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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
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RETURN TO FUSSELL

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
LUCKY FISH SUBDIVISION

THIS DECLARATION, made the ____ day of October, 2006, by GCW Properties, LLC, and Pages Creek Properties, LLC, North Carolina Limited Liability Companies (hereinafter called "DECLARANT") for the purposes hereinafter stated;

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Harnett Township, New Hanover County, North Carolina, (hereinafter referred to as the "Property") which is more particularly described as follows:

All those certain lots in Lucky Fish Subdivision as shown on maps recorded in Map Book 50 at Pages 113, 115, 117 and 119 in the New Hanover County Registry.

WHEREAS, Declarant desires to subject said Property to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth for the mutual benefit of Declarant and succeeding property owners and desires that said covenants, conditions, restrictions, liens and charges run with the land and be binding upon the Declarant, its successors and assigns.

NOW, THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act as set forth in Chapter 47F of the North Carolina General Statutes (the "Act") as well as 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 Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.
DEFINITIONS

SECTION 1. **Additional Property.** shall mean any property adjacent to or within one mile of the Property which is now owned or hereafter acquired by the Declarant for purposes of development and is annexed to the Property, without the joinder or consent of the members of the Association as hereinafter provided.

SECTION 2. **Allocated Interest** shall mean the Common Expense Liability and votes in the Association allocated to each lot.

SECTION 3. **Architectural Control Committee (the "ACC")** shall mean and refer to the Architectural Control Committee of the Association established under Article VII of this Declaration.

SECTION 4. **Association** shall mean and refer to LUCKY FISH SUBDIVISION HOA, Inc., a North Carolina non-profit corporation, its successors and assigns, the owners association organized for the mutual benefit and protection of the Property.

SECTION 5. Community Boating Facility, Boat Slips or Docking Spaces shall have the same meaning and may be used interchangeably to mean the space in and above the water located in the Community Boating Facility adjacent to the Pages Creek for the docking of a boat, shown diagrammatically as four boat lifts and three 6' x 40' floating docks - along with all walkways, retaining walls, bulkheads and appurtenances shown on the Pages Creek side of Lots 2A, 2B and 3C of the Subdivision, inclusive, on the plat or plats referred to above.

SECTION 6. Common Area shall be used interchangeably to mean and refer to all land within the property owned by the Association, along with facilities and improvements erected or constructed thereon, for the use and enjoyment of the members of the Association, including, without limitation, the Community Boating Facility, as shown on any map of LUCKY FISH SUBDIVISION recorded in the New Hanover County Registry. In addition, all private streets, water lines located outside public rights-of-way and individual lots, all sewer lines located outside public rights-of-way and individual lots, and public sanitary sewer easements where sewer lines serve the Property are declared to be Common Areas. Common Areas shall also include any landscaping, sidewalks, lighting, and irrigation located within the boundaries of any public roads. Said Common Areas shall be maintained by the Association, pursuant to the terms and conditions of this Declaration. The Declarant reserves, for itself and the Association, the right to convey water and sewer lines, facilities and easements to public authorities (when and if County or City water service becomes available to the subdivision) or to public utilities. Declarant reserves the right to alter and amend the recorded Map to amend, delete or relocate such Common Areas and facilities (except the Community Boating Facility) as Declarant, in its sole discretion, deems appropriate.

SECTION 7. Common Expenses shall mean expenditures made by or financial liabilities of the Association, together with any allocations to reserves, and shall include, without limitation, 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, including, without limitation, the Community Boating Facility, private streets and bulkheads.
- c. Expenses declared to be common expenses by the provisions of this Declaration or the By-Laws:
- d. Liability for such insurance premiums as the Declaration or By-Laws may require the Association to purchase;
- e. Expenses agreed by the members to be common expenses of the Association including but not limited to the maintenance and landscaping of yards and other areas which may be included within a lot,
- f. Any ad valorem taxes and public assessments levied against the Common Areas.

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

SECTION 9. Common Profits shall mean and refer to the balance of all income, rents, profits and revenues of the Association remaining after the deduction of the common expenses or reserves therefore. Common profits shall not mean or include any sums lawfully assessed against members by the Association.

SECTION 10. Community Boating Facility shall mean and refer to all of the property and facilities, including without limitation, piers, floating docks and boat lifts, located in the riparian corridor, that area located between Pages Creek and the Lots designated as Lots 2A, 2B and 3C of LUCKY FISH SUBDIVISION and extending outward toward Pages Creek from the common area adjoining said numbered lots between the parallel lines designated as riparian lines to the Pages Creek, as shown on the plat or plats of LUCKY FISH SUBDIVISION, recorded or to be recorded in the Office of the Register of Deeds of New Hanover County.

SECTION 11. Declarant shall mean and refer to GCW PROPERTIES, LLC, a North Carolina Limited Liability Company, its successors and assigns to whom the rights of Declarant are expressly transferred, or if such successors or assigns should acquire more than one

undeveloped lot or undeveloped acreage for the purpose of development, or acquire title to the Property under a deed in lieu of foreclosure, judicial foreclosure, or foreclosure under power of sale contained in any deed of trust or anyone otherwise denominated a "Declarant" who succeeds to any special Declarant right is thereby shall be deemed Declarant.

SECTION 12. **Declaration** shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 13. **Executive Board** shall be used interchangeably with "Board of Directors" and shall mean the body, regardless of name, designated in the Declaration to act on behalf of the Association.

SECTION 14. **Lot** shall mean and refer to one of those seven plots of land, shown as 1A, 1B, 2A, 2B, 3A, 3B and 3C, other than the Common Area, designated on any recorded subdivision map of the Property and also upon which a home has been or may be constructed, The number of lots may be increased or decreased as determined by the Declarant in accordance with the provisions of this Declaration and local ordinances, rules and regulations.

SECTION 15. **Lot Owner and Owner** shall be used interchangeably mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, Including contract sellers, but excluding those who have such interests merely as security for the performance of any obligation.

SECTION 16. **Member** shall mean and refer to every person who is a member of the Association.

SECTION 17. **Membership** shall mean and refer to the rights, privileges, benefits, duties and obligations, which shall inure to the benefit of and burden each member of the Association.

SECTION 18. **Person** shall mean and refer to an individual, corporation, partnership, association, trustee or other legal entity.

SECTION 19. **Planned Community** shall mean and refer to the Property plus any Additional Property made a part of the Planned Community.

SECTION 20. **Property** shall mean and refer to all of LUCKY FISH SUBDIVISION as shown on any recorded plat thereof, as described in the preambles above, including, without limitation, Lots 1A through 3C, the Community Boating Facility and any of Additional Property that may hereafter be brought within the jurisdiction of the Association as herein provided.

SECTION 21. **Purchaser** shall mean any Person, other than a Declarant or a Person in the business of selling real estate for the purchasers own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 22. **Reasonable Attorneys' Fees** means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

SECTION 23. **Riparian Rights.** All riparian rights associated with the ownership of waterfront property associated with or applicable to the waterfront common area, including the right to construct and maintain improvements in the Community Boating Facility shall be held by the Declarant for the use and enjoyment of the Association and shall be conveyed to the Association as an appurtenance to the Common Areas.

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, if any, 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 limit the number of guests of members.
- b. The Executive Board or Board of Directors, on behalf of the Association, as a Common Expense, may at all times keep the Common Areas and other assets of the Association, if any, insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees.
- c. The Association may mortgage or convey the Common Areas, or dedicate or transfer all or part of the Common Areas, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that the Association may, without the consent of the Owners, grant easements over the Common Areas for drainage systems and public utilities servicing the Planned Community, and provided, further, that any conveyance or encumbrance of Common Areas shall be subject to any rights of ingress and egress to any Lot over private streets.
- d. The right of the Association to suspend the voting rights and privileges by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- e. The right of the Association to impose regulations for the use and enjoyment of the Common Areas, if any, and improvements thereon, which regulations may further restrict the use of the Common Areas.
- f. The right of the Association to charge reasonable fees for the use of the Common Areas and facilities by non-members of the Association.

SECTION 2. Delegation of Use. Any owner may delegate in accordance with the ByLaws, his right of enjoyment of the Common Areas to the members of his family, his tenants, or contract purchasers, provided, however such delegate shall reside on the Property.

SECTION 3. Maintenance of Common Areas. Maintenance of the Common Areas shall be the responsibility of the Association.

SECTION 4. Parking Rights and Restrictions. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles and other vehicles owned or controlled by such Owner, members of the Owner's family, guests or domestic employees of the Owner and tenants, and Owners (including family members and tenants) of the Lots covenant and agree not to park their automobiles, trucks, boats, trailers or other vehicles on the streets or Common Areas located on the Property. No trucks or other commercial vehicles greater than 3/4 ton and no boats or trailers shall be stored, housed or parked on the Property except within an enclosed garage.

SECTION 5. Riparian Rights. No owners of Lots 2A, 2 B and 3C shall have Riparian Rights separate and apart from the Declaring's Riparian Rights which shall be conveyed to the Association as an appurtenance to the Common Areas.

ARTICLE III OWNERS ASSOCIATION

SECTION 1. Formation of Association. The Association is a nonprofit corporation

organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Areas and any Limited Common Areas in accordance with this Declaration, its Charter and Bylaws.

SECTION 2. Membership. Every Owner of a lot in the Property shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The Board of Directors may make reasonable rules regarding proof of ownership.

SECTION 3. Voting Rights. The Association shall have two classes of voting Membership.

Class A. Class A Members shall be all Owners, with the exception of the Declaring, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The votes for such Lot shall be exercised as they determine, but in no event shall the Owners of the Lot collectively be entitled to cast more than one vote with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

Class B. The Declaring shall be a Class B Member and shall be entitled to two (2) votes for each vote held by the Class A Members. The Class B Membership shall cease on the happening of any of the following events, whichever occurs earlier.

- a. when the Developer no longer owns any land within the Development, or
- b. upon the voluntary surrender of all Class B Membership by the holder thereof.

The period during which there is Class B Membership is sometimes referred to herein as the "Declaring Control Period".

SECTION 4. Government Permits. All duties, obligations, rights and privileges of the Declaring under any water, sewer, storm water and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies shall be the duties, rights, obligations and privileges the responsibility of the Association.

ARTICLE IV. MANAGEMENT AND CONTROL

Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with the Declaration and the By-Laws; PROVIDED, HOWEVER, that all of the powers and duties of the Board of Directors may be exercised by the Declaring until such time as 6 of the lots in LUCKY FISH SUBDIVISION have been sold and conveyed by the Declarant to purchasers or until September 1, 2015, whichever occurs first. Management and control may be transferred to the lot owners at any time but in all events, no later than 120 days after the happening of the earlier of the above events.

ARTICLE V. COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefrom, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. Annual assessments or charges;
- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided;

- c. Insurance assessments;
- d. To the appropriate governing taxing authority, a pro rata share of ad valorem taxes levied against the Common Area, if any; and
- e. Working Capital Assessment,

Such assessments shall be established and collected as hereafter provided.

The annual, special and insurance assessments, together with interest, costs of collection thereof, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due, The personal obligations of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them and then only with the consent of the Association. All assessments shall be shared equally by the owners of each lot.

SECTION 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement and maintenance of the Common Areas and all easements and utilities serving the Property, whether or not located on the Property, and any amenities located on the Property, The funds arising from said assessments or charges, may be used for any of foregoing, including, without limitation, the following purposes: Maintenance and improvements of the Common Areas, drainage and utility easements and rights of way. drainage systems (including storm drainage facilities and systems) including drainage ditches and/or retention ponds, if any, serving the Property, whether or not located on the Property (and if not located on the Property the same shall be considered to be a part of the Planned Community for purposes of assessments); enforcing these covenants and restrictions and the rules of the Association; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization or master association of which the Association is or shall become a member and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the property in neat and good order and to provide for the health, welfare and safety of Owners and residents of LUCKY FISH SUBDIVISION.

SECTION 3. Amount of Annual Assessments.

- a. **Maximum Annual Assessment.** Until the end of Declaring Control, the maximum annual assessment shall not exceed Two Thousand Dollars (\$2,000.00) per Lot, the exact amount of which shall be determined from time to time as hereinafter provided.
- b. **Increase by Association Board of Directors.** From and after the date specified In subparagraph (a) above, the annual assessment which may be established effective January 1st of each year by the Board of Directors, may not be increased by more than twenty percent (20%) of the prior year's assessment without a vote of the Members as provided below.
- c. **Increase by Members.** From and after the date specified in subparagraph (a) above, the annual assessment may be increased by more than twenty percent (20%) only by an affirmative vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose. Written notice of said meeting, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitation herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation.
- d. **Proposed Assessments.** In proposing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the

Association, any accrued debts and reserves for future needs.

SECTION 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part; the cost of any construction, reconstruction, repairs or replacement of a capital improvement upon the Common Area, including fixtures amid personal property related thereto, and specifically including the water lines and systems within the project provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall have been sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

SECTION 5. Insurance. The Board of Directors on behalf of the Association, as a common expense, shall at all times keep the property of the Association, if any, insured against such perils, including, but not limited to directors' liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the Property and Common Area. which insurance shall be payable in case of loss to the Association.

SECTION 6. Notice And Quorum For Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the last such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. 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. Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all lots, on a per lot basis, and may be collected on a monthly, quarterly or annual basis as determined by the Board of Directors. Provided, however, the Association may differentiate in the amount of assessments charged when a reasonable basis (or distinction exists, such as between vacant Lots of record and Lots of record with completed structures (or which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated,

SECTION 8. Commencement of Assessments and Due Dates. The assessments provided for herein shall be paid in advance in monthly, quarterly or annual installments as determined by the Board of Directors and the payment of such assessments as to each Lot shall commence upon the date of conveyance to an Owner of a Lot from Declarant. The Board of Directors shall fix the amount of the annual assessments against each Lot at least ten (10) days in advance of each annual assessment period. Written notice of the annual assessment shall be set to every Owner subject thereto. The due date shall be established by the President.

SECTION 9. Effect Of Nonpayment Of Assessments And Remedies Of The Association. Any assessment or portion thereof not paid when due shall be delinquent. Any assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owners Lot, and, in either event, interest, costs and reasonable attorney's fees incurred in the prosecution of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided (or herein by non-use of the Common Areas or abandonment of the Lot, All unpaid installment payments of Assessments shall become immediately due and payable if any Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

SECTION 10. Subordination Of The Lien To Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to

mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

SECTION 11. **Certificate of Assessments.** The Association shall upon demand at any time furnish to any Owner liable for assessments a certificate setting forth whether said assessments have been paid or the amount outstanding, which certificate shall be conclusive evidence of the status of said assessments. A reasonable charge may be made for such service.

SECTION 12. **Working Capital Assessment.** At the time title is conveyed to an owner by the Declarant, each Owner shall contribute to the Association as a working capital reserve an amount equal to two months' estimated annual assessment. Such funds shall be used for initial operating and capital expenses of the Association, including, without limitation, prepaid insurance, supplies and the Common Areas furnishings and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

ARTICLE VI. MAINTENANCE AND LANDSCAPING

SECTION 1. The Association shall contract for the landscaping, irrigation and maintenance of the Common Areas, signs and other improvements (except as otherwise provided herein) located within LUCKY FISH SUBDIVISION, except improvements on individual lots. The expense of providing such services shall be deemed a common expense and shall be shared equally by all Lot Owners as provided in ARTICLE V above. Each Lot Owner shall be responsible for the maintenance of each Lot including maintenance of storm water management improvements located on each lot, and each dwelling on each lot and agrees to maintain the dwelling in a good and acceptable manner.

SECTION 2, If, in the opinion of the Association, any Owner shall fail to maintain any lot or dwelling owned by him in a manner which is reasonably neat and orderly 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 two-thirds (2/3) of the members of the Board of Directors, and following ten (10) days written notice to the Owner(s), may enter upon and make or cause to be made repairs to such improvements and perform such maintenance on the lot as the removal of trash, The Association shall have an easement onto and over each lot 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 a part of the assessment to which such Lot is subject.

ARTICLE VII ARCHITECTURAL CONTROL

SECTION 1. **Developer's Rights.** All duties and responsibilities conferred upon the Architectural Control Committee (the "ACC") by this Declaration or the By-laws of the Association shall be exercised and performed by the Declarant or its Designee, so long as Declarant shall own any lot in the Properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

SECTION 2. **Definitions.** For purposes of this Article VII the following terms shall have the following meanings unless the context clearly requires a different meaning:

- a. "accessory building" means every detached garage, carport, tool shed, storage or utility building, well house, or other similar building constructed on a Lot which is not a dwelling;

- b. "buildings" means accessory buildings and dwellings;
- c. "dwelling" means a building constructed for single family residential use;
- d. "improvements or "structures" mean buildings and all walls, fences, bulkheads, decks, patios, planters, terraces, mail receptacles, swimming pools, tennis courts, storm water management improvements, or anything else constructed or placed on a Lot.

SECTION 3. Reservations. The Declaring reserves the right to change, alter, or redesignate: roads, utility and drainage facilities, plus such other present and proposed amenities or facilities as may, in the sole judgment of the Declarant be necessary or desirable.

SECTION 4. Variances. The ACC shall be empowered to allow adjustments, consistent with local zoning ordinances, of the conditions and restrictions stated herein in order to overcome practical difficulties and prevent unnecessary hardships in the application of the regulations contained herein, provided, however, that such is done in conformity to the intent and purposes hereof, and provided, also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood. Variances and adjustments of height, size, and setback requirements may be granted hereunder.

SECTION 5. Development Concept. It is the express intention of the Declarant to maintain in this residential community a uniform plan of development that will blend with and not detract from the natural environment with respect to design, type and general appearance of the structures to be erected on the lots. The Declarant and the ACC shall develop conceptual guidelines and standards which shall be complied with by Property owners to obtain the approvals required below. Property owners are encouraged to have their architects contact the ACC prior to any costly design work for conceptual guidelines pertaining to the residential community.

SECTION 6. Approval of Plans. The proposed Site and Grading Plans; Building Plans and Specifications; Exterior Colors and Finishes; and Construction Schedule must be approved by the ACC. One (1) copy of all plans and related data shall be furnished to the ACC for its records. Until all of the above listed prerequisite plans are approved no improvements or structures shall be erected, placed, or altered on any residential lot. The material used, as well as the design, shall be subject to the prior written approval of the ACC. Neither the Declarant nor the ACC shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

SECTION 7. Guidelines.

- a. The Site and Grading Plans should show the proposed location of each building, structure, driveway, parking area, other improvements, and proposed alterations to the physical characteristics of the site. The grade, elevation, or physical characteristics (including but not limited to slopes and tree growth) of any such lot shall not be altered in any way whatsoever without — written approval of the ACC based upon a Site or Grading Plan. The Site and Grading Plans shall not be in conflict with the Grading, Drainage, and Erosion Control Plan of LUCKY FISH SUBDIVISION recorded with the County.
- b. The ACC encourages the planting of flowering shrubs and trees; however, all tree removal or planting of trees, bushes, shrubs, grasses, or other vegetation whatever, shall be based upon a Site Plan, Landscaping Plan, or Planting Plan which has been submitted to and received written approval from the ACC.
- c. Upon the written request of a lot owner for approval of plans, the ACC shall have ten days within which to approve or disapprove plans. In the event of failure to approve or disapprove within 10 days, such approval will not be required provided the design of proposed building is in harmony with the existing structures in this area. If the ACC approves the construction of such improvements, it shall issue a certificate evidencing such approval.

- d. Refusal or approval of any such plans or specifications may be based by the ACC upon grounds, including purely aesthetic and environmental considerations, that in the sole and absolute discretion of the ACC shall seem sufficient.
- e. Without the prior written consent of the ACC, no changes or deviations in or from such plans or specification as approved shall be made. No alterations in the exterior appearance of any building or structure, or in the grade, elevation, physical characteristics of any lot shall be made without like approval by the ACC.
- f. Upon completion of approved construction, the ACC shall inspect the construction to insure that the approved Plans and samples have been complied with by the Owner. No structure may be occupied or used until the issuance by the ACC of a certificate of compliance. The certificate of compliance shall be issued by the ACC without fee; provided, however, that in the event that the ACC's first inspection of the construction reveals deviations or deficiencies from the approved Plans and samples, the ACC may charge a fee of \$50 for every subsequent inspection which is necessary to insure compliance with the approved Plans and samples. Any such fee must be paid before the issuance of the compliance certificate.
- g. If the finished building or other structure does not comply with the submitted plans and specifications, the Committee retains the right to make the necessary changes at owners expense, and the further right to file under the North Carolina lien laws notice of liens for any costs incurred.
- h. No house plans will be approved unless the proposed house shall have a minimum of 2500 square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed heated and cooled area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas; provided further, that shed type porches, even though attached to the house are specifically excluded from the definition of the aforesaid term "enclosed dwelling area".

SECTION 8. Subdividing. No lot shall be subdivided, or its boundary lines changed except with the prior written consent of the ACC. However, the ACC hereby expressly reserves to itself, its successors or assigns, the right to replat any two (2) or more lots shown on the plat of any subdivision in order to create a modified building lot or lots; and to take such steps as are reasonably necessary to make such replatted lot suitable and fit as a building site, said steps to include but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted lots.

ARTICLE VIII. UTILITIES

SECTION 1. Water Service. Water service for lots in LUCKY FISH SUBDIVISION shall be provided by a private well drilled or otherwise constructed on each lot at the owner's expense.

SECTION 2. Sewage Disposal. Sewage disposal collection shall be provided by New Hanover County. All lot owners must tie into the New Hanover County Sewer System. All tap fees or other charges required by the County to connect individual lots to the County system will be the responsibility of each individual lot owner.

ARTICLE IX COMMUNITY BOATING FACILITY

SECTION 1. Improvements and Alterations. Declarant has applied for all governmental permits required to construct a private boat dock facility designated as the "Community Boating Facility" as shown on the plat or plats of the Property recorded or to be recorded in the Office of the Register of Deeds of New Hanover County for the use and benefit

of the members of the Association.

SECTION 2. Floating Dock(s). The Declarant shall construct or cause to be constructed three (3) 6' x 40' floating docks and four boat lifts to serve as the Community Boating Facility. The Association shall have the responsibility to repair and maintain the floating docks and boat lifts, the costs of which shall be a common expense of the Association.

SECTION 3. Assignment of Boat Slips or Docking Spaces. The Declaring shall assign a boat slip to each lot owner as appurtenant to membership in the Association. The boat slips so assigned may not be exchanged among the members of the Association,

SECTION 4. Dock Boxes. There shall be no more than one (1) dock box per slip of such size, design and construction and in such location, as the Declaring or Board of Directors shall determine. No removal or change in location, size, design or construction will be made without the written consent of the Board of Directors; provided, that any such approved removal or change shall be at the expense of the person seeking such removal or change.

SECTION 5. Use of Boat Slips. No portion of the Community Boating Facility (the "Facility") or any boat slip may be used for any commercial purpose. The use and occupation of the Facility and all boat slips shall comply with all requirements of CAMA, Permit # _____, (the "Permit") as the same may be amended, including, without limitation, the following:

- a. No boat lift may be occupied by boats over _____ feet in length or by boats with heads. No floating dock may be occupied by boats over _____ feet in length or by boats with heads.
- b. No sewage, whether treated or untreated, shall be discharged from any boats using the facility.
- c. The Permit that authorizes this facility permits only those docks, piers and other structures and uses located in or over the waters specifically granted to the Permittee. No other structure, whether floating or stationary, may become a permanent part of this Facility unless the Permit is properly modified.
- d. Non-water dependent uses may not be conducted in the Facility.

ARTICLE X USE RESTRICTIONS

SECTION 1. Land Use And Building Type. No lot in or common area in LUCKY FISH SUBDIVISION shall be used for any purposes except for residential purposes other than the "Common Area" and the "Community Boating Facility" which may be used for recreational purposes. All numbered lots in LUCKY FISH SUBDIVISION shall be restricted for construction of single-family dwellings only. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article VII of this Declaration relating to architectural control. Different land use restrictions and architectural control guidelines may be established for adjoining properties developed by Declarant.

SECTION 2. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yards of each lot and Common Area. Any rules and regulations formulated by the Association, along with all policy resolutions and policy actions taken by the Board of Directors of the Association, shall be recorded in a Book of Resolutions, which shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours.

SECTION 3. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, or upon the Common Areas, including the Community Boating Facility, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other property. In the neighborhood by the Owners thereof. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly or unkempt condition of buildings or grounds on such Lot, which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

SECTION 4. Use of Property. Each Lot, building, the home thereon and the Common Areas shall be for the following uses and subject to the following restrictions, in addition to those set forth in the By-Laws:

- a. Nothing shall be kept and on activity shall be carried on in any building or home or on the Common Areas which will increase the rate of insurance. applicable to residential use, for the surrounding Property or the contents thereof,
- b. No Owner shall do or keep anything, or cause or allow anything to be done or kept, in his home or in the Common Areas which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation.
- c. No waste shall be committed on any portion of the Common Areas.
- d. All garbage receptacles, containers and enclosures shall be located so as not to be unsightly and said locations shall be as originally designated or constructed by Declarant or as approved by the Architectural Control Committee.
- e. No immoral, improper, offensive or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed.
- f. Nothing shall be done in or to any home or garage or in, to or upon any of the Common Areas which will impair the structural integrity of any building, home, garage or portion of the Common Areas or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration,
- g. No industry, business, trade, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained or permitted on any part of the Property, except that the Declarant or its agents may use up to two (2) homes at any given time as models or sales offices. The Association shall have the right, without any obligation, to permit certain home occupations to the extent that they comply with local zoning regulations, and to the extent that the Association can determine, in its sole discretion, and on a cases by case basis, which, if any, home occupations, would be consistent with scope and theme of the development.
- h. Except as may be required by municipal ordinance, and except as may be permitted by rules and regulations established by the Association in its discretion, no Owner shall display, or cause to allow to be displayed to public view any sign, placard, poster, billboard or identifying name or number upon any home, building or any portion of the Common Areas.
- i. No person shall undertake, cause, or allow any alteration or construction In or upon any portion of the Common Areas except at the direction of and with the express whiten consent of the Association, or the Declarant.
- j. The Common Areas shall be used only for the purposes for which they are intended and reasonably suited and which are incidental to the use and occupancy of the homes, subject to any rules or regulations that may be adopted by the Association pursuant to its By-Laws.
- k. Owners shall be responsible for any damage done to any streets, roadways, access

ways and Common Areas or property of other Owners within the Property which may be caused by any Owner, his agents, domestic employees, guests, licensees or invitees. The Association shall have an easement, if necessary, to repair or restore any such damages. The cost of repair or damages shall be added to and become a part of the assessment to which such Lot is subject. The Association shall have the authority to assess any Owner for such damage and such charge shall be added to and become part of the assessments to which such lot is subject and may be enforced in accordance with the provisions of Article V herein.

- I. All lots are subject to the rules and regulations promulgated by the State of North Carolina concerning storm water runoff, as the same may be amended from time to time. These regulations currently provide that no more than 4300 square feet of any Lot shall be built upon area as defined by the storm water rules specified in the approved plans and the State Permit Number _____. CAMA may reduce the allowable built upon area for those lots located in the Area of Environmental Concern. (AEC). The overall tract built upon area percentage for the lots in the subdivision must not exceed 25%. This limitation includes impervious surfaces such as foundations, structures, pavement, concrete, driveways (including that portion of the driveway located within a street right of way, which runs from the property line to the road pavement); and walkways or patios of brick, stone or slate, and gravel, mad or stone covered areas, not including wood decking or the water surface of swimming pools. Declarant reserves the right to recalculate the maximum allowable built upon area in accordance with the storm water runoff rules of the State of North Carolina, as amended. All drainage swales or drainage patterns used to treat storm water runoff as require by the State of North Carolina may not be filled in, piped or changed without the consent of the Declarant, its designee, the Association, or the State of North Carolina and shall be maintained as set forth in Article VI herein. Notwithstanding the foregoing, all Owners shall comply with any and all storm water runoff regulations or other such regulations which may be applicable to each individual Lot.

SECTION 5. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Areas except at the direction or with the express written consent of the Association.

SECTION 6. Lease of Homes. No home shall be leased for transient or hotel purposes, nor may any Owner lease less than the entire dwelling, nor shall any such lease be fix any period of less than six (6) months. Any lease must be in writing and must provide that the terms of the lease and occupancy of the dwelling sham be subject In all respect to the provisions of the Declaration of Covenants, Conditions and Restrictions and By-Laws of the Association and any failure by a lessee to comply with the terms of such documents shall be a default under the lease.

ARTICLE XI EASEMENTS

SECTION 1. Walks, Drives, Cart Path, Parking Areas and Utilities. All of the Property, Including Lots and Common Areas, shall be subject to a perpetual non-exclusive easement or easements in favor of all Lot Owners for their use and the use of their immediate families, guests, invitees, tenants or lessees for all proper and normal purposes and for ingress, egress and regress in and to such easements for private streets, driveways, walkways, cart paths, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declaring or its predecessors in title. The Association shall have the power and authority to grant and to establish in, over, upon and across the Common Areas conveyed to it such further easements as are requisite for the convenient use and enjoyment of the property.

SECTION 2. Reservation to Declaring. Every Lot shall be subject to an easement for entry and encroachment by the Declaring or the Association for the purpose of correcting any problems that may arise regarding grading and drainage. The Declaring, upon making entry for

such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable. The cost of any corrections made by the Declaring made necessary or resulting from any actions or negligence of the Lot owner shall be the responsibility of the Lot owner.

SECTION 3. Reservation for Lot 2B. Further, Declaring reserves the right to subject Lot 2B to a contract with _____ for the installation or improvement of a well for water and water lines for irrigation of landscaping in common areas including the Community Boating Facility and electricity to same. The well, electricity and all maintenance costs are a common expense.

SECTION 4. Emergencies. Every Lot and home shall be subject to an easement for entry by the Association or emergency personnel, including, without limitation, all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Areas in the performance of their duties for the purpose of correcting, repairing or alleviating any emergency condition which arises upon any Lot and/or Common Areas, and/or home and which endangers any building or portion of the Common Areas.

SECTION 5. Utility Easements, Drainage Easements. Easements as necessary in the lands constituting the Common Areas and the rear, front and side ten feet of each Lot for the installation and maintenance of utilities and drainage facilities; including the right of Declaring and the Association to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric, telephone and cable television lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any additional Property recorded or to be recorded in the office of the Register of Deeds of New Hanover County; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any frees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the owner of such Lot. No structures or plantings or other material shall be placed or permitted or remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. These easement areas (whether or not shown on the recorded plats for the Planned Community) and improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible. The easements herein granted and reserved include, without limitation, service easements for fire fighting, law enforcement, garbage collection and the delivering of mail.

SECTION 6. Sewer Collection System Easement. An easement the installation, maintenance and operation of facilities to provide sanitary sewer services to all Lots is declared. All lots will be required to connect to the New Hanover County sewer system.

SECTION 7. Community Boating Facility Access. The Declarant hereby grants to the Association for the benefit of the members, and their guests, in accordance with such rules and regulations as may be prescribed by the Association, a perpetual easement and right-of-way over cart path running through the Common Areas and Lots 2B and 3C of LUCKY FISH SUBDIVISION as shown on the plot or plots thereof recorded or to be recorded in the New Hanover County Registry, for access, ingress and egress to the Community Boating Facility as shown on said plat(s).

SECTION 8. Declarant's Access Easement. Declarant hereby reserves unto itself, its successors and assigns, perpetual, alienable easements over all streets and Common Areas as necessary to provide drainage, access, ingress and egress, to adjacent properties in the event Declarant, its successors or assigns should acquire or develop any additional Property, as hereinabove defined, or any property adjacent to LUCKY FISH SUBDIVISION, whether or not

such adjacent property is annexed to this development as herein provided.

SECTION 9. Landscaping and Maintenance Easement. An easement is hereby established in favor of the Declarant, the Association, their agents and assigns over all Lots as may be required by this Declaration, for the purpose of providing and maintaining landscaping, for installation and maintenance of irrigation lines and facilities and for other activities reasonably relating to the installation and maintenance of improvements to the Property, including, without limitation, walls, signs, ponds and bulkheads, and maintenance, repair and improvement obligations as set forth in this Declaration,

SECTION 10. Entranceway, Perimeter Fence, Wall. Declarant also reserves for itself and the Association, a perpetual easement and right, without any obligation, to construct and maintain an entranceway structure and/or sign at the entrance and to landscape the entranceway to the subdivision on that portion of Lots 1A and 3A fronting on Canady Road and within the area shown as Lucky Fish Lane as shown on the recorded plot of the subdivision. Declarant also reserves for itself and the Association, the right without any obligation, to construct and maintain a perimeter fence extending from the entrance to the subdivision along the perimeter of the subdivision along the rear of Lots 3A, 3B, 3C and 2A, 1A and 1B on the recorded plat of the subdivision. For the purpose herein described, if an entranceway structure and/or fence is constructed, the same shall be maintained by the Association, as a common expense, and there is hereby created a perpetual easement in favor of the Association along the designated easement areas of lots 1A and 3A, as shown on the recorded map of the subdivision for such purposes,

SECTION 11. Assignment by Declarant. All water, sewer, land use, storm drainage facilities, storm water system and utility permits, agreements and easements between Declarant and any governmental agency or department or public or private utility company shall be assumed by the Association upon the recordation of a plat showing any real property located within the Property. The Association shall thereafter 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, storm drainage facilities, storm water system or utility areas covered by the permits, agreements and easements are not located within the Property. The Declarant shall assign all such permits to the Association to the extent allowed by law.

SECTION 12. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional Property, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration

ARTICLE XII RIGHTS OF INSTITUTIONAL LENDERS

SECTION 1. Institutional Lender or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Authority, Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- a. To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such financial statement and report to be furnished by April 15 of each calendar year.
- b. To be given notice by the Association of the call of any meeting of the membership