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FOR REGISTRATION REGISTER OF DEEDS  
TAMMY THEUSCH BEASLEY  
NEW HANOVER COUNTY, NC  
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INSTRUMENT # 2013011742

PREPARED BY  
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Wilmington, North Carolina 28401

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

**DECLARATION OF EASEMENTS,  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR TIBURON PARC**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR TIBURON PARC (the "*Declaration*") is made as of the 3 day of APRIL, 2013, by THE OLEANDER COMPANY, INC., a North Carolina corporation ("*Declarant*").

**WITNESSETH:**

WHEREAS, Declarant is the owner of that real property described on a Map entitled Tiburon Parc prepared by Hanover Design Services, P.A., and recorded in Map Book 57 at Page 387-389 in the Office of the Register of Deeds of New Hanover County, North Carolina (the "*Registry*") (the "*Property*"); and

WHEREAS, the Development of the Property is best facilitated by the grant and reservation of certain easements and by the common maintenance of access and utility easements, drainage and stormwater facilities, common areas and the restrictions on use contained herein for the mutual benefit of the owners of the Parcels (as hereinafter defined) as shown on the Map described above, their successors and assigns.

NOW, THEREFORE, 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 any 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**

1.1 Definitions.

(a) "Additional Property" shall mean and refer to any real property which is located within a one-mile radius of the Property which is annexed to Tiburon Parc as provided herein.

(b) "Articles" shall mean and refer to the Articles of Incorporation of the Association

(c) "Architectural Guidelines" are those guidelines and standards for design, architecture, construction, landscaping which may adopted by the Board from time to time in accordance with the provisions of this Declaration.

(d) "Architectural Review Committee" or "ARC" shall mean and refer to the committee created pursuant to Section 3 4(B) hereof which shall have jurisdiction over architectural matters.

(e) "Association" shall mean and refer to Tiburon Parc Property Owners' Association, Inc., a nonprofit corporation organized under the laws of the State of North Carolina, its successors and assigns.

(f) "Board" shall mean and refer to the Board of Directors of the Association.

(g) "Bylaws" shall mean and refer to the Bylaws of the Association.

(h) "Common Expenses" shall mean and refer to all expenses (actual or estimated) incurred, or anticipated, by the Association for the benefit of the Owners. Common Expenses shall include, but shall by no means be limited to, expenses incurred for the following:

- a for the promotion of the recreation and welfare of the Owners;
- b. for the payment of ad valorem taxes and public assessments levied on the Common Facilities, if any;
- c for the maintenance and operation of any utility systems owned or used by the Association or the Owners (to the extent the same is for the benefit of all Owners);
- d. for the maintenance of private streets, roads, walkways, fences, signs, sign monuments and retaining walls within the Property which benefit more than one Parcel (but specifically excluding any which only benefit and are located within a single Parcel), as well as all signs and lighting located thereon and adjacent thereto;
- e. for the maintenance of the Common Facilities and the cost of labor, materials and equipment necessary for the proper use, enjoyment and maintenance of the Common Facilities;
- f. for landscaping and yard maintenance, including mowing of grass, for all property within the Common Facilities (but specifically excluding landscaping

contained within any Parcel, which shall be the responsibility of the Owner thereof to maintain);

- g. for snow removal regarding all streets and sidewalks within the Common Facilities;
- h. for maintenance of the entrance area;
- i. for the procurement and maintenance of all insurance coverage maintained by the Association in accordance with the Declaration;
- j. for the procurement and maintenance of fidelity bonds for all persons having access to funds of the Association;
- k. for the employment of professionals, such as accountants, attorneys, and management firms, to represent the Association as determined by the Board; and
- l. to maintain reasonable reserves for the foregoing purposes

(i) "Common Facilities" shall mean and refer to all common facilities designated as such, now or in the future, by Declarant for the common use and enjoyment of all of the Owners in accordance with this Declaration and shall specifically include the following:

- a. The Access and Utility Easements as depicted on the Map;
- b. All stormwater and drainage facilities identified and described in the stormwater permit issued to Declarant for development of the Property, including the existing Stormwater Facility as depicted upon the Map;
- c. All roads now or hereafter constructed upon the Property and reasonably intended to be used for ingress and egress to, from and through the Property (but excluding any parking areas located solely on a single Parcel which shall not be part of the Common Facilities unless specifically indicated by separate agreement and further excluding all public roads);
- d. Any and all utility installations located upon the Property reasonably designed and constructed for use by two or more Parcels; and
- e. The "Pond Tract" as shown on the Map.

(j) "Declarant" shall mean and refer to The Oleander Company, Inc., and its successors and assigns to whom the rights of Declarant hereunder are expressly assigned, in whole or in part, by written assignment recorded in the Registry and subject to such terms and conditions as the Declarant may impose.

(k) "Directors" shall mean and refer to the members of the Board

(l) "Easements" shall mean and refer to the easements established pursuant to Section 4.2 of this Declaration

(m) "Equivalent Share" shall mean the percentage of the Common Expenses which is attributable to a Parcel. It shall be calculated as a percentage determined by dividing the acreage listed for the specific Parcel on the Map (as may be amended from time to time) by the acreage of the entirety of the Parcels within the Property (excluding Common Facilities), each rounded to the nearest one-tenth of an acre. By way of example, if the acreage for a particular Parcel is 1.5

acres, and the total acreage of all Parcels within the Property is 10 acres, the Equivalent Share for that particular Parcel is 15%.

(n) "Equivalent Vote" shall mean the Equivalent Share for any Parcel multiplied by 100. By way of example, if the Equivalent Share of a Parcel is 15%, the Equivalent Vote for the Parcel is 15.

(o) "Map" shall mean and refer to that map or plat entitled Tiburon Parc prepared by Hanover Design Services, P.A., and recorded in Map Book 57 at Page ~~387-389~~ in the Registry and any other map of the Property, including revisions or Additional Property, which may be executed and recorded by Declarant in the Registry.

(p) "Member" shall mean and refer to each Owner or Owners of a Parcel within the Property who shall also then be a Member of the Association for such period of ownership. If a Parcel is owned by more than one person or entity, then such persons or entities collectively shall be the Member and shall be entitled to vote those voting shares allocated to such Parcel; provided, however that all votes allocated to a Parcel must be voted together and must be cast by only one representative designated by the Owner.

(q) "Mortgage" shall mean a mortgage, deed of trust, deed to secure debt or other security instrument encumbering one or more Parcels and which has been recorded among the land records of the county or jurisdiction in which the Parcel is, or Parcels are, located.

(r) "Mortgagee" shall mean and refer to the mortgagee, beneficiary, trustee or other holder of a Mortgage on a Parcel or Parcels.

(s) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Parcel but such term shall not include a Mortgagee.

(t) "Parcel" and "Parcels" shall mean and refer to Parcels A1-A, A1-B, A2, A3 and B, shown on the Map, and any Parcel, annexed to Tiburon Parc as permitted herein

(u) "Property" shall mean and refer to the real property shown on the Map, and shall also include any Additional Property upon its annexation in accordance with the terms of this Declaration.

(v) "Stormwater Permit" shall mean and refer to Stormwater Management Permit Number 2011033, as amended and approved by the City of Wilmington, North Carolina from time to time.

(w) "Structure" shall mean and refer to any thing, or device, the placement of which upon or within any Parcel might affect the physical appearance thereof, including, by way of illustration and not limitation, buildings, sheds, covered areas, driveways, fountains, pools, parking areas, trees, shrubbery, paving, curbing, landscaping, fences or walls or any sign or signboard "Structure" shall also mean any excavation or fill, the volume of which exceeds ten

(10) cubic yards; or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Parcel.

(x) "Supplemental Declaration" shall have the meaning set forth in Section 2.2 hereof.

(y) "Tiburon Parc" shall mean and refer generally to the development from time to time located on the Property. It is understood that Declarant may, in its discretion, elect to change the name of the development at any time for a period of three (3) years from the recording of this Declaration. The name change shall be effectuated by the recording of an amendment to the Declaration reflecting the name change in the Registry.

## **ARTICLE II Property**

2.1 Description. The Property is made subject to this Declaration and the Parcels shall hereafter be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, and each Owner, subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

2.2 Additional Property. Declarant reserves the right, but shall not have the obligation, to annex Additional Property to Tiburon Parc and the terms of this Declaration by executing and recording a "Supplemental Declaration". No Additional Property may be annexed by any other person or entity without the written consent of the Declarant.

2.3 Contents of Supplemental Declaration. Supplemental Declarations may set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may desire.

## **ARTICLE III Governance and Administration; Membership and Voting Rights; Association Powers**

3.1 Function of Association. The Association shall be responsible for the management, maintenance, operation and control of the Common Facilities, the planning, development, construction and maintenance of any improvements that may be required pursuant to zoning approval and/or any traffic impact analysis studies with respect to the development of any Parcel or other portion of the Property, the construction of any buildings or other improvements on any Parcel or other portion of the Property subject to or which may become subject to this Declaration, shall comply with the terms of the Stormwater Permit and the provisions contained in ARTICLE VI and shall have the right (together with the Owners and Declarant) to enforce the Declaration and any other governing documents relating to the Property

as noted herein, including without limitation any adopted rules and regulations. Notwithstanding anything contained herein (or within the Articles or Bylaws) to the contrary, the Association shall perform its duties with respect to the Property in accordance with the requirements of this Declaration and the laws of the State of North Carolina.

3.2 Rights of the Association. Although expressly not subject to the provisions of Chapter 47 of the General Statutes of the State of North Carolina, the Association shall have those powers set forth in GS § 47F-3-102 to the extent such powers do not otherwise conflict with the terms of this Declaration.

3.3 Membership. Every owner of a Parcel which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Parcel. The Association shall have two (2) classes of voting membership:

A. Class A: Class A Members shall be all Owners, with the exception of Declarant, who shall be allocated votes based on their Equivalent Vote. When more than one person holds an interest in any Parcel, all such persons shall collectively be a single Member. However, the vote for such Parcel shall be exercised as the Owners among themselves determine, but in no event shall more than a vote equal to the Equivalent Vote be cast with respect to any Parcel. If multiple Owners owning any Parcel are unable to agree on their vote, their vote shall be counted for the purpose of determining a quorum and not be counted otherwise

B. Class B The Class B Member shall be Declarant and the Class B Member shall be allocated votes based on the product of three (3) times the Equivalent Vote attributed to the Parcels owned by Declarant within the Property. Upon the recording of a Supplemental Declaration which annexes Additional Property, Declarant's Class B membership with respect to any Parcels annexed shall become effective, regardless of whether there existed at the time of such recording any Class B membership interest. The Class B membership shall cease upon the earlier of such time as Declarant, in its sole discretion, elects to terminate such membership by a Notice of Termination recorded in the Registry

3.4 Conveyance of Title to Common Facilities At such time as it deems appropriate, but not later than at such time that all of the Parcels have been sold and Declarant has terminated any Class B membership rights, Declarant shall convey such title as it may have in the Common Facilities and any other real or personal property to the Association by Non-Warranty Deed or Bill of Sale without warranty. The Association shall accept the conveyance of all such Common Facilities and property pursuant to this section.

3.5 Architectural Control and Review.

A General: No structure, improvement, sign(s), fixture or appurtenance (including lighting and light fixtures, in both style and bulb color and appearance) shall be placed upon the Property (or any Parcels a part thereof) and no work completed upon the Property except in compliance with this Section 3.4 No approval or review shall be necessary to repaint or reconstruct and maintain any originally approved structure

improvement, fixture or appurtenance provided it complies with the originally approved plans and specifications. Notwithstanding anything contained within this Declaration to the contrary, Declarant shall not be limited by any requirements of the Board, the Architectural Review Committee or the Architectural Guidelines, with respect to any Parcel(s) within the Property owned by Declarant, and Declarant shall be free to construct upon the same any and all structures, improvements, fixtures or appurtenances which it deems acceptable, in its sole discretion.

**B**     Architectural Review:

(1)     By Declarant: Until termination of the Class B membership or until Declarant voluntarily relinquishes such rights in writing, Declarant reserves the right to review and approve, in its absolute discretion, all plans and specifications proposed by any Owner for the construction of any structure, improvement, fixture or appurtenance which shall be placed upon the Property. Notwithstanding the foregoing, Declarant further reserves the right to assign its right of review and approval to the ARC appointed by the Board, provided at all times during a period of such assignment Declarant shall maintain the right to overrule the decisions of the Architectural Review Committee, in its discretion.

(2)     Architectural Review Committee: At such time as Declarant terminates its right under B(1) above, the Board shall appoint the ARC which shall assume jurisdiction over architectural matters. The ARC, when appointed, shall have no fewer than three (3) and no greater than five (5) members (as determined by the Board), and shall be appointed (and removed, as necessary or desirable) by the Board. Members of the ARC need not be Owners or Members of the Association, and may be compensated in amounts and in such manner as decided by the Board.

(3)     Procedures: Except as expressly allowed in this Declaration, no activities relating to the construction of any structure, improvement, fixture or appurtenance upon any portion of the Property (including any Parcel) shall commence until an application for approval of plans and specifications has been submitted to the Declarant or the ARC as set forth above, and approval is delivered in accordance with this section. The application shall include plans and specifications showing site layout, structural design, elevations and materials/design of the exterior, landscaping plans, drainage, lighting and other features of the proposed design and construction, as may be applicable, and the applicant shall further be required to deliver any additional items and information reasonably requested by Declarant or the ARC, as applicable. Approval and/or comments and requests for changes or further information shall be delivered to the applicant by the Declarant or the ARC within forty-five (45) days of receipt of the application. Any responses and redesigns necessary after initial review and comment by Declarant or the ARC shall

be due from the applicant within seven (7) days of delivery, and the review and approval process shall continue under the same procedure until final approval (or withdrawal by the applicant) is reached. Final approval of an application is valid for a period of three hundred sixty-five (365) days, after which if construction has not commenced, the approval is deemed null and void. Failure of the Declarant or the ARC to deliver a response from the Declarant or ARC as required hereby shall be deemed approval of the application, provided that Declarant, during any period in which it owns any portion of the Property or Additional Property, shall maintain the right to veto any such approval (whether provided by default or otherwise) and deliver written notice of the same directly to the applicant prior to commencement of construction. Such veto by Declarant shall be final.

(4) Guidelines: At the election of Declarant until termination of rights as set forth in B(1) above, and thereafter at the discretion of the Board, Architectural Guidelines may be created to provide Owners with guidance regarding what general requirements the Declarant or the ARC will be looking for during review of proposals from Owners. If prepared, Architectural Guidelines will be made available to Owners and prospective owners for review prior to submission of a proposal for approval.

(5) Limitation of Liability: None of the Board, Declarant, the ARC, the Association or any individuals or organizations involved with any of the above shall have any responsibility for ensuring compliance with applicable building codes, safety and structural requirements, nor for ensuring that there is any standard design, size or requirements for structures within the Property.

3.6 Insurance by Association. The Association, acting through the Board as its duly authorized agent, shall obtain and continue in effect the following insurance, if reasonably available (or such similar insurance if not reasonably available), in such amounts and through such issuers as the Board determines in its discretion:

- A Commercial general liability insurance for the Common Facilities, insuring the Association and the Owners for loss caused by the negligence of the Association, any of the Owners, or each of their agents, employees, contractors or other parties acting on their behalf.
- B Blanket insurance coverage providing coverage for improvements within the Common Facilities as the Board may determine.
- C Officers and directors liability insurance as directed by the Board.
- D Such additional insurance as the Board, in its discretion, determines.

3.7 Assessments.

- A Annual Assessments; Budget: Annual assessments shall be fixed by the Board. Prior to the beginning of each fiscal year, the Board shall approve an annual budget of the estimated Common Expenses, together with any reserves the Board elects to maintain, and fix the amount of the annual assessment against each Parcel and send written notice of such assessment to every Owner subject to ratification procedures set forth herein. No ratification by the Members shall be required. The due dates of such assessments shall be as established by the Board and such assessments shall be payable on the due date, but may be collected in monthly, quarterly, or annual assessments, as established by the Board from time to time. A delinquent account may be accelerated by the Association such that the entire year's assessment becomes immediately due. Assessments shall begin as to any Owner the month following closing of the purchase of the Parcel(s) from Declarant. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating forth whether the assessments for a specified Parcel have been paid
- B Rate of Assessments: Subject to modification upon the annexation of Additional Property or other changes requiring modification thereof, both annual and special assessments shall be fixed at a rate for all Parcels based upon the Parcel's Equivalent Share.
- C Remedies for Non-Payment of Assessments: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days of the due date, the assessment shall bear interest from the date of delinquency at a rate not to exceed 18% per year or the maximum interest rate then permitted by law, whichever is greater. Additionally, a late fee of twenty-five and no/100ths Dollars (\$25.00) shall be assessed after ten (10) days from the due date of any assessment. The Board may, at its sole discretion, waive the imposition of interest to any delinquent assessment. The Association may bring an action in law against the Owner personally obligated to pay the assessment and interest or file a claim of lien and foreclose the lien created therein in any manner as allowed pursuant to applicable law. Cost and reasonable attorney fees as provided for above for any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Facilities, or abandonment of his Parcel(s). In the event that an action at law results in a judgment being entered against the Owner of any Parcel and in favor of the Association, the Association shall be further empowered to obtain execution on such judgment in a manner to the extent provided for and permitted by the laws of the State of North Carolina. The Association may delegate collection of delinquent assessments to a duly-appointed property manager

- D Omission of Assessments: The omission by the Board, before the expiration of any year, to fix the assessments hereunder for that or for the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any owner from the obligations to pay any assessments.
- E Special Assessments for Capital Improvements: In addition to the annual assessments authorized herein, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Facilities, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty-seven (67%) percent of the Equivalent Vote of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all Members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting.
- F Creation of the Lien and Personal Obligation of Assessments: Every Owner of any Parcel subject to this Declaration, by acceptance of a deed therefore, whether or not expressed in any such deed of other covenant, is deemed to covenant and agrees to pay the Association:
- (1) Annual assessments or charges, as determined by the Board;
  - (2) Special assessments for capital improvements, or unanticipated crises or contingencies, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments on a Parcel together with interest thereon and costs of collection thereof; as hereinafter provided, shall be a charge on the Parcel and shall be a continuing lien upon the Parcel against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees incurred by the Association in collecting delinquent assessments shall also be the personal obligations of the person or entity who was the Owner of such Parcel at the time when the assessment became due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by them, notwithstanding that the lien for delinquent assessments shall continue to encumber the Lot.

- G Subordination of Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to any Mortgage which is a first lien on a Parcel. Sale or transfer of any Parcel shall not affect the assessment lien. However, the sale or transfer of any Parcel pursuant to 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 Parcel from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent, and any Mortgagee may, at its option, pay any delinquent obligations of an Owner. The Association shall notify by certified mail return receipt requested, any Mortgagees of any delinquency or any default in the presence of any obligations of an owner prior to taking any action against such owner which would affect the Mortgagee.

#### ARTICLE IV

##### Common Facilities: Easements; Maintenance Requirements

4.1 General Easements over Common Facilities. Every Owner of a Parcel subject to this Declaration shall have a nonexclusive, perpetual right and easement of enjoyment in and to the Common Facilities which shall be appurtenant to each Parcel, provided such use shall be subject to the terms and provisions of this Declaration.

4.2 Easements. Declarant does hereby establish, declare, and grant, for the benefit of each and every Parcel included in the Property and the Association, as an appurtenance thereto, and to and for the benefit of the Declarant, the following easements:

(a) Shown on Map. With the exception of the Buffer Easement within Parcel A1-A and Parcel A2 shown on the Map, which shall remain a private easement subject to a separately recorded agreement, all easements shown upon the Map for the purpose(s) noted therein and such other reasonable and ancillary purposes as Declarant may determine in its discretion.

(b) Ingress; Egress. Perpetual, non-exclusive rights, privileges and easements for the passage of vehicles and for the passage and accommodation of pedestrians, over, across and through all roadways, walkways and sidewalks located within or to be located within the Property and serving two or more Parcels, exclusive of the buildings and improvements constructed by the Owners on the Property and intended for the use of less than all of the Parcels, and further exclusive of parking areas located within any single Parcel.

Each Owner shall use reasonable efforts to assure that construction traffic to and from its Parcel shall not unreasonably interfere with the use, occupancy and enjoyment of the remainder of the Property (or any part thereof).

(c) Utilities. Perpetual non-exclusive rights, privileges, and easements in and to a general utility easement ten (10) feet in width over, under, along, and across the side and rear property lines of each Parcel within the Property and within such other unimproved portions of the Property as a reasonably necessary to provide utility services as are anticipated hereby, for the purposes of:

(i) Installing, operating, using, maintaining, repairing, replacing, relocating, and removing underground lines, equipment and facilities for the delivery of utility services to each Parcel and the buildings and other improvements from time to time located thereon, including, but not limited to, sanitary sewer, water (fire and domestic), gas, electrical, telephone, and communications line and other similar facilities that are not located within the rights-of-way for the streets and roads adjacent to such Parcel (hereinafter and collectively referred to as "Utility Lines"); and

(ii) Connecting and tying into the common Utility Lines for such purpose and using such common Utility Lines in connection with the delivery of such utility services to each Parcel and the buildings and other improvements from time to time located thereon.

Such utilities easement rights shall be subject to the following provisions as well as the other applicable provisions contained in this Declaration

(i) If any Utility Line is to be installed pursuant hereto, the location of such Utility Line shall be subject to the prior written approval of the Owner whose Parcel is to be burdened thereby, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, such Utility Line must be installed underground and an Owner's approval may be withheld for any reason with respect to (1) a Utility Line proposed to be located within any area on such Owner's Parcel where a building either is located or is planned to be located in the future, or (2) unless reasonable alternatives are not available, where the proposed location may materially impact other features of the Owner's Parcel (including trees, shrubbery and landscaping). The easement area related thereto shall be no larger than whatever is necessary to reasonably satisfy the utility company, for an easement granted to a public utility, or five (5) feet on each side of the center line of the Utility Line, as actually installed, for a private easement. The Owner whose Parcel is to be burdened shall have the right to require that an as-built survey of any such Utility Line be delivered to it at the installing Owner's expense, within thirty (30) days after such installation is complete. Parties wishing to install such Lines shall use good faith efforts to place the Lines within ten (10) feet from the property lines of any Parcel.

(ii) Any Owner of a Parcel installing and/or connecting to a Utility Line on the Parcel of another Owner pursuant hereto shall (i) provide at least forty-five (45) days prior written notice to the Owner of the Parcel on which such Utility Line is to be located of its intention to do such work, (ii) pay all costs and expenses with respect to such work, (iii) cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed lien free using first-class materials and in a good and workman like manner as quickly as possible and in a manner so as to minimize interference with the use of the Parcels affected and the conduct or operation of the business of the Owner whose Parcel is affected, (iv) shall design and construct such

facilities to the standards required for same to be dedicated to the applicable governmental authority or public utility, (v) not increase the cost of the utility services to the other parties served by such Utility Line and shall not interrupt, diminish, or otherwise interfere with the utility services to the other parties served by such Utility Line (except during periods other than during the normal business operating hours of such other parties after notice is given to such other parties and during such periods as otherwise approved by such other parties), (vi) comply in all respects with all applicable governmental laws, regulations, and requirements, (vii) promptly, at its sole cost and expense, clean the area (as needed) and restore the affected portion of the Property and facilities therein (including, without limitation, any disturbed landscaping improvements and irrigation facilities) to a condition equal to or better than the condition which existed prior to the commencement of such work, (viii) prior to commencing construction or installation of any such utilities, provide evidence of liability and builders risk insurance in an amount reasonably adequate given the work to be performed, and (ix) indemnify and hold the Owner of the Parcel on which such Utility Line is installed and any occupants thereof harmless from and against any claims, actions, demands, damages, losses, injuries or expenses, including, without limitation, reasonable attorneys' fees, which may result from any such work.

(iii) The party tapping into any Utility Line shall be responsible for all connection charges, meter fees and charges, user fees, tap-on fees, impact fees, acreage fees, and similar fees and charges imposed as a result of the connection of any Utility Line to the improvements constructed upon its Parcel.

(iv) Declarant and/or the Owner of any Parcel on which such Utility Lines are located shall have the right to dedicate and convey to appropriate governmental entities and public utility companies any Utility Lines installed pursuant to this section, provided any such dedication or conveyance shall not adversely affect the use and enjoyment of such Utility Lines by the Owners of the Parcels, and to grant any other easements or licenses to such appropriate governmental entities and public utility companies as are reasonably necessary or desirable for obtaining adequate utility service for the benefit of the Property, provided such easements and licenses shall not unreasonably interfere with the use and enjoyment of the encumbered Parcels and are located outside of the areas on the Parcels where a Building either is located or is expected to be located in the future. The Owners of the Parcels shall cooperate with and assist Declarant, the Declarant and/or any such other Owner and shall join in and consent to such dedications and conveyances if requested by Declarant, the Declarant or any such other Owner, at no cost, however, to such cooperating Owners.

(d) Entrance Easements. There is reserved for the benefit of the Declarant and the Association perpetual easements over, across and upon the entrances to the Property from the public rights of way for purposes of installing, constructing, reconstructing, operating, maintaining, repairing, replacing and removing (i) signage (including associated lighting) for the

purpose of identifying and promoting Tiburon Parc, (ii) "statement pieces" associated with Tiburon Parc, (iii) entrance walls, fences, and other similar facilities, (iv) landscaping features and plantings and irrigating facilities, and (v) underground utility lines and facilities necessary or appropriate to service the foregoing improvements installed and maintained from time to time within any entrance. All expenditures incurred by the Association in maintaining, repairing or replacing the foregoing improvements within the Entrances shall be assessed hereunder by the Declarant as part of Common Expenses.

(e) Stormwater Easements. An easement is hereby granted to the Owners and reserved to Declarant and the Association for the construction, maintenance, repair and replacement of any and all stormwater facilities constructed upon the Property in accordance with the Stormwater Permit as may be amended and supplemented which easement shall run with the land. That said easement shall also be for the benefit of any governmental agencies including, but not limited to the N.C. Division of Water Quality and the City of Wilmington, North Carolina to maintain said stormwater facilities.

4.3 Rights of Third Parties. The easements hereby established are private easements, and nothing herein shall be construed to create easements in favor of the general public. However, easements created under this Declaration in favor of an Owner and appurtenant to such Owner's Parcel may be exercised, used, and enjoyed by such Owners' agents, employees, contractors, tenants, invitees, licensees, and business visitors; provided, however, that such rights shall be subject to the terms of this Declaration.

4.4 Maintenance by Owners; Insurance. Each Owner shall maintain its Parcel(s) and all landscaping and improvements located thereupon in a first-class manner in compliance with the Architectural Guidelines (or as otherwise approved by Declarant) and in a manner which is consistent with the overall theme of Tiburon Parc.

4.5 Rules and Regulations. The Board shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Facilities. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board, shall be recorded in its minutes, which shall be maintained at the office of the person or entity managing the Common Facilities on behalf of the Association and available to the Owners for inspection during normal business hours, or at the designated office of the Association, if there is no property manager. No rule adopted shall materially interfere with rights granted or reserved to Declarant herein.

## **ARTICLE V**

### **Rights Reserved by Declarant**

5.1 Rights Reserved by Declarant. Notwithstanding anything contained herein to the contrary, and in addition to any rights otherwise reserved by Declarant in this Declaration, Declarant hereby reserves for itself, its successors and assigns, the following rights and privileges:

- A To annex into the Property any Additional Property as set forth herein.
- B To enter into contracts on behalf of the Association and to assign to the Association (which shall accept such assignment and assume all obligations thereunder) any rights and obligations it holds pursuant to any contracts, including but not limited to those for installation, maintenance or leasing of any utilities and services for the Property, including but by no means limited to contracts and/or leases relating to any lighting located on the Property.
- C To make use of any and all easements and rights of way (including access and utility easements) provided to Declarant, Owners or the Association hereunder and to use said easements to serve real property which has not been annexed to Tiburon Parc
- D To subject any portion of the Property to additional covenants and easements, including an additional association(s) necessary to operate such portion of the Property, provided that they do not unreasonably, materially and negatively interfere with the use and enjoyment of a Parcel of which Declarant is not the Owner.
- E During any period in which it maintains the right to annex Additional Property, and with the exception of Parcels A1-A, A1-B, A2, A3 and B (each as set forth on the Map), to remove any portion of the Property which has not yet been improved from the coverage of this Declaration.
- F To construct upon the Common Facilities such improvements and to utilize the same for such activities as it may, in its sole discretion, deem required or convenient for the sale or leasing of any Parcel, portion of the Property or Additional Property.
- G To utilize the name Tiburon Parc for marketing, promotional purposes and any other purpose deemed appropriate by Declarant.
- H To, along with its employees, agents, contractors and other designees, access and use the Common Facilities and to have reasonable access over any Parcels within the Property as it deems appropriate for the maintenance and development of any real property owned by Declarant (whether a part of the Property, Additional Property or otherwise), provided such access does not unreasonably, materially and negatively interfere with the use and enjoyment of a Parcel of which Declarant is not the Owner.
- I To approve or veto any rules and regulations, additional covenants or provisions proposed by the Association.
- J To assign all, or any part of, the rights and privileges maintained hereunder as Declarant, to one or more assignees in its sole and absolute discretion. Upon such assignment, Declarant shall have no liability of any nature for any matters occurring after the date of recordation of the assignment in the Registry.
- K To utilize and access any stormwater pond or facility located within the Property for purposes of irrigation upon any real property (whether part of the Property or otherwise) owned by Declarant