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NORTH CAROLINA

NEW HANOVER COUNTY

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COMMERCIAL SECTION 1B AT LANDFALL -
LANDFALL BUSINESS CENTER

RECORDED AND INDEXED
MARY JOE DAVIS
REGISTER OF DEEDS
NEW HANOVER CO. NC.

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THIS DECLARATION, made on the date hereinafter set forth by
LANDFALL ASSOCIATES, a North Carolina joint venture in the form
of a general partnership, hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in
Harnett Township, New Hanover County, North Carolina, which is
more particularly described as follows:

All of that land shown on the plat entitled
"LOT 2 COMMERCIAL SECTION 1B AT LANDFALL,"
recorded in Map Book 34, Page 30 (the
"Plat"), Office of the Register of Deeds of New
Hanover County, North Carolina (hereinafter
referred to as the "Properties"); and

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WHEREAS, Declarant is developing the Properties as an office
center to be known as "Landfall Business Center" (hereinafter
referred to as the "Center"), and in connection therewith wishes
to ensure the proper use, development and improvement of the
Properties so as to protect the Owners and Occupants of Lots
therein by restricting the use of all Lots for purposes
consistent with the overall development of the Properties and by
encouraging the erection of attractive, harmonious, permanent
Improvements appropriately located in the Properties.

NOW, THEREFORE, Declarant hereby declares that all of the
Properties described above shall be held, sold and conveyed
subject to the following easements, restrictions, covenants and
conditions, which are for the purpose of protecting the value and
desirability of, and which shall run with the real property and
be binding on all parties having any right, title or interest in
the described Properties or any part thereof, their heirs,
successors and assigns, and shall inure to the benefit of each
Owner thereof.



Keith Cooper
Landfall Associates
910-256-7646

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ARTICLE I

DEFINITIONS

SECTION 1. "Affiliate Lot" shall mean the real property owned by an Affiliate Member of the Association, as such real property is identified in any amendment to this Declaration creating an Affiliate Member in the Association.

SECTION 2. "Affiliate Member" shall mean any party entitled to use of the Disposal System pursuant to the provisions of SECTION 3 of ARTICLE III of this Declaration.

SECTION 3. "Association" shall mean and refer to COMMERCIAL SECTION 1B AT LANDFALL OWNERS ASSOCIATION, INC., its successors and assigns.

SECTION 4. "Building" shall mean and include, but shall not be limited to, both the main portion of a structure built for permanent use and all projections or extensions thereof, including, but not limited to, garages, outside platforms and docks, canopies, porches and outbuildings.

SECTION 5. "Common Area" shall mean all real and personal property, and interests therein, now or hereafter owned or leased by the Association for the common use and enjoyment of Owners and/or Affiliate Members, as provided under this Declaration, and their Occupants, lessees and employees, including but not limited to private streets and roads, any directory signage, gravity sewer lines not maintained by a public agency, detention ponds, the Drysdale Easement and the Disposal System, as hereinafter defined.

SECTION 6. "Declarant" shall mean and refer to Landfall Associates and its successors and assigns to whom Landfall Associates assigns in writing its rights hereunder as Declarant.

SECTION 7. "Disposal System" shall mean the lift station, force main and related appurtenances which have been or will be constructed to serve the Center and any Affiliate Members, and shall include the Disposal System Easement, all as provided in ARTICLE III hereof.

SECTION 8. "Improvements" shall mean and include, but shall not be limited to, buildings, outbuildings, roads and driveways (other than those dedicated to public use), parking areas, fences, screening walls, retaining walls, loading areas, signs, utilities, lawns, landscaping, irrigation and walkways located on Lots, together with any construction work or treatment done or applied to a Lot in connection therewith.

SECTION 9. "Lot" shall mean and refer to any numbered or lettered plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Area, streets and roads. At the time this Declaration is recorded, the Lots shall consist of Lots A, B, C, D and E as shown on the Plat.

SECTION 10. "Members" shall mean and refer collectively to Voting Members and Affiliate Members of the Association.

SECTION 11. "Occupant" shall mean any person or entity who occupies, or who has the right to occupy, all or a part of any Lot which is a part of the Properties, whether such occupancy or right of occupancy is based on ownership, lease, license or easement.

SECTION 12. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot, or any portion thereof, which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 13. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association and this Declaration.

SECTION 14. "Voting Member" shall mean and refer to every person or entity who holds membership with voting rights in the Association.

ARTICLE II

PROPERTY RIGHTS

SECTION 1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to permit the use of and to charge reasonable fees for the use of the Common Area;

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

(c) the right of the Association to grant easements and rights of way, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association consistent with the terms of this Declaration and the Articles and Bylaws of the Association. Provided, however, that no dedication or transfer of any Common Area other than the Disposal System shall be effective unless an instrument signed by (i) two-thirds (2/3) of the Voting Members, and (ii) Declarant, so long as Declarant has the right to select a majority of the members of the Association's Board of Directors, agreeing to such dedication or transfer, has been recorded;

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

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

SECTION 2. EASEMENTS OVER DRYSDALE DRIVE. Declarant is presently the owner of a private street designated as Drysdale Drive, which is located adjacent to the Properties. Declarant hereby grants a perpetual, non-exclusive right-of-way of ingress, egress and regress over and across that portion of Drysdale Drive lying between Military Cut-Off Road and the Properties, to all Lot Owners, their successors, assigns and Occupants (the "Drysdale Easement"). Declarant intends to convey Drysdale Drive to a non-profit owners association organized to maintain common areas within the Landfall residential community (the "Residential Association"). Following such conveyance, the Residential Association shall be responsible for the maintenance of all of Drysdale Drive and its improvements. In consideration for the Drysdale Easement, the Association shall pay to the Residential Association, on an annual basis or as otherwise required by the Residential Association, an amount equal to twenty-five percent (25%) of the maintenance costs (including the costs of any capital improvements and ad valorem taxes) of the portion of Drysdale Drive lying between Military Cut-Off Road and the Properties, as such amount is determined by the Residential Association in its sole discretion. Such expense shall be part of the common expenses of the Association, payable by Lot Owners as part of the Annual Assessments and/or Capital Improvement Special Assessments prorated among and levied against the Lots in accordance with the formula established in SECTION 5 of ARTICLE VI of this Declaration. Provided, however, that in the event the portion of Drysdale Drive lying between Military Cut-Off Road and the Properties is accepted for maintenance by the North Carolina Department of Transportation or any other public agency or entity, the obligation of Lot Owners to share in the maintenance costs of Drysdale Drive through Association common expenses shall terminate immediately upon such acceptance.

Declarant also hereby grants to the Association, its successors and assigns, a perpetual, non-exclusive right-of-way of ingress, egress and regress over and across that portion of Drysdale Drive leading from the Properties to a sewer manhole located within the Drysdale Drive entrance to the Landfall residential community, for the purpose of accessing such manhole in connection with the Association's maintenance and repair of the Disposal System.

SECTION 3. DELEGATION OF USE. Any Owner may delegate, in accordance with this Declaration, his rights of use and enjoyment of the Common Area and its facilities to an Occupant.

SECTION 4. LEASES OF LOTS. Any lease agreement between an Owner and a lessee for the lease of such Owner's Lot or any part thereof (including a lease of all or a portion of a Building constructed on a Lot) shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and Bylaws of the Association and that any failure by the lessee to comply with the terms of the Declaration, Articles and Bylaws shall be a default under the terms of the lease. All leases of Lots, Buildings or any portions thereof shall be in writing. Provided, however, that as between the Association and a Lot Owner, no lease agreement shall release the Lot Owner from ultimate responsibility for payment of all assessments due against that Owner's Lot. Other than the foregoing, there is no restriction on the right of any Owner to lease his Lot.

ARTICLE III

DISPOSAL SYSTEM

SECTION 1. RESERVATION OF EASEMENT OVER LOT D FOR DISPOSAL SYSTEM. As shown on the Plat, Declarant hereby reserves a Utility Easement along and within the southern boundary line of Lot D (the "Disposal System Easement"), for the purpose of constructing, maintaining and operating therein the Disposal System. Declarant's interest in the Disposal System Easement shall be conveyed to the Association simultaneously with the transfer and conveyance of the Disposal System, and may be transferred thereafter with the Disposal System to a public agency pursuant to the provisions of SECTION 7 of this ARTICLE III. The personal property comprising the Disposal System which is located within the Disposal System Easement, including but not limited to the lift station, force main and related appurtenances, shall constitute and remain the personal property of the Declarant, its successors and assigns, separate and distinct from Lot D, notwithstanding any manner whatsoever in which they are annexed, attached or affixed to Lot D. The sale of Lot D shall not operate to vest in the purchaser of said Lot any right, title or interest of any kind in or to the personal property comprising the Disposal System, and shall be subject to the Disposal System Easement herein reserved, whether so expressed in the deed to Lot D or not.

SECTION 2. DISPOSAL SYSTEM. Declarant has constructed or will construct a Disposal System to serve the Properties and possible future Affiliate Lots. The Disposal System will be constructed, maintained and operated in accordance with all applicable permits, laws and regulations. Regardless of whether the Disposal System is owned by the Declarant or by the Association, the Disposal System shall be part of the Common Area, maintained out of the assessments provided in ARTICLE VI

hereof. At such time as Declarant elects to convey ownership of the Disposal System (including the Disposal System Easement) to the Association, the Association shall be obligated to accept such conveyance.

Declarant hereby reserves for itself and grants to the Association, its successors and assigns, a general, non-exclusive easement of ingress, egress and regress over, under and across the Properties and all Lots, for the purpose of installation, operation, maintenance, repair and replacement of the Disposal System.

SECTION 3. AFFILIATE MEMBERS. Declarant may, but shall not be obligated to, grant to persons or entities which are not Lot Owners, an easement and right to use the Disposal System as set out in SECTION 5 of ARTICLE X of this Declaration. Upon the recording of any amendment to Declaration described in SECTION 5 of ARTICLE X, the party to which such easement is granted shall be an Affiliate Member of the Association, and shall have a non-exclusive right of use and easement of enjoyment in and to the Disposal System, subject to the following provisions:

(a) the right of all Owners within the Properties and other Affiliate Members to use the Disposal System;

(b) the right of the Association to charge Affiliate Members for the use of the Disposal System, pursuant to ARTICLE VI of this Declaration;

(c) the right of the Association to disconnect an Affiliate Lot from the Disposal System in the event of a delinquent assessment, as set out in SECTION 10 of ARTICLE VI of this Declaration;

(d) the right of the Association to grant additional easements as to the Disposal System, and to dedicate or transfer all or any part of the Disposal System to any public agency, authority or utility, pursuant to the provisions of this Declaration and the Articles and Bylaws of the Association;

(e) the right of Declarant to add additional Affiliate Members to the Association, pursuant to the provisions of SECTION 5 of ARTICLE X of this Declaration;

(f) the right of the Association to impose regulations for the use of the Disposal System; and

(g) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purposes of maintaining, improving and repairing the Disposal System.

SECTION 4. DELEGATION OF USE. Affiliate Members, their successors and assigns, may delegate, in accordance with this

Declaration and any amendments hereto, their rights of use and enjoyment of the Disposal System to any party leasing the Affiliate Lot from the Affiliate Member; provided that any lease agreement shall be in writing and shall provide that (1) the terms of the lease shall be subject to the provisions of this Declaration, the Articles and Bylaws of the Association; and (2) any failure by lessee to comply with the terms of the Declaration, Articles and Bylaws applicable to the Affiliate Member and the Affiliate Lot shall be a default under the terms of the lease. In no event shall any lease agreement release an Affiliate Member from its obligation to the Association to pay the Disposal System assessments described in ARTICLE VI of this Declaration.

SECTION 5. MAINTENANCE OF GRAVITY SEWER LINES.

(a) It is anticipated that the New Hanover County Water and Sewer District (the "District") will accept for operation and maintenance all gravity sewer lines serving the Properties which are located (i) under street rights-of-way, whether public or private; and (ii) within recorded or platted sanitary sewer easements within the Properties. In the event the District fails or refuses to accept those gravity sewer lines, the Association shall operate, maintain and repair such lines. In such event, the cost of such maintenance shall be part of the common expenses of the Association, payable by Owners and Affiliate Members as part of the Disposal System annual and/or special assessments as provided in ARTICLE VI of this Declaration.

(b) The Lot Owner or Affiliate Lot owner, and not the District or the Association, shall be responsible for maintaining and repairing all gravity sewer line(s) located within the boundaries of his Lot or Affiliate Lot.

SECTION 6. VOLUNTARY DISCONNECTION BY AFFILIATE MEMBERS. An Affiliate Member may elect to discontinue its use of the Disposal System, by giving written notice to the Association at least one hundred eighty (180) days prior to the effective date of such discontinuation. Until the effective date of discontinuation, the Affiliate Member shall be responsible for all assessments levied against its Affiliate Lot, consistent with the terms of this Declaration. All costs associated with the disconnection of the Affiliate Lot from the Disposal System shall be the responsibility of the Affiliate Member. At the time of the disconnection, the disconnecting Affiliate Member and the Association shall execute and record in the public records of New Hanover County a Release of Easement referencing the recording data of this Declaration, and noting the disconnection of the Affiliate Lot from the Disposal System. Following the recordation of that Release of Easement, the Affiliate Lot shall have no right to be served by the Disposal System, and the Affiliate Member shall have no obligation for the payment of Disposal System annual or special assessments accruing thereafter.

SECTION 7. TRANSFER TO PUBLIC AGENCY. In the event a gravity wastewater collection system provided by any local

governmental entity or agency shall become available to serve the Lots, Declarant or the Association, as the case may be, shall cause the wastewater generated at such properties to be discharged into such system, and shall convey and transfer all or part of the Disposal System and its interest in the Disposal System Easement to such governmental entity or agency as may be required as a condition of acceptance of the wastewater generated at the Lots. Such transfer or conveyance is hereby declared to be in the usual and regular course of the Association's activities and the approval by Members to such transfer or conveyance shall not be required, as the Association's ownership and operation of the Disposal System were necessitated by the lack of availability to the Properties of a public gravity collection system at the time this Declaration was recorded.

The Disposal System and Disposal System Easement may be so conveyed and transferred even if the gravity wastewater collection system provided by the local governmental entity shall not be available to serve any Affiliate Lot, and in such an event, neither Declarant, the Association or any Lot Owners shall have any liability or responsibility to any Affiliate Member for the discontinuance of service to an Affiliate Lot by the Disposal System.

ARTICLE IV

COMMON AREA CONVEYANCE

The Declarant covenants for itself, its successors and assigns, that it shall convey to the Association, in fee simple and at no cost to the Association, those parcels of land and facilities described below after the Declarant has completed improvements thereon, if such be required, such that the facility is functionally complete. The Association shall accept the conveyance and immediately become responsible for all maintenance and operation of such properties. All said parcels of land may be conveyed to the Association subject to this Declaration and all easements, encumbrances, rights-of-way and restrictive covenants of record at the time of conveyance. Properties to be conveyed by Declarant shall include, but shall not be limited to:

- (1) any private roads and rights-of-way within the Properties, including but not limited to the private street shown as "40' R/W (PRIVATE)" on the Plat;
- (2) any detention ponds located within the Properties;
and
- (3) Common Areas designated as such on any subdivision plats recorded as to the Properties.

Declarant, its successors and assigns, shall also transfer and convey to the Association at no cost, the personal property comprising the Disposal System and Declarant's interest in the Disposal System Easement. The Association shall accept such

conveyance and immediately become responsible for the operation and maintenance of such properties. Such transfer shall be subject to the provisions of this Declaration and to all easements, encumbrances, rights-of-way and restrictive covenants of record at the time of the conveyance.

The date(s) of said conveyance by the Declarant shall be at the Declarant's sole option; provided, however, all said conveyances shall take place on or before January 1, 2020.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. VOTING MEMBERS. Every Owner of a Lot which is subject to a lien for assessments shall be a Voting Member of the Association. An Owner may assign in writing his membership and voting rights to an Occupant upon such terms as the Association may prescribe. Otherwise, membership and voting rights shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment; provided, however, that no such assignment shall affect the obligation of the Owner to pay the assessments described in ARTICLE VI hereof.

Each Owner of a Lot shown on the Plat shall be entitled to voting rights as follows:

<u>Lot</u>	<u>Votes</u>
A	2
B	1
C	1
D	1
E	<u>1</u>
Total Votes	6

In the event a Lot recombination or resubdivision is approved as set out in SECTION 2 of ARTICLE VIII of this Declaration, votes among or between the recombined or resubdivided Lot shall be reallocated by the Board of Directors, in its sole discretion, and set out in an amendment to this Declaration; provided, however, that any such vote reallocation shall not decrease the proportionate voting share of any Lots not then being resubdivided or recombined.

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

In the event additional property is annexed into the Center in accordance with the provisions of ARTICLE X, SECTION 4 hereof, each additional Lot shown on a recorded plat shall be entitled to the votes attributable to such Lot in the amendment annexing that Lot.

SECTION 2. AFFILIATE MEMBERS. Affiliate membership shall be appurtenant to, and may not be separated from, ownership of the Affiliate Lots.

Affiliate Members shall not be entitled to any vote in the affairs of the Association, including but not limited to any matter relating to the Disposal System.

SECTION 3. DECLARANT'S RIGHT TO SELECT DIRECTORS. Notwithstanding anything to the contrary herein, until all Lots within the Properties have been sold to Owners other than Declarant or until December 31, 2004, whichever occurs first, Declarant shall have the right to designate and select a majority of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person to serve on any Board of Directors of the Association, the manner in which such person shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association. Declarant shall have the right to remove any person selected by it to act and serve on said Board of Directors and to replace such person with another person to act and serve in the place of any Director so removed for the remainder of the unexpired term of any Director so removed. Any Director designated and selected by Declarant need not be the Owner or Occupant of a Lot in the Center. Any representative of the Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest. Similarly, Declarant, as a Member of the Association, shall not be required to disqualify itself upon any contract or matter between the Declarant and the Association where Declarant may have a pecuniary or other interest.

ARTICLE VI

COVENANT FOR MAINTENANCE AND ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF LOT OWNERS FOR ASSESSMENTS. The Declarant, for each Lot owned within the Properties, and each Owner of any Lot or portion thereof, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges; (2) Disposal System Annual Assessments or charges; (3) Special Assessments for capital improvements and/or for the Disposal System, such assessments to be established and collected as hereinafter provided; (4) any fine, charge or late fee which may be levied by the Association against an Owner pursuant to the provisions of this Declaration; and, (5) to the appropriate governmental taxing authority: (a) a pro rata share of ad valorem taxes levied against the Common Area; and, (b) a pro rata share of assessments for public improvements to or for the benefit of the Common Area if the Association shall default on the payment of either or both for a period of six (6) months, all

as hereinafter provided. Such annual and special assessments, and any fine, late fee or other charge, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment, fine, late fee or charge is made. Each such assessment, fine, late fee and charge together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the entity which was the Owner of the Lot at the time when the assessment, fine, late fee or charge fell due. The personal obligation of a Lot Owner for delinquent assessments shall not pass to its successors in title unless expressly assumed by them.

SECTION 2. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF AFFILIATE MEMBERS FOR ASSESSMENTS. Any amendment to this Declaration which creates Affiliate Members in the Association shall provide that such Affiliate Member, in consideration for the easements granted in such amendment as to the use and enjoyment of the Disposal System, shall pay to the Association: (1) Disposal System Annual Assessments or charges; (2) Special Assessments for repair and maintenance of the Disposal System, such assessments to be established and collected as hereinafter provided; (3) any fine, late fee or other charge which may be levied by the Association against an Affiliate Member pursuant to the provisions of this Declaration; and (4) to the appropriate government taxing authority: (a) a pro rata share of ad valorem taxes levied against the Disposal System; and, (b) a pro rata share of assessments for public improvements to or for the benefit of the Disposal System if the Association shall default on the payment of either or both for a period of six (6) months, all as hereinafter provided. Such annual and special assessments, and any fine, late fee or other charge, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Affiliate Lot against which each such assessment is made. Each such assessment, fine, late fee or other charge together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the entity which was the owner of the Affiliate Lot at the time when the assessment, fine or charge fell due. The personal obligation of an Affiliate Member for delinquent assessments shall not pass to its successors in title unless expressly assumed by them.

SECTION 3. PURPOSE OF ASSESSMENTS.

(a) The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Members of the Association, their Occupants, lessees and employees and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose or for the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the maintenance of private streets (including the costs of maintenance of a portion of Drysdale Drive as required in

SECTION 2 of ARTICLE II of this Declaration), detention ponds, directory signage, the Disposal System and other elements of the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws, the payment of charges for street lights located in the Common Areas, the payment of charges for water and sewer services furnished to the Common Area, the employment of attorneys and other professionals to represent the Association when necessary, and such other needs as may arise.

(b) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid unto the Association by any Member, the same may be commingled with monies paid to the Association by the other Members. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner or an Affiliate Member shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot or Affiliate Lot, by whatever means, or by reason of the voluntary or involuntary disconnection of an Affiliate Lot from the Disposal System, the Association shall not be required to account to such Member for any share of the fund or assets of the Association, or which may have been paid to the Association by such Member, as all monies which any Member has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties and/or the Common Areas.

SECTION 4. ANNUAL ASSESSMENTS FOR LOT OWNERS. The Association shall levy, in each calendar year, Annual Assessments for the purpose of maintaining and operating all portions of the Common Area (except the Disposal System), including utility costs, fixtures and personal property related thereto. Such Annual Assessments shall be levied only against the Lots and Lot Owners thereof, and not against Affiliate Members and their Affiliate Lots. Until December 31 of the year of the conveyance of the first Lot to an Owner, the Annual Assessment shall be \$2,400.00 per vote (as assigned in SECTION 1 of ARTICLE V above), per Lot. In subsequent years, the amount of the Annual Assessment shall be as established by the Board of Directors, in its sole discretion, and may be increased or decreased from year to year by the Board, without consent of Lot Owners.

SECTION 5. DISPOSAL SYSTEM ANNUAL ASSESSMENTS. The Association shall levy, in each calendar year, Disposal System

Annual Assessments for the purpose of maintaining and operating the Disposal System, including utility costs, fixtures and personal property related thereto. Disposal System Annual Assessments shall be levied against Lots and Affiliate Lots, and all owners thereof. The Board shall establish on an annual basis a budget for the operation and maintenance of the Disposal System. For calendar year 1994, the annual budget for the Disposal System shall be \$3,600.00. The amount of such annual budget may be increased or decreased from year to year by the Board, in its sole discretion and without the consent by owners of Lots or Affiliate Lots.

From such annual budget, the Board will determine the Disposal System Annual Assessment payable by each Lot Owner and, if applicable, each Affiliate Member, by multiplying the amount of the Disposal System annual budget by the percentage attributable to such Lot Owner and Affiliate Member. Until revised by an amendment to this Declaration, as set out below, each Lot Owner's percentage of Disposal System Annual Assessment is as follows:

Tract A	27.0%
Tract B	14.0%
Tract C	14.0%
Tract D	22.5%
Tract E	<u>22.5%</u>
TOTAL	100.0%

In the event of (i) a resubdivision or recombination of any Lots pursuant to the provisions of SECTION 2 of ARTICLE VIII of this Declaration; (ii) the addition of new Lots or Affiliate Members pursuant to the provisions of SECTIONS 4 or 5 of ARTICLE X of this Declaration; or (iii) any Affiliate Lot ceasing to be served by the Disposal System because of a voluntary or involuntary disconnection of such Affiliate Lot from the Disposal System, the Board, in its sole discretion and without consent of any Members, shall re-establish the percentages set out in this SECTION 5 attributable to all then-remaining Lots and Affiliate Lots. Such new percentages shall be effective from the date of recording an amendment to this Declaration in the public records of New Hanover County, setting out those new percentages. Provided, however, that the Association shall not be required to refund any Disposal System assessments already paid by Members, in the event of an adjustment of percentages occasioned by the addition of new Affiliate Members to the Association, or by the resubdivision or recombination of a Lot.

SECTION 6. CAPITAL IMPROVEMENT SPECIAL ASSESSMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area (excluding the Disposal System),

including fixtures and personal property related thereto, provided that any such assessment shall be approved by majority vote of the Members who are voting in person or by proxy at a meeting duly called for this purpose. The Capital Improvement Special Assessments shall be levied against each Lot in the same manner as Annual Assessments, as set forth in SECTION 8 below. Special Assessments for Capital Improvements shall be levied only against Lot Owners within the Properties, and not against Affiliate Members and their Affiliate Lots.

Written notice of any meeting called for the purpose of taking any action authorized under this SECTION 6 shall be sent to all Voting Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Voting Members or of proxies entitled to cast twenty percent (20%) of the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 7. DISPOSAL SYSTEM SPECIAL ASSESSMENTS. In addition to the Disposal System Annual Assessments authorized above, the Association may levy, at any time and from time to time, special assessments for operating deficits of the Disposal System and/or to defray in whole or in part the costs of any construction, reconstruction, repair or replacement of the Disposal System, including fixtures and personal property related thereto, or for the cost of connecting the Disposal System to a gravity wastewater collection system provided by any governmental entity or agency, as set out in SECTION 7 of ARTICLE III of this Declaration. The Disposal System Special Assessments shall be calculated and levied against each Lot Owner and each Affiliate Member using the same formula established for the Disposal System Annual Assessments set forth in SECTION 5 of this ARTICLE. Approval by Members shall not be required for any such assessment.

SECTION 8. RATE OF ASSESSMENTS. The Annual Assessments and Capital Improvement Special Assessments shall be levied against the Lots so that each Lot's portion of the assessment bears the same relationship to the total assessment as such Lot's appurtenant vote in the Association bears to the total number of votes then outstanding in the Association. (For example, if a Lot has one (1) vote in the Association out of a total of six (6) possible votes, such Lot and its Owner would be liable for one-sixth (1/6) of any assessment.)

The Disposal System Annual Assessments and Disposal System Special Assessments shall be calculated and levied in accordance with the formula established in SECTION 5 of this ARTICLE.

SECTION 9. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES; INITIAL WORKING CAPITAL. The Annual Assessments and Disposal System Annual Assessments provided for herein shall be

collected on an annual basis, or other periodic basis established by the Board, and shall commence: (i) as to each Lot, on the date of conveyance of that Lot to an Owner by Declarant; and (ii) as to Affiliate Members, on the date of recordation of the amendment to Declaration entitling that Affiliate Member to use of the Disposal System. The first annual assessments shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the Annual Assessment and Disposal System Annual Assessment applicable to every Owner and Affiliate Member subject thereto. The due dates for all such annual assessments shall be December 1 of each year, or such other date as established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot or Affiliate Lot have been paid.

At the time of the initial sale of each Lot by Declarant to an Owner, such Owner shall pay to the Association (a) the prorated amount of the Annual Assessment and Disposal System Annual Assessment attributable to such Lot for the remaining calendar year of such sale, plus (b) an amount equal to four (4) months' Annual Assessment and Disposal System Annual Assessment for that Lot, as working capital.

At the time of the recording of an amendment to this Declaration creating or adding Affiliate Members to the Association, such new Affiliate Member shall pay to the Association (a) the prorated amount of the Disposal System Annual Assessment attributable to the Affiliate Lot owned by such Affiliate Member for the remaining calendar year in which such amendment to Declaration is recorded, plus (b) an amount equal to four (4) months' Disposal System Annual Assessment for such Affiliate Lot, as working capital.

SECTION 10. EFFECT OF NONPAYMENT OF ASSESSMENTS; LATE FEES; REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. In addition, the Association may impose a late fee of \$100.00 per month for each month any assessment remains unpaid for 30 days after its due date, up to a maximum late fee of \$1,200.00 per delinquent assessment per Lot or Affiliate Lot. The Association may bring an action at law against the Owner or Affiliate Member personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of deeds of trust, and late fees, interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner or Affiliate Member may waive or otherwise escape liability for any assessment provided for herein by non-use of the Common Area or Disposal System or abandonment of his Lot or Affiliate Lot, except as expressly otherwise provided in this Declaration, nor shall damage to or