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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

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SOUTH AMSBURY SECTION  
REGISTER OF DEEDS

THIS DECLARATION dated for purposes of reference only this 20th day of April 1999, by RIVER ROAD, L.L.C., a North Carolina limited liability company, hereinafter called "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create therein a residential community with open spaces and other common facilities for the benefit of the said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, to this end, desires to subject the real property described in Article II, together with such additions as may hereafter be made thereto, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated or will incorporate hereafter under the laws of the State of North Carolina, as a nonprofit corporation, SOUTH AMSBURY HOMEOWNERS ASSOCIATION, (the Association), for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, Developer declares that the real property described in Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

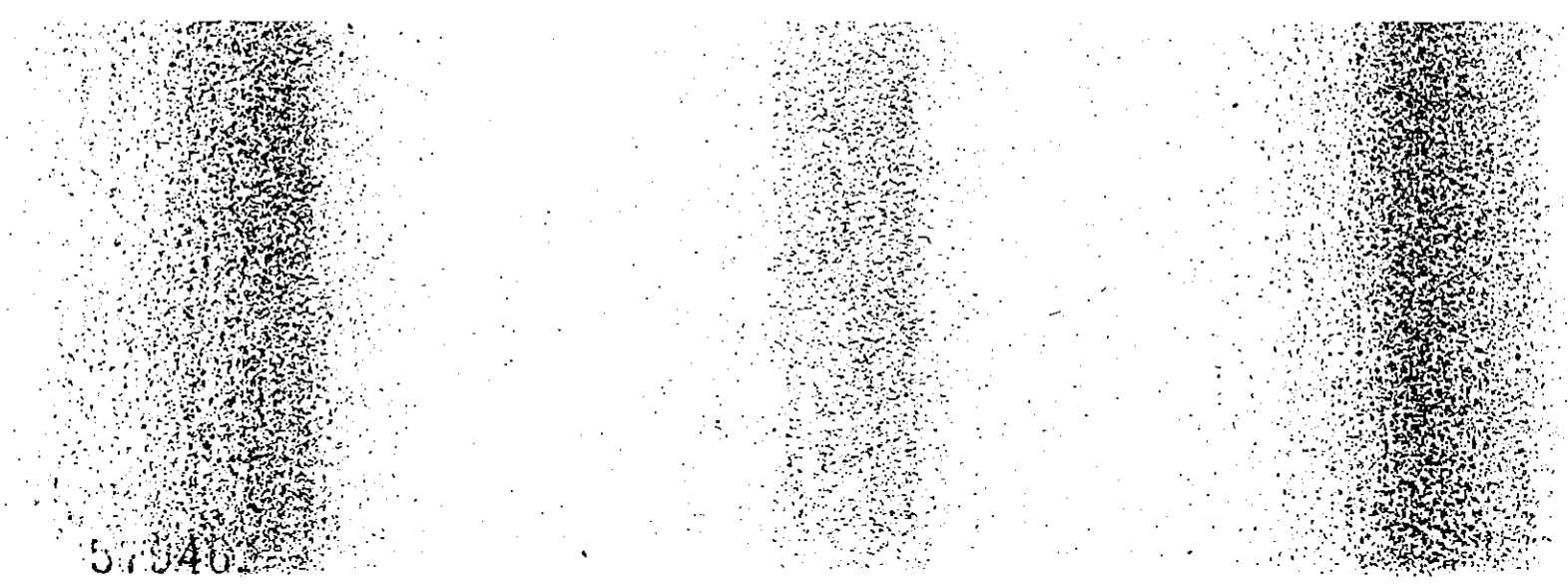
DEFINITIONS

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Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to South Amsbury Homeowners Association.
- (b) "Properties" shall mean and refer to the real property described in Article II made subject to this Declaration.
- (c) "Common Properties" shall mean and refer to those areas of land now or hereafter shown on any recorded subdivision plat as "Common Areas" or land hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the Owners of the Properties, including improvements and recreational amenities constructed thereon.
- (d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Areas as heretofore defined.

Prepared by River Road, LLC  
RETURNED TO  
DANIEL D. MAHN



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- (e) "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family, whether as owners or tenants.
- (f) "Multifamily Structure" shall mean and refer to any building containing two or more Living Units under one roof except when each such Living Unit is situated upon its own individual Lot.
- (g) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon the Properties but, *notwithstanding any applicable theory of the deed of trust, shall not mean or refer to the Trustee or cestui que trust unless and until there has been a transfer of title pursuant to foreclosure of any proceeding in lieu of foreclosure.*
- (h) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section I, hereof.
- (i) "Mortgagee" shall include the note holder or cestui que trust secured by a deed of trust.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

#### Section 1. Properties.

The real property, which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, which property is more particularly, described in Exhibit A attached hereto.

#### Section 2. Additions to Existing Property.

- (a) *Expansion. Additional lands may become subject to this Declaration to the extent such lands are described on Exhibit B attached hereto. The additions authorized hereunder may be made in one or more phases. Said additions shall be made by filing of record a Supplemental Declaration of Covenants and Restrictions with respect to the additional property desired to be annexed, which Supplemental Declaration shall extend the scheme of these covenants and restrictions to such property by adopting these Covenants and Restrictions by reference. Such Supplemental Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different characters, if any, of the added properties and as such are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplemental Declaration revoke, modify or add to the covenants established by this Declaration as described on Exhibit A attached hereto. Any annexation made hereunder must be completed on or before December 31, 2005. Any such amendment shall specify the date upon which dues and assessments are payable for Lots annexed thereby.*
- (b) *Mergers. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.*

**ARTICLE III****Membership and Voting Rights In The Association**

**Section 1. Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Living Unit or undeveloped and undesignated land which is subject by covenants or record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

**Section 2. Voting Rights.** The Association shall have two classes of voting membership.

**Class A.** Class A Members shall be all those Owners as defined in Section 1 with the exception of the Developer. Class A Members shall be entitled to one vote for each Lot or Living Unit in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot or Living Unit, all such persons shall be members, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

**Class B.** The Class B Member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot or Living Unit in which it holds interests required for membership. The Class B membership shall cease and become converted to Class A membership at the earlier occurrence of the following events:

- (a) When the total number of Class A Members equals or exceeds seventy-five (75%); or
- (b) January 1, 2003.

From and after the happening of the earlier to occur of these events, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot or Living Unit in which it holds the interests required for membership under Section 1.

**ARTICLE IV****PROPERTY RIGHTS IN THE COMMON AREAS**

**Section 1. Members' Easements of Enjoyment.** Subject to the provisions of Section 3 of this Article IV, every Member shall have a right and easement of enjoyment in and to the Common Areas, including rights of access, ingress and egress to and from public streets and walkways and the right to park a motor vehicle in areas specifically designated for such purposes; such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

**Section 2. Title to Common Properties.** The Developer will relinquish the legal title to the Common Areas to the Association. Notwithstanding this fact, Developer reserves the right, until such time as Developer's right to annex additional properties expires, to go upon the Common Areas for the purpose of constructing common use amenities thereon, such uses to include, but not limited to, the construction of a swimming pool, clubhouse, recreational amenities or a playground, or other similar facilities, which construction shall be at the expense of Developer, and for the benefit of the Association and the owners of all Lots, the right to utilize all drainage ways, retention ponds and similar common facilities and utilities for the benefit of all of the property described in Exhibit B, and other adjacent properties owned by Developer.

**Section 3. Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;
- (b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;
- (c) The right of the Association, as provided in its Articles of Incorporation and By-Laws, to suspend the voting rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed (30) days for any infraction of its published rules and regulations;
- (d) The right of the Association to charge reasonable admission and other fees for the use of the Common Areas for non-members of the Association;
- (e) The legal right of an Owner of property shown on the same plat to include portions of the Common Areas as may be necessary for said Owner to qualify under governmental requirements such as setback lines, open space, parking or other aspects which may be needed for issuance of a building permit to be secured to rebuild a damaged Living Unit; and
- (f) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or entity for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast not less than two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purposes or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken.

**Section 4. Use of Recreational Facilities.** To the extent that recreational facilities, as more fully described hereinbefore, are constructed upon Common Areas, either by the Developer or by the Association, the owners of all Lots shall have the right of utilization of such recreational facilities, and all costs associated therewith, for upkeep maintenance and repair, shall be the obligation of the Association, and assessments may be collected therefore as set out in Article V hereinafter. Neither the Developer nor the Association is obligated to construct such recreational amenities.

**Section 5. Stormwater Retention.** The Association shall perform or cause to be performed the following inspections and maintenance of the Stormwater Drainage System and Stormwater Retention Pond located within the common area of the subdivision as required by the regulatory authorities of the State of North Carolina:

- (a) Monthly, or after every runoff producing rainfall event, whichever comes first:
  1. Inspect the trash rack, remove accumulated debris, and repair/replace if it is not functioning.
  2. Inspect and clear the orifice of any obstructions. If a pump is used as the drawdown mechanism, pump operation will be checked. A log of test runs of the pump will be kept on site and made available to the Division of Water Quality personnel upon request.
  3. Inspect the pond side slopes and grassed inlet swales; remove trash, and repair eroded areas before the next rainfall event.

4. If the pond is operated with a vegetated filter, the filter will be checked for sediment accumulation, trash accumulation, erosion and proper operation of the flow spreader mechanism. Repairs/cleaning will be done as necessary.
- (b) Quarterly (Four times a year):
1. Inspect the collection system (i.e. catch basins, piping, grassed swales) for proper functioning. Accumulated trash will be cleared from basin grates, basin bottoms, and piping will be checked for obstructions and cleared as required.
  2. Pond inlet pipes will be checked for undercutting. Riprap or other energy dissipation structures will be replaced, and broken pipes will be repaired.
- (c) Semi-annually (twice a year):
1. Accumulated sediment from the bottom of the outlet structure will be removed.
  2. The forebay depth will be checked at various points. Sediment removal is required when the depth is reduced to 75% of the original forebay design depth of 7.5 feet.
  3. Grassed swales, including the vegetated filter if applicable, will be re-seeded twice a year as necessary.
- (d) Annually (once a year):
- The pond depth will be checked at various points, Sediment removal is required when the depth is reduced to 75% of the original depth or 3 feet, whichever is greater. Design depth is 7.5 feet, measured vertically from the orifice down to the pond bottom. Sediment must be removed to at least the original design depth.
- (e) General:
1. Mowing of the side slopes will be accomplished according to the season. Maximum grass height will be 6 inches.
  2. Cattails are encouraged along the pond perimeter; they will be removed when they cover more than one-half the surface area pond. The best time to cut them is at the end of the growing season in November. Environmentally sensitive chemicals for use in killing cattails can also be used, as directed by an Agricultural Extension Agent.
  3. The orifice/pump is designed to draw down the pond in two to five days. If draw down is not accomplished in that time, the orifice will be replaced with a larger or smaller orifice. Slow draw down may be attributed to a clogged system. The source of the clogging will be found and eliminated.
  4. All components of the detention pond system will be kept in good working order. Repair or replacement components will meet the original design specifications as per the approved stormwater plan. If previously approved components are determined to be ineffective, the component must be redesigned and/or replaced.

#### **Section 6. Access, Maintenance and Construction Easements.**

- (a) The Association, acting through its officers, agents, servants and/or employees shall have the rights of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance provided for by this Declaration.
- (b) Easements are reserved over those portions of the Common Areas and Limited Common Areas and facilities that may be necessary or required to accommodate overhanging eaves or other cantilevered Common Areas, or the air and light space above such Common Areas.
- (c) Each lot or unit and all Common Areas and facilities and Limited Common Areas are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage or other Common Areas and facilities, whether or not the cause of any or all of those activities originates on the lot or unit in which the work must be performed.

- (d) Each lot or unit, and the property included in the Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs for all buildings, structures and other improvements constructed by Developer, including but not limited to, sidewalks, walks, paths, patios, decks, fences, parking areas and parking pads, driveways, stoops, porches, roofs, outbuildings, and other similar appurtenances. A valid easement for such encroachments and for the maintenance of same, so long as such encroachments stand, shall and does exist.
- (e) In the event that ingress or egress to any lot or unit is through or across any common areas, such common areas are hereby subjected to an access easement for such owner's ingress, egress and regress to and from such lot or unit.
- (f) All easements and rights described herein are easements appurtenant, running with the land, and shall be binding on the Developer, 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 V

### *Covenant for Assessments*

**Section 1. Creation of Lien and Personal Obligation for Assessments.** Except for the Declarant, each Owner of any lot or living unit within the Properties, by acceptance of a deed for a lot or living unit, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association:

- a. Annual assessments or changes;
- b. Special assessments for capital improvements and other purposes stated in this Declaration;
- c. Default assessments (as hereinafter defined) which may be assessed against a lot pursuant to the Declaration and the Articles of Incorporation and Bylaws of the Association (hereinafter referred to as the "Documents") for Owner's failure to perform an obligation under the Documents or because the Association has incurred an expense on behalf of the Owner under the documents; and
- d. To the appropriate governing taxing authority or the Association a pro rata share of ad valorem taxes levied against the Common Areas.

All assessments, together with fines, interest, costs, reasonable attorneys' (and legal assistants') fees, and other charges allowed under this Declaration, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made until paid.

Each such assessment, together with fines, interest, costs, reasonable attorneys' (and legal assistants') fees, and other charges allowed under the Documents will also be the personal and individual obligation of the Owner of such Lot as of the time when the assessments fall due, and two or more Owners of a lot or Living unit will be jointly and severally liable for such obligations. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. No Owner may exempt himself, herself or itself from liability for any assessments by abandonment of the common areas and easements.

**Section 2. Purpose of Assessment.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Properties

and in particular for the improvement and maintenance (1) of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and (2) of the Lots and Living Units situated upon the Properties. Without limitation, such uses shall include satisfaction of the Association's obligations regarding the Common Areas to pay hazard and liability insurance, ad valorem taxes, the payment of governmental assessments for public and private capital improvements made to or for the benefit thereof, the repair, replacements and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

**Section 3. Determination of Annual Assessments.** Notwithstanding any provision to the contrary contained herein, should the Association's Board of Directors determine that the Annual Assessment for the next succeeding assessment period will exceed the Annual Assessment for the current assessment period by more than ten (10%) percent, then, in such event, such increase in the Annual Assessment must be approved by a vote of two-thirds (2/3) of the Owners voting in person or by proxy at a duly called meeting of the members of the Association, at which a quorum of members is present in person or by proxy, prior to its adoption by the Board of Directors of the Association.

**Section 4. Basis for Computing Assessments.** The Board of Directors shall categorize the purposes for which it makes assessments so that each purpose will be one which is charged in the same amount to each Owner of a Lot or Living Unit.

**Section 5. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized by this document, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas including fixtures and personal property related thereto, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the vote of each class of members who are voting in person or proxy at a meeting duly called for this purpose.

**Section 6. Change in Basis of Assessments.** The Association may change the basis of the assessments fixed by Section 3 hereof prospectively for any such period, provided that any such change shall have the assent of not less than 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, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2, hereof.

**Section 7. Quorum for any Action Authorized Under Sections 4, 5, and 6.** The quorum required for any action authorized by Sections 3, 4, and 5 of this Article V shall be as follows:

At the first meeting called, as provided in Section 3, 4, and 5 of this Article V, the presence at the meeting 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 forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Sections 3, 4, and 5 and the required quorum at any such subsequent meeting shall be two-thirds of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 8. Date of Commencement of Assessments: Due Dates.** The Regular assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first Regular 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 Regular assessment against each lot at least thirty (30) days in advance of each regular assessment period. Written

notice of the Regular assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates. 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.

**Section 9. Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto; failure to provide written notice shall indicate that the assessment is unchanged from the previous assessment.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certification writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 10. Effect of Nonpayment of Assessments and Remedies of the Association.** Any assessment or installment thereof, which is not paid within thirty (30) days after its due date will be delinquent. In the event that an assessment, or installment thereof, becomes delinquent, or in the event a default assessment is established under this declaration, the Association, in its sole discretion, may take any or all of the following actions:

- a. Assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;
- b. Charge interest from the date of delinquency at the maximum rate allowed by law;
- c. Suspend the voting rights of the Owner during any period of delinquency;
- d. Accelerate all remaining assessment installments for the assessment period in question so that unpaid assessments for the remainder of the assessment period will be due and payable at once;
- e. Bring an action at law against any Owner personally obligated to pay the delinquent assessment charges; and
- f. File a claim of lien with respect to the lot or living unit and foreclose the lien against the lot or living unit in the same manner as provided for the foreclosure of a mortgage under the statutes of the State of North Carolina.

The remedies provided under this Declaration will not be exclusive, and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

If the assessment is not paid within thirty (30) days after the delinquency date or written arrangement for payment consented to by the Association, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum and will be charged a \$15.00 late fee for monthly assessments not received by the fifteenth (15<sup>th</sup>) of each month.

**Section 11. Subordination of the Lien to First Mortgagee.** The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a deed of foreclosure under power of sale or any other transfer in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments, which thereafter become due, nor from the lien of any such subsequent assessment.

**Section 12. Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- a. All properties to the extent of any assessment or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- b. All Common Areas as defined in Article I, Section 1, hereof.
- c. All lots or living units owned by Declarant except for lots or living units retained by Declarant as rental units.

**Section 13. Successor's Liability for Assessments.** All successors of an owner or owners, except as provided hereinabove in Section 11, Article V, to the fee simple title of a lot will be jointly and severally liable for any and all unpaid assessments, fines, interest, late charges, costs, expenses, and attorney's (and legal assistant's) fees against such lot without prejudice to any successor's right to recover from any prior Owner any amounts paid by such successor. Any successor will be entitled to rely on a written statement of status of assessments received by such successor from the Association or its managing agent. The Association agrees that it will furnish to any owner or his designee, a written statement setting forth the amount of unpaid assessments then levied against the lot in which the Owner or his designee has an interest. The information contained in such statement shall be conclusive upon the Association, the Board of Directors, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith when such statement is signed by an officer of the Association or the managing agent for the Association.

**Section 14. Working Capital.** At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capital reserve an amount equal to a two months estimated common area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid Insurance, supplies, common areas and facilities, furnishings and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of each assessment-operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

## ARTICLE VII

### PARTY WALLS

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Living Units upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

**Section 3. Destruction by Fire or other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall must restore it as a party wall unless the other Owner agrees to the contrary in advance, and the other Owners thereafter making use of the wall shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 4. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners successors in title.

**Section 6. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

## ARTICLE VIII

### ARCHITECTURAL REVIEW COMMITTEE

**Section 1. Review by Committee.** No building, fence, wall or other structure nor any planting or landscaping change (including removal of any tree) shall be commenced, erected or maintained upon the Properties by any person or entity other than the Developer nor shall any exterior addition to or change or alteration to any lot or living unit therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Review Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been complied with fully. The Association shall have the right to bring an action to enjoin any activity taken in violation of this Article.

## ARTICLE IX

### EXTERIOR MAINTENANCE

**Section 1. Exterior Maintenance.** In addition to maintenance upon the Common Areas, the Association shall provide exterior maintenance upon each Lot and Living Unit which is subject to assessment under Article V hereof as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include doors, windows, window screens, door and window frames, rear decks, roof skylights, glass surfaces or landscaping.

**Section 2. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized by this document the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement for exterior maintenance of any Lot or Living Unit,

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.

**Section 3. Access at Reasonable Hours.** For the purpose solely of performing the exterior maintenance required by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any lot or exterior of any Living Unit at reasonable hours on any day.

## ARTICLE X

### USE RESTRICTIONS

**Section 1. Land Use and Building Type.** All lots shall be used for residential purposes except that so long as the Declarant shall retain ownership of any lots, it may utilize any such lot or lots for sales or rentals, offices, models or other usage for the purpose of selling or leasing lots within said project. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all lots have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease. Co-ownership of lots shall not be prohibited. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article VIII of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

**Section 2. Maintenance of Lot, Nuisances.** It shall be the duty of each homeowner or occupant to keep his or her property (or that of the occupant's landlord) in a neat and tidy condition, well maintained, with no unsightly debris or litter or the like in view. No homeowner or occupant shall place on his lot, any kind of statue, sculpture, "object d'art", yard decoration, artificial wildlife, or any other similar type of object. 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. Any oil stains or similar spills on driveways or other roadways shall be immediately cleaned up or removed by the lot owner responsible for such stain or spill. If any such stain or spill is not immediately cleaned up or removed, the Association shall clean up or remove the stain or spill and the cost of such clean up shall be assessed against and collected from such responsible lot owner in the same manner as assessments are assessed and collected.

**Section 3. Junk Vehicles.** No inoperable vehicles or vehicle without current registration, current state inspection sticker, current license plates and current insurance will be permitted on the premises and no tractor-trailers will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

**Section 4. Outside Furniture.** No furniture shall be permitted in the common areas. No furniture shall be permitted on the front porch of each unit except porch furniture in good repair and a reasonable number of plants. Porch furniture shall be permitted in the courtyard of each unit. All grill and accessories must be kept in the courtyard areas.

**Section 5. For Sale Signs Prohibited.** No "For Sale" signs or any other signs shall be permitted on any lot or in the common areas and facilities, except Declarant or its designee may place "For Sale" signs for as long as Declarant shall retain ownership of any unsold lot (s).

**Section 6. Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot any time as a residence either temporarily or permanently. This restriction shall not be applicable to a temporary construction trailer

used by a builder while a residence is being built on the lot, so long as such trailer is not used as a residence or living quarters.

**Section 7. Recreational Vehicles.** No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle shall be permitted to remain on any lot or in parking spaces, at any time, unless by consent of the Association.

**Section 8. Animals.** No animals, livestock or poultry of any kind shall be kept or maintained on any lot in any dwelling except that dogs, cats or other domesticated household pets may be kept for the purpose of providing companionship for the private family. Animals are not to be raised, bred, or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of any lot so that no person shall quarter on said lots cows, horses, bees, hogs, sheep, goats, guinea fowls, chicks, geese, rabbits, chickens, turkeys, skunks, snakes or any other animal that may interfere with the quietude, health or safety of the community. No more than four (4) household pets will be permitted on any lot. Pets must at all times be restrained and personally escorted or confined inside the house. It is the pet owner's responsibility to keep their lot clean and free of pet debris. All animals must be properly tagged for identification, and further, must be kept on a leash unless such animal is confined within a house. When such animals are not confined within owner's house, it is the pet owner's responsibility to remove any debris left by their pet upon any of the lots or common areas within the subdivision. Any costs incurred by the other lot owners of the Association as hereinafter set out, for the removal of pet debris left by the pet of a lot owner or occupant upon any lot or upon any part of the common areas shall be a charge against the pet owner's or occupant's lessor's lot and shall be assessed against that individual lot owner as a special assessment and subject to the regulation liens and assessments as hereinafter set forth.

**Section 9. Outside Antennas.** No outside radio or television antennas shall be erected on any lot or dwelling within the Properties unless permission for the same has been granted by the Board of Directors of the Association or its architectural control committees.

**Section 10. Window coverings.** All drapes, curtains or other similar materials hung at any window or door, or in any manner so as to be visible from the outside of any building erected upon any lot, shall be of a white or neutral background or material, unless the Board of Directors approves another color.

**Section 11. Exterior Lights.** All light bulbs or other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white or non-frost lights or bulbs. No colored lights or bulbs shall be allowed except as holiday decorations during normal holiday seasons. The Board of Directors shall have sole discretion as to acceptable lights or bulbs during holiday seasons and for the periods of time such bulbs or lights shall be acceptable. The Board of Directors of the Association may limit the number and type of lights used as decorations.

**Section 12. Trash Receptacles, Lawn Furniture, Toys and Personal Property.** All trash receptacles, lawn furniture, toys, lawnmowers, bicycles, grills, stored materials and other such similar personal property must be kept and stored inside the unit or otherwise out of view.

**Section 13. Vehicle Repairs.** No repairs to any vehicle may be made in driveways or parking spaces unless such repairs may be completed in one day. During the course of repair work, no vehicle shall be permitted to remain in any driveway on any type of jacks or stands more than one day.

**Section 14. Clotheslines.** The outdoor drying or airing of clothes and the erection of outdoor clotheslines or similar devices on any lot in the Subdivision shall not be allowed.

**Section 15. Fuel Tanks and Storage Receptacles.** No fuel tanks or similar storage receptacles located on any lot may be exposed to public view.

ARTICLE XI

COMMON AMENITIES

**Section 1. Collection Containers.** The Association may impose uniform standards for mail collection facilities (which may be a central facility or individual receptacles), waste disposal containers, newspaper boxes, mailboxes and such other common features typically installed on the exterior of a Living Unit, or on Common Areas. The owner of each Lot shall comply fully with all such standards adopted by the Association.

**Section 2. Street Lighting.** The Developer reserves the right to subject the real property in this Subdivision to a contract with Carolina Power & Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power & Light Company by the owner of each lot.

ARTICLE XII

GENERAL PROVISIONS

**Section 1. Rules.** The Board of Directors shall have the authority to adopt rules for the use of the Common Areas and shall furnish a written copy of said rules to the Owners. Any violation of such rules shall be punishable by fine and/or suspension of the voting rights of the violating Owners. The Board of Directors shall also have the power to adopt rules and regulations which prohibit or limit the types of animals or household pets which may be kept in or about the Lots or Living Units and which govern their allowance upon the Common Areas.

**Section 2. Duration.** The covenants and restrictions of this Declaration shall run with and shall be binding on all parties claiming under them to specifically include, but not limited to the successors and assigns, if any, of Developer, for a period of twenty (20) years from the date hereof after which time all said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the owners of two-third (2/3) of the lots (not including mortgagees or trustees under deeds of trust) has been recorded, agreeing to change said covenants in whole or in part.

**Section 3. Amendment.** Except as otherwise provided herein, these restrictions may be 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 a written document, recorded in New Hanover County Registry, executed by the owners (not including mortgagees, trustees, or other lienholders) of not less than two-thirds (2/3) of the subdivided lots to which these restrictions apply. Developer's power to amend this Declaration so as to add additional sections or phases to the subdivision as provided herein shall not require the consent of the Class A members and shall be valid when signed by the Developer and recorded in the New Hanover County Register of Deeds.

**Section 4. Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, or otherwise delivered, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

**Section 5. Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any liens or charges created by these covenants; and failure by the Association or any Owner to enforce

any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 6. Severability.** Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect.

**Section 7. Roads and Streets.** All roads and streets made subject to this Declaration shall be private, and shall be maintained by the Association as a Common Area unless designated as "public" on a recorded plat. Furthermore, Developer reserves a right of ingress and egress over and across all of such roads and streets for purposes of accessing any property described on Exhibit A, Exhibit B or adjoining properties owned by Developer or its successors and assigns. The Association shall maintain such roads and streets in good condition, readily available for normal use at all times.

**Section 8. Parking.** All parking spaces immediately adjacent to a designated Lot shall be available for the sole use of the owner of such Lot, and the Living Unit thereon; all other parking shall be jointly available for the owners of all lots and their guests, subject to reasonable rules and regulations adopted from time to time by the Board of Directors. All vehicles must be parked in marked parking spaces and no vehicles may be parked at any time on lawns, roadways or common areas. No vehicle shall be allowed to block any street, roadway or other access area.

**Section 9. Insurance.** It shall be the duty of the Association to maintain in effect casualty and liability insurance as follows:

- a. **Amount and Scope of Insurance.** All insurance policies upon the Properties (except personal property within a unit) shall be secured by the Board of Directors, or its designee on behalf of the Association with full authority which shall obtain such insurance against:
  - 1) Loss or damages by fire or other hazards normally insured against, and
  - 2) Such other risks including public liability insurance, as from time to time shall be customarily required by private institutional Mortgage Investors for projects similar in construction, location and use as the Properties and the improvements thereon all under such terms and conditions as the responsible authority shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries, and deaths of persons in connection with the operation, or maintenance arising out of lawsuits relating to employment contracts of the Association. The foregoing shall not preclude the Board from obtaining insurance coverage on all or a portion of the limited common areas and facilities.
- b. **Insurance Provisions.** The Board of Directors shall make diligent efforts to insure that said insurance policies provide for the following:
  - 1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Lot owners and their employees, agents, tenants and invitees.
  - 2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.
  - 3) Coverage will not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured and all mortgagees.
  - 4) Coverage will not be prejudiced by act or neglect of the Lot owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.

- 5) The master policy on the property cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual Lot owners.
- 6) The master policy on the property cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Lot owner or any mortgagee.
- c. **Premiums.** All insurance policy premiums on the property 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 the Owners equally as an additional annual assessment, (herein called "Insurance Assessment") which shall be in addition to the amounts provided for herein, an amount sufficient to pay the annual cost of all such insurance premiums.
- d. **Proceeds.** All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board of Directors as insurance trustee or to such attorney at law or institution with trust powers as may be approved by the Board of Directors.
- e. **Policies.** All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "A" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the Owners at least ten (10) days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any, upon request of such mortgagee at any time.

**Section 10. Distribution of Insurance Proceeds.** Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

- a. **Expenses of Trust.** All reasonable expenses of the insurance trustee shall be first paid or provisions made thereof.
- b. **Reconstruction or Repair.** The remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

**Section 11. Notice and Quorum for Any Action Authorized under Article XII, Sections 3 and**

**4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 of Article XII shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at the first meeting, the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 12. Conveyance of Common Areas to Association.** Prior to HUD insuring the first mortgage in each phase of the subdivision, the Developer, shall convey to the Association, free and clear of all encumbrances, the common areas and limited common areas as shown on the plat of that phase as recorded in the New Hanover County Registry.