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NEW HANOVER COUNTY, NC

MORGHAN GETTY COLLINS

REGISTER OF DEEDS

NC FEE \$78.00

Prepared by/Return to: Clifford N. MacDonald / Hogue Hill, LLP 101 S. Third St., Wilmington, NC 28401

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR
GLENN PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS FOR GLENN PARK is made on the date hereinafter set forth by GLENN ST PROPERTIES, LLC, a North Carolina limited liability company (hereinafter the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property known as Units A, B and C as shown on that plat recorded in Map Book 70 at Page 61 of the New Hanover County, North Carolina, Registry (hereinafter the "Plat"); and

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (hereinafter the "Act") and the following easements, restrictions, etc., 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 above-described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

SECTION 1. "Additional Property" shall mean and refer to any lands, in addition to the Property, annexed to and made a part of the Planned Community pursuant to the provisions of this Declaration, whether such lands are now owned or hereafter acquired by Declarant or others, and

whether developed by Declarant or others.

SECTION 2. "Allocated Interests" means the undivided interest in the Common Elements and Common Expense liability and votes in the Association allocated to each Lot.

SECTION 3. "Association" shall mean and refer to GLENN PARK HOMEOWNERS ASSOCIATION, its successors and assigns.

SECTION 4. "Board" or "Executive Board" shall mean and refer to the body designated in this Declaration or otherwise to act on behalf of the Association.

SECTION 5. "Building" shall mean and include, but shall not be limited to, both the main portion of a structure built for permanent use and all projections or extensions thereof, including, but not limited to, garages, outside platforms and decks, canopies, porches and outbuildings.

SECTION 6. "Common Elements" shall mean all real and personal property, and interests therein, now or hereafter owned or leased by the Association for the common use and enjoyment of Owners as provided under this Declaration, and their occupants, lessees and employees, including and not limited to private streets and roads, fences, any directory signage, gravity sewer lines not maintained by a public agency, and detention ponds as herein defined.

SECTION 7. "Common Expenses" means the expenses or financial liabilities for the operation of the Association. These include: (i) expenses of administration, maintenance, repair or replacement of the Common Elements; (ii) expenses declared to be Common Expenses whether annual or special by the Planned Community documents or by the Act; (iii) expenses agreed upon as Common Expenses whether annual or special by the Association; and (iv) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

SECTION 8. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot as permitted under the Act, this Declaration, or otherwise by law.

SECTION 9. "Declarant" or "Developer" shall mean and refer to GLENN ST PROPERTIES, LLC and its successors and assigns as defined in Section 47F-1-103(9) of the Act.

SECTION 10. "Declaration" shall mean this instrument as it may be from time to time modified, amended, or revised.

SECTION 11. "Improvements" shall mean and include, but shall not be limited to, buildings, outbuildings, roads and driveways (other than those dedicated to public use), parking areas, fences, screened walls, retaining walls, loading areas, signs, utilities, lawns, landscaping, irrigation and walkways located on Lots, together with any construction work or treatment done or applied to a Lot in connection therewith and any storm water drainage lines or facilities and any piping related thereto.

SECTION 12. "Limited Common Elements" means the portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Lots by the Declaration. The Limited Common Elements shall include (i) the exterior of all dwellings, including, but not limited to, roofs, exterior building surfaces, decks, porches, and gutters, (ii) yards and other improvements, including, but not limited to, walkways, paths, trees, shrubs, and grass.

SECTION 13. "Lot" shall mean and refer to any numbered or lettered plot of land shown upon any recorded map of the Property designated for separate ownership by a Lot Owner.

SECTION 14. "Master Association" shall mean a master association as defined in the Act.

SECTION 15. "Members" shall mean and refer collectively to the Members of the Association.

SECTION 16. "Occupant" shall mean any person or entity who occupies, or who has the right to occupy, all or part of any Lot which is a part of the Properties, whether such occupancy or right of occupancy is based on ownership, lease, license or easement.

SECTION 17. "Owner" or "Lot Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot, or any portion thereof, which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 18. "Person" means an individual, corporation, business, trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

SECTION 19. "Planned Community" shall mean and refer to the Property plus any Additional Property made a part of it by the exercise of any Special Declarant Right.

SECTION 20. "Property" shall mean and refer to that certain real property as shown on the Plat, hereinabove described, and such additions thereto as may hereafter be bought within the jurisdiction of the Association and this Declaration

SECTION 21. "Purchaser" means any person, other than a declarant or a person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for the performance of an obligation.

SECTION 22. "Special Declarant Rights" means the rights reserved for the benefit of a Declarant to: (i) complete Improvements indicated on the Plat filed with the Declaration; (ii) exercise any development right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain sales offices, management offices, signs advertising the Planned Community, and

models; (iv) use easements through the Common Elements for the purpose of making improvements within the Planned Community; (v) to make the Planned Community part of a larger planned community or group of planned communities; (vi) to make the Planned Community subject to a Master Association; (vii) to appoint or remove any officer or Executive Board Member of the Association or any Master Association during the Declarant Control Period; (viii) to permit other land to be annexed to and made a part of the Planned Community in accordance with the terms of this Declaration.

ARTICLE II **PROPERTY RIGHTS**

SECTION 1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Elements 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 permit the use of and to charge reasonable fees for the use of the Common Elements;

(b) the right of the Association to suspend the voting rights of an Owner or Occupant for any period during which any assessment against his Lot remains unpaid or for any infraction of its published rules and regulations;

(c) the right of the Association to grant easements and rights of way, to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association consistent with the terms of this Declaration and the Articles and Bylaws of the Association. Provided, however, that no dedication or transfer of any Common Elements shall be effective unless an instrument signed by (i) eighty percent (80%) of the Members and (ii) Declarant, so long as Declarant has the right to select a majority of the members of the Association's Board of Directors, agreeing to such dedication or transfer, has been recorded;

(d) the right of the Association to impose regulations for the use and enjoyment of the Common Elements and any improvements thereon, which regulations may further restrict the use of the Common Elements; and

(e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of maintaining and/or improving the Common Elements and facilities thereon.

SECTION 2. EASEMENTS IN FAVOR OF DECLARANT AND ASSOCIATION. The following easements are reserved to Declarant and the Association, their successors and assigns:

(a) easements as necessary in the lands constituting the Common Elements and that portion of each Lot not occupied by a structure for the installation and maintenance of utilities and

drainage facilities (including the right of Declarant and the Association to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, 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 Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of the county where the Planned Community is located; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to 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; and the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the owner of such Lot). No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. These easement areas (whether or not shown on the recorded plats for the Planned Community) and improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible;

(b) easements over all private streets, if any, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress to any Additional Property;

(c) an easement of unobstructed access over, on, upon, through and across each Lot and the Limited Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Limited Common Elements required by this Declaration. This easement shall also run in favor of the Association and the Association's agents, employees, successors and assigns.

SECTION 3. OTHER EASEMENTS. The following easements are granted by Declarant to others:

(a) an easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties;

(b) in case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association 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;

(c) the Association is granted an easement over each Lot for the purposes of providing Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration

SECTION 4. NATURE OF EASEMENTS. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional Property, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds or of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

ARTICLE III **RIGHTS OF DEVELOPER**

The Declarant shall have, and there is hereby reserved to the Declarant, the Special Declarant Rights as herein defined and the following rights, powers and privileges which shall be in addition to the Special Declarant Rights and any other rights, powers and privileges reserved to the Declarant herein:

SECTION 1. THE ARCHITECTURAL CONTROL COMMITTEE. All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property.

SECTION 2. PLAN OF DEVELOPMENT. The right to change, alter or redesignate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities, Common Elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts or Lots 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 or Lot (any Lot resulting from such recombination shall be treated as one Lot for purposes of Assessments); to eliminate from this Declaration Lots that are not otherwise buildable or are needed or desired by Declarant for access or are needed or desired by Declarant for use as public or private roads or access areas, whether serving the Planned Community or other property owned by the Declarant or others, or which are needed for Common Elements or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site or access area or roadway or Common Elements. The Declarant need not develop, or develop in any particular manner, any lands now owned or hereafter acquired by the Declarant, including any lands shown on plats of the Planned Community as "Future Development". Any such lands shall

not be subject to this Declaration unless Declarant expressly subjects them hereto by the filing of a supplemental declaration in the Register of Deeds office of the county where the Planned Community is located. Declarant is required by The North Carolina Division of Water Quality to state herein the maximum allowed built-upon area for all lots which Declarant has planned to develop within the Planned Community. By listing the maximum built-upon area herein for all such lots, Declarant does not obligate itself to develop in any particular manner or for any particular uses any lands now owned or hereinafter acquired by Declarant which are not shown on the recorded plats referenced herein.

SECTION 3. AMENDMENT OF DECLARATION BY DECLARANT. This Declaration may be amended without approval of the Lot Owners, i.e. the Members of the Association, by the Declarant, or the Board of the Association, as the case may be, as follows:

- (a) in any respect, prior to the sale of the first Lot;
- (b) to the extent this Declaration applies to Additional Property;
- (c) to correct any obvious error or inconsistency in drafting, typing or reproduction;
- (d) to qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status;
- (e) to incorporate or reflect any platting change as permitted by Section 2 of this Article or otherwise permitted herein;
- (f) to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. The Declarant may at any time amend this Declaration to change the maximum allowable built-upon area as permitted by DENR. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.

SECTION 4. ANNEXATION OF ADDITIONAL PROPERTY. Declarant may annex to and make a part of the Planned Community any other real property, whether now owned or hereafter acquired by Declarant or others, and whether developed by the Declarant or others (the "Additional Property"). Annexation of Additional Property to the Planned Community shall require the assent of 67 percent of the Members who are voting in person or by proxy at a meeting called for this purpose; provided, however, Additional Property may be annexed to the Planned Community without the assent of the Members so long as the Additional Property is restricted for use to residential purposes, roads, utilities, drainage facilities, amenities and other facilities related thereto.

SECTION 5. SALE MODEL. So long as the Declarant or its designee shall retain ownership of any Lot, it may utilize any such Lot for offices, models or other purposes relating to the construction, sale or rental of Lots and dwellings including the right to place "For Sale" or "For Rent" signs on any Lots. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose.

ARTICLE IV **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

SECTION 1. FORMATION OF ASSOCIATION. A Lot Owners' association shall be incorporated no later than the date the first Lot in the Planned Community is conveyed. The Association shall be a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

SECTION 2. MEMBERS. Every Owner of a Lot which is subject to a lien for assessments shall be a Voting Member of the Association. An Owner may assign in writing his membership voting rights to an Occupant upon such terms as the Association may prescribe. Otherwise, membership and voting rights shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment; provided, however, that no such assignment shall affect the obligation of the Owner to pay the assessments described in ARTICLE V hereof.

In the event a Lot recombination or re-subdivision is approved as set out in SECTION 2 of ARTICLE III of this Declaration, votes among or between the recombined or re-subdivided Lot shall be reallocated by the Board of Directors, in its sole discretion.

When more than one person holds an interest in any Lot, all such persons shall be Members. The vote or votes for such Lot shall be exercised as they among themselves determine, but in no event shall multiple Owners of a Lot be entitled to cast more than the vote allotted to such Lot.

SECTION 3. DECLARANT'S RIGHT TO SELECT DIRECTORS. Notwithstanding anything to the contrary herein, until 75% or more of the Lots for GLENN PARK as per the Plat referred to in this Declaration have been sold to Owners other than Declarant, or until December 31, 2028, whichever occurs first, Declarant shall have the right to designate and select a majority of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person to serve on any Board of Directors of the Association, the manner in which such person shall be designated shall be provided in the Articles of Incorporation and/or Bylaws of the Association. Declarant shall have the right to remove any person selected by it to act and serve on said Board of Directors and to replace such person with another person to act and serve in the place of any Director so removed. Any Director designated and selected by Declarant need not be the Owner or Occupant of a Lot in the Properties. Any representative of the Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest. Similarly, Declarant, as a Member of the Association, shall not be required to disqualify itself upon any contract or matter between the Declarant and the Association where Declarant may have a pecuniary or other interest.

ARTICLE V
COMMON ELEMENTS AND PERMIT CONVEYANCE

SECTION 1. COMMON ELEMENTS. The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element within the Planned Community from the date of completion of its construction or improvement by the Developer, whether or not (i) such Common Element has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Element has been transferred from the Declarant to the Association or assumed by the Association. If the Declarant is required by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within 30 days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special assessment within 30 days of receipt of such bill to cover the amount thereof if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special assessment.

SECTION 2. GOVERNMENT PERMITS. After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

ARTICLE VI
INSURANCE AND BONDS

SECTION 1. INSURANCE. Commencing not later than the time of the first conveyance of a Lot to a Person that is not a Declarant, it shall be the duty of the Association to maintain in effect casualty and liability insurance as follows to the extent it is reasonably available:

(a) **Amount and Scope of Insurance.** All insurance policies upon the Common Elements shall be secured by the Board of Directors, or its designee on behalf of the Association which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against in an amount after application of any deductibles of not less than 80 percent of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date exclusive of land excavation, foundations and other items normally excluded from property policies, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional mortgage investors for projects similar in construction, location and use as the Planned Community and the improvements thereon 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, or maintenance or use of the Common Elements and legal liability arising out of lawsuits relating to employment contracts of the Association. If the insurance described in subsection (a) of this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Lot Owners;

(b) **Insurance Provisions.** The Board of Directors shall make diligent efforts to insure 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 cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured and all mortgagees;

(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 or by any failure of the Association to comply with any warranty or condition regarding any portion of the Planned Community over which the Association has no control.

(5) the master policy on the Planned Community cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Lot Owners;

(6) the master policy on the Planned Community cannot be cancelled, invalidated or suspended on account of the conduct 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;

(7) each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest;

(8) if at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(c) Premiums. All premiums on such insurance policies and any deductibles payable by the Association upon loss shall be a Common Expense;

(d) Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors who shall hold any such insurance proceeds in trust for Lot Owners and lien holders as their interest may appear;

(e) Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "A" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the Lot Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the Owners at least ten (10) days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any upon request of such mortgagee;

(f) Individual Policies. If the Association shall determine that it would be more economically feasible in lieu of the Association maintaining a master policy for the entire Planned Community, for the Lot Owners to purchase insurance policies covering each Lot and Lot Owner individually, then upon the assent of 67 percent of the Members (which votes may be cast in person or by proxy) who are eligible to vote at a meeting duly called for such purpose, the insurance coverage for the entire Planned Community, may be turned over to the Members to purchase individual policies under such terms and conditions as the Association may prescribe. If the responsibility for maintaining the insurance coverage on the Planned Community is turned over to the individual Lot Owners under the provisions of this paragraph, then the Association shall be

named as additional insured on each policy, each Lot shall be insured for its full replacement value and the provisions of this Section shall be modified accordingly;

(g) Distribution of Insurance Proceeds. Subject to the provisions of Section 47F-3-113(g) of the Act the proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

(1) all reasonable expenses of the insurance trustee shall be first paid or provision made therefor;

(2) the remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

SECTION 2. FIDELITY BOND. The Association may maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association, as follows (provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association):

(a) The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds;

(b) Fidelity bonds required herein must meet the following requirements:

(1) fidelity bonds shall name the Association as an obligee;

(2) the bonds shall contain waivers by the issuers of the bonds of all defenses upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;

(3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense;

(4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association, to any insurance trustee and each institutional holder of a first lien on any Lot.

ARTICLE VII
COVENANT FOR MAINTENANCE AND ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF LOT OWNERS FOR ASSESSMENTS. The Declarant, for each Lot owned within the Property, and each Owner of any Lot or portion thereof, 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; (2) special assessments for capital improvements and/or for such assessments to be established and collected as hereinafter provided; (3) any fine, charge or late fee which may be levied by the Association against an owner pursuant to the provisions of this Declaration; and (4) to the appropriate governmental taxing authority: (a) a pro rata share of ad valorem taxes levied against the Common Elements; and (b) a pro rata share of assessments for public improvements to or for the benefit of the Common Elements if the Association shall default on the payment of either or both for a period of six (6) months, all as hereinafter provided. Such annual and special assessments, and any fine, late fee or other charge, 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 such assessment, fine, late fee or charge is made. Each such assessment, fine or late fee and charge together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the entity which was the Owner of the Lot at the time when the assessment, fine, late fee or charge fell due. The personal obligation of a Lot Owner for delinquent assessments shall not pass to its successors in title unless expressly assumed by them.

SECTION 2. PURPOSE OF ASSESSMENTS.

(a) The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Members of the Association, their occupants, lessees and employees and in particular for the improvements and maintenance of properties, services and facilities devoted to this purpose or for the use and enjoyment of the Common Elements, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Elements, the maintenance of private streets, stormwater runoff facilities, detention ponds, fences, walls and other areas of the Common Elements, the procurement and maintenance of insurance in accordance with the Bylaws, the payment of charges for street lights located in the Common Elements, the payment of charges for water and sewer services furnished to the Common Elements, the employment of attorneys and other professionals to represent the Association when necessary, and such other needs as may arise.

(b) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid unto the Association by any Member, the same may be commingled with monies paid to the Association by the other Members. Although

all funds and common surplus, including other assets of the Association, and any increments thereto profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Member for any share of the fund or assets of the Association, or which may have been paid to the Association by such Member, as all monies which any Member has paid to the Association which may be used in the operation and management of the Properties and/or the Common Elements.

(c) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Lot(s) to which that Limited Common Element is assigned, equally.

SECTION 3. ANNUAL ASSESSMENTS FOR LOT OWNERS. The Association shall levy, in each calendar year, annual assessments for the purpose of maintaining and operating all portions of the Common Elements including utility cost, fixtures and personal property related thereto. Such annual assessments shall be levied only against the Lots and Lot Owners thereof. Until December 31 of the year of the conveyance of the first Lot to an Owner, the annual assessment shall be \$1,000.00 per vote. In subsequent years, the amount of the annual assessment shall be as established by the Board of Directors, in its sole discretion, and may be increased or decreased from year to year by the Board, without consent of Lot Owners, so long as any increase does not exceed 10% from the prior year. Provided if the increase does exceed 10% from the prior year said increase shall be approved by 2/3 majority of the votes allotted to the Lots entitled to vote.

SECTION 4. CAPITAL IMPROVEMENT SPECIAL ASSESSMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements including fixtures and personal property related thereto, provided that any such assessment shall be approved by majority vote of the Members who are voting in person or by proxy at a meeting duly called for this purpose. The capital improvement special assessments shall be levied against each Lot in the same manner as annual assessments, as set forth in SECTION 5 below.

Written notice of any meeting called for the purpose of taking any action authorized under this SECTION 4 shall be sent at least thirty (30) days but not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Voting Members or the proxies entitles to cast twenty percent (20%) of the 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 (½) 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 5. RATE OF ASSESSMENTS. The annual assessments and capital improvement special assessments shall be levied against the Lots so that each Lot's portion of the assessment bears the same relationship to the total assessment as such Lot's appurtenant vote in the Association bears to the total number of votes then outstanding in the Association. (For example, if a Lot has one (1) vote in the Association out of a total of three (3) possible votes, such Lot and its Owner would be liable for one-third (1/3) of any assessment.

SECTION 6. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES. The annual assessments provided for herein shall be collected on an annual basis, or other periodic basis established by the Board, and shall commence: as to each Lot, on the date the Declarant conveys any Lot to another party. The first annual assessments shall be adjusted accordingly to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment applicable to every Owner subject thereto. The due dates for all such annual assessments shall be December 1 of each year, or such other date as established by the Board of Directors. 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 has been paid.

SECTION 7. EFFECT OF NONPAYMENT OF ASSESSMENTS; LATE FEES; 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, the Association may impose a late fee of \$15.00 per month for each month any assessment remains unpaid for 30 days after its due date. per delinquent assessment per Lot. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of deeds of trust, and late fees, interest, costs and reasonable attorney's fees for representation of the Association in such action of foreclosures shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for any assessment provided for herein by non-use of the Common Elements or abandonment of his Lot, nor shall damage to or destruction to any improvements on the Common Elements, or any Lot by fire or other casualty result in any abatement of diminution of the assessments provided herein.

SECTION 8. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Elements or assessments for public improvements, which default shall continue for a period of six (6) months, each Owner of a Lot shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority among the Owners in accordance with the formula established in SECTION 5 of this ARTICLE. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on such Lot and the taxing