to the Living Unit. The Owner of each Living Unit shall further be fully responsible for the maintenance of all utility systems, whether located on said Owner's Lot or on Common Properties, which utility systems provide utility service to the Living Unit on the Lot owned by said Owner, this responsibility to include (but not by way of limitation) the obligation to maintain any component of a heating and air conditioning system and any component of a plumbing system, which system benefits exclusively said Owner.

All exterior hardened or improved surfaces, including any Limited Common Property, shall be maintained by the Association, and the cost thereof shall be a Common Expense.

Any Owner desiring or believing that exterior maintenance which is the responsibility of the Association should be performed, shall give written notice to an officer of the Association specifying the

desired work to be performed. The Association shall, in its reasonable discretion, determine whether to undertake such work as requested by said Owner, but the Association shall give a written response to such Owner, within thirty (30) days following receipt of such written notice, specifying its decision and the reasons therefore.

Section 2. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance required by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day.

ARTICLE X

General Provisions

Section 1. Zoning. No Lot or Living Unit shall be used for any purpose which is not permissible under applicable governmental residential zoning regulations, and no Living Unit may be used for non-residential purposes, except that Declarant or its assigns for use of a Living Unit for a sales model.

Section 2. Prohibited Activities. No noxious or offensive trade or activity shall be carried on upon or in any Lot or Living Unit, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 3. Mobile Homes, etc. No trailer, mobile home, basement, tent, shack or garage shall at any time be used for human habitation temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

Section 4. Rules. The Board of Directors shall have the authority to adopt rules for the use of the Common Properties and shall furnish a written copy of said rules to the Owners. Any violation of such rules shall be punishable by fine and/or suspension of the voting rights of the violating Owners. The Board of Directors shall also have the power to adopt rules and regulations which prohibit or limit the types of animals or household pets which may be kept in or about the Lots or Living Units and which govern their allowance upon the Common Properties. The owner of each Lot shall be allowed a maximum of two (2) normal household pets. The Association shall have full power to use all remedies allowed by the Act, and shall follow the procedures set out in the Act in adopting and enforcing rules.

Section 5. Amendment. These covenants and restrictions may be amended during the first twenty (20) year period from recordation by the vote of not less than ninety percent (90%) of Members cast in person or by proxy at a meeting duly called for

this purpose, written notice of which, including the subject matter of the proposed amendment, shall be sent to all Members at least thirty (30) days in advance. Thereafter, these covenants and restrictions may be amended by the vote of at least seventy-five percent (75%) of Members cast in person or by proxy at a meeting duly called for this purpose, written notice of which, including the subject matter of the proposed amendment, shall be sent to all Members at least thirty (30) days in advance.

Matters mentioned elsewhere in this Declaration requiring the approval of First Mortgages or requiring a greater percentage of Members for approval shall be so governed. Any such amendment shall become operative and binding upon all Members and their properties when set forth in an amended declaration of Covenants and Restrictions and recorded in the office of the Register of Deeds of New Hanover County, North Carolina.

Section 6. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, or otherwise delivered, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

Section 7. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorney fees may be collected in accordance with the Act.

Section 8. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect.

Section 9. Mail Receptacles. Exterior mail receptacles shall be located only in places approved by Declarant or by the Association, and uniform specifications for the receptacles shall be adopted by the Association.

Section 10. Sign. Declarant may construct as many as two (2) subdivision identification signs located on Common Properties. The Association shall maintain such Common Properties, and the signs thereon, as a Common Expense of the Association.

Section 11. Solid Waste. Trash receptacles shall be utilized only as approved by Declarant or the Association, and shall only be

located in areas on Common Properties approved by Declarant or the Association.

Section 12. Irrigation. The Association shall maintain as a Common Expense any irrigation system constructed by Declarant, its successors or assigns, or the Association for the purpose of maintaining the vegetation on the Common Properties in a good and sightly condition.

Section 13. Utilities. Any utilities not metered directly to a Living Unit shall be assessed against the Association as a Common Expense.

Section 14. Utility Easement. The Association is specifically granted an easement over all Common Properties, and any portion of a Lot upon which a Living Unit is not located, for the purpose of ingress, egress and maintenance of any utility system. The Association is specifically granted the right and authority to transfer or assign the right to utilize such easement area to any public utility, including the County of New Hanover, for purposes of ingress and egress and maintenance of any utility system located thereon.

Section 15. Maintenance. The maintenance obligation of the Association shall include the exterior maintenance of any portion of a Lot that is not occupied by a Living Unit, just as though such portion of a Lot was a Common Property.

Section 16. By-Laws. The operation of the Association shall be governed by this Declaration and by the provisions of the By-Laws of the Association, which By-Laws are attached hereto as Exhibit B.

Section 17. Assignment. All of Declarant's rights, privileges and obligations reserved or granted by this Declaration of Covenants may be assigned, by written instrument, to a third party, and upon recordation of such assignment, said third party, as to those rights, obligations or privileges specifically assigned, shall be for all purposes entitled to the exercise or burden of such rights, obligations or privileges.

Section 18. Permitting Limitations. A maximum of 14,995 square feet of impervious surface shall be allowed on the Properties, including that portion subject to this Declaration of the right-of-way between the edge of payment and the front lot line. Impervious surfaces include asphalt, gravel, concrete, brick, stone, slate or similar material but does not include wood decking or the surface of swimming pools. This covenant is intended to insure continued compliance with a storm water permit issued by the State of North Carolina. This covenant may not be changed or deleted without the consent of the State of North