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NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS  
CONDITIONS, EASEMENTS, AND  
RESTRICTIONS FOR THE COTTAGES  
AT SUMMERWALK

This Declaration, made the 2nd day of November, 2017, by  
**SUMMERWALK DEVELOPMENT, LLC, a North Carolina limited liability company,**  
hereinafter referred to as "Declarant" or "Developer";

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the City of  
Wilmington, New Hanover County, State of North Carolina, known as **THE COTTAGES  
AT SUMMERWALK** (which consist or will consist of 19 Single Family Lots), some of  
which are shown on a plat recorded in the Office of the Register of Deeds of New  
Hanover County, North Carolina, in Map Book 63 Pages 393, to which  
reference is made for a more particular description (the "Property"); and

WHEREAS, the Property is a "Neighborhood" within a larger planned community  
known as SUMMERWALK, and is subject to and bound by that Master Declaration of  
Covenants, Conditions and Restrictions for Summerwalk (the "Master Declaration"),  
recorded in Book 6059, Page 1683 of the New Hanover County Registry, as the same  
may be amended from time to time; and

WHEREAS, Declarant desires to subject the Property to these protective  
covenants and form an association of Owners within THE COTTAGES AT  
SUMMERWALK to provide for, among other things, the operation and maintenance of  
the Association Maintenance Area and any other property for which it may have  
maintenance responsibility in a manner consistent with the governing documents and  
the Community-Wide Standard; and

NOW, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions.

## ARTICLE I. DEFINITIONS

In addition to other terms defined herein, the following capitalized terms shall have the following meanings as used herein:

SECTION 1. Additional Property shall mean and refer to any lands, in addition to the above described Property, annexed to and made a part of The Cottages At Summerwalk.

SECTION 2. Allocated Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

SECTION 3. Approved Builder shall mean any builder approved by the Declarant to construct single family homes within The Cottages at Summerwalk.

SECTION 4. Association shall mean and refer to The Cottages at Summerwalk Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns, the owners association organized pursuant to the Act for the purposes set forth herein, the "Association".

SECTION 5. Association Maintenance Area shall mean any land areas or facilities which the Association is obligated to operate or maintain which are not Areas of Common Responsibility maintained by the Master Association.

SECTION 6. Areas of Common Responsibility shall mean and refer to all lands and easements within or appurtenant to the Planned Community which are owned or enjoyed by either the Association or the Master Association, other than a Lot, and intended for the common use and enjoyment of the Owners, and their tenants including, without limitation, any private roads (including any roads intended to be public but which are not accepted for dedication and maintenance by the appropriate governmental authority), and any perimeter fencing for the Property (any storm water retention ponds and related drainage facilities within the Planned Community owned, operated and maintained by the Master Association). Areas of Common Responsibility may also include any areas designated on any plats for the Planned Community as "Open Space", "Common Area", "Common Element", "Recreation Area", "Amenity Area", "Conservation Area" or other similar designation. Areas of Common Responsibility need not be contiguous to or abutting the Property or any Additional Property.

SECTION 7. Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

SECTION 8. Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise.

SECTION 9. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to Summerwalk Development, LLC, its successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right(s).

SECTION 10. Declarant Control Period shall have the meaning set forth in Article III hereof.

SECTION 11. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 12. Executive Board or Board shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this Declaration or otherwise to act on behalf of the Association.

SECTION 13. Lot(s) and/or Units shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner and shown on a recorded subdivision plat.

SECTION 14. Lot Owner or Owner shall mean the Declarant or other Person who owns a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 15. Master Association means Summerwalk Master Association, Inc., a North Carolina nonprofit corporation, as defined in the Act.

SECTION 16. Master Declaration means the Master Declaration of Covenants, Conditions and Restrictions for the Summerwalk recorded in Book 6059, Page 1683 of the New Hanover County Registry, as amended from time to time.

SECTION 17. MASTER DECLARANT shall mean Summerwalk Development, LLC, a North Carolina limited liability company, or any successor or assign who 1) takes title to any portion of Summerwalk for the purpose of development and/or sale and 2) who or which is specifically granted some or all of the Master Declarant's rights pursuant to a recorded instrument executed by the immediately preceding Master Declarant. The Master Declarant is the "Declarant" as such term is used in the Master Governing Documents.

SECTION 18. Master Governing Documents shall mean the Master Declaration and any applicable Supplemental Declaration, the By-Laws and the Articles of Incorporation of the Master Association, the Architectural Design Standards, the Restrictions and Rules, resolutions by the Master Association Board of Directors, and recorded plats of Summerwalk, as any one or more of same may be amended from time to time.

SECTION 19. Member(s) shall mean the Lot Owners.

SECTION 20. Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

SECTION 21. Planned Community shall mean and refer to SUMMERWALK plus any Additional Property made a part of the Planned Community by the exercise of any Special Declarant Right.

SECTION 22. Purchaser means any Person, other than the Declarant or an Approved Builder, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 23. Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

SECTION 24. Residential Design Standards for Summerwalk shall mean the guidelines and standards for architecture, design, construction, landscaping and exterior items on Lots adopted pursuant to Article IV of the Master Declaration, as they may be amended from time to time.

ARTICLE II.  
PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Areas as well as the Limited Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules governing use of the Common Areas as well as the Limited Common Areas by the Owners, but such rules may not (i) exclude an Owner or an Owner's tenants from simultaneous use

of the Common Areas except for non-payment of Assessments or rules violations or (ii) deprive any Owner of access;

(b) The Association may grant a security interest in or convey the Common Areas, or dedicate or transfer all or part of the Common Areas, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least eighty percent (80%) of the Members, excluding the Developer; provided, however, that the Association may without the consent of the Owners grant easements, leases, licenses and concessions through or over the Common Areas. No conveyance or encumbrance of Common Areas shall deprive any Lot of its rights of access or support.

(c) The Declarant may grant conservation easements over any of the Common Areas which are to serve as open space, natural areas, conservation areas, or over any other Common Areas where the granting of such conservation easements will not interfere with the Lot Owners' intended enjoyment thereof. Such conservation easements may be granted at any time before the Declarant actually transfers title to the affected Common Areas to the Association.

**SECTION 2. Easements in Favor of Declarant and the Association.** The following easements are reserved to Declarant and the Association, their agents, contractors, employees, successors and assigns:

(a) easements as necessary in the lands constituting the Common Areas and Areas of Common Responsibility and the portion of each Lot not occupied by a residence for the installation and maintenance of utilities and drainage facilities (including the right to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on a plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of New Hanover County; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the Owner of such Lot). No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. These easement areas (whether or not shown on the recorded plats for the

Planned Community) but not the improvements within such areas shall be maintained by the Association except those for which a public authority or utility company is responsible.

(b) easements over all private streets, access easements, and Areas of Common Responsibility within the Planned Community as necessary to provide access, ingress and egress, to and the installation of utilities for any Additional Property.

SECTION 3. Other Easements. The following additional easements are granted by Declarant:

(a) an easement to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Areas in the performance of their duties.

(b) in case of any emergency originating in or threatening any Lot or Common Areas, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the immediate right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners.

(c) the Association (should it elect to do so) is granted an easement over any lot for the purpose of providing lawn maintenance in those situations where a Lot Owner defaults on its obligation to maintain the lawn and shrubbery to Community Wide Standards.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Planned Community, or any part or portion thereof, regardless of whether or not reference 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 III.

#### HOMEOWNERS' ASSOCIATION AND MASTER ASSOCIATION

SECTION 1. Formation of Association. The Association shall be incorporated no later than the date the first Lot in The Cottages at Summerwalk is conveyed. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Areas of Common Responsibility and any required Maintenance in accordance with this Declaration, its Charter and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in

the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

**SECTION 2. Membership.** Every Lot Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

**SECTION 3. Membership Classes.** The Association shall have two classes of voting membership (but the Declarant by amendment to this Declaration without the consent of any Lot Owners may add other membership classes for any future development annexed to The Cottages at Summerwalk.

*Class A.* Class A Members shall be Owners of Lots in Townes at Summerwalk, other than the Declarant, its successors and or assigns.

*Class B.* The Declarant its successor or assigns, shall be the sole Class B Member.

**SECTION 4. Voting Rights.** The voting rights of each class of membership shall be as follows:

(a) The Class A Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited. Only certain classes of members may vote on certain issues as hereinafter provided.

(b) The Class B Member shall be entitled to three (3) votes for each Lot platted or planned for the Cottages at Summerwalk (currently 19 Lots). The Class B Membership shall cease and be converted to a Class A Membership on December 31, 2028, or upon Declarant's voluntary surrender of all Class B Membership.

The period during which there is Class B Membership is sometimes referred to herein as the "Class "B" Control Period". During the "Class "B" Control Period", the Declarant shall have the right to designate and select the Executive Board of the Association and the right to remove any person or persons designated and selected by the Declarant to serve on the Executive Board, and to replace them for the remainder of the term of any person designated and selected by the Declarant to serve on the Executive Board who may resign, die, or be removed by the Declarant.

**SECTION 5. Government Permits.** After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Townhome Community, all duties, obligations, rights and privileges of

the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Townhome Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association.

**SECTION 6. Areas of Common Responsibility.** The Association shall at its sole cost and expense be responsible for the operation and maintenance of any Area of Common Responsibility within The Cottages at Summerwalk Neighborhood from the date of completion of its construction or improvement by the Declarant (unless specifically assumed by the Master Association), whether or not (i) such Area of Common Responsibility has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Area of Common Responsibility has been transferred from the Declarant to the Association or assumed by the Association. If the Declarant provides any operation or maintenance activities to an Area of Common Responsibility for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within 30 days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special Assessment to cover the amount of such bill if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment. The Association shall be entitled to determine the amount of time and dates that each irrigation system on each Lot must be operated.

**SECTION 7. Community-Wide Standard.** All conduct, operation and maintenance required by this Declaration to be performed by the Association shall be performed in accordance with the "Community-Wide Standard" as defined in the Master Declaration.

**SECTION 8. Summerwalk.** The Property and all Lots located in The Cottages at Summerwalk are part of the Summerwalk planned community and are subject to and bound by that Declaration of Covenants, Conditions, and Restrictions for Summerwalk Residential Property (the "Master Declaration"), recorded in Book 6059, Page 1683, of the New Hanover County Registry, and all amendments thereto, **INCLUDING THE OBLIGATIONS TO (1) PAY ALL MASTER ASSOCIATION ASSESSMENTS WHICH ARE IN ADDITION TO THE ASSESSMENTS PROVIDED FOR IN THIS DECLARATION; (2) ABIDE BY THE ARCHITECTURAL REVIEW AND LAND RESTRICTIONS THEREUNDER, INCLUDING BUT NOT LIMITED TO THE PROVISIONS OF THE RESIDENTIAL DESIGN STANDARDS FOR SUMMERWALK; AND (3) COMPLY WITH THE TERMS OF ALL ADDITIONAL MASTER GOVERNING DOCUMENTS.** All Members of the Association are also members of the Master Association. THE COTTAGES AT SUMMERWALK is a "Neighborhood" within

Summerwalk as that term is defined in the Master Declaration. Under the terms of the Master Declaration, the Summerwalk Master Association, Inc. has the right to veto any action taken by the Association hereunder and to require specific actions to be taken by the Association.

SECTION 9. Voting Member. The Master Declaration provides that the Lot Owners shall elect a Voting and Alternate Voting Member to cast all votes attributable or allocated to the Lots within the Planned Community by the Master Declaration. The President of the Association shall ex officio serve as the Voting Member and the Vice-President as the Alternate.

#### ARTICLE IV. INSURANCE AND BONDS

SECTION 1. Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available.

(a) Commercial. Commercial general liability insurance covering claims arising out of incidents occurring on the Association Maintenance Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. Insurance premiums for the insurance coverage obtained by the Board pursuant to this Section and as necessary to pay the cost of deductibles shall be Common Expenses to be paid by all Members by regular Insurance Assessments as provided.

(b) Any other insurance coverage which is contemplated in these Protective Covenants and deemed necessary by the Association, or required to be maintained by the Association, under the Planned Community Act.

(c) Insurance Provisions. The Board of Directors shall make diligent efforts to insure that the insurance policies required by this section 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 may 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 Planned Community over which the Association has no control.

(5) the master policy on the Planned Community cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Lot Owners;

(6) the master policy on the Planned Community cannot be cancelled, 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;

(7) each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest;

(8) if at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(d) Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors who shall hold any such insurance proceeds in trust for Lot Owners within the Townhome Development and lien holders as their interest may appear;

(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 Board of Directors and the Cottages at Summerwalk Lot Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors 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;

**SECTION 2. Common Area Insurance.** The Board of Directors on behalf of the Association, as a Common Expense of all Lot Owners, must at all times keep the Association Maintenance Areas and other assets of the Association insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims.

**SECTION 3. Fidelity Bond.** The Association may maintain, as a Common Expense paid by all Owners, blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association; provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

## ARTICLE V COVENANTS FOR ASSESSMENTS

**SECTION 1. Creation of the Lien and Personal Obligation of Assessments.** Each Lot Owner covenants and agrees to pay to the Association the following assessments, as applicable (collectively the "Assessments"):

- A. Annual Association Maintenance Area Assessments;
- B. Special Assessments;
- C. Insurance Assessments;
- D. Ad Valorem Tax Assessments;
- E. Working Capital Assessments; and
- F. Transfer Fees.

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Assessments levied by the Association shall be used, as applicable, exclusively to promote the recreation, health, safety and welfare of the Owners and residents of The Cottages at Summerwalk.

**SECTION 2. Purpose of Annual Assessments.** The funds arising from Annual Common Area Assessments may also be used for any or all of the following purposes: the operation, maintenance, repair and replacement of the Association Maintenance Areas (including all street lights within The Cottages at Summerwalk Neighborhood); payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization of which the Association is a member and to the Master Association; and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Association Maintenance Areas in good operating order and repair.

**SECTION 3. Annual Assessments.** At least 90 days before the beginning of each fiscal year, the Executive Board shall adopt proposed annual budgets, as follows:

- (i) a budget for the Annual Common Element Assessments consisting of the annual cost of operating and maintaining the Areas of Common Responsibility.
- (ii) such other budgets as the Executive Board deems appropriate.

Within 30 days after adoption of the proposed budgets for the Summerwalk Community, the Executive Board shall provide to all of the Lot Owners a summary of the budgets and notice of a meeting to consider ratification of the budgets, including a statement that the budgets may be ratified without a quorum. Each budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association entitled to vote on the particular budget rejects the budget. All Members shall be entitled to vote on the budget for the Annual Common Area Assessments. Only Class A members shall be entitled to vote with regard to the budget applicable to them. In the event a proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board. The Annual Assessments for each Lot shall be established based on the annual budgets thus adopted, with all Lots funding the budget for the Annual Common Area Assessments; provided, however, that the first Annual Assessments shall be set by the

Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Executive Board. The Executive Board shall have the authority to require the Assessments to be paid in periodic installments. 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.

The budgets for the Annual Common Area Assessment shall include in each calendar year the amount budgeted by the Master Association for Base Assessments and Neighborhood Assessments, if any (as said assessments are defined and authorized in the Master Declaration) to be paid by all Lot Owners in the Cottages at Summerwalk Neighborhood. The Association shall collect as part of its Annual Assessments the amounts budgeted for such Base Assessments and Neighborhood Assessments, if any and pay the Base Assessments and Neighborhood Assessments to the Master Association on behalf of the Lot Owners.

SECTION 4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the following purposes:

A. To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Maintenance Areas, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the affected Members voting as a class who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

B. Without a vote of the Members, to provide funds to reimburse the Declarant as provided for in Article III, Section 6, hereof.

SECTION 5. Insurance Assessments. All premiums on insurance policies 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 may at any time levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

SECTION 6. Ad Valorem Tax Assessments. All ad valorem taxes levied against the Common Areas, if any, shall be a common expense, and the Association may at any time during the year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount

sufficient to pay ad valorem taxes not included as a component of the Annual Assessment.

SECTION 7. Working Capital Assessments. At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of \$350.00 to the Association as working capital to be used for operating and capital expenses of the Association (this Working Capital Assessment is in addition to any similar assessment imposed by the Master Declaration and due to the Master Association). Such amounts paid for working capital are not to be considered as advance payment of the Annual or any other Assessments. The Declarant may waive the Working Capital Assessment for any vendee who is an Approved Builder intending to build a residence on a Lot to be conveyed by an Approved Builder to others so long as the general contractor agrees with the Declarant and the Association to charge the Working Capital Assessment to the general contractor's vendee and to pay the same to the Association at the time the general contractor conveys said Lot and residence.

SECTION 8. Rate of Assessment. The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

SECTION 9. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance of a deed by a retail purchaser. Declarant shall not be obligated to pay Assessments (but Declarant at its option shall subsidize the Association, if required, until the Association has sufficient revenues).

SECTION 10. Effect of Nonpayment of Assessments And Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

SECTION 11. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

A. The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of New Hanover County.

The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 of the Act are enforceable as Assessments.

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

C. The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

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

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

F. A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

## ARTICLE VI MAINTENANCE

Association's Responsibility. The Association shall maintain and keep in good repair the Common Area, which may include, but need not be limited to:

- (a) All landscaping and other flora, parks, and signage for the Cottages at Summerwalk situated upon the Association Maintenance Areas; structures and improvements situated upon the Common Area, including private streets and rights of way and islands within their streets and cul-de-sacs; bicycle and pedestrian pathways and trails situated upon the Common Area (excluding any such facilities which are provided by the Master Association for the benefit of the Summerwalk Community, which facilities shall be responsibility of the Master Association); any other areas designated as Common Area by