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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
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DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR PORTER'S POINTE

Prepared by and return to: Manning, Fulton & Skinner P.A. (DGM)

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR PORTER'S POINTE (this "Declaration"), made as of this 3rd day of May, 2007 by **PORTER'S POINTE, LLC**, a North Carolina limited liability company with its principal office located at 2609 Mimosa Place, Wilmington, North Carolina 28403 ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of New Hanover, State of North Carolina, commonly referred to as "Porter's Pointe", which is more particularly described on Exhibit "A" attached hereto;

WHEREAS, it is the desire and intention of Declarant to impose on the Property (defined below) certain restrictions, conditions, easements, covenants and agreements under a general plan or scheme of improvement for the benefit of all Property herein described and the future owners thereof; and,

WHEREAS, the Property shall be comprised of single family residential lots and associated open space.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, 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. "Articles" shall mean the Articles of Incorporation of the Association as filed with the Secretary of State, State of North Carolina, as the same may be from time to time amended.

Section 2. "Association" shall mean and refer to the Porter's Pointe Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 3. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 4. "Bylaws" shall mean the document for governance of the Association as adopted initially by the Board and as amended by the Members.

Section 5. "Consumer-Occupant Lot Owner" referred to herein is a Lot Owner who purchases a Lot from the Declarant or a builder of the initial residence on the Lot and occupies the residence on the Lot.

Section 6. "Common Elements" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of all the Owners. Common Elements include but are not limited to: private alleys and roads (including any roads that are currently public but which become private after the date of this Declaration), all retaining walls, all entry walls and walls bordering the Property, the pedestrian access ways, streetscape buffers, sewer lines and water lines that serve more than one Lot, and includes open space, "passive open space," "active recreation space," and common areas, as may be designated on any subdivision map of the Property or by the Association; Common Elements also include stormwater drainage and stormwater system improvements and easements located on the Property serving any or more than one Lot and are not maintained by any governmental authority. The Common Elements to be owned by the Association is all of that Property other than the Master Plan Lots and the Common Elements owned by any sub-association established by the Declarant.

Section 7. "Common Expenses" shall mean and include, as applicable:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses for maintenance, including but not limited to snow removal, of the landscape, any right-of-way easements, and, as determined by the Association or the Board, any amenities as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair, and replacement of the Common Elements including, without limitation, expenses relating to the signage, lighting, irrigation, hardscaping and landscaping located at all entrances to Porter's Pointe as shown on the recorded plat, the expenses relating to any signage, lighting, irrigation, hardscaping

and landscaping located on any of the common areas/open spaces/passive open spaces/active recreation spaces within Porter's Pointe as shown on any recorded plat of the subdivision, and the expenses of maintenance, repair and replacement of all private alleys and roads within Porter's Pointe (it being understood that all Lot Owners within Porter's Pointe shall be responsible for Common Expenses relating to the maintenance, repair and replacement of all private alleys and roads within Porter's Pointe, even if any such Owner's Lot is located on a public road).

(d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws.

(e) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws, including but not limited to expenses for the maintenance, repair and replacement of stormwater drainage and stormwater system improvements and easements located on the Property serving any or more than one Lot which are not maintained by any governmental authority;

(f) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase;

(g) Ad valorem taxes and public assessment charges lawfully levied against Common Elements;

(h) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property, cross Common Elements of the Property and serve both the Property and lands adjacent thereto;

(i) The expense of the maintenance of all easements and landscaping and improvements thereon, conveyed to the Association. This includes the cost of maintenance of the streetscape buffers within the open space located at the intersection of Brays Drive and Porter's Neck Road.

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

Section 8. "Declarant" shall mean and refer to Porter's Pointe, LLC, a North Carolina limited liability company, its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose, or any owner of the Property or Lots or remainder of those resulting from the sale of the Property, Lots or the remainder thereof at foreclosure when held by Declarant or its successor to the rights of Declarant or resulting from the transfer in lieu of foreclosure.

Section 9. "Declarant Development Period" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds of New

Hanover County, North Carolina, and continuing until the later of (i) such time as Declarant shall no longer have the right to annex any additional property pursuant to the provisions of Article VI, Section 2 hereof; or (ii) such time as Declarant shall no longer own any portion of the Property for the purpose of development or sale.

Section 10. "Lot" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map of the Property, as such map or maps may be from time to time amended or modified, for detached single-family residential use, designated for residential use and for separate ownership and occupancy. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of any other Owner or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or an affiliate of Declarant, as the case may be, and to thereby create additional Lots, eliminate existing Lots or Common Elements, or create additional Common Elements; provided, however, in no event shall the Property contain a greater number of Lots than the number from time to time permitted by the appropriate local governmental authority. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

Section 11. "Master Plan" shall mean and refer to the plan(s) for the Property and any additional property now or hereafter approved by the appropriate local governmental authority as such plan(s) may be from time to time amended.

Section 12. "Master Plan Lot" shall mean and refer to any separately numbered portion of the Property shown from time to time on the Master Plan intended for use or used as a site for any single-family attached or detached dwelling, patio (zero lot line) home, townhome or condominium unit and shall include any improvements constructed thereon and "Master Plan Lots" shall refer to all such lots collectively.

Section 13. "Member" shall mean and refer to every person or entity who holds membership in the Association.

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

Section 15. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 16. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 17. "Property" shall mean and refer to that certain real property described on Exhibit "A" hereto attached, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements together with and including the right of access, ingress and egress, on and over the Common Elements, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights and the right to use the Common Element facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) the right of the Association pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of Members entitled to cast at least eighty percent (80%) of the votes of each class of Members of the Association, to sell, dedicate or transfer fee title to all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances;

On any instrument of dedication, sale, or transfer of real or personal property, the Secretary of the Association shall certify that eighty percent (80%) of the votes of each class of members have approved the action evidenced by the instrument, and that certificate shall be conclusive that the execution and delivery of such instrument was properly authorized by the Association and its members and shall be relied upon and binding as to any third party or as to any grantee, its successor and assigns; provided, however, conveyances for general service utility purposes as specified in the Declaration may be made without consent of the members, and the Association may execute an instrument of conveyance therefore without such certification;

(c) the right of the Association, with the assent of the Members entitled to cast two-thirds (2/3) of the votes of each class of Members to borrow money for the purpose of improving the Common Elements and facilities and in aid thereof to mortgage the Common Elements, provided that the rights of such mortgagee in the Common Elements shall be subordinate to the rights of the Members and the Association hereunder;

(d) the right of the Association, to participate in an equal exchange of land, as permitted by local government ordinances.

(e) the right of the Association in accordance with its Articles or Bylaws to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Common Elements and to create limited common elements.

(f) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of use and enjoyment and rights of ingress, egress and access, as specified above, to the initial Common Elements and Common Elements established on all lands included in subsequent phases.

(g) the right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Association's Board; provided, however, no such dedication or transfer shall interfere with or obstruct drainage rights in favor of, utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances and no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded.

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

Section 3. Title to the Common Elements. While reserving the right to build and own facilities on the permanent open space and to charge reasonable fees for use of said facilities, the Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Elements located within the Property to the Association, free and clear of all encumbrances and liens, except for encumbrances of utility, service, access, storm drainage and other similar service or utility easements. The Association shall be deemed to accept such Common Elements for ownership and maintenance as necessary.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every record Owner of a Lot which is subject to assessment shall be a Member. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited. In the event that two or more Lots are recombined to form one Lot, the owner of the new Lot shall only be entitled to one vote for the new Lot. Likewise, in the event that one Lot is subdivided to form two or more Lots, the owners shall be entitled to one vote per new Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to sixty two (62) votes for each Master Plan Lot that is owned by Declarant and/or any affiliate or for which Declarant or any affiliate holds a contract right to purchase. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when Declarant or any affiliate of Declarant no longer owns a Lot within the Property, or
- (b) at Declarant's election, provided however, a majority of the Lots shall have been sold to Consumer-Occupant Lot Owners at the time of such election.

Section 3. Prior to conversion of the Class B membership to Class A membership, Declarant shall have the right to designate and select all of the Members of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any members or members of the Board of Directors so removed for the remainder of the unexpired term of any member or members of the Board of Directors so removed. Any Board of Directors member designated and selected by Declarant need not be a resident of the Property. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Board of Directors which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

Section 4. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of Article II, Section 1(b) herein.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

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

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

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

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses; and, in particular, but not limited to, for the acquisition, improvement and maintenance of Property, services, amenities and facilities, and for the use and enjoyment of the Common Elements, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Elements, providing for security to the Property, the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Amount of Assessment.

(a) Initial Maximum Assessment. To and including December 31, 2007, the maximum annual assessment shall not exceed \$1,200.00 per Lot.

(b) Increase by Association. From and after December 31, 2007, the annual assessment imposed by this Association, initially \$1,200.00, effective for any year (including 2007) may be increased effectively from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the twenty (20%) percent. The percentage increase shall be based on the maximum annual assessment for the prior year, or if the Association has not chosen to implement an increase for one or more years, the increase provided in this Section 3(b) may, at the option of the Association, be based on the annual assessment that would be effective had the increase been implemented each year prior to the year of the actual increase. Any budget providing for an increase not requiring a vote pursuant to subsection (c) below, is ratified unless ninety percent (90%) of the total vote of each class of Members vote to reject the budget at a duly called meeting. The Board of Directors, at its option may declare that a special Refurbishment Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Refurbishment Assessment shall be in an amount not to exceed \$200.00 per Lot and may be levied no more than once every year from the date of the recording of this Declaration. The Refurbishment Assessment shall be used to pay for the cost of enhancing, refurbishing or repairing portions of the Common Elements such as, but not limited to entryway features, lighting and landscaping and the like.

(c) Increase by Members. From and after January 1, 2008, the annual assessment may be increased by a percentage greater than permitted by this Article 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. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles.

(d) Criteria for Establishing Annual Assessment. In establishing 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, but it may not fix the annual assessment in an amount in excess of the greater of twelve (12%) percent or the sums derived by application of the Consumer Price Index formula provided in subsection (b) without the consent of members required by subsection (c) of this Section 3.

(e) Board Authority. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(f) Declarant Expenses. Until such time as Declarant shall no longer control the Board, Declarant may loan to the Association funds to cover the expenses not otherwise covered by the assessment hereunder.

(g) Attorney's Fees. There shall be an approval by the majority of the votes of the members prior to making a special assessment for attorneys fees or prior to incorporating attorneys fees (other than those typically incurred in the normal management of the Subdivision) into the annual budget on which the annual assessment is based.

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, restoration, repair or replacement of a capital improvement upon the Common Elements, any extraordinary maintenance, including vegetation, fixtures and personal property related thereto and any property for which the Association is responsible, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. . Provided, however, the Board of Directors, at its option and without a vote of the members of the Association, may declare that a Special Capital Assessment be levied against all Lots. Provided, however, the Board of Directors, at its option may declare that a Special Capital Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Special Capital Assessment shall be in an amount not to exceed \$1,000.00 per Lot and may be levied in emergency situations only, no more than once every year from the date of the recording of this Declaration. The Special Capital Assessment shall be used to defray the cost of any construction, reconstruction, restoration, repair or replacement of capital improvements upon the Common Elements. This assessment may not be used for any other purposes including litigation involving the Association.

Section 5. Replacement Reserve Out of the Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and any limited Common Elements which the Association may be obligated to maintain.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than ten (10) 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 each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to a minimum seven (7) day, maximum twenty-one (21) day notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. If at a second meeting, the requirement of one-half (1/2) of the required quorum is not met, then in a subsequent meeting the requirement shall be one-fourth (1/4) of the required quorum and successive meetings may be held until a quorum is maintained by successively halving the quorum requirement of the prior meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on an annual basis or other periodic basis established by the Board.

Section 8. Date of Commencement of Annual Assessments; Due Dates; Initial Working Capital. The annual assessments provided for herein shall commence as to all Lots at the time of recording of a deed from the Declarant to the initial property owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

In addition to the regular assessments to be charged and paid hereunder, each Owner shall, at the time of the initial sale of a Lot to that owner, pay to the Association a sum equal to three (3) months assessment on that Lot as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the Owner notwithstanding the fact that Declarant may have made prior regular assessment payments to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, shall be subject to a late charge of \$25.00 per month. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant the provisions of the applicable provisions of the North Carolina General Statutes. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V

ARCHITECTURAL CONTROL

No site preparation (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or initial construction, erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, bulkheads, screens, landscaping, plantings, equipment, swimming pools, or other structures shall be commenced, erected, placed, altered or maintained upon any lot, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, location and elevations of the proposed improvements, landscaping or plantings shall (a) have been submitted to, and approved in writing by, as to harmony of external design and location in relation to surrounding structures and topography, the Porter's Pointe Design Committee (the "Architectural Committee") composed of no fewer than three (3) persons and no more than seven (7) persons appointed by the Declarant on such date as determined by Declarant in its sole discretion, and (b) shall be in conformity with the Porter's Pointe Code & Architectural Review Guidelines (the "Architectural Review Guidelines"). Initial construction on all Lots shall be reviewed and approved by the Declarant until the sale of the final Lot in the Subdivision by the Declarant. After such date, the Architectural Committee shall be composed of no fewer than three (3) persons and no more than seven (7) persons, and shall be appointed by the Board. In the event the Architectural Committee fails to approve such submission made by any Lot Owner within thirty (30) days after said plans and specifications have been received by the Committee, approval will be deemed to have been denied. Any plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding any prior approval by the Committee.

The Architectural Committee may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may be (but need not be) based on square footage of the proposed improvements being reviewed, and such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Architectural Committee may employ architects, engineers or other persons as deemed necessary to perform the review. The Board may include the compensation of such person's in the Association's annual operating budget. Notwithstanding the foregoing, the total fees charged for the review of an application for a Lot shall not exceed \$500.00

Upon request, the Association, on behalf of the Architectural Committee, shall provide any Owner with a letter stating that any such work, plans and specifications, landscaping or plantings have been approved, and the letter may be relied upon by third parties.

Approval or disapproval by the Architectural Committee of such plans, location or specifications may be based upon any grounds, including purely aesthetic and environmental, which in the sole discretion of the Committee, it shall deem sufficient. Neither the Association, Board, nor the Architectural Committee shall be responsible for any defects in the plans and specifications submitted to it or in any structure erected or improvements made on any Lot.

The Board and the Architectural Committee, or their appointed agents, shall have the right, at their election, but shall not be so required, to enter upon any of the Lots during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications.

The Architectural Committee shall have the power to grant, and may allow, variances of and adjustments of, the restrictions established herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the restrictions contained herein; provided, however, that variances or adjustments are done in conformity with 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 Lots in the immediate neighborhood. Variances and adjustments may be of the height, size, and setback requirements, pursuant to the terms herein, but shall not be limited thereto. No variance shall be permitted if it violates governmental minimum standards. Notwithstanding the foregoing, Declarant shall have the power to grant the above variances and adjustments so long as Declarant has the authority to appoint members to the Architectural Committee.

In the event of the grant of any variance in the restrictions established herein, the Declarant for so long as the Declarant has the authority to appoint members to the Architectural Committee, and thereafter the Association on behalf of the Architectural Committee shall execute a document acceptable in substance to the Association attesting to such grant and the specific nature thereof in form suitable for recording, so that the Lot Owner may record the document in the Registry of the County in which the Lot is located. Such document shall be prepared at the cost of the Lot Owner and shall be binding upon the Declarant, the Association, its successors and assigns, and other Lot Owners and may be relied upon by third parties to evidence the variance approval.

Any purchaser of a Lot or institution financing a lot shall rely on the foregoing statement.

The Association, so long as Declarant has authority to appoint members to the Architectural Committee, shall defer architectural approvals and grants of variances to Declarant unless Declarant has voluntarily relinquished control of the Association.

ARTICLE VI

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property, except as provided in Section 2 of this Article VI, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting setting forth the purposes of the meeting. The presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to a notice requirement of a minimum of seven (7) days and a maximum of twenty-one (21) days and the required quorum shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat. Subsequent meetings may be held reducing the quorum requirement by one-half (1/2) at each meeting until a quorum is attained.

Section 2. If within twenty five (25) years of the date of recordation of this Declaration in the office of the New Hanover County Register of Deeds, the Declarant should develop such other lands as Declarant or as an affiliate or member of Declarant may hereafter acquire contiguous to the Property, such contiguous land may be annexed by the Declarant without the consent of Members; and, in doing so, Declarant may file and record such amendments to this Declaration as are necessary without the consent of the Members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Association. For purposes of determining contiguity of property, the rights-of-way of public or private roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise contiguous property.

Declarant may amend this Declaration at the time of annexation of additional lands as pursuant to the provisions of this Article VI, Section 2. Declarant shall have the right to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration but such additions and/or modifications shall have no effect upon the properties previously subjected to this Declaration.

Section 3. Annexation of additional lands shall be accomplished by recording in the Office of the Register of Deeds in the county in which the Property is located, a supplemental Declaration of Annexation, duly executed by the Declarant, if the Declarant has the right to annex pursuant to Section 2 above (and by the Association if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Property on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person

or entity shall be necessary to accomplish the annexation except any local governmental authority if required by its ordinances.

Section 4. Subsequent to recordation of the Declaration of Annexation by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Elements within the lands annexed as such Common Elements are developed and by recordation of such deed by the Declarant, the Association is deemed to accept such Common Elements for ownership and maintenance as necessary.

Section 5. Should Declarant elect to annex any additional property and accordingly to subject such property to the terms and conditions of this Declaration, Declarant reserves the right to alter the restrictions contained in Sections 1 and 2 of Article VIII herein. The addition of property authorized under this paragraph may increase the cumulative maximum number of lots authorized in the properties, and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

ARTICLE VII

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Property. No portion of the Property (except for a temporary office of the Declarant and building models used by Declarant) shall be used except for single-family residential purposes and for purposes incidental or accessory thereto.

No trade or business of any kind shall be conducted upon any Lot or part thereof, except as may be approved by the Board of Directors on a case-by-case basis after petition by an Owner. Provided however, that any such approved business must be conducted entirely within the confines of the house or garage of an Owner and must not create, among other things, a nuisance to the neighbors, or create among other things, excessive noise, traffic, odors or unpleasant appearances. Once permission is granted by the Board of Directors for such a business, the Board of Directors automatically retains the right to terminate approval of such business for violation of the above conditions or any other conditions stated in the Board's initial approval and the Owner shall terminate such business within thirty (30) days after receipt of notice from the Board.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, birds, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats, pet birds or other household pets