

Prepared by: Kenneth A. Shanklin
and KENNETH A. SHANKLIN LAW OFFICE
Returned 214 Market Street
To: Post Office Box 1347
Wilmington, NC 28402-1347
Telephone: (910) 762-9400
Telefax: (910) 251-1773

FOR REGISTRATION REGISTER OF DEEDS
REBECCA T. CHRISTIAN
NEW HANOVER COUNTY, NC
2002 MAR 13 11:29:08 AM
BK: 3232 PG: 425-458 FEE: \$110.00
INSTRUMENT # 2002012737

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR
MASON'S BLUFF SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MASON'S BLUFF SUBDIVISION (the "Declaration"), made the 12 day of March, 2002, by M.L.H. Development, LLC, a North Carolina Limited Liability Company ("MLH") and LEA DEVELOPMENT, LLC, a North Carolina Limited Liability Company ("LEA") (hereinafter collectively called "Declarants") for the purposes hereinafter stated, with the joinder of JAMES W. LEA, III and wife, CATHERINE B. LEA, who own Lot 1 of Mason's Bluff.

WITNESSETH:

WHEREAS, Declarants are the Owners of certain real property in Harnett Township, New Hanover County, North Carolina (hereinafter referred to as the "Property"), which is more particularly described in attached Exhibit "A," which as been subdivided as follows:

BEING all of Mason's Bluff, including Lots 1 through 10, the Community Boating Facility, and all Common Elements, according to the plats thereof duly recorded and to be recorded in the New Hanover County Register of Deeds with the map of Phase One of Mason's Bluff being duly recorded in Map Book 42 at Page 89 in the Office of the Register of Deeds of New Hanover County, to which plats reference is hereby made for a more particular description.

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

NOW, THEREFORE, Declarants hereby declare 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, servitudes, 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 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 Declarants 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 Mason's Bluff HOA, Inc., a North Carolina non-profit corporation, its successors and assigns, the property owners' association organized for the mutual benefit and protection of the Property.

SECTION 5. Boat Slip or Docking Space 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 Intracoastal Waterway for the docking of a boat, shown diagrammatically as Slips 1-10, inclusive, on the plat of same attached hereto and marked as Exhibit "B" and incorporated herein by reference, and further demonstrated on the recorded plat of Phase One of Mason's Bluff recorded in Map Book 42 at Page 89 in the Office of the Register of Deeds of New Hanover County.

SECTION 6. Common Area or Common Elements 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 Mason's Bluff 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 which water or sewer lines serve the Property are declared to be Common Elements. Common Elements shall also include any landscaping, sidewalks, lighting and irrigation located within the boundaries of Mason's Bluff Drive, a private street as shown on the recorded plat of Mason's Bluff. These Common Elements shall be maintained by the Association pursuant to the terms, requirements and conditions of this

Declaration. Declarants reserve, for themselves and the Association, the right to convey water and sewer lines, facilities and easements to public authorities (when and if County or City water and/or sewer service becomes available to the subdivision) or to public utilities. Declarants reserve the right to alter and amend the recorded Map to amend, delete or relocate such Common Elements and facilities (except the Community Boating Facility) as Declarants, in their sole discretion, deem 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 Elements, including without limitation the Community Boating Facility, private streets, docks, piers and bulkheads;
- c. Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- d. Liability for such insurance premiums as the Declaration or Bylaws 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; and
- f. Any ad valorem taxes and public assessments levied against the Common Elements.

SECTION 8. Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, the 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 and floating docks located in the riparian corridor, that area located east or southeast of the waterfront common area, a one-foot wide strip of land running along mean high water adjoining the Lots designated as Lots 1, 2 and 3 of Mason's Bluff and extending eastwardly and southeastwardly from the common area adjoining said numbered Lots between the parallel lines designated as riparian lines to the Intracoastal Waterway, as shown on the plat or plats of Mason's Bluff, recorded or to be recorded in the Office of the Register of Deeds of New Hanover County. The Community Boating Facility is authorized pursuant to a Special Use

Permit issued on July 10, 2000, by the New Hanover County Commissioners, Case No. S-462. The Community Boating Facility is specifically subject to the terms and conditions of the Special Use Permit, including the limitation of paragraph 6(D)(1) of the Order granting a Special Use Permit that required the Owners of Lots 1, 2 and 3 of Mason's Bluff to relinquish their riparian right to construct a separate pier and dock for Lots 1, 2 and 3 other than the Community Boating Facility.

SECTION 11. Declarants shall mean and refer to M.L.H. Development, LLC, a North Carolina Limited Liability Company, and Lea Development Co., LLC, a North Carolina Limited Liability Company, their successors and assigns (i) to whom the rights of Declarants are expressly transferred, (ii) who acquire more than two or more undeveloped Lots for the purpose of development with an assignment of all or part of any special Declarant right, (iii) 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 (iv) anyone otherwise denominated "Declarant" or "Declarants" who succeeds to any special Declarant right. Additionally, James W. Lea, III and wife, Catherine B. Lea, who own the area which became Lot 1 of Phase One of Mason's Bluff with the recordation of the recorded Plat of Phase One of Mason's Bluff in Map Book 42 at Page 89 of the New Hanover County Registry on March 6, 2002, join in the execution of this Declaration for the purposes of submitting Lot 1 to the benefits, rights, easements and privileges of a Lot Owner in Mason's Bluff and subject to the covenants, conditions, easements, restrictions and obligations of a Lot Owner under this Declaration.

SECTION 12. Declarant Control Period shall mean that period from the filing of the Articles of Incorporation of the Association until the earlier of (i) 120 days after conveyance of seventy-five percent (75%) of the Lots to Owners other than the Declarants, (ii) two years after Declarants have ceased to offer Lots for sale in the ordinary course of business, (iii) two years after the Expansion Right to add additional Property to the Declaration was last exercised, or (iv) the date Declarants voluntarily terminates the Declarant Control Period pursuant to an instrument recorded in the office where the Declaration is recorded; provided, however, the Declarant Control Period shall, in all events, terminate on that date which is three years from the date of filing of the Articles of Incorporation of the Association; and provided further, in the event that the Expansion Right is exercised to add additional Lots to the Property, the Declarant Control Period shall be adjusted and extended (or revived, as the case may be) to reflect the addition of such additional Lots but not beyond the date of three years from the date of the filing of the Articles of Incorporation of the Association.

SECTION 13. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 14. 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 15. Expansion Right shall have the meaning ascribed to such term in Article XIII, below.

SECTION 16. Lot shall mean and refer to those 10 plots of land, 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 Declarants in accordance with the provisions of this Declaration and local ordinances, rules and regulations.

SECTION 17. Lot Owner and Owners shall be used interchangeably to 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 18. Member shall mean and refer to every person who is a Member of the Association.

SECTION 19. 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 20. Person shall mean and refer to an individual, corporation, partnership, association, trustee or other legal entity.

SECTION 21. Planned Community shall mean and refer to the Property plus any Additional Property made a part of Mason's Bluff Subdivision.

SECTION 22. Property shall mean and refer to Mason's Bluff Subdivision as shown on any recorded plat thereof, as described in the preambles above, including without limitation Lots 1 through 10, the Community Boating Facility and any Additional Property that may hereafter be brought within the jurisdiction of the Association as herein provided.

SECTION 23. Purchaser shall mean any Person, other than Declarants or a Person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 24. Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

SECTION 25. Riparian Rights means the rights associated with the Ownership of waterfront property associated with or applicable to the waterfront common area, including the right to construct and maintain piers, and the Community Boating facility shall be held by Declarants for the use and enjoyment of the Association and shall be conveyed to the Association as an appurtenance to the Common Elements.

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 Elements 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 Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by a two-thirds (2/3) vote of the Members; provided, however, that the Association may, without the consent of the Owners, grant easements over the Common Elements for drainage systems and public utilities servicing the Planned Community, and provided further that any conveyance or encumbrance of Common Elements 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 reasonable regulations for the use and enjoyment of the Common Elements, if any, and improvements thereon, which regulations may further restrict the use of the Common Elements.
- f. The right of the Association to charge reasonable fees for the use of the Common Elements 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 Elements to the members of his family, his tenants or contract purchasers, provided every such delegatee shall reside on the Property.

SECTION 3. Maintenance of Common Elements. Maintenance of the Common Elements 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 Elements 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.

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 Elements and any Limited Common Elements in accordance with this Declaration, its Charter and the 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. Membership Class and Voting Rights. The Association shall have one class of voting membership. The Members shall be all of the Owners of the Lots. All Members shall be entitled to one vote per Lot, for each Lot owned by the Member or Members in all proceedings in which action shall be taken by Members of the Association. If the Owner of a Lot is comprised of two or more persons or other legal entities, or any other combination thereof, the vote for that Lot shall be cast in the manner provided for in the Articles of Incorporation or Bylaws of the Association, or as the several constituents may determine, but in no event shall all such constituents cast more than one vote per Lot for each Lot owned by them. During the Declarant Control Period, the Declarant shall be entitled to appoint and remove the Members of the Board of Directors of the Association; provided, however, (a) not later than sixty (60) days following conveyance of twenty-five percent (25%) of the Lots to Owners other than the Declarants, at least one Member of the Board and not less than twenty-five percent (25%) of the Members of the Board shall be elected by Lot Owners other than Declarants, and (b) not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to Lot Owners other than Declarants, not less than thirty-three percent (33%) of the Members of the Board shall be elected by Lot Owners other than Declarants. Following the expiration of the Declarant Control Period, the Board of Directors shall be elected by the Owners in the manner otherwise set forth in the Articles of Incorporation and the Bylaws of the Association.

SECTION 4. Government Permits. All duties, obligations, rights and privileges of Declarants under any water, sewer, storm water and utility agreements, easements, permits and special use permits for the Planned Community and the Community Boating Facility with

municipal or governmental agencies or public or private utility companies shall be 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 Bylaws, provided, however, that all of the powers and duties of the Board of Directors may be exercised and performed by Declarants or their Designees, so long as the Declarant Control Period is applicable or Declarants own any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

ARTICLE V **COVENANTS AND ASSESSMENTS**

SECTION 1. Creation of Lien and Personal Obligation of Assessments. Declarants, for each Lot owned within the Properties, hereby covenant, 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, specifically including assessments for capital improvements, replacement and repairs to the Community Boating Facility, such assessments to be established and collected as hereinafter provided;
- c. Insurance assessments;
- d. A pro rata share of ad valorem taxes levied against the Common Area, if any, to the appropriate governing taxing authority; 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 attorneys' 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 attorneys' 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 and an obligation of the Lot *in rem*. The personal obligations of an Owner for delinquent assessments shall pass to his successors in title regardless of whether the new Owner expressly assumes or is aware of such assessment. 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 Elements, especially including the Community Boating Facility, 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 Elements and the Community Boating Facility; drainage and utility easements and rights-of-way; drainage systems, including storm drainage facilities, drainage ditches and detention ponds, if any, serving the Property, whether 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 Mason's Bluff.

SECTION 3. Amount of Annual Assessments.

a. **Maximum Annual Assessment.** Until December 31, 2002, the maximum annual assessment shall not exceed Fifteen Hundred and No/100 Dollars (\$1,500.00) per Lot, the exact amount of which shall be determined from time to time as hereinafter provided.

b. **Increase by Board of Directors.** From and after the date specified in subparagraph (a) above, the annual assessment which may be established effective January 1 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 the 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. **Propose 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 and for the Community Boating Facility. 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, repair or replacement of a capital improvement upon the Common Area, including fixtures and 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 Membership 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. Additionally, in addition to the annual assessments and special assessments for capital improvements, the Association may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any improvement, construction, reconstruction, repair, maintenance or replacement of the Community Boating Facility, including fixtures and personal property related thereto. Any special assessment for the Community Boating Facility shall not need the assent or approval of the Membership.

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 (to the extent insurable by the Association) 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 SECTIONS 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 first 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 for distinction exists, such as between vacant Lots of record and Lots of record with completed structures for 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 from the due date shall be 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 Owner's Lot and, in either event, interest, costs and reasonable attorneys' 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 for herein by non-use of the Common Elements 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. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of thirty (30) days or longer.

a. The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the Office of the Clerk of Superior Court of New Hanover County. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest and other charges imposed pursuant to Sections 47E-3-102, 47F-3-107, 47F-3-107A and 47F-3-115 of the Act are enforceable as Assessments.

b. The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including but not limited to a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

c. The lien for unpaid assessments is extinguished unless proceedings to enforce the tax lien are instituted within three years after the docketing of the claim of lien in the Office of the Clerk of Superior Court of New Hanover County.

d. Any judgment, decree or order in any action brought under this SECTION 10 shall include costs and reasonable attorneys' fees for the prevailing party.

e. Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot, obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

SECTION 11. Subordination of 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 by foreclosure of a mortgage shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

SECTION 12. 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 13. Working Capital Assessment. At the time title is conveyed to an Owner by the Declarants, each Owner shall contribute to the Association as a working capital reserve an amount equal to three months' estimated annual assessment or \$400.00, whichever amount is greater. Such funds shall be used for initial operating and capital expenses of the Association, including without limitation prepaid insurance, supplies, Common Elements 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 may 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 Elements, signs and other improvements (except as otherwise provided herein) located within Mason's Bluff, 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 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 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. Declarants' Rights. All duties and responsibilities conferred upon the Architectural Control Committee (the "ACC") by this Declaration or the Bylaws of the Association

shall be exercised and performed by Declarants or their Designees, so long as the Declarant Control Period is applicable or Declarants own 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;
and
- d. “improvements” or “structures” means buildings and all walls, fences, bulkheads, decks, patios, planters, terraces, mail receptacles, swimming pools, tennis courts or anything else constructed or placed on a Lot.

SECTION 3. Reservations. Declarants reserve 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 Declarants, 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 Declarants 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. Property Owners are encouraged to have their architects contact the ACC prior to any costly design work for conceptional 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 Declarants 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. No grade, elevation or physical characteristics (including but not limited to slopes and tree growth) of any such Lot shall be altered in any way whatsoever without prior written approval of the ACC based upon a Site or Grading Plan.

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 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 (10) 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 the 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 specifications as approved shall be made. No alterations in the exterior appearance of any building or structure, or in the grade, elevation or 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 approval 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 the Owner's 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 2,500 square feet of enclosed heated dwelling area for Lots 2 through 10 and 2,300 square feet for Lot 1. The term "enclosed heated dwelling area" as used in the minimum requirements shall be the total enclosed 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 heated dwelling area." House plans may have a two-car garage, provided, however, the garage shall not face the street unless specifically approved by the ACC.

SECTION 8. Subdividing. No Lot shall be subdivided or its boundary lines changed without 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(s) 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 Lot(s).

ARTICLE VIII UTILITIES

SECTION 1. Water Service. Until such time as New Hanover County or municipal water service becomes available, water service for Mason's Bluff shall be provided by individual wells. Declarants assume no responsibility to install a community water distribution system. All Lot Owners must tie into the New Hanover County or municipal water distribution system within 120 days after County or municipal water service becomes available to the subdivision. All tap fees or other charges required by the County to connect individual Lots to the County or municipal system will be the responsibility of each individual Lot Owner.

SECTION 2. Sewage Disposal. Until such time as New Hanover County or municipal sewer service becomes available, sewage disposal shall be by means of a septic tank or other method, provided that any such method must be approved by Declarants and the appropriate State and/or County health authorities. All Lot Owners must tie into the New Hanover County Sewer System within 120 days after County sewer service becomes available to the subdivision. 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, Alterations, Repairs and Operation. Declarants have 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 and as shown further on Exhibit "B" hereto for the use and benefit of the Members of the Association. The Community Boating Facility is subject to the terms, conditions and limitations of the New Hanover County