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**Declaration of Covenants, Conditions And
Restrictions For**

Stones Edge

**Prepared by
Murchison, Taylor and Gibson, PLLC
16 North Fifth St.
Wilmington, NC 28401**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR STONES EDGE (this "Declaration") is made and entered into this the 28 day of November, 2006, by **HOLLY TREE INVESTMENTS, LLC**, a limited liability company organized and existing under the laws of the state of North Carolina (hereinafter referred to as the "Declarant").

WITNESSETH

WHEREAS, Declarant is the Owner of all of the interest and equity in that certain tract of land described in Exhibit A attached hereto and incorporated herein by reference (as further defined below, herein called the "Property"), to be known as Stones Edge; and

WHEREAS, it is the desire of the Declarant to insure the use of said property for residential purposes only, to maintain the attractiveness and value of the Property, to maintain the standard of conduct and use of the Property as established by this Declaration or as commonly exists in the Residential Community, or the minimum standards established pursuant to the Architectural Design Standards, Restrictions and Rules, and Board resolutions and thereby to secure to each Owner the full benefit and enjoyment of his or her property with no greater restriction upon the free and undisturbed use of his or her Lot than is necessary to insure the same advantages to all Owners; and

WHEREAS, Declarant, for the use and benefit of itself and its successors and assigns, does desire to encumber, place and impose upon the Property, the following conditions, covenants, reservations, easements and restrictions to ensure the proper use, development and improvement of such Property; to enhance the value, desirability and attractiveness of the Property; to protect against the construction of improvements and structures not in keeping with the Community-Wide Standard; to ensure compliance with all applicable governmental rules, regulations, ordinance and laws, including zoning ordinances, building codes and environmental laws and regulations; to provide for a method for the maintenance and continued improvement of certain common areas and facilities appurtenant to the Property; and to otherwise provide for the construction and development of quality improvements on the Property.

NOW THEREFORE, in consideration of the premises and of the mutual benefits and duties herein contained, Declarant hereby declares that the Property shall be held, developed, improved, leased, sold, transferred, conveyed and occupied subject to the following covenants, reservations, easements, conditions and restrictions, all of which are for the purpose of protecting the value and desirability of, and which shall run with title to, the Property and shall be binding on all parties having a right, title or interest therein, along with their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

1. "Association" shall mean and refer to Stones Edge Property Owners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

2. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association pursuant to its By-Laws.

3. "Building" shall mean and refer to a home and associate garage constructed or erected on a Lot shown upon a recorded map of the property.

4. "By-Laws" shall mean the by-laws of the Association as they now or may hereafter exist.

5. "Common Area" shall mean and refer to any of the Property conveyed to the Association by warranty deed recorded in the New Hanover County Registry and which deed specifically designates said area as Common Area and incorporates the provisions of these restrictions as to the use of said property as Common Area, along with any facilities and improvements erected or constructed thereon, for the exclusive use and enjoyment of the Members of the Association. In addition, the subdivision sign(s), landscaping and fencing located at the entrance to Stones Edge is hereby designated as Common Area for the exclusive use and enjoyment of the Members of the Association. Additional Common Area may be annexed or "phased" into the subdivision as hereinafter provided.

6. "Common expenses" shall mean and include:

- a. All sums lawfully assessed by the Association against its Members;
- b. Expenses of administration, maintenance, repair or replacement of the Common Areas and the stormwater system;
- c. Expenses declared to be common expenses by the provisions of this Declaration or the By-Laws;
- d. Liability for such other insurance premiums as the Declaration or By-Laws may require the Association to purchase;
- e. Expenses agreed by the Members to be common expenses of the Association;
- f. Any ad valorem taxes and public assessments levied against the Common Area.

7. "Common profits" shall mean and refer to the balance of all income, rents, profits and revenues of the Association remaining after the deduction of the common expenses or reserve therefore. Common profits shall not mean or include any sums lawfully assessed against Members by the Association.

8. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Residential Community. Such

standard may be more specifically determined by the Board of Directors and the Architectural Review Committee.

9. "Conservation Area" or "Wetlands Conservation Area" shall mean and refer to any area designated as a Conservation Area or Wetlands Conservation Area on any recorded plat of the Residential Community. A Conservation Area or Wetlands Conservation Area may be located upon individual Lots or in any of the Common Areas within the Residential Community.

10. "Declaration" shall refer to this Declaration of Covenants, Conditions, and Declaration for Stones Edge, and any supplements or amendments thereto.

11. "Declarant" shall mean and refer to Holly Tree Investments, LLC, a North Carolina limited liability company, or its successors and assigns, to whom the rights of Declarant are expressly transferred by instrument duly recorded in the New Hanover County Registry, or who acquires title to all the remaining Property owned by the Declarant under a deed in lieu of foreclosure, judicial foreclosure, or foreclosure under power of sale contained in any deed of trust.

12. "Design Guidelines" shall mean the architectural design guidelines and procedures set forth herein or adopted by the Architectural Review Committee pursuant to ARTICLE VIII herein and applicable to all Lots.

13. "Home" shall mean and refer to a detached, free-standing dwelling or place of residence and attached or detached garage constructed upon a Lot within the property.

14. "Lot" shall mean and refer to any plot of land, other than the Common Area, which is subject to this Declaration and is shown on a recorded map of the Residential Community, and upon which a home has been or may be constructed.

15. "Member" shall mean and refer to every person who is a member of the Association. Each Owner as defined herein, shall be a Member.

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

17. "Person" shall mean and refer to an individual, corporation, partnership, association, trustee or other legal entity.

18. "Planned Community Act" or "North Carolina Planned Community Act" shall refer to the North Carolina Planned Community Act, (N.C.G.S. §47F-1-101 et. seq.), as the same may be amended from time to time.

19. "Property" shall mean and refer to that certain real property shown on that plat referred to above and any other real property which is made subject to this Declaration.

20. "Residential Community" means all of the Property which shall be known collectively as Stones Edge, and all real property which may be made subject to this Declaration in the future.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

1. Annexation by Membership. Except as provided in Section 2 below, annexation of additional property shall require the assent of two-thirds (2/3) of the Class A Members and all of the Class B Members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

2. Annexation by Declarant. If the Declarant, its successors or assigns, shall develop all or any portion of any land contiguous to or within one mile from the Property which is subject to the Declaration, such additional tract or tracts may be annexed to said Properties without the assent of the Class A Members, by the execution and recording in the New Hanover County Registry of Supplemental Declaration making said additional tract or tracts subject to these restrictions, provided however, the development of the additional tract(s) described in this section shall be in accordance with the same general scheme of development as Stones Edge.

ARTICLE III

PROPERTY RIGHTS AND RESTRICTIONS OF OWNERS

1. Use of the Common Area. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every assessed Lot, subject to each of the following provisions;

a. The right of the Association to formulate, publish and enforce rules and regulations as provided in ARTICLE V herein.

b. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and carrying out its maintenance responsibilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.

c. The right of the Association to suspend the voting rights and rights to use of the Common Area and facilities by a Member, or any person to whom he has delegated his voting right, for any period during which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for an infraction of its published rules and regulations.

d. Easements as provided in ARTICLE IX herein.

2. Delegation of Use of Common Area. Subject to the provisions of the By-Laws and the rules and regulations of the Association, any Owner may delegate his right to the enjoyment of the Common Area to the members of his family, his tenants, or contract purchasers, provided, every such delegee must reside in the home of the Owner.

3. Conveyance of Common Area to Association. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to any of the Property which is to be designated as the Common Area, to the Association, and the Association shall be obligated to accept said conveyance. Any such conveyance shall be free and clear of all liens and encumbrances, except utility and drainage easements, easements to governmental authorities and the provisions of this Declaration, upon condition that such area conveyed shall be designated "Common Area" and shall be for the sole and exclusive use and benefit of Members, so long as such area is maintained in conformity with the requirements of the Community Documents, at the sole expense of the Association. The conveyance of the Common Area for the entire Residential Community shall be completed at the time of or prior to, the conveyance of the last Lot in the Community to an Owner.

4. Use of Wetlands Conservation Area. Notwithstanding any provision in this Declaration to the contrary, that portion of the Property which is also designated as Wetlands Conservation Area as shown on plat entitled "Revised Boundary Survey and the "404" Wetlands for A. H. Harrell" and dated April 1, 2004 shall be maintained in perpetuity in a natural condition, subject to the following uses and restrictions:

a. No Owner or other person or entity shall perform any of the following activities on or within any Wetlands Conservation Area:

1. Fill, grade, excavate or perform any other land disturbing activities.
2. Cut, mow, burn, remove, or harm any vegetation.
3. Construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures.
4. Drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area.
5. Dump or store soil, trash, or other waste.
6. Graze or water animals, or use for any agricultural or horticultural purpose.
7. Use, place, spray, or introduce herbicide.

b. Notwithstanding the above, owners of Lots 2, 3, 12, 13 and 14 may remove by hand dead, dying or diseased trees and noxious or poisonous plants such as poison ivy, poison oak, and poison sumac.

c. This Section 4 of Article III is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, Action ID 200400804 and, therefore, may be enforced by the United States of America. This covenant is to run with the Property and shall be binding on the Declarant and all parties claiming under it and may not be amended without the express written consent of the U.S. Army Corps of Engineers, Wilmington District.

ARTICLE IV

PURPOSE, FUNCTION AND GOVERNANCE OF THE ASSOCIATION

1. Function of Association. The Association shall be the entity responsible for management, maintenance, repair, ownership, operation and control of the Common Area. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Common Areas owned or leased by the Association as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural design guidelines and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and applicable North Carolina law.

2. Membership. Every person who is record Owner of a fee or undivided fee interest in any Lot, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligation, shall be a Member of the Association. There shall be only one vote per Lot in the Association except as otherwise provided in this ARTICLE IV. Membership shall be appurtenant to and may not be separated from Ownership of any Lot. The Board of Directors may make reasonable rules regarding proof of Ownership.

3. Voting Rights.

a. Class "A". Class A Members shall be all Owners with the exception of the Declarant. When more than one person holds an interest in any Lot, all such persons shall be Members.

b. Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under these Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member may appoint the members of the Board during the Class "B" Control Period, as specified herein. After termination of the Class "B" Control Period, the members of the Board shall be selected as provided in the By-Laws.

During the Class "B" Control Period, the Class "B" Member shall be entitled to three (3) votes for each platted Lot and three (3) votes for each planned but currently-unplatted Lot in the Residential Community. The Declarant makes no representation whatsoever regarding the actual number of Lots to be included in the Residential Community. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:

(i) when the Declarant owns twenty-five percent (25%) or less of the total number of the planned Lots in the Residential Community, including any property which may be annexed thereto, as herein provided, or

(ii) on January 1, 2025.

c. In any situation in which a Member is entitled personally to exercise the vote for his or her Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such Co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

ARTICLE V

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, roads, road rights of way, furnishings, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order and repair, consistent with this Declaration and the Community-wide Standard. Subject to the provisions of this Declaration, the Board of Directors shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of any Common Area.

2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association at any time any Common Area and any other of the Property, and any personal property and leasehold and other property interests. Any such property conveyed to the Association by the Declarant shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth herein and in the deed.

3. Rules. The Association, through its Board, may make, revoke, amend and enforce reasonable rules governing the use of the Properties, in addition to further defining or limiting, and, where specifically authorized hereunder, creating exceptions to, those covenants and restrictions set forth in this Declaration (the "Rules and Regulations"). Such Rules and Regulations shall be binding upon all Owners, occupants, invitees, lessees, guests and licensees.

4. Enforcement. The Association may impose sanctions for violations of this Declaration, the By-Laws, or Rules and Regulations, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Lot of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. The Board may assess the reasonable monetary fines authorized by this Section as a Specific Assessment authorized by Article VI of this Declaration.

5. Implied Rights; Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, or Chapter 55A of the North Carolina General Statutes, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, Articles, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

6. Indemnification. To the maximum extent allowed by North Carolina law, the Association shall indemnify every officer, director, and Committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be party by reason of being or having been an officer, director or Committee member. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7. Dedication of Common Areas. The Association at any time may dedicate portions of the Common Areas to any local, state, or federal governmental entity, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association.

8. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to enhance the security and safety of the Owners, occupants, invitees, lessees, guests and licensees. **NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT, SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OF ANY PERSON OR ENTITY WITHIN THE SUBDIVISION, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF ANY SECURITY MEASURES WHICH MAY BE UNDERTAKEN. EACH PERSON OR ENTITY USING THE PROPERTIES ASSUMES ALL RISKS FOR DEATH OR PERSONAL INJURY, LOSS OR DAMAGE TO REAL OR PERSONAL PROPERTY, LOTS, RESIDENCES OR BUILDINGS ON THE LOTS, AND THE CONTENTS OF RESIDENCES OR BUILDINGS ON THE LOTS, RESULTING FROM ACTS OF THIRD PARTIES.**

9. Turnover Transfer by Declarant. Upon the expiration of the Class B control period, as provided in Article IV herein, or any time prior to said expiration, in the sole

discretion of the Declarant, the Declarant may convey to the Association (i) all of the right, title and interest of the Declarant in and to all Common Area which has not been previously transferred to the Association, (ii) any and all right, title and interest of Declarant in and to any roads within the Residential Community, (iii) any rights of way or easements in or across the Property reserved to and exercisable by the Declarant, (iv) any and all stormwater permits, erosion control permits, CAMA permits, water system permits, wastewater system permits, and any other governmental permits and licenses obtained by the Declarant in connection with the development of the Residential Community by the Declarant (the "Development Permits"), and (v) any and all rights and obligations as the Declarant under this Declaration, except for any rights and authority of the Declarant which may survive such expiration of the Class B control period which the Declarant may specifically except from said conveyance, and the rights and authority of the Declarant as an owner of the any of the Lots described herein (said conveyance referred to herein as the "Turnover Transfer").

10. Obligations of the Declarant Prior to Turnover Transfer. Prior to the Turnover Transfer as provided in Section 9 of this Article V, the Declarant shall provide to the Association the following:

a. a certification from the North Carolina Department of Transportation (with regard to any public roads within the Residential Community) or from a licensed professional engineer chosen by the Declarant (with regard to any private roads within the Residential Community), that all roads within the Residential Community are built to the specifications of the North Carolina Department of Transportation (the "Road Certification").

b. a certification from a licensed professional engineer chosen by the Declarant that the stormwater drainage system of the Residential Community is planned and constructed in accordance with said stormwater plan and any applicable stormwater permits, licenses or agreements between Declarant and any governmental agency or any public or private utility company and in accordance with any applicable laws and governmental rules and regulations (the "Stormwater Certification").

c. a certification from a licensed professional engineer chosen by the Declarant that any erosion control system, water system, wastewater system, and any other utility system of the Residential Community is planned and constructed in accordance with any applicable erosion control plan and permit, water system permits, wastewater system permits, and any other governmental permits, licenses or agreements between Declarant and any governmental agency or any public or private utility company, and in accordance with any applicable laws and governmental rules and regulations (the "Utility Certification")

11. Obligations of the Association upon Turnover Transfer. Upon the receipt of the Road Certification, the Stormwater Certification, the Utility Certification and the Turnover Transfer as provided herein, the Association shall be obligated and required as follows:

a. to accept the Turnover Transfer,

b. to assume all the rights and responsibilities of the Declarant, including with regard to the maintenance and repair of any roads, rights of way and easements, Common Areas and any other property transferred to the Association, the maintenance of and payment of premiums for any necessary property insurance, and the payment of any applicable property taxes.

c. to assume the rights and responsibilities of the Declarant for all erosion control plans and permits, CAMA permits, water system permits, wastewater system permits, and any other governmental permits, licenses or agreements obtained by the Declarant in connection with the development of the Residential Community. After such assignment and assumption, the Association shall cooperate in good faith to obtain the transfer of any such permits, agreements and licenses on the records of any governmental agency or department or public or private utility company having jurisdiction of said matters.

The Turnover Transfer shall be effective upon delivery of the Road Certification, the Stormwater Certification, the Utility Certification and the Turnover Transfer by the Declarant, and the Declarant shall have no further responsibility for and shall be released from any liability with regard to any matters arising after the effective date, from or relating to the Turnover Transfer or with regard to any real property or rights therein, Development Permits, or any other rights, duties or other matters transferred to the Association as a result of the Turnover Transfer.

12. Lot Maintenance by Association. If any Owner shall fail to maintain any Lot owned by him in a manner which is reasonably neat and orderly, or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, or shall fail to maintain the utility, sewer and drainage easement in accordance with the requirements set out herein, or shall otherwise fail to comply with this Declaration, the By-Laws or the Rules and Regulations, the Association, by the affirmative vote of a majority of the Members of the Board, and following ten (10) days written notice to the Owner, may enter upon and make or cause to be made repairs to such improvements and perform any maintenance on the Lot, such as the removal of trash, cutting of grass, pruning of shrubbery, weeding, and items of drainage and erosion control, for the purpose of correcting the identified deficiency. The Association shall have an easement in all Lots for the purpose of accomplishing the foregoing. The reasonable cost incurred in rendering all such services, plus a service charge of fifteen percent (15%) of such cost, may be assessed against the Owner and the Lot as a Specific Assessment.

ARTICLE VI

COVENANT FOR ASSESSMENTS.

1. Creation of the Lien and Personal Obligation of Assessments. Every Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, and every other Owner of any Lot which is made subject to the terms and conditions of this Declaration, is deemed to covenant and agree to pay to the Association.

a. Annual assessments;

- b. Special assessments.
- c. Specific assessments.
- d. Initial capital assessment.

Such assessments shall be fixed, established and collected from time to time as hereinafter provided. Said assessments, together with such interest thereon, costs of collection thereof, and reasonable attorney's fees as may be established by the Association, shall be a charge against and a continuing lien upon the Lot and the improvements thereon, against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment became due. The personal obligations of an Owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them and then only with the consent of the Association. The liability for all assessments by the record Owners of each Lot shall be joint and several. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the health, safety and welfare of the Owners and the Residential Community; enforcing these covenants and the By-Laws, rules, regulations of the Association; providing the services and facilities for the purposes of or related to the maintenance, use and enjoyment of the Common Area and facilities; for the purposes of payment of common expenses; and managing, repairing, maintaining and replacing the stormwater system, subdivision signs, and landscaping and fencing located at the entrance to the property.

3. Annual Assessments.

a. The initial annual assessment for each Lot shall be established by the Declarant, but shall not exceed Seventy Five & no100 Dollars (\$75.00) per lot, and shall be due and payable effective January 1, 2005.

b. From and after the date specified in subparagraph 3(a) above, the maximum annual assessment may be increased effective January 1 of each year by the Board of Directors, without a vote of the Membership of the Association, by a percentage which may not exceed twenty (20%) percent of the amount of the Assessment for the previous year.

c. From and after the date specified in subparagraph 3(a) above, the annual assessment may be increased in any amount by an affirmative vote of a majority of the Members who are, in person or by proxy, at a meeting duly called for such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

d. In proposing the annual assessment for any assessment year, the Board shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs. The Board shall annually prepare a separate reserve budget which takes

into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may include in the annual assessment an amount for a capital contribution sufficient to permit meeting the projected capitol needs of the Association.

e. Declarant shall be exempt from the payment of the annual assessment for any unsold Lots for a period of two years after the date such Lots are platted of record in the Office of the Register of Deeds of New Hanover County as Lots in the Residential Community. Upon the expiration of two years from the date of recordation of said plat or plats, the obligations of the Declarant to pay the pro rata share of the annual assessment of the year remaining shall commence, and accrual of the obligation to pay assessments to the Association shall not begin until that date.

4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repairs, or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

5. Specific Assessments. The Board shall have the power to levy Specific Assessments against a particular Lot, as follows:

a. to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

b. to cover costs, including overhead and administrative costs and reserves incurred for maintenance, repair and replacement of any private roads, signs, mail boxes, fences and berms which may be constructed for the benefit of certain specified lots.

c. to cover costs incurred in bringing a Lot into compliance with the terms of this Declaration, the By-Laws or the Rules and Regulations, or fines or costs imposed as a consequence of the conduct of an Owner, provided the Board shall give the Owner prior written notice and an opportunity for a hearing before levying a Specific Assessment under this subsection 5(c).

6. Initial Capital Assessment. Each initial Owner of a Lot agrees to pay an Initial Capital Assessment in the amount of Fifty & no/100 Dollars (\$50.00), for the purpose of establishing the capital improvements fund of the Association. Said amount will be collected at

closing of the initial sale of each Lot by the Declarant and shall be paid to the Association, to be maintained in a separate interest-bearing account from the operating account.

7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, on a per Lot basis, and shall be due and payable on a monthly, quarterly or annual basis as determined by the Board of Directors. This requirement shall not apply to Specific Assessments as provided in Section 5 of this Article VI.

8. Due Dates for Assessments.

a. Annual assessments shall commence as to each Lot on January 1, 2007. The Board of Directors shall fix the amount of the annual assessment against each Lot at least two (2) months in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto thirty (30) days in advance of each annual assessment period. The due dates shall be established by the Board of Directors.

b. The Board of Directors shall fix the commencement date and the due dates for any assessments other than the annual assessments.

c. The Association, upon demand at any time, shall furnish a certificate in writing 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.

9. Lien for Assessments.

a. All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including reasonable attorneys fees). Such lien shall be superior to all other liens, except the liens of all ad valorem taxes or assessments, and any other liens which by law would be superior.

b. The Association may record notice of the claim of lien in the Office of the Clerk of Superior Court of New Hanover County or file a suit to collect such delinquent assessments and charges. The Association may file Notice of Lis Pendens, bring an action of law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property, or utilize any other remedy provided under North Carolina law. No Owner may waive or otherwise escape liability for the assessments provided for herein.

10. Effect of Nonpayment of Assessments: Remedies of the Association: Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at a rate not to exceed the maximum legal rate allowed in the State of North Carolina per annum and in addition, a late fee shall be assessed in such amount as may be determined by the Board of Directors. The Association may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the

property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and, in either event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments.

11. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release or any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Master Association Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

12. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay regular assessments on its unsold Lots, or to pay the difference between the amount of assessments collected on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year, or pay one-half (½) of the assessments for an unimproved Lots for all Lots which are platted of record in the Office of the Register of Deeds of New Hanover County but which have not yet been sold to a Person other than Declarant or an authorized builder. Unless the Declarant otherwise notifies the Board in writing at least 45 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligation hereunder may be satisfied in the form of cash or by "in kind" contribution of services or materials, or by a combination of these.

13. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any first mortgage and ad valorem taxes on each Lot. The sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

14. Exempt Property. The following property shall be exempt from payment of Assessments:

- a. all Common Area;
- b. any property dedicated to and accepted by any governmental authority or public utility;
- c. any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Lot which is subject to assessment under Section 1, Phase 10.9 (in which case the Lot shall not be exempted from assessment); and