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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2005 AUG 19 11:10:00 AM
BK: 4891 PG: 3349-3373 FEE: \$83.00

INSTRUMENT # 2005047561

Drawn by and Return to: Saffo Law Firm, P.C.

STATE OF NORTH CAROLINA **DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR
COUNTY OF NEW HANOVER HELLENIC SHORES SUBDIVISION**

This Declaration, made this the 19 day of August, 2005, by **NDP, LLC a North Carolina limited liability company**, of Orange County, North Carolina, hereinafter referred to as the "Declarant" for the purposes hereinafter stated;

WITNESSETH:

THAT WHEREAS, Declarant is the owner of certain real property in New Hanover County, North Carolina, known as **HELLENIC SHORES**, which is shown on a plat recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 48 Page 178, to which reference is made for a more particular description (the "Property"); and

WHEREAS, Declarant declares that the Property described above shall be held, sold and conveyed as a Planned Community 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 land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Act" shall mean the North Carolina Planned Community Act enacted under Chapter 47F of the North Carolina General Statutes, as amended.

Section 2. "Articles" shall mean the Articles of Incorporation of the Association as filed with the Secretary of State, State of North Carolina, as the same may be from time to time amended.

Section 3. “Association” shall mean and refer to Hellenic Shores Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 4. “Board” or “Board of Directors” shall mean those persons elected or appointed and acting collectively as the board of directors of the Association.

Section 5. “Bylaws” shall mean the document for governance of the Association as adopted initially by the Board and as amended by the Members.

Section 6. “Common Properties” shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of the Owners and Members of the Association.

Section 7. “Common Expenses” shall mean and include:

- (a) Expenses for maintenance of the roads, streets, rights of way and any amenities as provided in this Declaration;
- (b) Expenses of administration, maintenance, repair, or replacement of the Common Properties;
- (c) Expenses declared to be common expenses by the provisions of the Act, this Declaration or the Bylaws;
- (d) Hazard, liability, or such other insurance premiums as the Act, the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase;
- (e) Ad valorem taxes and public assessment charges lawfully levied against Common Properties;
- (f) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property, cross Common Properties of the Property and serve both the Property and lands adjacent thereto;
- (g) The expense of maintenance of any roads, streets, easements, amenities, taxes or any other expense item associated with Property or amenities not located on the Property but permitted to be used by the Members of this Association by any adjoining landowner, association or other entity pursuant to any cross-access or other agreement by the Association with the adjoining land owner;
- (h) Expenses for maintenance of security devices or personnel; and,

(i) Expenses for the maintenance of pedestrian easements as may be shown on the recorded map of the Property, and as may be required by this Declaration;

(j) Expenses of assessments of any other owners association, council or group which by virtue of this Declaration or any agreement between the Association and any other owners association, council or group may be imposed on the Association or the members of the Association for maintenance of any of the Common Properties within the Property by the other association or for security or maintenance of roads, streets and Common Properties outside the bounds of the Property, including security installations and security personnel so long as the same benefits the Members of this Association; and,

(k) Any other expenses determined by the Board or approved by the Members to be common expenses of the Association.

Section 8. “Declarant” shall mean and refer to **NDP, LLC**, or its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred in whole or in part, and subject to such terms and conditions as Declarant may impose.

Section 9. “Limited Common Properties” shall mean those portions of the Common Properties that serve only a single Lot or a limited number of Lots, and which may include, but specifically is not limited to, driveways, walkways, parking areas or areas serving only specified Lots, and such other similar areas as may be designated by a subdivision map or the Property or by the Association.

Section 10. “Living Unit” shall mean any residential occupied dwelling other than a single family residential dwelling on a Lot. An example of a Living Unit shall be an apartment unit.

Section 11. “Lot” shall mean and refer to any plot or tract of land shown upon any recorded subdivision map of the Property, as such map or maps may be from time to time amended or modified, for detached single-family residential use and designed for separate ownership and occupancy.

Section 12. “Member” shall mean and refer to every person or entity who holds membership in the Association.

Section 13. “Membership” shall mean and refer to the rights, privileges, benefits, duties, and obligations, which shall inure to the benefit of and burden each Member of the Association.

Section 14. “Notice” required to be given herein shall be in writing and mailed by U.S. mail, postage prepaid, first class to the address of the Association or of any Member on the records of the Association or shall be hand delivered to the Association or the Member.

Section 15. “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 which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Record ownership of any Lot shall make the Owner thereof a Member of the Association.

Section 16. “Planned Community” shall mean the Property any Additional Property, and all portions thereof, which the Declarant has submitted or may later submit to the terms, covenants, conditions, easements and restrictions of this Declaration, as contemplated by Section 47F-1-103(23) of the Act.

Section 17. “Property” shall mean and refer to that certain real property hereinbefore described as Hellenic Shores Subdivision as shown on a plat recorded in Map Book 48 Page 178, of the New Hanover County Registry, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. **Owners’ Easements of Enjoyment.** Every Owner shall have the right and easement of enjoyment in and to the Common Properties together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Common Properties, all of 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 charge reasonable admission and other fees for the use of any recreational or other similar facility situated upon the Common Properties;
- (b) the right of the Association to suspend the voting rights and the right to use the recreational or other Common Property facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate, sell, lease mortgage or transfer all or any part of the Common Properties, or any interest therein, to any public agency, authority, or utility, or to any other person for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication, sale, mortgage or transfer shall be effective unless it has been approved by a vote or the written agreement of no less than eighty percent (80%) of the Members and an instrument of dedication, sale, lease, mortgage or transfer properly executed by the Association has been recorded. On such instrument the Secretary of the Association

shall certify that eighty percent (80%) of the Members have approved the dedication, sale, lease, mortgage or transfer, and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes, as specified herein, may be made by the Association without consent of the Members;

- (d) the right of the Association to limit the number of guests of Members;
- (e) the right of the Association, in accordance with its Articles or Bylaws to impose rules and regulations for the use and enjoyment of the Common Properties, the Lots and improvements thereon, which rules and regulations may further restrict the use of the Common Properties and create Limited Common Properties.
- (f) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified above, to the initial Property and all lands included in subsequent phases.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Properties and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property but may not delegate or assign responsibility for the actions of those to whom such right is delegated.

Section 3. Title to the Common Properties. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Properties located within the Property to the Association prior to the conveyance of the first Lot, free and clear of all encumbrances and liens, other than utility easements or rights of way for service, access, storm drainage and other similar service or utility easements that may affect the Property.

Section 4. TV Antennas, Cablevision, Music. The Association may, in its discretion, provide one or more central television or radio antennas for the convenience of the Members and may supply cablevision, and the cost of these may be included in Annual or Special Assessments. If it elects to provide such services and facilities, the Association may regulate or prohibit the erection of television, radio or other antennas on individual Lots.

ARTICLE III

OWNERS' ASSOCIATION

Section 1. Formation of Association. Hellenic Shores Owners' Association, Inc. is a non-profit 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 Properties, collect and disburse funds to pay the Common Expenses, and to

provide any other services provided in this Declaration or agreed to by a majority of the Members.

Section 2. Membership. Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

Section 3. Voting Rights. Each Member shall be entitled to one vote in the affairs of the Association for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Unless a greater percentage vote of the Members or Lot Owners is required by the Act, this Declaration or the Bylaws, any action requiring or submitted to a vote by the Members may be taken upon the majority vote of the Members entitled to vote at a meeting at which a quorum is present, or by the written agreement of a majority of the Members. The determination of a quorum and other rules governing meetings of the Members and the Association shall be set forth in the Bylaws and shall control unless inconsistent with this Declaration or the Act.

The Association may suspend the voting rights and the right to use the recreational or other Common Property facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of the Association's published rules and regulations.

Section 4. Powers, Privileges, Rights and Obligations. In addition to the rights and powers granted to the Association by the Act, this Declaration, its Articles and Bylaws, and to the rights and powers with regard to assessments set forth in Article V of this Declaration, the Association shall have and possess and shall perform and exercise the following powers, privileges, rights and duties, subject, however, to the rights of the Declarant contained in Article VI hereof:

- (a) The Association shall be entitled to make and amend reasonable rules and regulations governing use of the Common Properties;
- (b) The Association shall be responsible for the operation, upkeep, maintenance, protection, preservation, repairs, reconstruction and/or replacement of (i) the Common Properties improvements and additions thereto, and (ii) the Limited Common Properties, if any; provided, however, that in the event that any of the above activities are necessitated by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, or is caused by fire, wind, rain, blowing water, lightning, smoke or other hazard or casualty, and the cost of such maintenance, repair or other activity is not fully recovered by insurance, then, at the sole discretion of the Board, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may be added to the annual assessment levied against said Owner's Lot;
- (c) The Association may engage in such other activities as authorized by a

majority of the Members;

(d) The Association may suspend the voting rights and privileges of any Owner for any period during which any assessments against the Owner's Lot remain unpaid, and for a period not to exceed 60 days for an infraction of the published rules and regulations of the Association; and

(e) The Association may mortgage or convey the Common Properties, or dedicate or transfer all or part of the Common Properties, to any public agency, authority or utility in the manner described in Article II, Section 1, Paragraph (c) herein.

ARTICLE IV

INSURANCE

(a) Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available;

(1) Property insurance on the Common Properties insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property maintenance of the Common Properties.

(b) If the insurance described in paragraph (a) of this Article 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. The Declaration may require the Association to carry any other insurance, and the Association in any event may carry any other insurance it deems appropriate to protect the Association or the Lot Owners.

(c) Insurance policies carried pursuant to Paragraph (a) of this Article shall provide that:

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

(2) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;

(3) Not act or omission by any Lot Owners, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(4) 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.

(d) Any loss covered by the property policy under Paragraph (a)(1) of this Article shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lienholders as their interest may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portions of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Planned Community is terminated.

(e) An insurance policy issued to the Association does not prevent a Lot Owner from obtaining insurance for the Lot Owner's own benefit.

(f) Any portion of the Development for which insurance is required under Paragraph (a)(1) of this Article which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Development is terminated as a Planned Community, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the Lot Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of Owners assigned to the Limited Common Properties not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Development is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Properties shall be used to restore the damaged area to a condition compatible with the remainder of the Development, (ii) the insurance proceeds attributable to Limited Common Properties which are not rebuilt shall be distributed to the Owners of the Lots to which those Limited Common Properties were allocated, or to the lienholders, as their interest may appear, and (iii) the remainder of the proceeds shall be distributed to all the Lot Owners or lienholders, as their interest may appear, in proportion to the Common Expense liabilities of all the lots. Notwithstanding the provisions of this paragraph, North Carolina General Statutes Section 47F-2-118 (termination of the planned community) shall govern the distribution of insurance proceeds if the Development is terminated as a Planned Community.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses, and (2) special assessments for extraordinary maintenance and capital improvements, (3) special assessments for purchase, construction or reconstruction of improvements; and (4) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Common Properties and public roads if the Association shall default in payment thereof. The annual and special assessments, together with interest and costs, and reasonable attorneys' fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in the title unless expressly assumed by them.

The Association shall also have the authority, through the Board to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses to promote the recreation, health, safety, and welfare of the Owners of Lots; and, in particular, but not limited to, for the acquisition, improvement and maintenance of the Property, services, amenities and facilities, and for the use and enjoyment of the Common Properties, 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 and public assessments assessed against the Common Properties, the providing for security of the Property, the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board, the payment of common antenna or cable service, the employment of counsel, accountants and other professionals for the Association when necessary, the enforcement of this Declaration and such other needs as may arise. Out of the assessments, the Board may create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements

to the Common Properties which the Association may be obligated to maintain.

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

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased each year by not more than ten percent (10%) above the Annual Assessment for the previous year without a vote of the Members, except as herein provided.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased by more than ten percent (10%) by a vote of sixty-seven percent (67%) of the Members who are entitled to vote in person or by proxy at a meeting duly called for this purpose at which a quorum is present.

(c) The Board may increase the amount of the Annual Assessment to \$200.00 per Lot notwithstanding the provisions of Paragraphs (a) and (b) above, and thereafter the limitations set forth in said Paragraphs shall apply to any annual increase.

Section 4. Special Assessments for Extraordinary Maintenance and Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Properties and any Limited Common Properties, including fixtures and personal property related thereto, and any property for which the Association is responsible, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the Members who are entitled to vote in person or by proxy at a meeting duly called for this purpose at which a quorum is present.

Section 5. Insurance Assessments. All premiums on insurance policies purchased by the Board or its designee pursuant to Article IV and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may in any assessment year levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments provided for under Section 3 above, which shall be in an amount sufficient to pay the annual cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment. Such Assessment shall not be subject to the 10% limitation set out in Section 3, (a) and (b) of this Article V.

Section 6 Ad Valorem Tax Assessments. All ad valorem taxes levied against the Common Properties, if any, shall be a Common Expense, and the Association may in any assessment year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments provided for under Section 3 above, which shall be in an amount sufficient to pay such ad valorem taxed in such year not included as a component of the Annual Assessment. Such assessment shall not be subject to the 10% limitation set out in Section 3, (a) and (b) of this Article V.

Section 7. Working Capital Assessments. At the time title to a Lot is conveyed to an Owner by the Declarant, the Owner shall pay to the Association as working capital an amount equal to two months' Annual Assessment. Such funds shall be used solely for initial operating and capital expenses of the Association such as pre-paid insurance, supplies, and furnishings, fixtures and equipment for the Common Properties, etc. Amounts paid into the working capital fund are not to be considered as an advance of the Annual or any other assessments. Any working capital funds remaining after the last Lot has been sold by Declarant shall be transferred to and become part of the general funds of the Association, to be used in the discretion of the Board.

Section 8. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than 15 days nor more than 30 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast forty percent (40%) of all the votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to a minimum seven (7) day and maximum twenty-one (21) day notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. If at a second meeting the requirement of one-half of the required quorum is not met, then in a subsequent meeting the requirement shall be one-fourth (¼) of the required quorum and successive meetings may be held until a quorum is maintained by successfully halving the quorum requirements of the prior meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 9. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or other periodic basis established by the Board; provided, however, that the assessment against any Lot that does not contain a finished dwelling shall only be twenty-five percent (25%) of a Lot that does

contain a dwelling. A Lot shall cease to enjoy the benefit of the reduced assessment at such time as it is sold by a builder of the dwelling to the consumer-occupant and that sale is closed.

Section 10. Uniform Rate of Assessment. The Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or quarterly basis.

Section 11. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from the Declarant.

Section 12. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall bear interest from the due date at the rate of eighteen (18%) percent per annum or the maximum rate permitted by law whichever is the lesser rate. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the North Carolina General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court in the County in which the Property is located in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recorded any time after thirty (30) days after the due date of the assessment or any installment thereof 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 all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, reasonable attorneys' fee, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed 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.

Section 13. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer, but shall not abate the personal obligations of the prior Owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Should the priorities set forth above be modified by law, such variation as established by law shall prevail.

Section 14. Exempt Property. Any portion of the Property dedicated to, and accepted by,

a local public authority and any portion of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the ad valorem tax assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI

RIGHTS OF DECLARANT/DECLARANT CONTROL

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

Section 1. The Association/Period of Declarant Control. All the powers and duties of the Board may be exercised by the Declarant, and the Declarant shall appoint all members of the Board, until such time as ninety percent (90%) of the Lots within the Development have been sold or conveyed by the Declarant to purchasers (the "Declarant Control Period"). Management and control of the Association can be voluntarily transferred earlier by Declarant to the Owners at any time.

Section 2. The Architectural Control Committee. During the Declarant Control Period, all duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the By-laws shall be exercised and performed by the Declarant or its designee.

Section 3. 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 Development (so long as the Declarant retains title to said lands) 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 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 subdivision plat of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract; to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access or are needed for use as private roads or access areas, 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.

Section 4. Amendment of Declaration by the Declarant. This Declaration may be amended by the Declarant 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 include any platting change as 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 Veterans Administration, 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. 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 4.F.

Section 5. Street Lighting. The Declarant reserves unto itself, and unto the Association after the Declarant Control Period, the right to subject the real property in the subdivision to a contract with Progress Energy (CP&L) for the installation of street lighting which requires a continuing monthly payment to Progress Energy (CP&L) by each residential customer.

ARTICLE VII

USE RESTRICTIONS AND ARCHITECTURAL CONTROL

Section 1. Building and Site Improvements. No site preparation (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or initial construction, erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, bulkheads, screens, landscaping, plantings, equipment, or other structures shall be commenced, erected, placed, altered or maintained upon any lot, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, location and elevations of the proposed

improvements, landscaping or plantings 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 Declarant, or after the sale of ninety percent (90%) of all Lots by Declarant, by the Board or by an Architectural Control Committee composed of three (3) persons appointed by the Board. In the event the Declarant, the Board, or the Architectural Control Committee fails to approve or disapprove such submission made by any Lot Owner within thirty (30) days after said plans and specifications have been received by the Declarant, the Board, or Architectural Control Committee, approval will not be required and this Article will be deemed to have been fully complied with. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant, the Board, or the Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Declarant, the Board, or the Architectural Control Committee, as the case may be, for its records. Neither the Declarant, the Board, nor the Architectural Control Committee shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

Section 2. Approval of Plans.

A. No house plans will be approved unless the proposed house shall have a minimum of 1,800 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

B. Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines shall be established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any lot shall be controlled by applicable county or municipal zoning ordinances and must be approved absolutely by the Declarant, the Board, or the Architectural Control Committee, as the case may be.

C. The exterior of all houses and other structures must be completed within twelve (12) months after the Owner's receipt of approval from the Declarant, the Board, or the Architectural Control Committee; and construction of any addition to a dwelling, exterior improvement to an existing dwelling, any grading, landscaping, or any outbuilding, swimming pool or improvement ancillary to the dwelling shall be completed within six (6) months after the Owner's receipt of approval; except where such completion is impossible or would result in great hardship to the Owner or building, due to strikes, fires, national emergency or natural calamities. The Declarant, the Board, or the Architectural Control Committee shall have the authority to extend the foregoing times upon application of the Lot Owner and for good cause shown for a period not to exceed six (6)