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NEW HANOVER COUNTY,

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REGISTER OF DEEDS

BY: CAROL HUGHLEY

DEPUTY

Submitted electronically by "Hutchens Law Firm"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the New Hanover County Register of Deeds.

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS
FOR WINDS HARBOR AT MIDDLE SOUND**

THIS DECLARATION, made the 7th day of August, 2015 , by SOUTH LUMINA, LLC, a North Carolina limited liability, hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated:

WITNESSETH

WHEREAS, Declarant is the owner of that certain real property in New Hanover County, North Carolina, known as WINDS HARBOR AT MIDDLE SOUND, which is shown on a plat recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 60, Page 119-120, to which reference is made for a more particular description (the "Property"); and

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act in Chapter 47F of the North Carolina General Statutes (the "Act") and also subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the land and be binding on and shall inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

**ARTICLE I
DEFINITIONS**

Section 1. Additional Property shall mean and refer to any lands which are now owned or may be hereafter acquired or developed by Declarant, in addition to the above described Property, and annexed to and made a part of the Development (as hereinafter defined) pursuant to Article VIII hereof.

Section 2. Architectural Control Committee shall mean the committee composed of three (3) or more representatives appointed by the Board to approve alterations and improvements as set forth herein.

Section 3. Association shall mean and refer to WINDS HARBOR AT MIDDLE SOUND HOMEOWNERS' ASSOCIATION, a North Carolina nonprofit corporation, its successors and assigns, the owners association organized for the purposes set forth in Article V hereof.

Section 4. Assessments shall mean the Annual, Special, Insurance, Ad Valorem and Working Capital Assessments defined in Article VI hereof.

Section 5. Board shall mean the Board of Directors of the Association.

Section 6. Builder shall mean McKee Homes LLC or any other persons, firms, or entities to whom or which Declarant conveys one or more Lots within the Property for the purpose of constructing a dwelling thereon.

Section 7. Common Area(s) shall mean and refer to all real property within the Development owned by the Developer or the Association for the common use and enjoyment of the

Owners, including any facilities located on such real property, specifically including, but not limited to, the private streets and rights of way located on such property, common landscaping areas, stormwater retention ponds and common park areas.

Section 8. Common Expenses shall mean expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

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 SOUTH LUMINA, LLC, and any successor or assign designated as Declarant in a document recorded with the New Hanover County Register of Deeds executed by the immediately preceding Declarant.

Section 10. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

Section 11. Development shall mean the Property plus any Additional Property.

Section 12. Limited Common Area(s) shall mean areas and facilities within any Lot which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration. There shall be no Limited Common Area on any Lot unless the same is specifically shown on the Subdivision Map for WINDS HARBOR AT MIDDLE SOUND.

Section 13. Lot(s) shall mean and refer to any numbered lot within the Development.

Section 14. Owner shall mean and refer to the record owner, whether one or more persons or entities, of 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. Property shall mean the Property as defined in the preamble to this Declaration.

Section 16. Member(s) shall mean and refer to every person or entity who has a Membership in the Association.

Section 17. Membership shall mean and refer to the rights, privileges, benefits, duties and obligations, which shall inure to the benefit of and burden each Member of the Association.

ARTICLE II PROPERTY RIGHTS AND EASEMENTS

Section 1. Owners' Property Rights and Easement of Enjoyment in the Common Area. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Area, if any, 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 and regulations governing use of the Common Areas by the Owners, and the Owner's guests or invitees.

(b) The Association, acting through the Board of Directors, shall have the right to grant easements, rights of way, licenses and similar interests over any part of the Common Areas for any lawful

purpose which it determines, in its own discretion, to be consistent with the interest of the Association provided it is approved by eighty percent (80%) of the voting membership of the lot owners.

- (c) Subject to other provisions of this Declaration applicable to usage of the Common Areas.

Section 2. Easements in Favor of Declarant and the Association. The following easements are reserved to Declarant and the Association, their successors and assigns:

(a) Easements as necessary in the lands constituting the Common Area and that portion of each Lot not occupied by a structure for the installation and maintenance of utilities and drainage facilities including swales and drainage ditches. Specifically, and not by way of limitation, there shall be a ten foot (10') non-municipal utility easement along and inside the front Lot lines of all Lots. Declarant and the Association shall have 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 the 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 and to mow any grass; 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 problems. Provided fences along the rear lot line will be permitted provided the fence is located within 18 inches of the rear lot lines and does not impede or restrict any water flow through a drainage ditch or swale.

(b) Easements over all private streets, if any, access easements, and Common Areas within the Development as necessary to provide access, ingress and egress between different parts of the Property and to any Additional Property.

(c) Some Lots may be subjected to non-disturbance easements or similar easements for conservation or wet lands buffering purposes. Further, some Lots may be subjected to landscape easements for the purpose of maintaining specified plantings, levels of maintenance, signs, walls, fences, and other decorative structures. The operation of such easements shall be governed by provisions in this Declaration, other recorded instruments and by policies duly enacted by the Association and pursuant to its authority set forth in this Declaration.

Section 3. Other Easements. The following easements are granted by Declarant to others:

(a) An easement is hereby granted 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 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, and such right of entry shall be immediate.

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 Property or any Additional Property, 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.

Section 5. Prohibition Of Permanent Structures Within Easements. No permanent structure except permitted fences allowed under Article II in Section 2(a) may be built within those easements shown on any recorded plat of the Property, or described in the Declaration, unless constructed by Declarant. Owners may not plant trees, shrubs, flowers and grass in those easements except with written approval of the Declarant or the Architectural Control Committee. Owners shall be responsible for the cost of removal, repair and/or replacement of any non-permanent structures which the Association deems necessary to remove to allow for maintenance, servicing, repair or replacement within those easements. Owners shall also be responsible for the cost of the removal of any permanent structure constructed within those easements, if removal is required by the Association. Any costs incurred by the Association for removal, repair and/or replacement of structures or vegetation in the easement areas shall be assessed to the Owner of the related Lot.

ARTICLE III RIGHTS OF DEVELOPER

The Declarant shall have, and there is hereby reserved to the Declarant, the following rights, powers and privileges which shall be in addition to any other rights, powers and privileges reserved to the Declarant herein:

Section 1. Development Activities. For as long as Declarant or a Builder owns one or more Lots within the Development, which Lot or Lots are being actively marketed for sale, Declarant or the Builder, as applicable, shall have the right to conduct development, construction, marketing and customer service operations within the Development in a customary and reasonable fashion. This includes the right to maintain construction and sales offices and model homes on Lots which Declarant or Builder owns and to park vehicles thereon, the right of access over the streets and rights of way within the Development by construction and supply vehicles and the right to store materials and equipment related to such land development and construction on Lots owned by Declarant or a Builder, and the right to make and reproduce photographs of the Common Area and of private homes in marketing, advertising, and public relations efforts. However, it shall be incumbent upon those exercising these reserved rights to conduct their activities in ways respectful of the comfort and safety of the occupants of Lots in the Development.

Section 2. The Architectural Control Committee. All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant or a Builder shall own any Lot within the Property or any Additional Property, and thereafter by the Architectural Control Committee appointed by the Board. If the Board has not appointed the members of the Architectural Control Committee, the Board shall act as the Architectural Control Committee.

Section 3. Plan of Development. The right to change, alter or redesignate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Development

including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract; to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access or are needed for use as public or private roads or access areas, whether serving the Development or other property or are needed for Common Areas or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Area.

Section 4. Developer Control of the Homeowners' Association. Until the Declarant or a Builder owns less than four lots in the Property or until December 31, 2020, whichever occurs first (the "Developer Control Period"), the Declarant shall retain the sole right to appoint or remove any officer or member of the Board of Directors of the Association. Provided the Declarant can surrender this right and turn over control to the Association at any time after the sale of the first Lot in the sole discretion of the Developer.

Section 5. Amendment of Declaration by Declarant or Board without Membership Approval. This Declaration may be amended or supplemented without Member approval by the Declarant, or the Board of the Association, as the case may be, as follows:

- (a) in any respect, prior to the sale of the first Lot;
- (b) to the extent this Declaration applies to Additional Property;
- (c) to correct any obvious error or inconsistency in drafting, typing or reproduction;
- (d) to qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status;
- (e) to include any platting change as permitted herein;
- (f) to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and Improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and Improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. Notwithstanding anything else herein to the contrary, only the Declarant shall be entitled to amend this Declaration pursuant to this Section, during the Developer Control Period.

Section 6. Ownership of Common Areas. No later than the end of the Developer Control Period, Declarant shall convey, and the Association shall accept, fee simple title to all Common Areas within the Property, except for any Common Areas Declarant conveys to a public authority or other utility provider for the purpose of providing utility services to the Property.

Section 7. Right to Transfer Declarant Rights. Any or all of Declarant's rights or obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to other persons. No such transfer or assignment shall be effective unless evidence by a recorded document. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety. In such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

Section 8. Assignment by Declarant. Any or all of the rights, powers, easements, functions and obligations reserved or given to the Declarant in this Declaration may be assigned to the Association, and the Association shall accept and assume responsibility for any or all such rights, powers, easements, functions and obligations when requested by the Declarant. Any such assignment or transfer shall be made by a recorded document, executed by both the Declarant and the Association, and the Association shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Declarant. The Declarant, but not the Association, shall thereupon be released from such obligations and duties.

ARTICLE IV ARCHITECTURAL STANDARDS

Section 1. General.

(a) No improvements shall be made, placed, constructed or installed on any Lot and no exterior modifications including, but not limited to, exterior painting or changes in color schemes, changes in exterior materials or design, to existing Improvements shall be undertaken without prior approval of the Declarant so long as the Declarant or a Builder owns any Property or Additional Property and thereafter without the approval of the Architectural Control Committee in accordance with this Article, except that the Declarant's activities shall be exempt from this requirement so long as it is engaged in development or construction in the Development. All improvements constructed by a Builder shall be subject to the approval of the Architectural Control Committee, not to be unreasonably withheld. The Architectural Control Committee shall respond to a Builder's request for approval within two (2) business days after receipt of a request.

(b) All Improvements to Lots in the Development shall conform to the Declaration and the rules promulgated by the Architectural Control Committee.

(c) The Declarant during the Developer Control Period and the Architectural Control Committee thereafter shall have jurisdiction over all original construction or installation of homes or Improvements on any Lot and later changes or additions after initial approval thereof together with any modifications, additions or alterations subsequently to be constructed or installed on any Lot or made to any Improvements initially approved, including any exterior change or alteration or change of color.

(d) The Declarant during the Developer Control Period and the Architectural Control Committee thereafter shall have the right to disapprove any plans, specifications and details submitted to it in the event the same are not in accordance with any of the provisions of this Declaration or any provision of the Architectural Control Committee which may be in effect at the time, if any maintenance obligations of the Association would be adversely impacted or if the aesthetics of the Development would be negatively impacted. Disapproval of plans may be based upon any grounds which the Declarant or the Architectural Control Committee, in their sole and uncontrolled discretion, shall deem sufficient; however, approval of plans shall not be unreasonably withheld.

Owners shall have the right to appeal disapproval of plans by the Architectural Control Committee (but not by Declarant). The decision by the Association on such appeal, upon majority vote of the members of its Board of Directors, shall be final and not subject to appeal or review.

(e) The Declarant during the Developer Control Period or the Architectural Control Committee thereafter shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans.

ARTICLE V
HOMEOWNERS' ASSOCIATION

Section 1. Formation of Association. WINDS HARBOR AT MIDDLE SOUND HOMEOWNERS' 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 Common Areas and to provide any other services provided in this Declaration or agreed to by a majority of the Members.

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. Voting Rights. During the Developer Control Period, the Declarant shall be entitled to one vote for each Lot owned by the Declarant and one vote for each Lot owned by another person. After the Developer Control Period, the Declarant shall be entitled to one vote for each Lot owned by the Declarant. Each Member shall be entitled to one vote in the affairs of the Association 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 among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by more than one party.

Section 4. Powers, Privileges, Rights and Obligations. In addition to the rights and powers granted to the Association in its charter and to the rights and powers with regard to assessments set forth in Article VI of this Declaration, the Association shall have and possess and shall perform and exercise the following powers, privileges, rights and duties, subject, however, to the rights of the Declarant contained in Article VI hereof:

(a) The Association shall be entitled to make and amend the bylaws and the rules and regulations of the Association;

(b) The Association shall be responsible for the operation, upkeep, maintenance, protection, preservation, repairs, reconstruction and/or replacement of (i) the Common Areas and improvements and additions thereto, including, but not limited to, private streets and rights of way, and (ii) the Limited Common Areas, if any; (iii) any utility easements or drainage easements used for the benefit of more than one lot owner; provided, however, that in the event that any of the above activities are necessitated by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, or is caused by fire, wind, rain, blowing water, lightening, smoke or other hazard or casualty, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors of the Association, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may be added to the annual assessment levied against said Owner's Lot;

(c) The Association may engage in such other activities as authorized by a majority of the Members.

(d) After notice and opportunity to be heard, the Association may impose reasonable fines and/or suspend the voting rights and privileges or service provided by the Association (except access to lots) for reasonable periods for violations of the bylaws and rules and regulations of the Association.

(e) The Association may mortgage 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.

(f) The Board of Directors on behalf of the Association, as a common expense, may at all times keep the Common Areas and other property of the Association, if any, insured against loss or damage by fire or other hazards and other such risks, including, but not limited to directors' liability and 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. Such insurance shall be obtained without prejudice to the right of each Member to insure his personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees.

(g) All other powers which are allocated to the owners association under NCGS 47F-3-102 are hereby incorporated by reference as if fully set out herein and in the event of any conflict between the provisions in this Declaration and those set forth in NCGS 47F-3-102 the provisions of NCGS 47FF-3-102 will prevail.

Section 5. Government Permits. Obligations under all government permits for the Development shall be the obligation of the Association on the following terms and conditions:

(a) General. After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Development, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater, erosion control and utility agreements, easements and permits for the Planned 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. During the Declarant Control Period the Declarant shall be authorized on behalf of the Association to execute any documents required or requested by appropriate governmental agencies in furtherance of the covenant.

(b) Stormwater Permit(s). Any stormwater retention ponds and related facilities for the Development which have or are to be constructed by or on behalf of the Declarant constitute Common Areas and the Association, at its sole cost and expense, is responsible for the operation and maintenance of such facilities. The Association and each of its Members agree that at anytime after (i) all work required under any stormwater permits for the Development have been completed, and (ii) the Developer is not prohibited under the NC Department of Environment and Natural Resources (DENR) regulations from transferring the stormwater permit(s) for the Development to the Association, the Association's officers without any vote or approval of Lot Owners, and within 10 days after being requested to do so, will sign all documents required by DENR for the stormwater permit(s) to be transferred to the Association; provided, however, that at the time the Developer requests that the Association accept

transfer of the stormwater permit(s), the Developer has delivered to the Association a certificate from an engineer licensed in the State of North Carolina, dated no more than 45 days before the date of the request, that all stormwater retention ponds, swales and related facilities are constructed in accordance with the plans and specifications therefore. The Association shall indemnify and hold harmless the Developer from any obligations and costs under any stormwater permits or for operation and maintenance of the stormwater retention ponds and related facilities, except during the Declarant Control Period, the Builder (or if no Builder, the Developer) shall be responsible for repairing any damage to such facilities caused by development activities. The Developer shall not be responsible for damages to stormwater retention ponds and related facilities caused by construction of residences or other activities by Owners, their agents and contractors, upon their Lots. If the Association fails to sign the documents required by this paragraph, the Developer shall be entitled to specific performance in the courts of North Carolina requiring that the appropriate Association officers sign all documents necessary for the stormwater permit(s) to be transferred to the Association. Failure of the officers to sign as provided herein shall not relieve the Association of its obligations under this section. In addition, each Owner for the Owner, the Owner's heirs, successors and assigns, by acceptance of a deed from the Declarant, for a Lot hereby irrevocably appoints Alan B. Gregory as the Owner's attorney in fact, on behalf of the Owner and Association, to sign all documents required by DENR necessary for the stormwater permit(s) to be transferred to the Association; provided, however, that the Declarant shall first have requested as provided above that an officer of the Association execute such documents and any officer has failed to do so within the time provided.

ARTICLE VI
COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed for the Owner's Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

- (a) Annual Assessments;
- (b) Special Assessments for Capital Improvements;
- (c) Insurance Assessments;
- (d) Ad Valorem Tax Assessments; and
- (e) Working Capital Assessments.

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.

Provided, however, the Declarant shall not be required to pay any working capital or annual assessments on any lot owned by it prior to its initial sale to another owner or December 31, 2020, whichever occurs first. Provided, further, any lots sold to a Builder as a vacant lot will be exempt from annual assessments or working capital assessments for a period of one year or until sold to a third party

whichever occurs first. Notwithstanding the foregoing, Builder shall pay the Association a maintenance fee equal to \$30 per month for each lot owned by Builder.

Section 2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and Additional Property and for the improvement and maintenance of the Common Areas and any Limited Common Areas. The funds arising from said assessments or charges, may be used for any or all of the following purposes: operations, maintenance and improvement of the Common Areas, and any Limited Common Areas, including payment of utilities, enforcing this Declaration, paying taxes, insurance premiums, legal and accounting fees and governmental charges, establishing working capital, and in addition, doing any other things necessary or desirable in the opinion of the Association to maintain and to keep the Common Areas and Limited Common Areas in good operating order, condition and repair.

Section 3. Annual Assessments. The Board of Directors shall adopt an annual budget at least 60 days before the beginning of each fiscal year. Within 30 days after adoption of the proposed budget for the Development, the Board of Directors shall provide to all of the Owners a summary of the budget. The budget shall be effective unless rejected by the Members as set out in the N.C. Planned Community Act. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first home to an Owner other than a Builder. The due date for payment shall be established by the Board of Directors. The Board of Directors 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.

Section 4. Special Assessments for Capital Improvements. 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 purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas and any Limited Common Areas, including but not limited to all utility rights of way, drainage easements or any other easements for the benefit of the lot owners or the association and fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Insurance Assessment. All premiums on insurance policies purchased by the Board of Directors or its designee pursuant to Article V and any deductibles payable by the Association upon loss shall be a common expense, and the Association may in any assessment year levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments provided for under Section 3 above, which shall be in an amount sufficient to pay the annual 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 in any assessment year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments provided for under Section 3 above, which shall be in an amount sufficient to pay such ad valorem taxes in such year 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 to the Association as working capital an amount equal to two

months' assessments. Provided, however, that builders shall not be required to pay any working capital until the lot is sold to a third party or the property is occupied as a residence or one year after sale to a builder, whichever occurs first. Such funds shall be used solely for initial operating and capital expenses of the Association such as prepaid insurance, supplies, and furnishings, fixtures and equipment for the Common Areas, etc. Amounts paid into the working capital fund are not to be considered as advance payment of the Annual or any other assessments. Any working capital funds remaining after the last Lot has been sold by Declarant shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

Section 8. Notice and Quorum For Any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 of this Article shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all votes of each class of Membership shall constitute a quorum. The required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 9. Uniform Rate of Assessment. The Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 10. Commencement of Assessments. Except as otherwise provided in Article VI, Section 1, Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

Section 11. 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 or eighteen percent (18%) per annum, whichever is lower. 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 in the same manner as a deed of trust under power of sale as allowed under North Carolina Law. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area 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.

Section 12. Subordination Of The Lien To Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot 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 Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 13. 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 the county in which the Lot is located. 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-3-107A 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 Article 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 VII
USE RESTRICTIONS AND ARCHITECTURAL CONTROL

Section 1. Building and Site Improvement. No dwelling, wall or other structure, including fences, shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Architectural Control Committee, as the case may be, for its records. The Architectural Control Committee shall not be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

Section 2. Approval of Plans.

(a) No house plans will be approved unless the proposed house shall have a minimum of 2,300 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

(b) Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines shall be established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any lot shall be controlled by and must be approved absolutely by the Architectural Control Committee.

(c) The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency or natural calamities.

(d) No structure shall be erected, altered, placed or permitted to remain on any Lot, except one single family dwelling not to exceed the height permitted by local zoning ordinances. No garage apartments are allowed.

(e) All service utilities, including, but not limited to, HVAC, fuel tanks, trash receptacles, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Declarant, the Board or the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes shall be uniform in design. Design for mail and newspaper boxes shall be furnished by Declarant. Fences shall be permitted on any Lot; provided, however, that the design and materials of any fence are approved by the Declarant, the Board, or the Architectural Control Committee, as the case may be, and provided further, that no fence shall be over six feet in height or forward of the rear corner of the house or dwelling erected on the Lot; and provided further, that no chain link or vinyl fences are permitted on any Lot. Clotheslines are not permitted on any Lot.

(f) Off street parking for not less than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot which parking areas and the driveways thereto shall be constructed of concrete, brick, asphalt, or turf stone, or any other material approved by Declarant, the Board or Architectural Control Committee.

Section 3. Land Use and Building Type. No Lot shall be used for any purpose except for residential purposes. All numbered Lots are restricted for construction of single family dwellings only. Different and amended land use restrictions and architectural control guidelines may be established for Additional Property added to the Development by Declarant; provided, however, that no Lot may be used for other than single family dwellings except pursuant to approval of the Members in accordance with this Declaration.

Section 4. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on the Owner's Lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

Section 5. Lot Maintenance. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. In the event the Owner fails to do so, then, after thirty days notice from the Architectural Control Committee, the Association or its designee may enter upon the Lot and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass, and in such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Lot, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens.

Section 6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Association or its designee; provided, however, that this shall not prevent the Declarant, its designees or assigns from maintaining a construction trailer or office on any part of the Development until the construction of dwellings on all Lots is completed. Provided that any temporary structure must comply with all governmental laws regulations whether state or local pertaining to said structures. However, nothing herein shall be meant to prevent the construction (with Developer's consent) of storage and utility buildings. It is the express intention of the Developer that no trailer or mobile home (including a double-wide mobile home) shall be allowed on the Property. Nothing herein shall be construed to prevent the use, upon Developer's approval, as set forth above, of a prefabricated or modular home as long as same is consistent with the general development and the standards of quality of said subdivision and is not materially detrimental to the value of the subdivided lots in said subdivision.

Section 7. Vehicles/Boats. No watercraft, boat, motor boat, camper, school bus, trailer, motor or mobile homes, tractor/trailer, (including vehicles rated to handle over one ton) or similar type vehicle, shall be permitted to remain on any Lot or on any street at any time, without the written consent of the Association or its designee. All operational vehicles of any lot owner or lot occupant shall be parked on driveways or other parking areas for the vehicles located on the lot to keep streets open for emergencies and other vehicular traffic. Provided the Association can condition consent on keeping vehicles and boats in an area which is screened or not visible from the street. No inoperable vehicle or vehicle without current registration and insurance, will be permitted on any Lot, street or Common Area. The Association shall have the right to have all such vehicles towed away at the owner's expense. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street. Due to noise concerns, safety, liability and property damage reasons, no motorized, gas or electric vehicles, including dirt bikes and all terrain vehicles (ATV's) are permitted on the Common Area/Open Space or grounds of the properties or on lots yet to be built on. Only maintenance equipment needed to maintain the grounds is exempt from this rule.

Section 8. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and do not exceed three (3) pets in one household, and provided further that they are not allowed to run free, are at all times kept properly leashed or under the rule of their owner and do not become a nuisance to the neighborhood. No aggressive canine species such as pit bulls, rottweilers or chows are permitted.

Section 9. Statuary, Television Satellite Dishes and Antennas. No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Board of Directors of the Association or its Architectural Control Committee. Provided, however, an owner may install a satellite dish not exceeding 24 inches without further approval provided said satellite dish is installed in the rear portion of the yard or the rear portion of the dwelling.

Section 10. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be clear, white or non-frost lights or bulbs.

Section 11. Landscaping. Prior to initial occupancy of the residence constructed on each Lot, all yard area of such Lot must be sodded and an irrigation system approved by the Declarant or Architectural Control Committee installed; provided, however, that any areas to be used as planting beds for trees and shrubs need not be sodded so long as such beds are planted prior to initial occupancy of the Lot. The Declarant, the Board or the Architectural Control Committee, as the case may be, may on account of adverse weather conditions or for other good cause shown permit such landscaping to be done within a period of six months after initial occupancy of the residence.

Section 12. Signs. Except for lots upon which are located model homes constructed by builders approved by the Declarant, no signs of any type or description shall be placed on or displayed on any residential lot except signs "For Rent" or "For Sale," which signs shall not exceed six square feet in size. Model homes, including unrestricted signage, may remain in use as models as long as there are lots available for sale in said subdivision. Notwithstanding any language to the contrary, builders may erect in common areas temporary directional signs or signage not larger than ten square feet in size.

Section 13. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Areas except at the direction or with the express written consent of the Association.

Section 14. Subdividing. Subject to the provisions of Article III hereof, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the Developer Control Period and thereafter by the Board of Directors of the Association.

ARTICLE VIII ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Assent of Members. Declarant may annex to and make a part of the Development any other real property which Declarant now owns or which Declarant may hereafter acquire or develop (the "Additional Property"), as follows:

(a) Except as provided in subparagraph B, below, annexation of Additional Property to the Development shall require the assent of a majority of the Members who are voting in person or by proxy at a meeting called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting.

(b) Additional Property may be annexed to the Development without the assent of the Members so long as the Additional Property can be used only for residential purposes and related facilities usually appurtenant to residential developments, recreational facilities and Common Areas.

Section 2. Recording. Annexation of Additional Property shall occur upon the recording, in the Office of the Register of Deeds for the county where the Additional Property is located, of (i) a subdivision plat for the Additional Property and (ii) a supplemental declaration stating that the Additional Property is made a part of the Development and is subject to this Declaration. Upon recording of such plat and supplemental declaration, the Additional Property shall become fully subject to the terms of this Declaration, except to the extent that pursuant to Article V, Section 4 hereof, the Declarant amends the applicability of this Declaration to the Additional Property.