

15  
5.7



FOR REGISTRATION REGISTER OF DEEDS  
REBECCA P. SMITH  
NEW HANOVER COUNTY, NC  
2005 NOV 07 04:29:04 PM  
BK: 4933 PG: 1771-1786 FEE: \$56.00

INSTRUMENT # 2005066132

**COUNTY OF NEW HANOVER**

**PORTSIDE VILLAGE**

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF PORTSIDE VILLAGE HOMEOWNERS ASSOCIATION, INC. ("Declaration"), a subdivision located in New Hanover County, North Carolina, made and entered into as of the 4th day of November 2005, by and among the Board; and all prospective and current owners of Lots as shown on all maps of "Portside Village Subdivision" recorded in the New Hanover County Register of Deeds Office; recorded in Map Book 39, at Page 118;

WHEREAS, the Board of Directors, desires to submit the Lots and Common Elements, together with the improvements thereon, to the provisions of Chapter 47F of the General Statutes of North Carolina (hereinafter sometimes referred to as the "North Carolina Planned Community Act" or the "Act"), and develop a residential community and intends by the recordation of this Declaration to impose the covenants, conditions, restrictions and easements contained herein (hereinafter sometimes called "Restrictions") on the property described herein as Lots and Common Elements to the end that the Lots and Common Elements shall be held subject to the Act and said Restrictions;

NOW, THEREFORE, the Board of Directors does hereby declare that the Restrictions contained herein shall run with the Lots and Common Elements described herein; shall be a burden on and a benefit to such Lots and Common Elements; shall be binding on all parties having or acquiring any right, title, or interest in the Lots or any part thereof; and shall inure to the benefit of each Owner of any part thereof.

**ARTICLE 1**

**DEFINITIONS**

As used in this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association, exhibits attached and all amendments thereof, unless the context requires otherwise, the following definitions shall prevail:

1. Articles means the Articles of Incorporation PORTSIDE VILLAGE HOMEOWNERS ASSOCIATION, INC.
2. Association means PORTSIDE VILLAGE HOMEOWNERS ASSOCIATION, INC., its successors and assigns.
3. Association Documents means collectively, the Articles of Incorporation of the Association, this Declaration, the Bylaws and the Rules and Regulations, all as may be amended, modified or restated from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

RETURN TO  
Suzanne Roberts  
458-9827

4. **Bylaws** mean the Bylaws of PORTSIDE VILLAGE HOMEOWNERS ASSOCIATION, INC.
5. **Common Elements** means all real property (including the improvements thereon), interests in real property, and personal property now owned or hereafter acquired by the Association for the common use and enjoyment of all of the Owners. The Common Elements are subject to those easements and restrictions set forth in this Declaration, including but not limited to, Article I hereof.
6. **Common Expenses** or **Common Expense** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
7. **Declaration** means this Declaration of Restrictions Portside Village and any amendments or modifications hereto or restatements thereof. This Declaration sometimes is referred to herein as the Restrictions.
8. **Dwelling** means the primary residential structure located on a Lot built in accordance with the requirements of this Declaration.
9. **Eligible Mortgage Holder** means the holder of a first deed of trust on a Lot who has requested in writing that the Association notify them of any proposed amendment to the Declaration, the Articles, or the Bylaws.
10. **Executive Board** means the body, regardless of name, designated in the declaration to act on behalf of PORTSIDE VILLAGE HOMEOWNERS ASSOCIATION, INC.
11. **Improved Lot** means a Lot containing a Dwelling for which a certificate of occupancy (temporary, conditional or final) has been issued or upon which Landscaping has been installed.
12. **Landscaping** means living plants, shrubs, vegetation, ground coverings (including grass or sod), and appurtenant live/growing vegetative materials together with straw, mulches and composting materials installed upon a Lot.
13. **Lot** means those separately numbered and designated parcels shown on any of the Maps and on any other Maps of the Additional Property brought within the Subdivision.
14. **Member** means an Owner, and each Member shall be entitled to one vote for each Lot owned.
15. **Owner** means the record Owner, whether one or more persons, of a fee or undivided fee interest in a Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
16. **Properties** shall mean and refer to all real property in that certain subdivision, in New Hanover County, North Carolina, known as Portside Village, as the same is shown on map prepared by Hobbs Surveying Company, Registered Land Surveyors, which is recorded in Map Book 39, at Page 118, in the Office of the Register of Deeds of New Hanover County.
17. **Subdivision** means all of the property defined herein as Lots and Common Elements, and includes all or any portion of the Additional Property submitted to this Declaration by the Board of Directors.
18. **Unimproved Lot** means any Lot other than an Improved Lot.

19. Any capitalized word not defined herein, unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall, as used herein, have the meaning as set forth in N.C.S. 47F-1-103.

## **ARTICLE 2**

### **ASSOCIATION – GENERAL PURPOSES, MEMBERSHIP AND VOTING**

1. An association named Portside Village Homeowners Association, Inc. has been formed pursuant to the rules and requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina as an association of the Owners of Lots. Its purposes are as follows:
  - a. To own, manage, maintain, and operate the Common Elements and facilities located upon the Common Elements;
  - b. To maintain Landscaping installed on the Lots as provided herein; to enforce the Restrictions contained herein; and to make and enforce rules and regulations governing the Owners' use and occupancy of Lots and Common Elements.
  - c. To fulfill the general purposes of the Association as set forth herein and in the other Association Documents, together with those purposes set forth in the Act, the Association shall have all the powers set forth in the Association Documents, the Act and the North Carolina Nonprofit Corporation Act.
2. By this Declaration, the Owners of individual Lots by their acceptance of individual deeds thereto, covenant and agree with respect to the Association: (A) that each is a member of the Association; (B) that for so long as each is an Owner, each will perform all acts necessary to remain in good and current standing as a member of the Association; and (C) that each shall be subject to the rules and regulations of the Association with regard to ownership of a Lot.
3. Each membership in the Association shall relate to and have a unity of interest with an individual Lot, which may not be separated from ownership of said Lot.
4. Members shall be all Owners that shall be entitled to one vote for each Lot owned, either in person or proxy; provided, however, when more than one Person holds an interest in any Lot, all such Persons shall hold the membership with regard to such Lot in undivided interests. The vote of such multiple Owners of a Lot shall be exercised as they, among themselves, shall determine, but in no event shall any fractional vote be counted or more than one vote be cast with respect to any Lot.

## **ARTICLE 3**

### **MANAGEMENT AND ADMINISTRATION OF SUBDIVISION**

1. The Association shall be fully responsible for the maintenance, management and operation of the Common Elements. Pursuant to and subject to the provisions contained herein but only to the extent specifically provided herein, the Association shall be responsible for the maintenance of Landscaping on each Lot as provided herein. The management shall be carried out in accordance with the terms and conditions of the Association Documents, but may be delegated or contracted to managers or management services.

## ARTICLE 4

### ASSESSMENTS FOR COMMON EXPENSES

#### 1. Assessments:

a. Each Owner of any Lot by acceptance of a deed for same (whether or not it shall be so expressed in such deed) is deemed to agree to pay to the Association assessments as hereinafter provided. The assessments, together with interest, costs and reasonable attorneys' fees, subject to the provisions of Section (7) of this Article, shall be a continuing lien upon the Lot against which each such assessment is made. Furthermore, each assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Member who was the Owner of the Lot at the time when the assessment became due. The personal obligation for assessments shall not pass to a successor in title to a Lot unless expressly assumed by them, however, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot. Assessments shall commence as to each Lot upon the delivery of the deed to the Owner of the Lot.

b. The Executive Board shall establish and set the assessment for each Lot for each fiscal year and may provide that such assessments shall be payable installments during the fiscal year, which installment shall be no less frequent than monthly.

c. Insurance Assessments. All insurance policy premiums on the Common Area for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association shall levy against Owners equally as an additional annual assessment, (herein called "Insurance Assessment") which shall be in addition to the amounts provided for under Sections 3 and 5 above, an amount sufficient to pay the annual cost of all such premiums.

d. Initial Assessment. At the time title is conveyed to a new purchaser, said owner shall contribute to the Association as an initial assessment in the amount of \$100.00 per lot. Amounts paid at this time are not considered as advance payments of regular assessments.

#### 2. Annual Budget:

a. As provided in the Bylaws and subject to the restrictions and limitations provided herein, the Executive Board shall establish an Annual Budget in advance for each fiscal year. Such budget shall project all Common Expenses for the forthcoming fiscal year, including a reasonable allowance for contingencies and reserves. The budget shall take into account the maintenance obligations as set forth above and any projected or anticipated income. The Executive Board shall keep separate, in accordance with subparagraph (c) of this Section 2, items relating to the daily operation, management and maintenance of the Association and Common Elements from items relating to capital improvements. Upon adoption of such Annual Budget by the Executive Board, copies of said budget shall be delivered to each Owner and the assessment for said year shall be established, subject to the restrictions and limitations provided herein, based upon such budget; however, the non-delivery of a copy of said budget to each Owner shall not affect the liability of any Owner for such assessment. Should the Executive Board at any time determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the Common Expenses of the Association during such fiscal year, or in the event of emergencies, the Executive Board shall have the authority to levy such additional assessment or assessments it may deem to be necessary.

b. The Executive Board, in establishing the Annual Budget, shall designate therein a sum to be collected and maintained as a reserve fund (the Capital Improvement Fund) for the periodic maintenance, repair and replacement of capital improvements to the Common Elements and Landscaping on the Lots. The amount to be allocated to the Capital Improvement Fund may be established by the Executive Board so as to collect and maintain a sum reasonably necessary to anticipate the need for repair, maintenance and replacement of capital improvements to the Common Elements and to maintain, repair and replace Landscaping on the Lots as provided herein. The Capital Improvement Fund shall be used only for periodic maintenance, repair and replacement of capital improvements to the Common Elements and to maintain, repair and replace Landscaping on the Lots as provided herein. Any interest earned on monies in the Capital Improvement Fund shall not be expended for daily operation, management and maintenance of the Association and Common Elements.

c. All monies collected by the Association shall be treated as the separate property of the Association and such monies may be applied by the Association to the payment of any expense of operating and managing the Association, or the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles and the Bylaws. As monies for assessments are paid into the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners for the same purposes. Although all funds, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Elements, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When the Owner of a Lot shall cease to be a member of the Association by reason of his divestment of ownership of such Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, including any monies which such Owner may have paid to the Association, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Association.

3. Except as herein provided, assessments for Improved Lots shall be fixed at a uniform rate, and assessments for Unimproved Lots shall be fixed at a uniform rate.

4. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment shall bear interest at such rate as may be determined by the Executive Board, from time to time, until paid in full. The Executive Board may establish procedures to collect delinquent assessments, together with penalties, interest and other charges as permitted by the Act; and, in accordance with such procedures, may declare the payment of any future installments of the assessment to be accelerated and the entire assessment due and payable immediately.

5. The assessments levied by the Association shall be used exclusively to pay Common Expenses and to promote the recreation, health, safety and welfare of the Owners and the improvement and maintenance of the Common Elements and Lots as provided herein.

6. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot 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 its issuance.

7. The lien of the assessments provided for herein shall be subordinate to the lien of any first lien deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first lien deed of trust or any proceeding in lieu thereof, shall extinguish the lien (but not the personal obligation of the Person who was the Owner of the Lot at the time when the assessment fell due) 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.

## **ARTICLE 5**

### **SPECIAL ASSESSMENTS**

1. Special assessments may be levied against Lots for such reasons as are provided in the Association Documents, and on such terms as provided by the Executive Board. Furthermore, special assessments may be assessed against a specific Lot to pay for the cost of curing a violation of the Association Documents and as may otherwise be provided for in the Act. Special assessments, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such special assessment is made. Furthermore, each such special assessment, together with interest, court costs, and reasonable attorneys' fees, shall be the personal obligation of the Person who was the Owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent special assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent special assessments shall continue to be a lien upon such Lot. It is provided, however, that no special assessments shall be levied upon a Lot until a Dwelling on such Lot either has been constructed and occupied or constructed and sold unless Declarant consents to such special assessments.
2. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the special assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of special assessments on a Lot is binding upon the Association as of the date of its issuance.

## **ARTICLE 6**

### **LIEN FOR ASSESSMENTS**

1. Any assessment, together with interest at the rate specified herein, costs of collection, court costs, and Reasonable Attorneys' Fees, shall constitute a lien against the Lot upon which such assessment is levied. If such assessment is not paid within thirty (30) days after the date such assessment is due, the Association may record notice of the same in the Office of the Clerk of Superior Court of New Hanover County and thereafter proceed to collect such delinquent assessments and charges in accordance with the assessment collection policy established from time to time by the Executive Board. Action to collect delinquent assessments may include, but not be limited to, filing a Notice of Lis Pendens, bringing an action at law against the Owner personally obligated to pay the same and/or bringing an action to foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein.

## **ARTICLE 7**

### **COMPLIANCE WITH ASSOCIATION DOCUMENTS**

In the case of failure of an Owner to comply with the terms and provisions contained in Association Documents, the following relief shall be available:

1. The Association or an aggrieved Owner on his behalf shall have the right to bring an action and recover sums due, damages, injunctive relief, and/or such other and further relief as may be just and appropriate.
2. The Association, in addition to any other rights set forth in the Association Documents, is authorized and shall have the right to: (a) enter any portion of the Subdivision or a Lot on which, or as to which, a violation

or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of the Association Documents, and the Executive Board, its agents or employees, shall not thereby be deemed guilty in any manner of trespass; and (b) to use self-help to remove or cure any violation of the Association Documents within the Subdivision. Such actions undertaken by the Association shall be upon compliance with the Notice and Hearing procedures contained in this Declaration. However, notwithstanding any other provisions in the Declaration or the Notice of Hearing procedures to the contrary, the Association, acting through its Executive Board may enforce any provision and regulations of the Association Documents by self-help specifically including, but not limited to, violations and defaults which create a health hazard, a dangerous or emergency situation, the towing of vehicles that are in violation of parking rules and regulations and removing of signs, mail boxes and other items of similar size which are in violation of the Association Documents. Additionally, the Board may elect to enforce any provision of the Association Documents without complying with the Notice and Hearing procedures through a civil action at law or in equity to enjoin any violation or to recover monetary damages or both. In any such civil action or lawsuit, to the maximum extent permissible, the Owner or occupant responsible for the violation for which abatement is sought shall pay all costs incurred by the Association, including Reasonable Attorneys' Fees actually incurred, if the court finds for the Association.

3. The Executive Board shall not impose a fine or penalty, undertake permitted remedial action, suspend voting or infringe upon other rights of an Owner or other occupant of a Lot for violations of the Declaration, the Bylaws or the Association's rules and regulations without compliance with the Notice and Hearing procedures.

4. The remedies provided by this Article are cumulative and are in addition to any other remedies provided in the Association Documents, by law and the Act.

5. The failure of the Association or any Person to enforce any provision of the Association Documents shall not be deemed a waiver of the right to enforce such provisions thereafter as to the same violation or subsequent violation of similar character.

## **ARTICLE 8**

### **PROPERTY RIGHTS OF LOT OWNERS, CROSS-EASEMENTS, AND EXCEPTIONS**

1. Every Owner of a Lot as an appurtenance to such Lot shall have a non-exclusive perpetual easement over and upon the Common Elements for each and every purpose or use for which such Common Elements were intended as determined by their type or for which such Common Elements generally are used, subject to the limitations and provisions contained herein. Such easements and rights shall be appurtenant to and shall pass with the title to every Lot, whether or not specifically included in a deed thereto, subject to the restrictions and limitations contained herein, including but not limited to, the following provisions:

a. The Association shall have the right to make reasonable rules and regulations respecting the use of the Common Elements, and exercise any powers granted by the Act and the North Carolina Nonprofit Corporation Act.

b. The Association shall have the right, upon compliance with the Notice and Hearing Procedures, to suspend the rights of an Owner to utilize the Common Elements and the improvements thereon during any period in which any assessment against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any other violation of the Association Documents.

2. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, and guests.

3. Easements for the installation and maintenance of utilities and drainage facilities as shown on the Maps are hereby reserved and retained by the Executive Board, together with the right to grant similar easement rights to other Persons. No structure, fence, planting, Landscaping or other material which may interfere with the installation and maintenance of utilities, which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements may be placed in the easement areas without prior approval by the Executive Board or designated committee. Structures, fences, Landscaping and other materials, which have been approved by the Executive Board or designated committee, may be placed in the easement areas. The Executive Board or designated committee may deny placement of structures, fences, Landscaping or other materials in the easement areas if it determines they would adversely affect the drainage or utilities of the Subdivision.

4. Each Owner, as an appurtenance to his Lot, shall have and is hereby conveyed a perpetual, non-exclusive right of way and easement for the purposes of ingress, egress and regress to and from his Lot over, through and across the streets and roads shown on the Maps.

5. A perpetual easement is hereby granted to the Association, its employees and designees, to enter all portions of the Subdivision, including each Lot to (a) perform its maintenance responsibilities set forth in this Declaration, (b) to perform maintenance responsibilities that are the obligation of the Owner but which the Owner has not performed in compliance of this Declaration and (c) make inspections to insure compliance with this Declaration, the design guidelines and the rules and regulations. Except in emergencies, entry onto any Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' Lot, and any damage shall be repaired by the Association at its expense. Association also may enter a Lot to abate or remove, using such measures as are reasonably necessary, any structure, thing or condition which violates the Declaration, the design guidelines or the Association documents. All costs incurred, including Reasonable Attorneys' Fees, may be assessed against the violating Lot Owner as a specific or special assessment.

6. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the lots and Common Area in the performance of their duties.

7. In case of an emergency originating in or threatening any lot or the Common Area and facilities, regardless of whether any Lot Owner is present at the time of such emergency, the Board of Directors, or any other person authorized by it, shall have the right to enter upon any lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners, and such right of entry shall be immediate.

8. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement 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 9**

### **INSURANCE**

1. The Association shall purchase and maintain, to the extent reasonably available, hazard insurance against loss or damage by fire and similar perils for all improvements and fixtures owned by the Association located on Common Elements, including personal property of the Association. The insurance, if reasonably

available, shall cover at least ninety percent (90%) of the current replacement costs of the improvements and fixtures, after application of any deductibles, as determined by the Association with the assistance of the insurance company providing coverage or consultant selected by the Executive Board. Coverage may exclude land, foundations, excavations, or other items that are usually excluded from insurance coverage. The insurance policy shall require that the insurer notify the Association in writing at least sixty (60) days prior to any substantial change in coverage or cancellation

2. If the property of the Association is located within a special flood hazard area, the Association may purchase and maintain flood insurance in amounts it deems necessary. Any such policy shall require the insurer to notify the Association in writing at least sixty (60) days prior to cancellation or any substantial change in the coverage.

3. The Association shall purchase and maintain at all times a comprehensive general liability insurance policy covering all Common Elements and any other areas that are under its supervision. The liability insurance shall insure against liability to the public or to Owners, their tenants, guests or invitees, relating in any way to the ownership, operation, maintenance and/or use of the Common Elements, and any part thereof, and any other areas under the Association's supervision. Such insurance policy shall, if reasonably available, contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners. Limits of liability shall be at least One Million Dollars (\$1,000,000) covering all claims for bodily injury and/or property damage arising out of a single occurrence. Coverage under this policy shall include, if available and economically feasible, legal liability arising out of losses related to employment contracts of the Association. The policy shall require the insurer to notify the Association in writing at least 10 days before the insurer cancels or substantially changes the coverage. The general liability insurance to be purchased pursuant to this subsection shall include Directors and Officers Liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00), or, if such coverage cannot be obtained within said policy, a separate policy providing such coverage and in such amount shall be purchased by the Association.

4. Fidelity bonds or insurance coverage against dishonest acts on the part of such persons (including by way of illustration and not limitation, Association members, officers, directors, managers, agents, employees and volunteers) handling or responsible for funds belonging to or administered by the Association may be maintained by the Association if deemed necessary. In the event the Association has delegated some or all of the responsibility for handling of funds to a management agent, such bonds or insurance coverage may include officers, employees and agents of such management agent. Any such fidelity bond or insurance shall name the Association as the named insured. Any such policy shall contain a provision providing that it may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association and all Eligible Mortgage Holders.

5. If the insurance described in Section (1) and (3) above is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States Mail to all Lot Owners.

6. Each Owner shall be responsible for purchasing and maintaining liability insurance covering his Lot and Dwelling.

7. If any Dwelling located on a Lot is destroyed by fire or other casualty, all rubbish and debris shall be removed with promptness after such fire or other casualty. In no event shall debris or rubbish remain on a Lot longer than ninety (90) days after such fire or other casualty. Provided, however, no such removal or demolition shall be required if prohibited by court order or if a legal or insurance investigation concerning such fire or casualty is ongoing.

8. The deductible, if any, of any insurance policy purchased by the Executive Board shall be a Common Expense; provided, however, that the Association may, pursuant to Article VI hereof, assess as a special assessment any deductible amount necessitated and arising from the act, misuse or neglect of an Owner or such Owner's tenant, household, guests, employees, agents and invitees.

## **ARTICLE 10**

### **WAIVER**

1. No provision contained in Association Documents shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any Owner as to the same or similar future violations, no matter how often the failure to enforce is repeated.

## **ARTICLE 11**

### **VARIANCES**

1. The Executive Board in its discretion may allow reasonable variances and adjustments in the restrictions contained herein in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lots owned in fee by various Owners with each such Owner having an easement upon areas owned by the Association. No variance or adjustment will be permitted if such would be materially detrimental or injurious to the welfare of the other property and improvements in the Subdivision as determined by the Executive Board.

## **ARTICLE 12**

### **DURATION, AMENDMENT AND TERMINATION**

1. The Restrictions contained in this Declaration shall run with and bind the Lots and Common Elements until January 1, 2005, after which time they shall automatically be extended for successive periods of ten (10) years. This Declaration may be amended in full or part by an affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided, that no amendment shall: (a) alter any obligation to pay ad valorem taxes on the Common Elements; (b) alter any obligation to pay assessments for street lighting as herein provided or affect any lien for the payment of same; or (c) modify any provision contained herein which specifically requires the consent of another party to modify such provision unless the required consent of such other party has been obtained.

To be effective any amendment must be recorded in the New Hanover County Register of Deeds office.

2. Invalidation of any of these restrictions by judgment or court order shall in no way affect any other provision of these restrictions, which shall remain in full force and effect.

3. This Declaration and Portside Village Subdivision planned community may be terminated only by written agreement signed by Owners of Lots to which at least eighty percent (80%) of the votes in the Association are allocated. Any such termination shall be in accordance with the provisions of N.C. Gen. Stat. § 47F-2-118.

## **ARTICLE 13**

## **COMMON ELEMENTS: PRIVATE**

1. All Common Elements and any facility thereon are private. Neither the execution of this Declaration nor recording of any Portside Village Subdivision map nor any other act with respect to the property is or is intended to be or shall be construed as a dedication to the public of any of the Common Elements.
2. All Common Elements shall be owned by the Association and shall be accepted by the Association free and clear of all liens and encumbrances except pro rata ad valorem real property taxes for the year of conveyance, reasonable drainage and utility easements, the easement rights specified herein, including but not limited to, easement rights, all government laws and regulations, and this Declaration.

### **ARTICLE 14**

#### **ACCEPTANCE**

1. The grantee of any Lot subject to these restrictions, by acceptance of a deed conveying title thereto, or by the execution of a contract for the purchase thereof, shall accept such deed or contract upon and subject to each and all of these restrictions herein contained and also the jurisdiction, rights and powers of the Association, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Association and to and with the grantees and subsequent owners of each of the Lots to keep, observe, and comply with the Association Documents.
2. Each such grantee also agrees, by such acceptance, to assume, as against all of the risks and hazards of ownership or occupancy attendant to such Lot, including but not limited to its proximity to any Common Element or recreational facility.

### **ARTICLE 15**

#### **NOTICE**

1. All notices provided for or permitted pursuant to these Restrictions shall be in writing and, except as is herein expressly otherwise provided, notice shall be deemed sufficient and service thereof completed upon transmittal by facsimile, hand-delivery or receipt, refusal or nondelivery of same when mailed postage prepaid to the party to or upon whom notice is being given or served at the address of such party last reflected on the records of the Association.

### **ARTICLE 16**

#### **GENERAL RESTRICTIONS**

1. No lot or lots shall be put to any use other than for residential purposes.
2. Each lot is to be a minimum of 7,000.00 square feet and shall accommodate a residential dwelling of no less than 1,000 heated square feet. No lot may be divided or subdivided nor shall any portion or any portion of less than the whole of any lot be sold or conveyed except that a lot may be subdivided into two portions and conveyed to the owners of the adjoining lots on either side so as to become a part of said lot; provided the property thus combined shall be considered one lot for the purpose of these covenants, and must be with the written consent of Board of Directors.
3. No dwelling shall be constructed or permitted to remain on any lot the square footage of which is less than 1,000 square feet. Said square footage shall not include porches, garage areas or carport areas and the said square footage shall be computed by measuring from the exterior walls of said dwelling. Each dwelling must have wood, lap aluminum, vinyl, brick or masonite siding and an asphalt shingle or fiberglass roof and/or metal

roof. All exterior construction must be complete within twelve months of issuance of building permit including painting. Garages and carports must be constructed of materials approved by the Board of Directors. It is the express intention of Board of Directors to maintain in the property a uniform plan of development with respect to design, size, type, cost and general appearance of the structure to be located on the property.

4. No modular or mobile homes shall be permitted to be placed on any lot.
5. All outbuildings and/or storage rooms shall be constructed in a fashion and color to match the home located on said lot, including siding and roof shingles. "The minimum size for any outbuilding/storage room shall be 8' by 8' by 8'.
6. There shall be no chain-link fencing in the front yard of any dwelling. Chain link and privacy fences are permitted in the back of the property not to exceed six feet in height. All fence plans must be approved by the Board of Directors.
7. Motor vehicles without current and valid licenses and inspections shall not be permitted to remain on any Lot or any streets within the Subdivision. Motor vehicles utilized for commercial purposes other than pick-up trucks or vans that do not affect the overall spirit of the neighborhood shall not be permitted upon any Lot or upon the streets within the Subdivision except during the construction of residential dwellings upon the Lots and for the delivery of goods and services to the residential Dwellings located upon the Lots.
8. No vehicle of any type may be parked on any Lot other than on paved driveways. Vehicles over  $\frac{3}{4}$  ton must be kept in an enclosed garage. Enforcement of vehicles parked in the right of way and street will be subject to the Ordinances of the Town of Carolina Beach."
9. Junk cars, blocked-up cars, inoperative machines and similar eyesores shall not be placed or permitted to remain on the street or property.
10. No mechanical or maintenance work shall be done in the front yard or side yard of any home, or in the street in front of the home; such work may only be done under the home or in the back yard.
11. Only one power boat, which may be no longer than thirty (30) feet and and which must be properly registered, licensed and inspected, may be kept or stored in the garage, carport or driveway of any Lot. Said boat must be kept on a licensed and inspected trailer. At no time shall any boat, vessel, motorboat, trailer or similar recreational vehicle be parked or kept overnight or longer in a yard unless enclosed by approved fencing as determined by the Board of Directors or the Association.
12. No camper, trailer, school bus, motor home, truck rated over one (1) ton, or other vehicle similar to any of the same shall be permitted to remain on any Lot, or in any parking space on or adjacent to any Lot, unless prior written consent for the same is obtained from Board of Directors, or unless the same is properly stored in an enclosed area such that no part of such vehicle is visible to anyone from the streets located in the Subdivision.
13. The burning of refuse and vegetative matter is prohibited.
14. It shall be the obligation of the owner of any lot or lots to provide, install and maintain adequate culvert or drain pipe beneath his or her driveway as it crosses the ditch line at the front of the lot in order that the natural flow or drainage will not be at any time blocked along the street. The culvert or drainage pipe must be of sufficient size to accommodate the flow of surface water in the ditch line. In no instance shall said drainage pipe be less than fifteen (is) inches in diameter and twenty (20) feet long, and said pipe shall be installed prior to the location of any dwelling on said lot.

15. It shall be the duty of each Owner to keep his or her property in a neat and tidy condition, well maintained, with not unsightly debris, litter or the like in view. No noxious or offensive trade or activity shall be carried on or maintained on any lot, nor shall any activity be conducted which constitutes an annoyance or nuisance to the neighborhood. If yards are not properly maintained, they shall be cleaned up at the owner's expense.
16. No commercial trade or activity shall be carried on upon any lot.
17. It shall be the obligation of each property owner to maintain, to the original construction depth, all drainage ditches located upon his or her lot. Any construction of culverts or other construction along or across said ditches must be done so that the free flow of water from subsurface drainage is not interrupted or interfered with. If a property owner elects to tile the entire ditch running along his or her property, then such property owner must install a catch basin at one of his or her property lines, which catch basin must meet North Carolina Department of Transportation standards and must be approved in writing by the Developer. Further, property owners shall at all times maintain any improvements between his lot line and the street pavement of the street upon which said lot is located.
18. No structure of a temporary character, trailer, tent, shack, garage apartment, garage, barn, outdoor toilet facility or other outbuilding shall be used on any lot as a residence, either temporary or permanent, either for the owners of said lot, for servants or for any other persons, except such temporary structures as may be required while residences are being constructed by a licensed general contractor.
19. No animals shall be kept on the property other than household pets, and no household pets may be kept, bred, or maintained for any commercial purpose. Control of such pets is the responsibility of the owner, and all pets shall be kept inside, or within an approved fenced area or upon a leash. No pets shall be left outside the main dwelling neither past 10:00 P.M. nor prior to 6:00 A.M.
20. No lot or area shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste and such materials may not be kept on any lots, except in sanitary containers.
21. No lot shall be subdivided or its boundary line changed.
22. Lot owners shall have the obligation to maintain all private roads (if any) and other common elements in good condition.
23. No signs of any description shall be displayed on any lot other than private nameplates or signs for identification of the residence.
24. No "FOR SALE", "YARD SALE", or "FOR RENT" signs or any other signs shall be permitted in Common Area and facilities. One real estate sign, standard size 18" x 24" is permitted on each property for sale or rent.
25. Permanent window treatments must be installed in all new homes within thirty (30) days of occupancy. Bedsheets, towels, blankets, etc. are not considered acceptable window treatments. No window air conditioning units may be visible from the front of the property.
26. Satellite dishes and other large antennae are prohibited. However, a lot owner may install a satellite dish suitable for what is commonly known as "Direct TV." Said dish shall be no larger than 20" in diameter and its location must be approved in writing by the Board of Directors.

27. All clotheslines, clothes poles or other paraphernalia for drying or airing of clothes or other items located on any lot in the subdivision shall be concealed or screened from public view.
28. The allowable built upon are per lot is 2,072 square feet, inclusive of that portion of the right of way between the front lot line and the edge of the pavement, structures, walkways of brick, stone, slate, but not including wood decking or water surface of swimming pools.
29. The covenants pertaining to stormwater regulations may not be changed or deleted without concurrence of the Division of Water Quality.
30. Filling in or piping of any vegetative conveyances (ditches, swales, etc) associated with the development, except for average driveway crossing, is strictly prohibited by any persons.
31. Lots within CAMA's Area of Environmental Concern may have the permitted built upon area reduced due to CAMA's jurisdiction within the AEC.
32. These restrictions are subject to being altered, modified, canceled or changed at any time as to said subdivision as a whole or as to any subdivided lot or part thereof by written document executed by the owners of a majority of the lots in this subdivision, and recorded *in* the office of the Register of Deeds of New Hanover County, North Carolina. However, the Developer may amend these restrictions at any time, and without the consent of any lot owner(s), up to thirty-six (36) months from the date of the recording of these restrictions.
33. Invalidation of any one of these covenants by judgment or court order shall not in anyway affect any of the other provisions, which shall remain in full force and effect.
34. Board of Directors shall have the right but not the obligation to subject additional properties adjacent to PORTS IDE VILLAGE.
35. All present and future owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate.
36. Any person or corporation owning any lot or lots in said subdivision shall have the right and authority to bring appropriate legal proceedings to prevent violations of these restrictive covenants and/or to recover damages for such violations. In such event, any such violator shall be liable to the persons or corporation instituting any such action, for costs of court, reasonable attorney's fees and other costs incurred in enforcing these restrictions.

I, the undersigned, do hereby certify:

That I am duly elected and acting as a Director of the PORTSIDE VILLAGE HOMEOWNERS Association, Inc., a North Carolina Corporation: and

That the foregoing Declaration of Covenants constitute the amended Declaration of Covenants of said Association and should over write any existing, as duly adopted at a meeting of the Association, held on the 19 day of September 2005

IN WITNESS WHEREOF, I have hereunto subscribed my name this 7 day of November, 2005

PORTSIDE VILLAGE HOMEOWNERS ASSOCIATION, INC.

Susan Roberts  
Director

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I Leslie Jean Lewis, a Notary Public of the County of New Hanover and State aforesaid, certify that Susan L Roberts personally came before me this day and acknowledged that she is a Director of PORTSIDE VILLAGE HOMEOWNERS ASSOCIATION a North Carolina Corporation, and that by authority duly given as the act of the corporation, the foregoing instrument was signed.

Witness my hand and official seal, this 7 day of November, 2005

Leslie Jean Lewis  
Notary Public

My Commission Expires March 27, 2006

My Commission expires \_\_\_\_\_

