

40



FOR REGISTRATION REGISTER OF DEEDS  
REBECCA T. CHRISTIAN  
NEW HANOVER COUNTY, NC  
2004 FEB 13 04:17:35 PM  
BK: 4195 PG 148-188 FEE: \$131 00

INSTRUMENT # 2004007375

**MASTER DECLARATION OF PROTECTIVE COVENANTS  
FOR KENTWOOD VILLAGE**

Prepared by Murchison, Taylor & Gibson, PLLC  
**RETURNED TO** 6 North Fifth Avenue, Wilmington, NC 28401

NORTH CAROLINA

NEW HANOVER COUNTY

THIS MASTER DECLARATION OF PROTECTIVE COVENANTS FOR KENTWOOD VILLAGE (these "Protective Covenants") is made this 13th day of February, 2004, by STEVENS BUILDING COMPANY, a North Carolina corporation ("DECLARANT")

DECLARANT is the owner of the real property described in Exhibit A, which is attached hereto and incorporated by reference. These Protective Covenants impose restrictions upon the Properties (as defined in ARTICLE 1 herein) under a general scheme of development for the mutual benefit of the owners of each portion of the Properties.

DECLARANT hereby declares that all of the property described in Exhibit A, as well as any additional property subjected to these Protective Covenants by Supplemental Declaration in accordance with the terms hereof, shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the real property subjected to these Protective Covenants. These Protective Covenants shall be binding on and shall inure to the benefit of all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, and assigns.

**ARTICLE 1  
DEFINITIONS**

The terms used in these Protective Covenants shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Articles of Incorporation" or "Articles". the Articles of Incorporation of Kentwood Village Homeowner's Association, Inc, which have been or will be filed with the North Carolina Secretary of State, and as may be amended from time to time.

1.2 "Association". Kentwood Village Homeowner's Association, Inc, a North Carolina nonprofit corporation, formed or to be formed by the DECLARANT as a property owners association for unit owners in the Residential Community, all of whom shall be members of the Association.

1.3 "Board of Directors" or "Board". the board governing the Association and managing the affairs of the Association.

1.4 "Business" and/or "Trade" shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration.

1 5 “By-Laws” the By-Laws of Kentwood Village Homeowner’s Association, Inc , as they may be modified or amended from time to time The initial By-Laws are attached hereto as **Exhibit B**

1 6 “Class “B” Control Period” the period of time during which the Class “B” Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3 3

1 7 “Committee” the Architectural Review Committee, as described in ARTICLE 10 herein

1 8 “Common Area” all real and personal property which the Association owns or leases, or which is designated as “common area”, “open space” or “private open space” on any plat of the Properties (or any portion thereof) recorded by DECLARANT, and which is held or maintained for the common use and enjoyment of the Members Without limiting the generality of the foregoing, the Common Area shall be deemed to include all areas labeled as “Private Open Space” or “Open Space” on that certain plat of Kentwood Village recorded in Map Book 45, Page 146 in the New Hanover County Public Registry

1 9 “Common Expenses” the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve and actual and estimated expenses of maintaining and operating the Common Areas (including, without limitation, drainage ponds, ditches and swales), conservation and buffer areas, and landscaped areas within road right of ways, as the Board may find necessary and appropriate pursuant to these Protective Covenants the By-Laws, and the Articles of Incorporation, as well as certain maintenance of the exterior portions of the Units, including the following

- (a) All sums lawfully assessed by the Association against its Members,
- (b) Expenses of administration, maintenance, repair or replacement of the Common Areas and the stormwater system,
- (c) Expenses declared to be Common Expenses by the provisions of these Protective Covenants or the By-Laws,
- (d) Expenses agreed by the Members to be Common Expenses of the Association,
- (e) Any ad valorem taxes and public assessments levied against the Common Area,
- (f) Any expenses incurred by the Association in connection with the care, inspection and maintenance (including, without limitation, lawn mowing, trimming and other lawn maintenance services provided by the Association from time to time) of the front yards of the Units as deemed necessary by the Association in accordance with the Community-Wide Standard,
- (g) Any expenses incurred by the Association in connection with the care, inspection and maintenance of wooden fences located on a Unit which is provided in connection with the initial development of the home on such Unit (“Wooden Fences”),
- (h) Any expenses incurred by the Association in connection with the care, maintenance, repair and replacement of any wooden “inlays” constituting part of the driveway of a Unit (“Wooden Inlays”), and
- (i) Any expenses incurred by the Association in connection with the care, maintenance, lighting, repair and replacement of the brick wall located by the developer along Sea Spray Drive and the plantings and landscaping of any Common Areas around such wall (collectively, the “Brick Wall”)

Common Expenses shall not include any expenses incurred during the Class “B” Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class “A” votes of the Association

1 10 “Community-Wide Standard” the standard of conduct, maintenance, or other activity generally prevailing throughout the Residential Community Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee

1 11 “DECLARANT” Stevens Building Company, a North Carolina corporation, together with such successors or assigns of DECLARANT who should acquire more than one undeveloped Unit from the DECLARANT for the purpose of development and who are specifically granted DECLARANT’s rights hereunder

1 12 “Design Guidelines” the architectural design guidelines and procedures set forth in ARTICLE 10 and/or adopted by the Architectural Review Committee pursuant to ARTICLE 10 and applicable to all Units within the Properties

1 13 “Future Development Property” any real property owned by DECLARANT within a one (1) mile radius of the Properties

1 14 “Individual Assessment” assessments levied in accordance with Section 9 6 of these Protective Covenants

1 15 “Kentwood Village” the development created or to be created on the Properties

1 16 “Limited Common Area” portions of the Common Area which the Association or DECLARANT has designated for the common use and enjoyment of more than one, but less than all, of the Members

1 17 “Master Assessment” assessments levied on all Units subject to assessment under ARTICLE 9 to fund Common Expenses for the general benefit of all Units

1 18 “Member” a Person entitled to membership in the Association, as provided in Section 3 2

1 19 “Mortgage” a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed

1 20 “Mortgagee” a beneficiary or holder of a Mortgage

1 21 “Mortgagor” any Person who gives a Mortgage

1 22 “Owner” the record Owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation

1 23 “Person” a natural person, a corporation, a partnership or limited partnership, a limited liability company or partnership, a trustee, association, or any other legal entity

1 24 “Planned Community Act” the North Carolina Planned Community Act (N C G S §47F-1-101 et seq ), as same may be amended from time to time

1 25 “Property” or “Properties” the real property described in Exhibit A, together with such additions thereto (including, without limitation, portions of the Future Development Property) as may hereafter be brought within the jurisdiction of the Association by the filing of a Supplemental Declaration

1 26 “Protective Covenants” shall mean this instrument as it may from time to time be amended or supplemented

1 27 “Residential Community” the residential development created or to be created on the Property

1 28 “Rules and Regulations” the rules and regulations adopted by the Board governing land use, individual conduct and uses or actions upon the Property

1 29 “Service Assessment” assessments levied in accordance with Section 9 13 of these Protective Covenants

1 30 “Special Assessment” assessments levied in accordance with Section 9 5 of these Protective Covenants

1 31 “Supplemental Declaration” an amendment or supplement to these Protective Covenants filed pursuant to ARTICLE 8 which subjects additional property to these Protective Covenants and/or imposes, expressly or by reference, changes to or additional restrictions and obligations on the land described therein

1 32 “Unit” a portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon The term shall include, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, single-family detached houses on separately platted lots, and single family residential lots

## ARTICLE 2 PROPERTY RIGHTS

2 1 Right to Use and Enjoyment of Common Area Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, and for ingress and egress to and from the Common Area, which shall be appurtenant to and pass with the title to every Unit, subject to the following provisions

(a) These Protective Covenants, the Articles, the By-Laws, the Rules and Regulations and any other applicable covenants or Supplemental Declarations,

(b) Any restrictions or limitations contained in any deed conveying such property to the Association,

(c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area and improvements thereon, including rules restricting use of the recreational facilities within the Common Area to occupants of Units and their guests and rules limiting the number of guests who may use the Common Area, and the right of the Board to establish penalties for any infractions thereof,

(d) The right of the Board to suspend the voting rights and the right to use the Common Areas and the recreational facilities within the Common Area by an Owner (i) for any period during which any charge against such Owner’s Unit remains unpaid, and (ii) for a period not to exceed sixty (60) days for a single violation, or for a longer period in the case of any continuing violation, of these Protective Covenants, any applicable Supplemental Declaration, the Articles, the By-Laws, the Design Guidelines or the Rules and Regulations, after notice and a hearing pursuant to the By-Laws,

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4 7,

(f) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth herein and the rights of such Mortgagees in said properties shall be subordinate to the rights of the Unit Owners hereunder, and

(g) Easements as provided in ARTICLE 12

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, contract purchasers and social invitees, subject to reasonable Board regulation An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the duration of the lease and any such lessee shall abide by all the restrictions contained herein Any such lease shall not release the owner of his liability for damage to the Common Area caused by said lessee

2 2 Use of SeaSpray Amenities DECLARANT has received non-binding representations from the developer of the adjacent development known as “SeaSpray Landing” that

the right to use the existing SeaSpray Landing clubhouse, tennis courts, swimming pools and other recreational amenities at SeaSpray Landing (collectively, the "SeaSpray Amenities") may be extended to Owners within the Residential Community subject to the payment of certain periodic use fees. Notwithstanding the foregoing, **NEITHER DECLARANT NOR THE ASSOCIATION MAKES ANY WARRANTIES OR REPRESENTATIONS WHATSOEVER WITH RESPECT TO ANY OWNER'S RIGHT OR PRIVILEGE TO USE THE SEASPRAY AMENITIES, AND EACH OWNER, BY ITS ACCEPTANCE OF TITLE TO ANY UNIT, THEREBY WAIVES ANY CLAIM AGAINST THE DECLARANT AND/OR THE ASSOCIATION RELATIVE TO THE USE OF THE SEASPRAY AMENITIES.** In the event an arrangement is established for the use of the SeaSpray Amenities and such arrangement requires the collection of assessments for such usage, the Association shall have the right and power to collect such payments with assessments as provided in Article 9 herein.

### ARTICLE 3

#### ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

3.1 Function of Association The Association shall be the entity responsible for management, maintenance, ownership, operation and control of the Common Area owned or leased by the Association within the Properties. The Association shall also be responsible for providing certain maintenance services for the exterior portions of Units as more particularly provided in ARTICLE 5 herein. The Association shall be the primary entity responsible for enforcement of these Protective Covenants and such reasonable rules regulating use of the Common Areas owned or leased by the Association as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural design guidelines and controls set forth in these Protective Covenants and in the Design Guidelines. The Association shall perform its functions in accordance with these Protective Covenants, the By-Laws, the Articles and applicable North Carolina law.

3.2 Membership Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of that membership. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association, provided that only one person (and such person's immediate family members with respect to membership rights other than voting) may be designated to act in such capacity for such an Owner at any particular time.

3.3 Voting The Association shall have two classes of membership, Class "A" and Class "B"

(a) Class "A" Class "A" Members shall be all Owners of Units except the Class "B" Member, if any. Class "A" Members shall have one vote for each Unit in which they hold the interest required for membership under Section 3.2, there shall be only one vote per Unit.

(b) Class "B" The sole Class "B" Member shall be the DECLARANT. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under these Protective Covenants and the By-Laws, are specified elsewhere in the Protective Covenants and the By-Laws. The Class "B" Member may appoint the members of the Board during the Class "B" Control Period, as specified herein. After termination of the Class "B" Control Period, the members of the Board shall be selected as provided in the By-Laws.

During the Class "B" Control Period, the Class "B" Member shall be entitled to six (6) votes for each platted Unit and six (6) votes for each planned but currently-unplatted Unit in the Residential Community. The total number of planned Units in the Residential Community is currently twenty-eight (28), although the actual number of Units may be more or less, and the Class "B" Member makes no representation whatsoever regarding the actual number of Units to be included in the Residential Community. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:

(i) when the DECLARANT owns ten percent (10%) or less of the total number of the planned Units in the Residential Community, including any of the Future Development Property which may be annexed thereto, as herein provided, or

(ii) on January 1, 2043

(c) Exercise of Voting Rights In any situation in which a Member is entitled personally to exercise the vote for his or her Unit and there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such Co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it

3.4 Subordinate Associations and Declarations No declaration, restrictive covenants, or property owner's association shall be established upon or be binding upon or applicable to any of the Properties unless approved in writing by DECLARANT

#### ARTICLE 4 RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area The Association, subject to the rights of the Owners set forth in these Protective Covenants, shall manage and control the Common Area and all improvements thereon (as defined in other sections herein including, without limitation, roads, road rights of way, recreation pathways, decks, docks, boardwalks, lighting, irrigation, furnishings, equipment, and common landscaped areas), and shall keep it and them in good repair and in a clean, attractive, sanitary condition consistent with these Protective Covenants and the Community-Wide Standard

4.2 Personal Property and Real Property for Common Use The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. DECLARANT may convey to the Association improved or unimproved real estate located within the Residential Community, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth herein and in the deed

4.3 Rules The Association, through its Board, may make, revoke, amend and enforce reasonable rules governing the use of the Properties, in addition to further defining or limiting, and, where specifically authorized hereunder, creating exceptions to, those covenants and restrictions set forth in these Protective Covenants. Such rules shall be binding upon all Owners, occupants, invitees, lessees, guests and licensees

4.4 Enforcement The Association may impose sanctions for violations of these Protective Covenants, the By-Laws, or Rules and Regulations, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. The Board may assess the reasonable monetary fines authorized by this Section as an Individual Assessment authorized by Section 9.6 of these Protective Covenants

4.5 Implied Rights, Board Authority The Association may exercise any other right or privilege given to it expressly by these Protective Covenants or the By-Laws, by the Planned Community Act or Chapter 55A of the North Carolina General Statutes, and as reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in these Protective Covenants, the By-Laws, Articles, all rights and powers of the Association may be exercised by the Board without a vote of the membership

4.6 Indemnification To the maximum extent allowed by North Carolina law, the Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be party by reason of being or having been an officer, director or committee member. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available

4 7 Dedication of Common Areas The Association may dedicate portions of the Common Areas to any local, state, or federal governmental entity, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association

4 8 Security The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be NEITHER THE ASSOCIATION NOR THE DECLARANT (OR ANY SUCCESSOR TO DECLARANT) SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES

4 9 Management and Administration The management and administration of the Association Common Areas and Amenities shall be the sole right and responsibility of the Association The management shall be carried out in accordance with the terms and conditions of these Protective Covenants, the Articles, By-Laws and Rules and Regulations, but they may be delegated to Manager(s) or a management service

4 10 Assignment to Association DECLARANT shall be entitled to assign all water, sewer, land use, stormwater system and utility permits, agreements and easements between DECLARANT and any governmental agency or department or public or private utility company to the Association, in which case the Association shall be required to assume same After such an assignment, the Association shall be responsible for and assume all duties, obligations, and rights and privileges of the DECLARANT under such permits, agreements and easements, including all maintenance responsibility, even if part of the water, sewer, land use, stormwater system or utility areas covered by the permits, agreements and easements are not located within the Properties

4 11 Common Area The Common Area cannot be mortgaged, conveyed or encumbered without the consent of eighty percent (80%) of the Unit Owners During the Class "B" Control Period, any such mortgage, conveyance or encumbrance shall also require the consent of DECLARANT

## ARTICLE 5 MAINTENANCE

5 1 Association's Responsibility The Association shall maintain and keep in good repair the Common Area, which may include, but need not be limited to

(a) all landscaping and other flora, parks, and signage for the Residential Community situated upon the Common Area, structures and improvements situated upon the Common Area, including any private streets and rights of way and islands within their streets and cul-de-sacs, bicycle and pedestrian pathways and trails situated upon the Common Area, ponds, lakes, drainways, recreation pathways within or upon the Common Area, the entrance to the Residential Community (provided that maintenance of certain areas may be shared by owners of other developments in the area, in which case the Association shall be responsible for its allotted share or portion of such maintenance), any Wooden Fences, Wooden Inlays and portions of the Brick Wall (as such terms are defined in Section 1 9(f) herein) which may be located on the Common Area, and any other areas designated as Common Area or Limited Common Area by DECLARANT, and

(b) any other Common Area designated by the Board or the DECLARANT, from time to time in a Supplemental Declaration

The Association may, at its option, assume responsibility for certain exterior maintenance of the Units, the stormwater system, and any portions of Wooden Fences, Wooden Inlays and the Brick Wall which may be located upon any Units (in which event the costs of such maintenance shall be Common Expenses hereunder), provided, however, and notwithstanding anything herein to the contrary, the Association shall be entitled to discontinue maintenance of the exteriors of any Unit at any time in its discretion, whereupon all such exterior maintenance of such Unit shall immediately and automatically become the obligation of the relevant Unit Owner

5.2 Owner's Responsibility With the exception of exterior maintenance duties assumed by the Association pursuant to Section 5.1 herein, each Owner shall maintain his or her Unit and all structures, parking areas, landscaping and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to the Supplemental Declaration or other Declaration of Protective Covenants applicable to such Unit. As to Units which abut a watercourse or body of water, it shall be the responsibility of each Owner to maintain, in a manner consistent with the Community-Wide Standard and these Protective Covenants, any area lying between the boundary or lot line of such Unit and the waterline of such watercourse or body of water (as such waterline may fluctuate from time to time). Any fencing which is not maintained by the Association shall be maintained and kept in good condition and repair by the Owner of the Unit on which such fencing is located (at such Owner's cost and expense). In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may, but is not required to, perform such maintenance responsibility and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 9.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Maintenance of Units Subject to the Association's maintenance of the exterior portions of Units as provided in Section 5.1 herein, each Owner shall maintain his or her Unit and all landscaping and improvements comprising the Unit in a manner consistent with the Community-Wide Standard and these Protective Covenants, the Articles, the By-Laws, the Rules and Regulations and any other applicable covenants or Supplemental Declarations, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. If, in the opinion of the Association, any Owner shall fail to maintain any Unit owned by him in a manner which is reasonably neat and orderly and as is required by Article 12 herein or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the sole opinion of the Association, the Association in its discretion, by the affirmative vote of a majority of the members of the Board of Directors, and following ten (10) days written notice to Owner, may enter upon and make or cause to be made repairs to such improvements and perform such maintenance on the Unit as the removal of trash, cutting of grass, pruning of shrubbery, weeding and items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. The reasonable cost incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such cost, shall be added to and become an Individual Assessment to which such Unit is subject as provided in ARTICLE 9 herein.

5.4 Standard of Performance Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as other duties, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

## ARTICLE 6 INSURANCE AND CASUALTY LOSSES

The Association shall maintain adequate and appropriate insurance coverage on all Common Areas, as provided in the By-Laws of the Association and as required by the Planned Community Act.

## ARTICLE 7 SUBDIVISION

No Unit or Units shall be subdivided except to enlarge an adjoining Unit, but any Unit so enlarged cannot be improved with more than one single family dwelling. An Owner of a Unit and a portion or all of an adjoining or contiguous Unit or Units may construct a dwelling or other structure permitted hereunder upon and across the dividing line of such adjoining and contiguous Unit(s). The number of Units shall remain the same and shall be treated for all purposes under these Protective Covenants as two (2) or more units. Notwithstanding the preceding provisions of this Article 7 to the contrary, DECLARANT shall be entitled to revise and move lot lines of any Units owned by DECLARANT as long as the total number of Units remains the same.

ARTICLE 8  
ANNEXATION AND WITHDRAWAL OF PROPERTY

8 1 Annexation without Approval of Membership

(a) Until January 1, 2043, DECLARANT may subject any portion(s) or all of the Future Development Property to the provisions of these Protective Covenants as provided in this Section 8 1. DECLARANT may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the Property. Nothing in these Protective Covenants shall be construed to require the DECLARANT or any successor to annex or develop any of the Future Development Property in any manner whatsoever.

(b) An annexation by DECLARANT under Section 8 1(a) shall be accomplished by filing a Supplemental Declaration in the land records of New Hanover County, North Carolina, describing the property to be annexed and specifically subjecting it to the terms of these Protective Covenants. Such Supplemental Declaration shall not require the consent of any Members other than DECLARANT, but shall require the consent of the owner of such property, if other than DECLARANT. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

8 2 Annexation by Membership Except as provided in Section 8 1 herein, annexation of additional property shall require the assent of two-thirds ( $\frac{2}{3}$ ) of the Class "A" Members at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. During the Class "B" Control Period, annexation of additional property under this Section 8 2 shall also require the consent of DECLARANT.

8 3 Withdrawal of Property The DECLARANT reserves the right to amend these Protective Covenants so long as it has a right to annex additional property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing property then owned by the DECLARANT, its affiliates, or the Association from the coverage of these Protective Covenants, to the extent originally included in error or as a result of any changes in the DECLARANT'S plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

8 4 Additional Covenants and Easements The DECLARANT may unilaterally subject the property submitted to these Protective Covenants initially or by Supplemental Declaration to additional covenants and easements, provided that such amendment or modification does not alter the general or common scheme of development for the Properties described herein and further provided that this right to amend shall not render these covenants and restrictions purely personal to the DECLARANT and the benefits and burdens contained in these Protective Covenants shall remain mutual and reciprocal to all Owners.

8 5 Amendment This Article shall not be amended without the prior written consent of DECLARANT during the Class "B" Control Period.

ARTICLE 9  
ASSESSMENTS

9 1 Creation of Assessments

(a) The Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time as more particularly provided in this Article 9. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments.

(b) All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by North Carolina law), late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 9 9. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the

Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage or any individual obtaining title by or through a foreclosure shall be personally liable for unpaid assessments which accrued prior to such acquisition of title. In the event of any transfer of title to a Unit, the lien of the assessments shall not be extinguished.

(c) No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

9.2 DECLARANT'S Obligation for Assessments During the Class "B" Control Period, DECLARANT shall not be obligated to pay any regular assessments on its unsold Units. Until the end of the Class "B" Control Period, all Common Expenses shall be borne by the Owners of Units sold by DECLARANT to unaffiliated third parties (and assessments on DECLARANT's unsold Units will only be payable to the extent needed to cover any shortfall not otherwise payable by assessments under this Article 9). After the expiration of the Class "B" Control Period, any unsold Units owned by DECLARANT shall be subject to assessment on the same terms as all other Units.

9.3 Computation of Master Association Assessment The Board shall prepare and distribute to the Members a budget covering the estimated Common Expenses during the coming year (including, without limitation, a capital contribution to establish a reserve fund in accordance with a budget prepared as provided in Section 9.4) as and to the extent required in the Planned Community Act.

9.4 Capital Reserve Budget The Board shall annually prepare a capital reserve budget for maintenance and replacement of capital improvements which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

9.5 Special Assessments In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover capital improvements or unbudgeted expenses (including, without limitation, expenses required to complete repair, maintenance and/or clean-up which the Board deems necessary or advisable after a storm, hurricane or other casualty event) or other expenses in excess of those budgeted. The Board may establish the amount of the Special Assessment if it is ONE HUNDRED DOLLARS (\$100.00) or less in any assessment year for each Member. All other Special Assessments shall require the affirmative vote of sixty-seven percent (67%) of Members present and voting in person or by proxy which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.6 Individual Assessments The Board shall have the power to levy Individual Assessments against a particular Unit or Units constituting less than all Units within the Properties as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner,

(b) to cover costs including overhead and administrative costs and reserves incurred for maintenance, repair and replacement of any private roads, signs, mail boxes, fences and berms which are constructed for the benefit of certain specified lots, as shall be more specifically set forth in a Supplemental Declaration,

(c) to cover costs incurred in bringing the Unit into compliance with the terms of these Protective Covenants, including, without limitation, Section 5.3, any applicable Supplemental Declaration, the Articles, the By-Laws, Rules and Regulations, or Design Guidelines or costs incurred as a consequence of the conduct of the Owner or occupant of the Unit, their lessees, licensees, invitees, or guest, provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing before levying an Individual Assessment under this subsection (c), and

(d) to cover any costs or expenses assessed against or charged to the Association by the Seaspray Landing Homeowners' Association, Inc., a North Carolina corporation (the "Sea Spray Association"), or any other entity from time to time, relative to such Owner's use and enjoyment of the SeaSpray Amenities (but only to the extent the Association elects to collect same, it being acknowledged that the Association shall have no obligation to collect same unless it otherwise agrees in writing) Notwithstanding the foregoing, the Association shall be entitled, in its discretion, to elect to include any charges it collects under this Section 9.6(d) as part of the Master Association Assessment

9.7 Working Capital Assessment Upon the conveyance of title to any Unit, the acquiring Owner shall contribute to the Association, as working capital, a working capital assessment of Two Hundred Dollars (\$200.00). Such funds shall be used for operating and capital expenses of the Association, such as prepaid insurance, supplies, furnishings and equipment, etc. Amounts paid into the working capital fund are not to be considered advance payment of regular assessments. All working capital funds shall become part of the general operating funds of the Association.

9.8 Date of Commencement of Master Association Assessments and Due Dates The Master Association assessments provided for herein shall commence on the date of conveyance of each Unit to an Owner other than DECLARANT. The due dates shall be established by the Board of Directors.

9.9 Lien for Assessments

(a) All assessments authorized in this Article shall constitute a lien against the Unit against which they are levied until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including reasonable attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any recorded first Mortgage made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

(b) The Association may record notice of the claim of lien in the Office of the Clerk of Superior Court of New Hanover County or file a suit to collect such delinquent assessments and charges. The Association may file Notice of Lis Pendens, bring an action of law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property, or utilize any other remedy provided under North Carolina law. No Owner may waive or otherwise escape liability for the assessments provided for herein.

(c) Upon foreclosure of the lien referenced in this Section 9.9, the Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it, and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

9.10 Effect of Nonpayment of Assessments Remedies of the Association Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at a rate not to exceed the maximum legal rate allowed in the State of North Carolina per annum and in addition, a late fee shall be assessed in such amount as may be determined by the Board of Directors. The Association may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and, in either event, interest,

costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments.

9 11 Failure to Assess Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release or any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Master Association Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

9 12 Exempt Property The following property shall be exempt from payment of Master Association Assessments, Service Assessments and Special Assessments

- (a) all Common Area or Limited Common Area,
- (b) any property dedicated to and accepted by any governmental authority or public utility,
- (c) any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Unit which is subject to assessment hereunder (in which case the Unit shall not be exempted from assessment),
- (d) any Unit which is not approved by any governmental agency for residential use, and
- (e) any Unit or property owned of record by the DECLARANT, its successors or assigns, except as otherwise provided in Section 9 2

9 13 Service Assessments The Board shall have the power to levy Service Assessments against a particular Unit or Units constituting less than all Units within the Properties to cover the costs, including overhead and administrative costs, of providing specialized maintenance and/or landscaping services to such Units and the occupants thereof (unless such maintenance is part of the services provided by the Association to Owners generally, in which case the cost of such maintenance shall be included in the Master Association Assessment). Such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.

9 14 Surplus Funds Any excess of Association income over Common Expenses (as defined in Section 1 9 herein and which shall include reasonable reserves) shall be applied against the subsequent tax year's general assessments.

## ARTICLE 10 DESIGN GUIDELINES

### 10 1 General

(a) No structures, buildings, improvements or construction, which shall include within its definition, clearing, grading, excavation and other sitework, shall be commenced, erected, or maintained upon any Unit or the Properties, nor shall any exterior addition to or change or alteration therein (including, without limitation, any change of color) be made, except in compliance with this Article and the Design Guidelines, nor shall any such work commence until the plans and specifications showing the nature, kind, shape, heights, 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 Committee according to the provisions of Section 10 2. Structures, buildings and improvements shall include, but not be limited to, any dwelling, garage, fence, wall, sidewalk, hedge, mass planting, change in grade or slope, drainage pipe, drainage canal, ditch, swale, catch basin, swimming pool, treehouse, playhouse, sign, flag pole, antenna, satellite dish, exterior illumination, monument or marker, outdoor statuary, exterior lights, security lights, storm door, well utility facility, mailbox, patio, deck, screening for outdoor trash cans or other purposes, sprinkler system, driveway, outdoor decorative objects, shrubbery or landscaping.

(b) Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(c) This Article shall not apply to the activities of the DECLARANT, nor to improvements to the Common Area by or on behalf of the Association.

(d) During the Class "B" Control Period, this Article may not be amended without the DECLARANT'S written consent.

#### 10.2 Architectural Review

(a) Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the Committee as described in subsection (b) below. The members of the Committee need not be Members of the Association and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full or prior to review.

(b) Architectural Review Committee (herein "Committee") The Committee shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all construction on any portion of the Properties. For as long as DECLARANT owns any Unit within the Properties, the DECLARANT retains the right to appoint all members of the Committee who shall serve at the DECLARANT'S discretion. After the sale of the last Unit owned by DECLARANT to a third party, the Board shall be entitled to appoint the members of the Committee, who shall serve and may be removed in the Board's discretion.

10.3 Guidelines and Procedures The DECLARANT shall prepare the initial Design Guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Committee shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them subject to the approval of the Board of Directors. The Committee shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines.

#### 10.4 Submission of Plans and Specifications

(a) No construction or improvements, as defined in Section 10.1(a), shall be commenced, erected, placed or maintained on any Unit, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening shall have been submitted to and approved in writing by the Committee. The Design Guidelines shall set forth the procedure for submission of the Plans. A reasonable fee for the review of said plans may be required by the Committee, in which case such fee shall be submitted along with said Plans and any other supporting documents required by Committee. The Board or the Committee may also require an additional security deposit to be posted prior to the commencement of any construction or work, which sum shall be used to collect any fees, fines or penalties incurred during construction or work. If such a security deposit is required, any portion of the security deposit remaining upon the completion of construction shall be returned to the Owner.

(b) In reviewing each submission, the Committee may consider visual aesthetics, natural platforms and finish grade elevations, harmony of external design with surrounding structures and environment, and location in the relation to surrounding structures and plant life. The Committee may require relocation of native plants within the construction site as a

condition of approval of any submission Location of any driveways shall be subject to the approval of the Committee

(c) The Association shall have the right to refuse to approve any plans and specifications or grading plans which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons In so approving such plans, specifications and grading plans, the Association shall consider the suitability of the proposed building, improvements, structure, or landscaping and the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, and the effect thereof on the adjacent or neighboring property

(d) No bulldozing or clearing of trees or excavation of lakes or ponds shall be commenced until the plans, specifications and grading plans showing the nature, kind, shape and location of work to be done shall have been submitted to and approved in writing by the Association and a copy thereof, as finally approved, filed permanently with the Association

(e) The Committee shall, within forty-five (45) days after receipt of each submission of the Plans, advise the party submitting the same in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with these Protective Covenants and/or the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections In the event the Committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, approval shall be deemed to have been given Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the US Postal Service, registered or certified mail, return receipt requested Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have given at the time of delivery

(f) If construction does not commence on a project for which Plans have been approved within nine (9) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans for reconsideration

(g) Once construction has been initiated on a Unit, the Owner thereof must complete such construction within ten (10) months If an Owner does not comply with such schedule, then DECLARANT, the Board and the Association shall each have the right (but not the obligation) to complete such construction on Owner's behalf and at such Owner's expense In the event the DECLARANT, the Board or the Association exercises the right provided in the immediately preceding sentence, then DECLARANT, the Board and/or the Association (as the case may be) shall be entitled to collect from such Owner, in addition to a reimbursement of all costs expended in the completion of construction of the Unit, an administrative fee for such work, which fee shall be equal to twenty percent (20%) of the costs incurred by such party in completing the work Any and all of the foregoing costs and fees that may be incurred by or payable to DECLARANT, the Board and/or the Association shall be a charge and continuing lien upon such Unit until paid, and DECLARANT, the Board and/or the Association may bring an action against such Owner, or foreclose the lien against the property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and, in either event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount payable to DECLARANT, the Board and/or the Association

10.5 No Waiver of Future Approvals Each Owner acknowledges that the members of the Committee will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval

10.6 Variance The Committee may authorize in its discretion reasonable variances or adjustments from compliance with any of its guidelines and procedures in order to alleviate practical difficulties and hardship in their enforcement and operation Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, or (b) stop the Committee from denying a variance in other circumstances Any such variances shall

not violate the spirit or the intent of this document to create a subdivision of Units owned in fee by various persons with each such Owner having an easement upon areas owned by the Association

10 7 Limitation of Liability Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the DECLARANT, the Association, the Board, nor the Committee, shall be held liable for any injury, damages, or loss arising out of the review and approval of any application, including, but not limited to, the granting of a variance, the manner or quality of construction, defects in any plans or specifications, or deficiencies in kind or quality of materials used, or for ensuring compliance with building codes and other governmental requirements

10 8 Enforcement

(a) Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the DECLARANT, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, then DECLARANT, the Board and the Association shall each have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Unit's Owner and the benefited Unit and collected as an Individual Assessment. In the event the DECLARANT, the Board and/or the Association exercises any right provided above in this Section 10 8(a), then DECLARANT, the Board and/or the Association (as the case may be) shall be entitled to collect from the relevant Owner, in addition to a reimbursement of all costs expended in the removal of the violation and/or the restoration of the property, an administrative fee for such work, which fee shall be equal to twenty percent (20%) of the costs incurred by such party in performing the work.

(b) Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties. In such event, none of the Association, its officers, or its directors shall be held liable to any Person for exercising the rights granted by this paragraph.

(c) The Association shall have the authority to establish fines for violations of this Article and the Design Guidelines, including fines for continuing violations. The fine amounts may be deducted from any bond posted. If the fines are not paid, the Association may establish an Individual Assessment in accordance with the provisions of ARTICLE 9.

(d) In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Committee.

10 9 Architectural Change Committee At the discretion of the DECLARANT (or, if after the expiration of the Class "B" Control Period, at the discretion of the Association), either Declarant or the Association (as the case may be) shall have the option, but not the obligation, to establish an Architectural Change Committee to review minor changes or renovations to improvements previously approved by the Committee. If the DECLARANT or the Association elects to establish such an Architectural Change Committee, the Board shall establish guidelines regarding the operation and jurisdiction of such committee and shall appoint its members, each of whom shall serve and may be removed in the Board's discretion. Additionally, during the Class "B" Control Period, the DECLARANT shall have the right to remove and replace any member of the Architectural Change Committee.

ARTICLE 11  
USE GUIDELINES AND RESTRICTIONS

11 1 Plan of Development, Applicability, Effect

(a) DECLARANT has created the Residential Community as a residential development and, in furtherance of its and every other Owner's interest, has established a general plan of development for the Residential Community. Accordingly, the Properties are subject to guidelines