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DECLARATION FOR BERMUDA BAY
A PLANNED DEVELOPMENT
LOCATED IN KILL DEVIL HILLS, N.C.

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DECLARATION FOR BERMUDA BAY

THIS DECLARATION, made and entered into this 25th day of August, 2005 by Bermuda Bay, L.L.C, a North Carolina limited liability company (hereinafter "Declarant"), party of the first part; PROSPECTIVE PURCHASERS of Lots within the planned development known as "BERMUDA BAY," parties of the second part; TRSTE, INC., Trustee as hereinafter stated; and, Wachovia Bank, National Association (hereinafter "Lender");

WITNESSETH:

WHEREAS, Declarant owns in fee simple the real estate designated as Submitted Property in the description attached as Exhibit A hereto, and has elected to subject that real estate to the provisions of Chapter 47F of the General Statutes of North Carolina and to certain covenants, restrictions, reservations, easements, servitudes, liens and charges, all of which are more particularly hereinafter set forth; and,

WHEREAS, Declarant also owns in fee simple the real estate designated as Additional Property in the description attached as Exhibit B hereto, as the same may be amended by the Declarant from time to time, and may hereafter elect to subject all or any portion of that Additional Property, pursuant to Section 4.1 hereof, to the provisions of this Declaration and the amendments thereto; and,

WHEREAS, Declarant deems it desirable and in the best interests of all the prospective purchasers and owners of the real estate subject to this Declaration to protect the value and the desirability of such real estate by providing for the development of such real estate in accordance with a common plan and the maintenance of certain shared facilities; and,

WHEREAS, to provide a means for meeting the purposes and intents set forth herein, Declarant will create Bermuda Bay Owners Association, a nonprofit corporation incorporated under Chapter 55A of the General Statutes of North Carolina (Nonprofit Corporation Act); and,

WHEREAS, Declarant, its successors and assigns, may also cause other owners associations or condominium unit owners associations to be created or incorporated as separate and additional entities to govern certain matters pertaining exclusively to certain portions of

Bermuda Bay, which may be utilized for residential purposes and which associations may be subordinate to or independent from Bermuda Bay Owners Association.

NOW, THEREFORE, Declarant hereby covenants and declares, on behalf of itself and its successors and assigns, that the real estate designated as Submitted Property in Exhibit A hereto shall, from the date this Declaration is recorded in the office of the Register of Deeds of Dare County, North Carolina, be held, conveyed, acquired and encumbered subject to the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all prospective purchasers and parties who may acquire any right, title, estate or interest in or to any of such real estate or who may acquire any right of occupancy or entrance upon any portion thereof, all subject to the right of Declarant or the Association to amend this Declaration according to its terms to add all or any portion of the Additional Property to be subject to this Declaration.

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. Definitions. Terms used throughout this Declaration shall have the meanings specified for such terms below:

1. "Act" means Chapter 47F of the General Statutes of North Carolina identified as the Planned Community Act.

2. "Additional Property" means the real property so designated on Exhibit B attached hereto and such real property as may be designated as Additional Property in amendments to Exhibit B made by the Declarant from time to time, which the Declarant may submit to this Declaration and to the jurisdiction of the Association pursuant to Section 4.1 hereof, or any real estate that the Association may submit to the Declaration and assume jurisdiction over pursuant to Section 4.2. Additional Property may include and be designated as one or more parcels, Lots and Future Development.

3. "Articles of Incorporation" means the Articles of Incorporation for Bermuda Bay Owners Association filed in the office of the Secretary of State of North Carolina and in the office of the Register of Deeds of Dare County, North Carolina.

4. "Association" means Bermuda Bay Owners Association.



5. "Association Documents" means, collectively, the Articles of Incorporation, this Declaration, the Bylaws and the Rules and Regulations, all as may be amended and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

6. "Bylaws" means the Bylaws of the Association.

7. "Common Elements" means and includes (a) all of the real property, other than Lots, owned, leased or occupied by the Association or otherwise available to the Association for the benefit, use and enjoyment of the Owners; provided, however, that real estate within the Property is not Common Elements solely because it is burdened by an easement for utilities or dedicated for common use by Owners of Lots within the Property, (b) all personal property and equipment held and maintained by the Association for the joint use and enjoyment of all Owners, (c) all permits for the construction, maintenance and operation of the Common Elements assigned by the Declarant to the Association or otherwise procured or required by the Association, and (d) the Permit or Permits for the Stormwater Management Facilities assigned by Declarant to the Association or otherwise procured or required by the Association.

Portions of the Common Elements which the Association has the right to utilize and/or maintain for the benefit of the Owners may be located within a Lot. Any portion of the Property designated as Common Elements on any recorded plat of the Property shall be Common Elements available to the Association for the benefit, use and enjoyment of the Owners.

8. "Common Expenses" means all expenditures lawfully made and incurred on behalf of the Association, together with all funds lawfully assessed for the creation and maintenance of reserves pursuant to the provisions of the Association documents. Common Expenses may include all expenditures incurred by the Association for the costs of utilities provided to the separate Lots.

9. "Covenants Committee" means the committee that may be established by the Board pursuant to Article 9 to assure that the Property shall be owned, maintained, operated, enjoyed and used in a manner consistent with the purposes and intents of this Declaration.

10. "Declarant" means Bermuda Bay, L.L.C., a North Carolina limited liability company, its successors and assigns. Following the recordation of a document assigning to



another legal entity all of the rights reserved to Declarant under the Association Documents, the term "Declarant" shall mean that Assignee.

11. "Declaration" means this Declaration for Bermuda Bay and all amendments hereto including all amendments to the Declaration amending the provisions herein submitting Additional Property to the terms of this Declaration and the jurisdiction of the Association.

12. "Development Period" means the period ending on the earliest of:

a. The later of the tenth (10th) anniversary of the date of the recordation of this Declaration or the fifth (5th) anniversary of the date of recordation of the most recent amendment to the Declaration made by the Declarant adding Additional Property; provided, however, that once the Development Period has expired, the recordation of a subsequent amendment to the Declaration shall not reinstate the Development Period; and provided, further, that if Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond the Declarant's control which delays any desired development of the Property or Additional Property, then the aforesaid period shall be extended for the length of the delay or two (2) years, whichever is less, upon written notice to the Association of such extension;

b. Or the date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date.

13. "Development Plan" means the preliminary plan for development of the Property and Additional Property approved by the City of Kill Devil Hills (the "City") as amended from time to time, and such additional development as may be approved for any Additional Property.

14. "Executive Board" or "Board" means the executive and administrative entity established by the Articles of Incorporation and the Bylaws as the governing body of the Association.

15. "Limited Common Elements" means a portion of the Common Elements allocated by the Declaration or pursuant to the Act for the exclusive use of one or more but fewer than all of the Lots.

16. "Lot" means a separately numbered and/or lettered portion of the Property (but not including the real estate designated as Common Elements) on plats of the Property recorded in the office of the Register of Deeds of Dare County, North Carolina, and includes any



improvements now or hereafter appurtenant to that real estate. Lot shall also mean any condominium unit created in accordance with Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act).

Lots may be identified numerically, alphabetically or a combination of the two. For example, a Lot may be designated by the number "1," the letter "A" or the dual designation "1A," "1B," et seq. For purposes of the Association Documents, a Lot comes into existence on the date which a map or plat depicting said Lot or a declaration defining said Lot is recorded in the office of the Register of Deeds of Dare County, North Carolina.

17. "Majority Vote" means a simple majority (more than fifty percent (50%)) of the votes actually cast in person or by proxy at a duly held meeting of the members of the Association at which a quorum is present or at a duly held meeting of the Executive Board at which a quorum is present.

18. "Merchant Builder" means a Person acquiring title to two (2) or more Lots for the sole purpose of constructing permitted improvements thereon for resale to prospective Owners.

19. "Mortgagee" means an institutional lender (commercial or savings banks, saving and loan associations, trust companies, credit unions, industrial loan associations, insurance companies and any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such lenders) holding a first mortgage or first deed of trust ("Mortgage") encumbering a Lot.

20. "Owner" means one or more Persons who own a Lot within the Property in fee simple but does not mean any Person having an interest in a Lot solely by virtue of a contract of purchase or as security for an obligation. A Merchant Builder shall be an Owner.

21. "Owners Association" means an owners association or condominium unit owners association having jurisdiction over any planned community located within the Property, other than the Association, of which an Owner is a member.

22. "Permit" means the North Carolina Stormwater Management Permit, and any additional North Carolina Stormwater Management Permits, applicable to the Property, and any amendments, additions or replacements thereof.



23. "Person" means one or more natural persons, corporations, limited liability companies, partnerships, associations, trusts or other entities capable of holding title to real estate.

24. "Property" means, at any given time, the real estate then subject to this Declaration and includes all improvements and appurtenances thereto now or hereafter existing.

25. "Rules and Regulations" means the rules and regulations governing the use, occupancy, operation and physical appearance of the Property adopted from time to time by the Board.

26. "Section" means a portion of the Property designated as provided in Section 4.3 hereof.

27. "Stormwater Management Facilities" means all areas consisting of ditches, swales, retention ponds and other improvements upon the Common Elements within the Property constructed pursuant to and regulated by the Permit.

28. "Submitted Property" means the real estate designated as such in Exhibit A hereto and all real estate which is from time to time submitted to the Declaration.

29. "Upkeep" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

30. "Utilities Assessment" means the portion of the Common Expenses assessed separately by the Association for the costs of utilities provided to each Lot, which assessment shall be in proportion to the costs of utilities used by such Lot.

Any capitalized word not defined herein, unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall, as used herein, have the meaning as set forth in N.C. Gen. Stat. § 47F-1-103.

Section 1.2 Construction of Association Documents.

1. Captions. The captions are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of the Article, Section, Subsection or any other portion of this Declaration.

2. Severability. Each provision of the Association Documents is severable from every other provision and the validity of any one or more provisions shall not change the meaning of or otherwise affect any other provision.



Section 1.3 Bermuda Bay Owners Association. The Association is a nonprofit corporation organized and existing pursuant to Chapter 55A of the General Statutes of North Carolina charged with the duties and vested with the powers prescribed by law and set forth in the Act and the Association Documents.

1. Membership. Members of the Association shall at all times be, and be limited to, the Persons who are Owners of Lots. If more than one Person owns a Lot, then all of the Persons who own such Lot shall be members of the Association.

Membership in the Association is mandatory. Upon acquiring title to a Lot, each new Owner who is a member of the Association shall immediately give written notice to the Secretary of the Association stating the name and address of such new Owner and the Lot acquired by such new Owner. If the new Owner fails to give the Secretary such notice within thirty (30) days of acquiring title to such Lot, then the costs of locating each new Owner and reasonable recordkeeping costs incurred by the Association may be assessed against such Owner.

2. Classes of Members and Voting Rights. During the Development Period, the Association shall have two (2) classes of membership as follows:

a. Class A - Class A members shall be those Owners other than the Declarant. Each Class A above shall have one (1) vote for each Lot in which such member holds the interest required for membership; provided, however, that multiple Owners of a Lot as members of the Association collectively shall have one (1) vote per Lot owned on all matters upon which members of the Association vote.

b. Class B - The Class B member shall be the Declarant. The Class B member shall be entitled to two (2) votes for each Lot in which it holds the interest required for membership and, in addition, shall be entitled to appoint a majority of the members of the Executive Board of the Association during the Development Period as specified in the Bylaws. The Class B member shall have a veto, as set forth in the Association's Articles of Incorporation, over all actions of the Executive Board or any committee as may have been appointed by the Executive Board or established by the Bylaws or this Declaration. The Class B membership shall terminate and become converted to Class A membership upon the expiration of Development Period, at which time the Executive Board of the Association shall be elected solely by the Class A members and the veto of the Class B member, referred to in this subparagraph (b), shall terminate.



3. Board Authority to Act. Unless otherwise specifically provided in the Association Documents and the North Carolina Nonprofit Corporation Act, all rights, powers, easements, obligations and duties of the Association may be performed by the Executive Board on behalf of the Association.

4. Other Associations. Any portion of the Property may also be subjected to another declaration which grants rights with respect to a portion of the Property to an Owners Association, which declaration and/or Owners Association addresses concerns particular to that specific Section of the Property. Any obligations created under any such declaration shall be in addition to the obligations created by this Declaration.

ARTICLE 2

COMMON ELEMENTS

Section 2.1. Conveyance and Title. Declarant shall convey the Common Elements (other than Common Elements within a Lot) in each Section of the Property to the Association, or to an Owners Association as may be deemed appropriate by Declarant, in fee simple released from any encumbrance securing the repayment of monetary obligations incurred by the Declarant, but subject to all easements and other encumbrances appearing of the public records including those created by this Declaration. The conveyance of the Common Elements as contemplated herein in each Section of the Property shall occur prior to or simultaneously with the conveyance of the first Lot in that Section to an Owner.

The Common Elements other than that located within a Lot or within a Section of the Property shall be conveyed to the Association prior to the termination of the Development Period.

The Association shall accept title to any real estate or personal property offered to the Association by the Declarant.

Section 2.2. No Dedication. Nothing contained herein or in the other Association Documents shall be construed as a dedication to public use or as an assumption of responsibility for Upkeep of any Common Elements by any public or municipal agency, authority or utility, nor shall it be construed to prevent the Board of the Association from permitting public access to or use of any Common Elements.

Section 2.3. Transfer of Responsibility for Upkeep. Upon notice by Declarant to the Association of Declarant's intent to transfer ownership of any portion of the Common

Elements to the Association, a representative of the Association appointed by the Executive Board shall inspect such portion of the Common Elements to be conveyed and shall report its condition to the Executive Board within fifteen (15) days after notice from Declarant that such portion of the Common Elements is ready for inspection. If the Association fails to do so within said fifteen (15) day period, the Association waives its rights of inspection. When conveyed by the Declarant, the Common Elements and an improvements located thereon shall be substantially complete. If the Common Elements is not in such condition, the Association shall notify the Declarant in writing specifying the deficiencies whereupon on the Declarant shall have sixty (60) days to remedy the noted deficiencies. After such sixty (60) day period, the Association may perform on behalf of the Declarant work necessary to remedy the deficiencies and the Declarant shall promptly reimburse the Association for said reasonable costs incurred to remedy the deficiencies.

Section 2.4. Regulation of Common Elements. The Association shall have the right to regulate the use of the Common Elements pursuant to Section 8.3 hereof and to charge fees for the use thereof.

Section 2.5. Additional Improvements on Common Elements. After the initial improvements, if any, and conveyance of the Common Elements to the Association, the Declarant may, but is not obligated to, construct additional improvements on the Common Elements for the benefit of the Property pursuant to the easements in Section 3.1 hereof; provided, however, that such construction is subject to the review and approval of the Executive Board.

Section 2.6 Conveyance or Encumbrance of Common Elements.

1. Real Property and Improvements. Portions of the real property and the improvements located thereon that are Common Elements may be conveyed or subjected to a security interest by the Association if Persons entitled to cast at least sixty-five percent (65%) of the votes in the Association agree in writing to that action. Proceeds of the sale or financing of any real property and improvements constituting Common Elements shall be an asset of the Association.

Upon approval of any conveyance pursuant to this Section, the Executive Board shall have all powers necessary and appropriate to effect the conveyance or encumbrance free and clear of any interest of any Owner or the Association in and to the Common Element



conveyed or encumbered, including the power to execute deeds and any other instruments to complete the actions so approved.

2. Personal Property/Equipment. The Executive Board may convey or subject to a security interest by the Association any and all personal property and equipment constituting part of the Common Elements of the Association. Such action shall not require the approval or consent of any Member or Owner, and the proceeds of any such sale or financing shall be an asset of the Association.

ARTICLE 3
EASEMENTS

Section 3.1. Development Easements.

1. Easements Reserved to the Declarant.

a. Easement to Facilitate Development. The Declarant hereby reserves to itself and its designees a nonexclusive blanket easement over and through the Property and Common Elements for all purposes reasonably related to the development and completion of improvements on the Property and Common Elements, including without limitation: (i) temporary slope and construction easements; (ii) drainage, erosion control, and stormwater control and the installation of Stormwater Management Facilities (including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter the Declarant shall restore the affected area as near as practicable to its original condition); (iii) easements for the storage (in a sightly manner) of reasonable supplies of building materials and equipment necessary to complete the improvements; and (iv) easements for the construction, installation and Upkeep of improvements (e.g., landscaping, lights, signage, etc.) on the Property and Common Elements or reasonably necessary to serve the Property and Common Elements.

b. Easement to Facilitate Sales. The Declarant hereby reserves to itself and its designees the right to: (i) use any Lots owned by the Declarant, any other Lot with the written consent of the Owner thereof , any portion of the Property and the Common Elements as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; (ii) place and maintain in any location on the Property, the Common Elements and on any Lot directional signs, temporary promotional signs, plantings, entrance features, "theme area" signs, lighting, stone, wood or masonry walls or fences



and other related signs and landscaping features; provided, however, that all signs shall comply with applicable governmental regulations and the Declarant shall obtain the consent of the Owner of any Lot; and (iii) relocate, within the areas permitted by this section, or remove all or any of the above from time to time at the Declarant's sole discretion. These rights and easements shall continue throughout the Development Period.

c. Easement for Utilities and Related Services. The Declarant hereby reserves to itself and its designees, during the Development Period, the right to grant and reserve easements, rights of way and licenses, together with a non-exclusive blanket easement, over, through and upon the Property and the Common Elements for ingress, egress, installation and Upkeep of equipment for providing to any portion of the Property or Common Elements any utilities including, without limitation, water, sewer, drainage, gas, electricity, telephone, television, data transmission, and computer service, whether public or private, or for any other purpose necessary or desirable for the orderly development of the Property. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where initially installed with the permission of the Declarant, where contemplated on any site plan approved by the Declarant or where approved by resolution of the Executive Board.

d. Dedications and Easements Required by Governmental Authority. The Declarant hereby reserves to itself and its designees, during the Development Period, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Elements or the Property.

2. Further Assurances. Any and all conveyances made by the Declarant to the Association with respect to any of the Common Elements or the Property shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. Upon written request of the Declarant, the Association and each Owner shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

3. Assignment of Development Rights. The Declarant may assign its rights under Section 3.1, or share such rights with, one or more other Persons, exclusively,



simultaneously or consecutively with respect to the Common Elements, Lots, or Property owned by the Declarant or such Persons.

Section 3.2. Association Power to Make Dedications and Grant Easements. The Declarant, on behalf of itself and its successors and assigns, hereby also grants to the Association the equal rights and powers as reserved to the Declarant by Paragraphs 3.1(1)(a), (b) and (c) hereof. These rights and easements may be exercised by the Association, subject to Section 3.4 hereof; provided, however, that the limitations on duration applicable to the Declarant shall not apply to the Association. If the Declarant or any Owner requests the Association to exercise its powers under this section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

Section 3.3. Easement for Upkeep.

1. Association Access. The Declarant, on behalf of itself and its successors and assigns, hereby grants the right of access over and through any Lot to the Association and any other Person authorized by the Executive Board, in the exercise and discharge of their respective powers and responsibilities, including without limitation to make inspections, correct any condition originating in a Lot or in the Common Elements threatening another Lot or the Common Elements, correct drainage, perform installations or upkeep of utilities, landscaping or other improvements located on the Property for which the Association is responsible for upkeep, or correct any condition which violates the Association Documents. The agents, contractors, officers and directors of the Association may enter any area of any Lot (including any building) in order to utilize or provide for the upkeep of the areas subject to easements granted in this Article to the Association.

2. Declarant Access. Until the expiration of any applicable warranty period, the Declarant hereby reserves to itself and its designees a right of access over and through the Common Elements and any Lot to perform warranty-related work within the Common Elements or the Lots. The Declarant may assign its rights under this subsection to, or share such rights with, one or more other Persons, exclusively, simultaneously or consecutively.



Section 3.4. Limitations on Exercise of Rights and Easements.

1. These easements are subject to all other easements and encumbrances of record in the office of the Register of Deeds of Dare County, including those created by this Declaration.

2. The Declarant or the Association, as appropriate, when exercising the rights and easements granted by this Article, shall: (i) give reasonable prior notice to all affected Owners, unless an emergency exists which precludes such notice; (ii) minimize any economic or aesthetic injury to the affected Lots or the Common Elements; and (iii) not unreasonably interfere with the affected Owners' use, enjoyment and benefit from such Owners' Lots or the Common Elements.

3. If an easement is relocated, the cost of such relocation shall be paid by the party requesting the relocation.

4. Any damage resulting from the exercise of the aforesaid rights and easements shall be promptly repaired and the site restored to the extent practicable by the Declarant or the Association, as appropriate, or at the option of the Declarant or the Association, the party responsible for such damage. In either case, the cost of such repair and restoration shall be paid for by the party responsible for the damage.

Section 3.5. Easements for Encroachments. If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (1) the original construction thereof, (2) deviations within normal construction tolerances in the Upkeep of any improvement, or (3) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time any encroachment exists. The Owner of the encroaching improvement shall also have an easement for the limited purpose of Upkeep of the encroaching improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

Section 3.6. Private Easements.

Use, access, maintenance, upkeep and encroachment easements, as noted and designated on any recorded plat of the Property are hereby reserved for the benefit of the Owners of the Lots adjacent to such easements and said easements shall be a burden upon the Lots upon which said easements are located. The conveyance of any Lot upon which such an



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easement is located shall be subject to said easement and the conveyance of any Lot adjacent to such easement shall be deemed to be together with such easement.

The Owner of a Lot to which said easement is a benefit and an appurtenance may utilize said easement area for any purpose consistent with the use and enjoyment of this Lot including, but not limited to, the encroachment of eaves or similar structural components of the dwelling, maintenance and Upkeep of the dwelling and access to the dwelling, the intent being to grant the Owner of such Lot the exclusive use, possession and enjoyment of said private easement area. Any purported separate conveyance of said private easement area from the Lot to which it is appurtenant or the Lot which is burdened by said private easement shall be void.

Section 3.7. Easement for Support. To the extent that any portion of the Property now or hereafter supports or contributes to the support of any other portion of the Property, the former is hereby burdened with an easement for the lateral and subjacent support of the latter.

Section 3.8. Emergency Access. The Declarant, on behalf of itself and its successors and assigns, hereby grants an easement (1) to all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies and (2) to the Association over and through all Lots, if emergency measures are required in any Lot to reduce a hazard thereto or to any other portion of the Property. The Association is hereby authorized but not obligated to take any such emergency measures.

Section 3.9. Easement for Use of Common Elements.

1. Use and Enjoyment. The Declarant hereby reserves to itself and, on behalf of itself and its successors and assigns, grants to each Owner and each Person lawfully occupying a Lot a non-exclusive right and easement of use and enjoyment in common with others of the Common Elements. Such right and easement of use and enjoyment shall be appurtenant to each Lot, whether or not mentioned in the deed thereto. Any purported conveyance or other transfer of such rights and easements without the Lot to which such rights and easements are appurtenant shall be void.

2. Access. The Declarant hereby reserves during the Development Period and for so long as the Declarant is an Owner and also, on behalf of itself and its successors and assigns, grants to each other Owner and each Person lawfully occupying a Lot a non-exclusive

easement over all roads and walkways within the Common Elements for the purpose of pedestrian and vehicular access, ingress and egress, as appropriate, to any portion of the Property to which such Person has the right to go, subject to any Rules and Regulations promulgated by the Association pursuant to Section 8.3 hereof. Any purported conveyance or other transfer of such rights and easements without the Lot to which such right and easement are appurtenant shall be void.

3. Limitations. The rights and easements of enjoyment created hereby shall be subject (in addition to any easements granted or reserved in this Declaration or pursuant to the other Association Documents) to all rights and powers of the Declarant and the Association when exercised in accordance with the other applicable provisions of the Association Documents, including without limitation the Association's right to regulate the use of the Common Elements and to establish reasonable charges therefore, to grant easements across the Common Elements, to dedicate portions of the Common Elements and to mortgage the Common Elements.

4. Delegation. Subject to the Rules and Regulations or such other restrictions as adopted by the Association, any Person having the right to use and enjoy the Common Elements may delegate such rights to such Person's guests, employees, customers, tenants, agents and invitees and to such other Persons as may be permitted by the Association.

5. Additional Property. Each Person lawfully occupying any portion of the Additional Property submitted to this Declaration and the jurisdiction of the Association is hereby granted a non-exclusive right and easement of use and enjoyment in common with others of the amenities Common Elements and shared utilities and a right of access over and through the Common Elements to such facilities. The rights and easements granted hereby shall be subject to (in addition to any easements granted or reserved in this Declaration or pursuant to other Association Documents) all rights and powers of the Association, when exercised in accordance with the applicable provisions of the Association Documents. The Persons to whom this easement is granted, or the owners association or condominium unit owners association of any planned community located on the Additional Property, shall pay to the Association an assessment levied exclusively for a share of the costs of management and upkeep of the amenities or shared utilities and for services and facilities related thereto equal to the amount payable by the Owner if the Additional Property were subject to the Declaration.



Section 3.10. Limited Common Elements. The Declarant shall have the power, for as long as the Declarant has the right to add Additional Property under Section 4.1 hereof, to restrict portions of the Common Elements in the nature of an easement for the exclusive use of one or more specific Lots by designating such portions of the Common Elements as Limited Common Elements. The Declarant may either: (1) indicate the locations of the Limited Common Elements appurtenant to one or more Lots by depicting such Limited Common Elements and the Lots to which such are appurtenant on the plats recorded to effect the inclusion of said Additional Property or (2) label a portion of the Common Elements as "Common Elements that may be assigned as Limited Common Elements" on plats of the Additional Property and thereafter assign such Limited Common Elements to one or more specific Lots by unilaterally amending this Declaration to indicate the Limited Common Elements being assigned and the Lots to which it is appurtenant.

Section 3.11. Priority and Enforcement of Easements.

1. No Person who owns Property subject to this Declaration may subordinate the easements herein created to any subsequent encumbrance.

2. The easements and rights granted by this Declaration shall not be enforceable by Persons to whom such easements and rights may be delegated by Owners, including without limitation the guests, employees, customers, tenants, agents or invitees of any Owner. This section does not affect, however, the rights of Mortgagees in possession or court-appointed officers in possession and control of a Lot acting in the name, place and stead of Owners or any Person's right to enforce any easements or rights granted in any lease or agreement between such Person and an Owner.

ARTICLE 4

DEVELOPMENT OF THE PROPERTY

Section 4.1. Expansion/Withdrawal by the Declarant.

1. The Declarant intends to develop the Property substantially in accordance with the Development Plan. The Declarant reserves the right to modify the Development Plan subject only to approval by the City.

2. The Declarant hereby reserves an option during the Development Period to expand the Property from time to time without the consent of any Owner or Mortgagee by submitting all or any portion of the Additional Property to the provisions of this Declaration and



the jurisdiction of the Association whether or not such real estate is owned by the Declarant. The option to expand prior to the end of the Development Period may be terminated only upon the recordation by the Declarant of an instrument relinquishing such option. When submitting any portion of the Additional Property, the Declarant reserves the right unilaterally to record additional amendments to the Declaration subjecting any Lot on such portion to such additional covenants and restrictions as may be necessary to reflect the different characteristics of such Lot or portion as are not inconsistent with the overall scheme of the Declaration; provided, however, that the Declarant shall not have such right after the conveyance of such Lot to an Owner other than the Declarant. The Declarant shall add Additional Property in accordance with the procedures set forth in Section 4.3 hereof. There are no limitations on the option to expand except as set forth in this Article.

3. The Declarant hereby reserves an option during the Development Period to withdraw from the Property any portion of the Property or the Additional Property which may have been submitted by the Declarant to the provisions of this Declaration and the jurisdiction of the Association. The option to withdraw portions of the Property prior to the end of the Development Period may be terminated only by the recordation by the Declarant of an instrument exercising such option and in accordance with the procedures set forth in Section 4.3 hereof.

4. The Declarant may unilaterally amend the description of Additional Property set forth in Exhibit B hereto and record plats of the Additional Property to expand the land area referred to as Additional Property whether or not such real estate is owned by the Declarant.

Section 4.2. Expansion by the Association.

1. With the written consent of the fee simple owner (if not the Association) and any mortgagee or holder of a deed of trust on such real estate, an affirmative sixty-seven percent (67%) vote of the members entitled to be cast and the written consent of the Declarant during any period that the Declarant has the right to add Additional Property under Section 4.1 hereof, the Association may submit any real estate located immediately adjacent to the Property or across a public road from the Property to the provisions of this Declaration and the jurisdiction of the Association, in accordance with the procedures set forth in Section 4.3 hereof.



Section 4.3. Procedure for Expansion/Withdrawal. The Declarant or the Association, as appropriate, may record in the office of the Register of Deeds of Dare County one or more amendments to the Declaration submitting the real estate described therein to this Declaration and to the jurisdiction of the Association. Each amendment shall include a legally sufficient description of the real estate added and each recorded plat shall designate such real estate with the term "Section" followed by a unique identifier so as to differentiate between each Section of the Property. Any such amendment may contain such additions to the provisions in this Declaration as may be necessary to reflect the different character of the Additional Property added thereby and as are not inconsistent with the overall development scheme of this Declaration; provided, however, that such additions shall not apply to any real estate previously submitted to this Declaration. When recording an amendment adding Additional Property, appropriate plats shall be recorded showing the Additional Property being submitted to the Declaration and the jurisdiction of the Association, describing any real estate being conveyed to the Association as Common Elements, Limited Common Elements or Common Elements that may be assigned as Limited Common Elements and showing any new Lots (noting the total square footage of any new Lot).

1. Upon the exercise of the option of the Declarant to withdraw portions of the Property as provided in Section 4.1 (3), the Declarant shall cause to be recorded an amendment to this Declaration which shall include a legally sufficient description of the real estate withdrawn together with a plat, or amended plat, designating such real estate and showing its location relative to the existing or remaining portions of the Property which have not been withdrawn.

ARTICLE 5

SPECIAL DECLARANT RIGHTS; TRANSFER

Section 5.1. Special Declarant Rights. Special declarant rights are those rights reserved for the benefit of the Declarant as provided for in the Act and the Association Documents, and shall include without limitation the following rights: (1) to complete improvements on the Property; (2) to maintain models, management offices, construction offices, sales offices, customer service offices and signs advertising the Property; (3) to use easements over and through the Property for the purpose of making improvements within the Property; (4) to exercise the rights and votes of the Class B member of the Association; (5) to add



Additional Property; (6) to withdraw portions of the Property; (7) to appoint, remove and replace any director appointed by the Class B member until the meeting at which the Class A members are entitled to elect a majority of the directors; (8) to exercise its veto over all actions of the Executive Board or any committee thereof during the Development Period; and (9) to exercise any other rights and powers given to the Declarant by the Association Documents.

Section 5.2. Transfer of Special Declarant Rights.

1. The Declarant may transfer special declarant rights created or reserved under the Association Documents to any Person acquiring Lots or Additional Property by an instrument evidencing the transfer recorded in the office of the Register of Deeds of Dare County. The instrument is not effective unless executed by the transferor and transferee.

2. Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

a. A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations the transferor has undertaken or which are imposed by law.

b. If the successor to any special declarant right is an Affiliate of a declarant, as defined herein, the transferor is jointly and severally liable with the successor for any obligation or liability of its successor which relates to the Property.

c. If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an Affiliate of a declarant, the transferor is also liable for any obligations and liabilities relating to the retained special declarant rights imposed on a declarant by the Association Documents arising after the transfer.

d. A transferor has no liability for any act or omission, or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an Affiliate of the transferor.

3. Unless otherwise provided in a Mortgage, in case of foreclosure of a Mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under the Bankruptcy Code or receivership proceedings, of any Lots or Additional Property owned by a declarant, a Person acquiring title to all the Lots or Additional Property being foreclosed or sold, but only upon such Person's request, succeeds to all special declarant rights related to such Lots or Additional Property or only to any rights reserved in the

Association Documents to maintain models, management offices, construction offices, sales offices, customer service offices and signs advertising the Property. The judgment, instrument conveying title or other instrument recorded in the office of the Register of Deeds of Dare County shall provide for transfer of only the special declarant rights requested.

4. Upon foreclosure (or deed in lieu of foreclosure), tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under the Bankruptcy Code or receivership proceedings, of all Lots and Additional Property owned by a declarant (i) such declarant ceases to have any special declarant rights, and (ii) the Development Period terminates unless the judgment or an instrument recorded provides for transfer of special declarant rights held by that declarant to a successor declarant.

5. The liabilities and obligations of Persons who succeed to special declarant rights are as follows:

a. A successor to any special declarant right who is an Affiliate, as hereinafter defined, of a declarant is subject to all obligations and liabilities imposed on the Declarant by the Association Documents.

b. A successor to any special declarant right, other than a successor described in paragraphs (c) or (d) of this subsection or a successor who is an Affiliate of a declarant, is subject to all obligations and liabilities imposed by the Association Documents: (1) on a declarant which relate to such declarant's exercise or non-exercise of special declarant rights; or (2) on the transferor, other than: (a) misrepresentation by any previous declarant; (b) warranty obligations on improvements made by any previous declarant, or made before the Association was created; (c) breach of any fiduciary obligation by any previous declarant or such declarant's appointees to the Executive Board; or (d) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

c. A successor to only a right reserved in the Association Documents to maintain models, sales offices, customer service offices and signs, if such successor is not an Affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant.

d. A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to foreclosure, a deed in lieu of foreclosure or a judgment or instrument conveying title under subsection (c), may declare the intention in an instrument

recorded in the office of the Register of Deeds of Dare County to hold those rights solely for transfer to another Person. Thereafter, until transferring all special declarant rights to any Person acquiring title to any Lots owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to vote as the Class B member in accordance with the provisions of the Association Documents for the duration of any Development Period, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, such successor is not subject to any liability or obligation as a declarant.

6. Nothing in this Article subjects any successor to a special declarant right to any claim against or other obligation of a transferor declarant, other than claims and obligations arising under the Association documents.

7. For the purposes of this Section 5.2, "Affiliate" or "Affiliate of a Declarant" means any person who controls, is controlled by, or is under common control with a declarant. A Person controls a declarant if the Person (1) is a general partner, member, manager, officer, director or employer of the declarant; (2) directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interests in a declarant; (3) controls in any manner the election of a majority of the directors of a declarant; or (4) has contributed more than twenty percent (20%) of the capital of a declarant. A Person is controlled by a declarant if the Person: (i) is a general partner, member, manager, officer, director or employer of the Person; (ii) directly or indirectly or acting in concert with one or more other Persons or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than twenty percent (20%) of the voting interest in the Person, (iii) controls in any manner the election of a majority of the directors of the Person, or (iv) has contributed more than twenty percent (20%) of the capital of the Person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

Section 5.3. No Obligation. Nothing contained in the Association Documents shall impose upon the Declarant, or its successors or assigns, any obligation of any nature to build, construct, renovate or provide any improvements.

ARTICLE 6

COMMON EXPENSES AND ASSESSMENTS

Section 6.1. Determination of Common Expenses and Assessments.

1. Preparation and Approval of Budget.

a. At least sixty (60) days before the beginning of each fiscal year, the Executive Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary for the ensuing fiscal year to pay the cost of management of the Association and management and Upkeep of the Common Elements and, to the extent provided in the Association Documents, Upkeep of the Lots, and the cost of other expenses that may be declared to be Common Expenses by the Association Documents or by a resolution of the Executive Board. The budget may not include expenditures to be assessed as the Utilities Assessment.

Such budget shall also include such reasonable amounts as the Executive Board considers necessary to provide working capital (available cash for day-to-day expenses which is otherwise uncommitted), a general operating reserve (including an amount to cover operating losses due to insurance deductibles) and reserves for contingencies (potential costs or liabilities which have not been incurred but which should be planned for) and replacements. Such budget shall constitute the basis for determining the assessment against each Lot.

b. Within thirty (30) days after the adoption of any proposed budget for the Association, the Board shall provide to all Owners a summary of the budget and a notice of a meeting of the members of the Association to consider ratification of the budget, including a statement that the budget may be ratified without a quorum of members present at such meeting. The summary of the budget shall be reasonably itemized in such form that sets forth the amount of Common Expenses and the assessment against the Lots. The Board shall set a date for the meeting of the members to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after the mailing of the summary of the budget and the notice of the meeting. There shall be no requirement that a quorum of members be present at the meeting. The budget is ratified unless at that meeting a majority of all of the members present in person or by proxy rejects the budget. In the event the proposed budget is not ratified at said meeting, the budget last ratified by the members shall be continued until such time as the members ratify a subsequent budget proposed by the Board.



c. For the first fiscal year of the Association following the first conveyance of any Lot to a member other than the Declarant, and for all fiscal years thereafter, the Executive Board shall establish the annual assessment against each Lot for Common Expenses. The failure or delay of the Executive Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay the allocable share of the Common Expenses as herein provided whenever the same shall be determined. In the absence of any annual budget or adjusted budget, the assessments shall continue at the rate established for the previous fiscal year until notified of the new payment which is due on the first day of the next payment period which begins more than ten (10) days after such new annual or adjusted budget is adopted and the member receives such notice.

Section 6.2. Assessments and Common Expenses.

1. **Rate of Assessment and Payment.** Subject to the provisions of Section 6.3 hereof the total amount of the Common Expenses set forth in the budget as an annual assessment or levied as an additional assessment shall be assessed against each Lot equally.

a. No Lot shall be liable for assessments until a map or plat showing said Lot has been duly recorded in the office of the Register of Deeds of Dare County, North Carolina, all in accordance with Section 4.3 hereof.

b. Any additional assessment for each Lot shall be calculated on the same basis as the annual assessment; provided, however, that expenses designated as Limited Common Expenses shall be assessed against the Lots benefited on the same basis or based on usage, as may be determined by the Executive Board.

2. **Assessment Lien and Payment.** Any and all assessments and other charges shall be a lien against each Lot as provided in Section 6.6 hereof. On or before the first day of each fiscal year, and the first day of each succeeding payment period in such fiscal year, each member shall pay to the Association at such place as the Executive Board may direct that installment of the annual assessment which is due during such period. The Executive Board shall establish one or more payment periods and the due dates for each such payment in each fiscal year; provided, however, that payments shall be due not less frequently than quarterly or more frequently than monthly. All sums collected by the Executive Board with respect to assessments against the Lots or from any other source may be commingled into a single fund.



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3. Initial Budget and Initial Assessment. Upon taking office, the first Executive Board shall determine the budget, as defined in this section, for the period commencing thirty (30) days after taking office and ending on the last day of the fiscal year in which such directors take office. The first installment of the annual assessment for Common Expenses shall be payable as determined by the Executive Board.

4. Lots Added During the Fiscal Year. Notwithstanding any other provision of this Article, whenever any Additional Property is added, the assessment against each Lot being added shall be prorated based upon the number of days remaining in the payment period and shall be calculated in the same manner and due in the same number of installments as the assessment for the remainder of the fiscal year against Lots already a part of the Property.

5. Additional Assessments. The Executive Board may levy additional assessments on the Lots in the following manner: the Executive Board shall adopt, by appropriate action, the additional assessment and give written notice of its action to the members of the Association specifying the amount and the reasons therefor, which said notice shall provide for a special meeting of the members of the Association to be held not less than fifteen (15) days following said notice, the sole purpose of said meeting to be to consider the additional assessment. There shall be no requirement that a quorum of members be present at the special meeting. At the special meeting held for that sole purpose, the additional assessment shall be deemed ratified unless a majority of all of the members present in person or by proxy rejects the proposed additional assessment.

Following the ratification of any additional assessments on the Lots as herein specified, the Executive Board shall give notice to the members and, unless otherwise specified in the notice, said additional assessments shall be payable in full with the next periodic installment of regular assessments which is due not more than ten (10) days after the date of such notice or in not more than twelve (12) equal periodic installments, as the Board may determine. Such additional assessments shall be a lien as set forth in Section 6.6 hereof.

6. Special Assessments. The Executive Board shall have the power to assess a Lot individually for the amount of any charges and any costs incurred by the Association because of any violation or negligence for which that Owner is responsible under Article 12. Each such assessment shall be due ten (10) days after notice thereof is given to the Owner unless the notice specifies a later date.



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7. Optional Expenses. Upon request, the Association may provide certain services to members (including the Declarant) on a contractual basis pursuant to Section 7.8; provided, however, that the charge for such services shall be assessed against such Owner's Lot in accordance with the terms of the contract.

8. Reserves. The Executive Board shall build up and maintain reasonable reserves for working capital, contingencies and replacements. Such funds shall be a Common Expense of the Association and may be deposited with any financial institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Executive Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Reserves for items serving only certain Lots shall be accounted for and funded solely by the Owners served as a Limited Common Expense. As to each separate reserve account:

a. Extraordinary expenditures not originally included in the annual budget, which may become necessary during the year, shall be charged first against the appropriate reserves. Except for expenses for normal Upkeep shown in the annual operating budget, all expenses for repair and replacement of physical assets maintained by the Association shall be charged first against the appropriate reserves. Unless otherwise determined by the Executive Board, the amount held as reserves shall not substantially exceed the amount reasonably required to assure the Association's ability to replace components as they reach the end of their useful lives.

b. If regular annual maintenance extends the useful life of components so that reserves are excessive, the reserves shall be adjusted by reallocation to other budget items or by distribution to each member (including the Declarant) in proportion to the percentage (if any) of assessments paid by such member.

c. If the reserves are inadequate to meet actual expenditures for any reason (including non-payment of any member's assessment) then the Executive Board shall, in accordance with Subsection 6.2(5) hereof, levy an additional assessment against the Lots; provided, however, that during the period the Declarant owns Lots or Lots exempt from full assessment pursuant to Section 6.3 hereof, the Declarant shall pay any expenses that the Association is unable to meet from budgeted income or reserves, but the Declarant is not

obligated to pay any expenses that the Association is unable to meet because of nonpayment of any member's assessment.

d. In order to establish a working capital fund, upon the conveyance of a Lot to each Owner by the Declarant, each Owner shall contribute at closing an amount equal to two-twelfths (2/12) of the estimated assessment levied for the current year against each Lot, said sum to be paid to the Association. Said sum is not an advance payment of regular assessments but shall be utilized to establish the working capital fund. Such sum may also be utilized to reimburse the Declarant the exact cost of any premiums for insurance policies purchased by Declarant for the benefit of the Association.

9. Surplus and Deficit.

a. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Executive Board, be placed in reserve accounts, be placed in a special account to be expended solely for the general welfare of the members, be credited to the next periodic installments due from members under the current fiscal year's budget, until exhausted, or distributed to each member (including the Declarant) in proportion to the percentage (if any) of assessments paid by such member.

b. Unless the budget for the succeeding fiscal year is adjusted to amortize the deficit during such fiscal year, any net shortage in expenses (including reserves) shall be assessed promptly against the members as an additional assessment in accordance with Subsection 6.2(5) hereof; provided, however, that if Lots or Lots owned by the Declarant are exempt from full assessment in accordance with Section 6.3 hereof, then during the period the Declarant owns Lots or Lots exempt from full assessment, the Declarant shall make up any net shortage (expenses and reserves) in the Association's budgeted income over the Association's expenses as provided in Section 6.1(c) hereof, but the Declarant is not obligated to pay any expenses that the Association is unable to meet because of non-payment of any member's assessment.

Section 6.3. Declarant Exemptions and Utilities Assessment.

1. Exceptions. Lots owned by the Declarant shall be liable for twenty-five percent (25%) of the total amount of any assessment levied by the Executive Board against any Lot. The Common Elements owned by the Declarant or the Association shall be exempt from assessments and the lien created hereby.



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2. Utilities Assessment. The Utilities Assessment against each Lot shall be in proportion to the usage of utilities of such Lot. The Utilities Assessment shall be considered an assessment of Common Expenses for all purposes as set forth in the Association Documents and the Act.

Section 6.4 Liability for Common Expenses.

1. Declarant, Merchant Builder and Owner Liability. The Declarant and each Merchant Builder, for each Lot owned, hereby covenant and agree, and each Owner by acceptance of a deed therefor, whether or not so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association all Common Expenses and other charges assessed by the Executive Board pursuant to the provisions of this Declaration. Each Owner shall be personally liable for all assessments against such Owner's Lot or such pro-rata share of the assessment, as determined by the Owners Association, levied against the Lot in which such Owner's Lot is located. No Owner may be exempted from liability for the assessment for Common Expenses by reason of waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot. No Owner shall be liable for the payment of any part of the Common Expenses subsequent to the date of recordation of a conveyance by such Owner in fee of such Lot. Prior to or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Lot shall be jointly and severally liable with the selling Owner for all unpaid assessments against the latter for the proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Owner amounts paid by the purchaser therefor; provided, however, that any such purchaser may rely on a Statement of Common Expenses obtained pursuant to Section 6.6 herein.

2. Mortgagee Liability. Each Mortgagee who comes into possession of a Lot by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against such Lot which accrue prior to the time such Mortgagee or purchaser comes into possession thereof. The lien created by Section 6.6 hereof shall cease to exist with respect to assessments and charges levied prior to the time title is transferred by foreclosure or by deed of assignment in lieu thereof; provided, however, that if the proceeds of a foreclosure exceed the total amount due

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to the Mortgagee, the excess shall first be paid to the Association and applied to the satisfaction of the lien.

Section 6.5. Collection of Assessments. Any assessment, or installment thereof, not paid within fifteen (15) days after the due date shall be delinquent and shall accrue a late charge in the amount of one percent of such assessment, or such greater percentage as may be established from time to time by the Executive Board. The Executive Board, or the managing agent at the request of the Board, shall take prompt action to collect any assessments for Common Expenses due from any Owner or member which remain unpaid for more than thirty (30) days after the due date for payment thereof. Provisions for assessment collection may be adopted by the Executive Board and may include acceleration of payment of installments of such assessment as provided in Section 6.6(2) of this Declaration.

Section 6.6 Lien for Assessments.

1. Lien. The total annual assessment of each Owner for Common Expenses, Utilities Assessment, any additional assessment, any special assessment or any other sum duly levied (including without limitation charges, interest, late charges, etc.), made pursuant to the Association Documents, is hereby declared to be a lien levied against any Lot owned by an Owner. Until fully paid and satisfied, the lien shall apply to and encumber all of the Lots that were owned, as of the date when payment was due, by the Owner from whom payment was due, and shall also apply to and encumber any and all Lots thereafter acquired by that Owner from the time such Owner becomes the Owner thereof. With respect to annual assessments, the lien is effective on the first day of each fiscal year of the Association and, as to additional assessments, special assessments and other sums duly levied, on the first day of the next payment period which begins more than fifteen (15) days after the date of notice to the Owner of such additional assessments, special assessment or levy. The Executive Board or the managing agent may file or record such other or further notice of any such lien, or such other or further document, as may be required to confirm the establishment and priority of such lien. The lien created by this section shall be prior to all liens and encumbrances hereafter recorded except a first mortgage or first deed of trust held by a Mortgagee as defined in Article 1, Section 1.1(19), real estate taxes and other charges levied by governmental authority and made superior by law. The personal obligation of the Owner to pay such assessment shall, in addition, remain such Owner's personal obligation and as if to recover a money judgment for non-payment of any assessment or

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installation thereof, levied pursuant hereto, may be maintained without foreclosing or waiving the lien herein created to secure he same.

2. Acceleration. In any case where an assessment against the member or Owner is payable in installments, upon a default by such member or Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Executive Board, and the entire balance of the assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting member or Owner.

3. Enforcement. The lien for assessments may be enforced and foreclosed in any manner permitted by the laws of North Carolina for foreclosure of mortgages or deeds of trust containing a power of sale or by an action in the name of the Executive Board, or the managing agent, acting on behalf of the Association. During the pendency of any such action to enforce the Association lien, the member or Owner shall be required to pay a reasonable rental for the Lot for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the laws of North Carolina. The Association shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with such Lot.

4. Remedies Cumulative. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 6.7 Subordination and Mortgage Protection. Notwithstanding any other provision hereof to the contrary, the lien of any assessment levied pursuant to the Association Documents upon any Lot (and any charges, merest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a Mortgage made in good faith for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to foreclosure or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the Mortgagee or the purchaser of the Lot at such sale from liability for any assessments



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thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

Section 6.8. Statement of Common Expenses. The Executive Board or managing agent shall provide any member, Owner, contract purchaser or Mortgagee, within ten (10) days after a written request therefor, with a written statement of all unpaid assessments for Common Expenses due with respect to a specific Lot (or a statement that the amount of unpaid assessments is zero). No contract purchaser, Mortgagee or purchaser from a Mortgagee requesting such a statement shall be liable for, nor shall the Lot conveyed to such Person relying on such statement be subject to, a lien for, any unpaid assessments due prior to the date of such statement in excess of the amount set forth on such statement; provided, however, that this section shall not be interpreted to release any Owner from personal liability for such assessments levied while such Person owned the Lot. The Executive Board may impose a reasonable charge for the preparation of such statement to cover the cost of preparation.

ARTICLE 7

OPERATION OF THE PROPERTY

Section 7.1. Upkeep of Common Elements. The Association shall be responsible for the management and Upkeep of all of the Common Elements, the cost of which shall be assessed against all Lots as a Common Expense, or Limited Common Expense, as appropriate, except for improvements specially assessed in accordance with Section 7.5 hereof. Notwithstanding the general provisions for the costs of management and Upkeep of Common Elements set forth in this section, specific maintenance responsibilities and Upkeep costs shall be determined by any provisions therefor indicated on either an amendment to the Declaration or the plat recorded with the amendment to the Declaration subjecting such Common Elements to the Declaration. If the Executive Board determines that certain Upkeep was necessitated by the negligence, misuse or neglect of any Owner or for which an Owner is responsible pursuant to Section 12.1 hereof, the cost of such Upkeep shall be assessed against such Owner's Lot pursuant to Subsection 12.1(1) hereof. Further, the Board may determine that all or a part of the Upkeep of any portion of the Common Elements designated as Limited Common Elements shall be performed by and at the cost of the Persons having the exclusive right to use the same. The Executive Board shall establish the standard for Upkeep of the Common Elements in its sole discretion. The Executive Board shall provide for the Upkeep of the rights-of-way along

dedicated streets and dedicated public easements to the extent not provided by the City or the State. Further, the Executive Board shall maintain as Common Elements landscaping and plantings contained within the setback areas and any other buffer areas as may have been established or required by the City and the Permit.

Section 7.2. Upkeep of Common Elements in Owners Associations. The Owners Association of any planned community located within the Property shall keep the Common Elements of the planned community in good order, condition and repair and in a clean and sanitary condition (in keeping with the general character of the Property) including without limitation all necessary grounds maintenance. The Owners Association may contract with third parties, including the Association to the extent provided in Section 7.7 hereof, to provide the necessary Upkeep and/or management services to perform its responsibilities under this section. If such Owners Association shall fail to keep the portion of the Property for which such Owners Association has maintenance responsibility in good repair and condition and in a neat and orderly condition, consistent with such Rules and Regulations as the Executive Board may promulgate, then the Board may, pursuant to resolution, give notice to that Owners Association of the condition complained of, specifying generally the action to be taken to rectify the condition. If the Owners Association fails to rectify that condition within thirty (30) days after the date the notice is given, or such shorter period as may be specified in the notice if the circumstances warrant a shorter period, the Executive Board shall have the right pursuant to Section 3.3 and Subsection 12.1(5) hereof and any resolutions adopted by the Executive Board, to rectify the condition by taking such action (or by causing such action to be taken) as was specified in the notice. The costs incurred shall be charged against such Owners Association.

Section 7.3. Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be made with contemporary materials. The method of approving payment vouchers for all repairs and replacements made by the Association shall be determined by the Executive Board.

Section 7.4. Additions, Alterations or Improvements by the Executive Board.

1. **Action of the Board.** Whenever, in the judgment of the Executive Board, the Common Elements shall require capital additions, alterations or improvements (other than for Upkeep) costing in excess of fifteen percent (15%) in the aggregate of the total annual



assessment for Common Expenses for that fiscal year, the making of such additions, alterations or improvements requires a Majority Vote of the members, and the Executive Board shall assess all Owners benefited for the cost thereof as a Common Expense. Any capital additions, alterations or improvements (other than for Upkeep) costing in the aggregate fifteen percent (15%) or less of the total annual assessment for Common Expenses for that fiscal year may be made by the Executive Board without approval of the members and the cost thereof shall constitute a Common Expense. Notwithstanding the foregoing, if the Executive Board determines that such capital additions, alterations or improvements are exclusively or substantially exclusively for the benefit of specific Owners, such Owners shall be assessed therefor in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportion as may be determined by the Executive Board.

2. Permits. Each Owner shall cooperate with the Association in obtaining any governmental approvals or permits as may be necessary for the Association to alter, improve, reconstruct or repair all or any portion of the Common Elements which may be located on such Owner's Lot, either as approved above or as required for Upkeep. If requested by the Executive Board, each Owner shall name or appoint the Association as agent for such Owner to apply for and secure such approvals or permits with respect to such Common Elements in the Association's name.

3. Liens. Within thirty (30) days after the filing thereof, each Owner shall, either by payment of bond or otherwise, cause any mechanic's, materialmen's or other lien affecting any portion of the Common Elements located within such Owner's Lot and arising by reason of any work or materials ordered by the Owner or any action taken by the Owner to be discharged of record.

Section 7.5. Additions, Alterations or Improvements by the Owners.

1. Approval.

a. No member or Owner shall make any addition, alteration or improvement in or to the Property or any Lot or any improvements within the Property (other than for normal Upkeep or natural landscaping and not including areas within a Building Window visible from the exterior only because of the transparency of glass doors, walls or windows) which is visible from the exterior of the Lot, without the prior written consent of the Covenants Committee. No member or Owner shall paint, affix a sign not permitted by the Rules



and Regulations to or alter the exterior of any improvement located upon such member's or Owner's Lot, including the doors and windows, if such exterior is visible from another Lot or the Common Elements, without the prior written consent of the Covenants Committee. Except when a request is being handled by the Covenants Committee, the Executive Board shall be obligated to answer any written request by a member or Owner for approval of a proposed structural addition, alteration or improvement within fifteen (15) business days after the first Executive Board meeting held following such request, and failure to do so within the stipulated time shall constitute a consent by the Executive Board to the proposed structural addition, alteration or improvement; provided, however, that the Executive Board has no right or power, either by action or failure to act to waive enforcement or grant variances from written Design Guidelines without a specific finding that enforcement of such guidelines would impose an unfair burden on such member and stating the variance and the reasons therefor in a written instrument which shall be part of the records of the Association. Upon such written approval of any specific variance or exception from the requirements of the Design Guidelines, all development conforming to such variance or exception shall be deemed to comply; provided, however, that such approval shall not relieve a member or Owner from any obligation to obtain any governmental permit which may be required. If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement to any Lot or improvement located within the Property or on any Lot requires execution by the Association, and provided consent has been given by the Executive Board or the Covenants Committee, as appropriate, then the application shall be executed on behalf of the Association by an Officer only, without incurring any liability on the part of the Executive Board, the Association, the Executive Board or the Covenants Committee or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any Person having a claim for personal injury or property damage arising therefrom.

b. With respect to Lots which are also subject to the jurisdiction of an Owners Association, the covenants committee, Executive Board or similar body of such owners association or condominium unit Owners Association shall review all applications for architectural review on behalf of the Covenants Committee, unless the Executive Board specifically determines to have the Covenants Committee perform such review. Owners of such Lots must comply with the guidelines established by the Covenants Committee and the Rules



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and Regulations for the Property, as well as any guidelines or rules and regulations established by the Owners Association with jurisdiction over such Lot.

c. Subject to the approval of any Mortgagee of the affected Lots, the Executive Board, any Owner affected and the City, if required, any Lot may be subdivided or altered so as to relocate the boundaries between such Lot and any adjoining Lot. Additionally, in the case of Lots which are part of a planned community and subject to an Owners Association, any subdivision or relocation of boundaries of Lots must be in compliance with the documents governing the planned community as well as this section. Otherwise, no Lot may be subdivided nor may any Lot's boundaries be relocated except by the Declarant. Unless said Lot has previously been subdivided pursuant to this paragraph, no portion less than all of any Lot shall be conveyed or transferred by an Owner without the prior written approval of the Executive Board. However, this paragraph is not intended to require the approval of the Executive Board or Covenants Committee to grant deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments or to grant any easement, right-of-way or license to any municipality, political subdivision, public utility or other public body or authority, or to the Association or the Declarant for any purpose.

d. The provisions of this section shall not apply to a Mortgagee in possession of a Lot as a result of foreclosure, judicial sale or proceeding in lieu of foreclosure affixing a sign or taking any other actions that may be necessary to sell or lease all or any portion of the Lot, if such actions are in accordance with applicable zoning and not detrimental to the value of the Property.

2. Limitations.

a. Unless a Person commences construction in accordance with plans and specifications approved by the Covenants Committee within six (6) months after the date of approval, the approval shall lapse. Such construction shall be substantially completed within twelve (12) months after the date of commencement. Notwithstanding the foregoing, the approval may provide for a longer period during which to commence or complete construction.

b. Any Person obtaining approval of the Covenants Committee shall not deviate materially from the plans and specifications approved without the prior written consent of the Covenants Committee. An Owner shall notify the Covenants Committee when the alterations or improvements are complete. Approval of any particular plans and



specifications or design does not waive the right of the Covenants Committee to disapprove such plans and specifications, or any elements or features thereof, if such plans and specifications are subsequently submitted for use in any other instance or by any other Owner.

3. Certificate of Compliance. Upon the completion of any construction or alterations in accordance with plans and specifications approved by the Covenants Committee, the Covenants Committee shall, at the request of the Owner thereof, issue a certificate of compliance which shall be prima facie evidence that such construction or alteration referenced in such certificate has been approved and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of the Association Documents as may be applicable. The certificate shall not be used and may not be relied upon for any other purpose, and shall not constitute a representation either as to the accuracy or sufficiency of the plans and specifications reviewed by the Covenants Committee or the quality or soundness of the construction, alterations or improvements. The Covenants Committee may impose a reasonable charge to cover the costs of preparation and inspection.

Section 7.6. Disclaimer of Liability.

1. Bailee. The Executive Board, the Association, any member, any Owner and the Declarant shall not be considered a Bailee of any personal property and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

2. Operational. The Association shall not be liable for any failure of water supply, other utilities or other services to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage caused by the elements or by any Owner, or any other Person, or resulting from any utilities or services to the Property, including electricity, water, snow or ice which may leak or flow from or over any portion of the Property or from any pipe, drain, conduit, appliance or equipment, or any secondary or consequential damages of any type. The Association shall not be liable to any member or Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any portion of the Property. No diminution, offset or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property by the Association or from any action taken by the Association to comply with any law,



ordinance or with the order or directive of any governmental authority. This section is not intended nor shall it be construed to relieve any insurer of its contractual obligations under any policy benefiting the Association, a member or an Owner.

Section 7.7 Services to Owners and Owners Associations. The Association may, in the sole discretion of the Executive Board, provide additional services to Owners (including the Declarant), and to any Owners Association located within the Property on a contractual basis at the request of such Persons. The charges for such services shall be assessed to the Lot of the Owner or charged to the Owners Association.

Services which may be provided to an Owners Association include, without limitation: (i) the Upkeep of any Lot owned by an Owners Association or the common elements maintained by the Owners Association ; (ii) the enforcement of any declaration creating or governing the planned community subject to any Owners Association; (iii) the collection of assessments under the declaration creating or governing a planned community on behalf of and in the name of the Owners Association; (iv) financial and physical property management services; and (v) obtaining insurance for such Owners Association.

ARTICLE 8

TRANSFER OF PERMIT AND RESPONSIBILITIES

Section 8.1. Transfer To and Acceptance By Association. The Declarant shall, at its sole cost and expense, initially construct all Stormwater Management Facilities required to be located upon the Common Elements or upon any property annexed into the Property by the Declarant to the standards required by the Permit. Upon completion of the initial construction of the Stormwater Management Facilities, Declarant shall transfer the Permit and Declarant's responsibilities under the Permit to the Association and the Association shall accept such transfers. Thereafter, upon completion of the initial construction of the Stormwater Management Facilities required by the applicable Permit for any Additional Property annexed by Declarant into the Property pursuant to this Declaration, the Declarant shall transfer the applicable Permit and Declarant's responsibilities under the Permit applicable to the property annexed by Declarant into the Property to the Association and the Association shall accept the transfer from the Declarant of the applicable Permit and responsibilities under the Permit. Transfers of any such Permit shall occur upon the earlier to occur of (i) the date the North Carolina Department of Environment and Natural Resources allows the transfer of the Permit to occur; or (ii) the date



after which at least fifty percent (50%) of the Units therein are conveyed to Owners other than Declarant; and, in the case of property hereinafter annexed into the Property by Declarant as provided herein, the date after which at least fifty (50%) of the annexed Units are conveyed to Owners other than Declarant.

Prior to any such transfer of the Permit, the Stormwater Management Facilities for the Property, including any property annexed by Declarant into the Property, shall be certified to the Association and the State of North Carolina, either by state inspection or by a licensed engineer, as being in compliance with the applicable Permit prior to such assignment or transfer.

Section 8.2. Association Indemnification. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as the responsible party under the Permit and any Permit applicable to any property annexed into the Property from and after the date Declarant tenders transfer of its responsibilities under the Permit. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as holder of the Permit from and after the date Declarant tenders transfer of the Permit to the Association following the approval of such transfer by the North Carolina Department of Environment and Natural Resources and the certification of compliance as set forth above. Further, Declarant may bring an action for specific performance of the obligations of the Association pursuant to this paragraph.

Section 8.3. Administration of Permit. From and after the transfer of the Permit from the Declarant to the Association, the oversight, supervision, management and administration of the Permit shall be the sole responsibility of the Association. The Association's duties with respect to the Permit shall be carried out in accordance with the terms and conditions of the Association Documents and the Permit.

ARTICLE 9

COVENANTS COMMITTEE

Section 9.1. Purpose. The Executive Board may establish a Covenants Committee consisting of at least three (3) members appointed by the Board (all of whom shall be members of the Board), each to serve for a term of from one (1) to three (3) years as may be



determined by the Executive Board, in order to assure that the Property shall always be maintained in a manner: (i) providing for visual harmony and soundness of repair; (ii) avoiding activities deleterious to the aesthetic or property values of Property; and (iii) promoting the general welfare and safety of the Owners, such Owners' tenants and such Owners' (or tenants') households, guests, employees, customers, agents and invitees. If the Executive Board fails to appoint a Covenants Committee, then the Executive Board shall perform the duties of the Covenants Committee.

Section 9.2 Powers.

1. The Covenants Committee shall have the power pursuant to Article 12 hereof (upon petition of any Owner or upon its own motion) to impose reasonable charges upon, and issue a cease and desist request to, an Owner, such Owner's tenant and such Owner's (or tenant's) household, guests, employees, customers, agents, and invitees whose actions are inconsistent with the provisions of the Association Documents.

2. Subject to the review of the Executive Board, the Covenants Committee shall, from time to time, provide interpretations of the Association Documents pursuant to the intents, provisions and qualifications thereof when requested to do so by an Owner, a member or the Executive Board. The Committee may publish and record such interpretations in order to establish precedents for application of the Association Documents.

3. A Majority vote of the Covenants Committee shall be required in order to take any action except as otherwise provided in Subsection 12.1 hereof. The Covenants Committee shall keep written records of all its actions. Any action, ruling or decision of the Covenants Committee may be appealed to the Executive Board by any party deemed by the Board to have standing as an aggrieved party and the Board may modify or reverse any such action, ruling or decision. The Covenants Committee and the Executive Board shall have no authority to regulate construction by the Declarant during the Development Period.

Section 9.3. Conduct of Business. The Covenants Committee shall not exercise its powers and authority to interfere with the reasonable conduct of business on the Property or the development of the Property in accordance with the Development Plan.

Section 9.4. Authority. The Covenants Committee shall have such additional duties, powers and authority as the Executive Board may from time to time provide by resolution. The Executive Board may relieve the Covenants Committee of any of its duties,



powers and authority either generally or on a case-by-case basis. The Covenants Committee shall carry out its duties and exercise its powers and authority in accordance with Subsection 12.2 hereof and in the manner provided for in the Rules and Regulations adopted by the Executive Board, by resolution of the Executive Board, and the Bylaws. The Covenants Committee shall act on all matters properly before it within forty-five (45) days; failure to do so within the stipulated time shall constitute an automatic referral to the Executive Board.

ARTICLE 10

INSURANCE

Section 10.1. Authority to Purchase - Notice.

1. The Executive Board shall have the power on behalf of the Association to (1) purchase insurance policies relating to the Common Elements, (2) adjust all claims arising under such policies and (3) execute and deliver releases upon payment of claims. The cost of all insurance policies purchased by the Board relating to the Common Elements shall be a Common Expense. The Executive Board, the managing agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at an unreasonable cost. Exclusive authority to negotiate losses under such policies shall be vested in the Executive Board or with its authorized representative. The Executive Board shall promptly notify the members of material adverse changes in, or termination of, insurance coverages obtained on behalf of the Association.

2. Each such policy shall provide that:

a. The insure waives any right to claim by way of subrogation against the Declarant, the Association, the Executive Board, the managing agent, any member or the Owners and their respective households, guests, employees, customers, tenants, agents and invitees;

b. Such policy shall not be cancelled, invalidated or suspended due to the conduct of any member or any Owner, or such Owner's tenant or such Owner's (or tenant's) household, guests, employees, customers, agents and invitees, or of any member, Officer or employee of the Executive Board or the managing agent without a prior demand in writing that



the Board or the managing agent cure the defect and neither shall have so cured such defect within sixty (60) days after such demand; and

c. Such policy may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to the Executive Board or the managing agent.

3. All policies of insurance shall be written by reputable companies licensed or qualified to do business in North Carolina.

4. The deductible (if any) on any insurance policy purchased by the Executive Board shall be a Common Expense; provided, however, that the Association may, pursuant to Subsection 12.1(1) hereof, assess any deductible amount necessitated by the act, misuse or neglect of an Owner, or such Owner's tenant or such Owner's (or tenant's) household, guests, employees, customers, agents or invitees against such Owner.

5. The Declarant, so long as the Declarant shall own any Lot, shall be protected by such policies as an Owner.

Section 10.2. Physical Damage Insurance.

1. The Executive Board shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, sprinkler leakage (if applicable), cost of demolition, debris removal, and water damage endorsements, insuring any improvements located on the Common Elements, together with all service machinery contained or located therein and covering the interests of the Association, in an amount equal to one hundred percent (100%) of the then current replacement cost of any improvements located on the Common Elements (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board with the assistance of the insurance company affording such coverage). The Executive Board shall also obtain and maintain appropriate coverage on all personal property and real estate other than the Common Elements owned by the Association.

2. Each such policy shall also provide:

a. a waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made not to do so;



b. the following endorsements (or equivalent): (1) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Owner or their agents or any member when such act or neglect is not within the control of the insured or the Owners collectively, nor by any failure of the insured, any members or the Owners collectively, to comply with any warranty or condition with regard to any portion of the Property over which the insured, the members or the Owners collectively, have no control); (2) "cost of demolition"; (3) "contingent liability from operation of building laws or codes"; (4) "increased cost of construction"; (5) "replacement cost"; and (6) "agreed amount" or elimination of coinsurance clause;

c. that any "no other insurance" clause expressly exclude individual members' and Owners' policies from its operation so that the physical damage policy purchased by the Executive Board shall be deemed primary coverage and any individual members' or Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Executive Board hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their Mortgagees, unless otherwise required by law; and

d. such deductibles as to loss, but not coinsurance features, as the Executive Board in its sole discretion deems prudent and economical.

3. Certificates of physical damage insurance signed by an agent of the insurer, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Mortgagee requesting the same, at least ten (10) days prior to expiration of the then current policy. All Mortgagees shall be notified promptly of any event giving rise to a claim under such policy arising from damage to improvements located on the Common Elements in excess of ten percent (100) of the then current replacement cost of such improvements.

Section 10.3. Liability Insurance. The Executive Board shall obtain and maintain comprehensive general liability, broad form endorsement (including libel, slander, false arrest and invasion of privacy coverage) and property damage liability insurance in such limits as the Board may from time-to-time determine, insuring each director, the managing agent and the employees of the Association against any liability to the public or to any member or any Owner or such Owner's tenant and such Owner's (or tenant's) household, guests, employees, customers,



agents and invitees arising out of, or incident to the ownership or care, custody, control and use of the Common Elements or legal liability arising out of employment contracts of the Association. Such insurance shall be issued on a comprehensive liability basis and shall contain: (1) a cross-liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another named insured; (2) hired and non-owned vehicle coverage; (3) host liquor liability coverage with respect to events sponsored by the Association; (4) deletion of the normal products exclusion with respect to events sponsored by the Association; and (5) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to an Owner or member because of negligent acts of the Association or of another Owner or member. The Executive Board shall review such limits once each year, but in no event shall such insurance be less than One Million and No/100 Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than Three Million and No/100 Dollars (\$3,000,000.00).

Section 10.4. Other Insurance. The Executive Board shall obtain and maintain:

1. adequate fidelity coverage to protect against dishonest acts on the part of directors, officers, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association, including the managing agent. If the Association has delegated some or all of the responsibility for handling funds to a managing agent, such managing agent shall be covered by its own fidelity bond. Such fidelity bonds (except for fidelity bonds obtained by the managing agent for its own personnel) shall: (i) name the Association as an obligee, and (ii) contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression;
2. if required by majority of the Mortgagees or governmental regulations, flood insurance in accordance with the applicable regulations for such coverage;
3. workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);



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4. if applicable, pressure, mechanical and electrical equipment including air conditioning equipment coverage on a comprehensive form and in a amount not less than Fifty Thousand and No/100 Dollars (\$50,000.00) per accident per location;

5. directors and officers liability insurance in an amount not less than One Million and No/100 Dollars (\$1,000,000.00); and

6. such other insurance: (i) as the Executive Board may determine; (ii) as may be required with respect to the Additional Real Estate by any amendment to this Declaration adding such Additional Property; or (iii) as may be requested from time to time by a Majority Vote of the members.

Section 10.5. Separate Insurance on Lots.

1. Each member or Owner shall have the right to obtain insurance for such member's or Owner's benefit, at such member's or Owner's expense, coverage the improvements located on such Owner's Lot or the Lot owned or maintained by such member. No member or Owner shall acquire or maintain insurance coverage on the Common Elements insured by the Association so as: (i) to decrease the amount which the Executive Board may realize under any insurance policy maintained by the Board; (ii) to cause any insurance coverage maintained by he Board to be brought into contribution with insurance coverage obtained by a member or Owner; or (iii) in violation of any declaration of covenants encumbering such Owner's Lot. No member or Owner shall obtain separate insurance policies on the Common Elements owned by the Association.

2. Members and Owners may be required to obtain certain insurance coverages with respect to Additional Property in amendments to this Declaration adding such Additional Property.

ARTICLE 11

RECONSTRUCTION AND REPAIR

Section 11.1. When Reconstruction or Repair of Common Elements Required.

Except as otherwise provided in Section 11.4 hereof, if all or any art of any improvement located on the Common Elements is damaged or destroyed by fire or other casualty, the Executive Board shall arrange for and supervise the prompt repair and restoration thereof. The Association shall not use the proceeds of casualty insurance received as a result of damage or destruction of improvements located on the Common Elements for purposes other



than the repair, replacement or reconstruction of such improvements except in accordance with Sections 11.4 and 15.4 hereof.

Section 11.2. Procedure for Reconstruction and Repair of Common Elements.

1. Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of any improvement located on the Common Elements, the Executive Board shall obtain reliable and detailed estimates of the cost of restoring and repairing such improvement (including without limitation any floor coverings, fixtures and appliances) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Executive Board determines to be necessary.

2. Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of any improvement located on the Common Elements, subject to any modifications required by changes in applicable governmental regulations, and using contemporary building materials and technology to the extent feasible; provided, however, that other action may be taken if approved in accordance with Section 15.4 hereof.

Section 11.3. Disbursement of Construction Funds for Common Elements.

1. Construction Fund and Disbursement. The proceeds of insurance collected on account of a casualty and the sums received by the Executive Board from the collection of assessments against the Owners pursuant to Subsection 11.3(2) hereof, or any Owner pursuant to Subsection 12.1(1) hereof, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner.

a. If the estimated cost of reconstruction and repair is less than five percent (5%) of the total annual assessment for Common Expenses for that fiscal year, then the construction fund shall be disburse in payment of such costs upon order of the Executive Board.

b. If the estimated cost of reconstruction and repair is five percent (5%) or more of the total annual assessment for Common Expenses for that fiscal year, then the construction fund shall be disburse in payment of such costs upon approval of an architect qualified to practice in North Carolina and employed by the Executive Board to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other Persons who have



rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

2. Shortfalls. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such construction and repair may be obtained from the appropriate reserve for replacement funds or shall be deemed a Common Expense and an assessment therefor shall be levied subject to Section 6.2 hereof.

3. Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds. If, after payment of the costs of all reconstruction and repair, and the refund of any excess payments made by Owners pursuant to Subsection 11.3(2) hereof in proportion to their contributions or the refund of excess payments by any Owner, there remains any surplus fund, such fund shall be paid to the Association and shall be placed in the appropriate reserve account.

Section 11.4. When Reconstruction and Repair of Common Elements Not Required. If destruction of the improvements located on the Common Elements is insubstantial, the Executive Board may elect not to repair such insubstantial damage. Otherwise, any decision not to repair or restore improvements is on the Common Elements shall be made in accordance with Section 15.4 hereof. If damaged improvements are not repaired, then the Executive Board shall remove all remnants of the damage improvements and restore the site thereof to an acceptable condition compatible with the remainder of the Common Elements and the balance of any insurance proceeds received on account of such damage shall be placed in the appropriate reserve account.

ARTICLE 12

COMPLIANCE AND DEFAULT

Section 12.1. Relief. Each Owner and each Owners Association located within



the Property shall be governed by, and shall comply with, all of the terms of the Association Documents as they may be amended from time to time. For the purpose of determining an Owner's liability for the violation of any provision of the Association Documents or for an act or omission of such Owner, each Owner is responsible, regardless of negligence or culpability, for such Owner's own acts or omissions, the acts or omission of such Owner's tenants, and the acts or omissions of such Owner's (or tenant's) household, guests, employees, customers, agent or invitees. A default by an Owner or an Owners Association located within the Project shall entitle the Association, acting through its Executive Board or through the managing agent, to the following relief.

1. Additional Liability.

a. Each Owner and each Owners Association within the Property shall be liable to the Association or to an affected member or Owner for the expense of all Upkeep rendered necessary by such Owner's act or omission or the act or omission of such Owners Association regardless of negligence or culpability, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Executive Board. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Any costs, including without limitation, legal fees incurred as a result of a failure to comply with the Association Documents by any Owner may be assessed against such Owner's Lot.

b. If a new Owner does not give the Secretary written notice stating the name an address of the new Owner and the number or address of the Lot within thirty (30) days after acquiring title to such Lot, pursuant to Section 1.3 hereof, then the costs of locating such Owner and reasonable record keeping costs incurred by the Association, as determined by the Board, may be assessed against such Owner. The Board may set or change the amount of such assessment from time to time. Such assessment shall be a lien against such Owner's Lot as provided in Section 6.6 hereof.

2. Costs and Attorneys' Fees. In any proceedings arising out of any alleged default by an Owner or an Owners Association located within the Property, the prevailing party



shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be determined by the Court.

3. No Waiver of Rights. The failure of the Association, the Executive Board or of a member or Owner to enforce any right, provision, covenant or condition which may be granted by the Association Documents shall not constitute a waiver of the right of the Association, the Board or any member or Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Executive Board or any member or Owner pursuant to any term, provision, covenant or condition of the Association Documents shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Association Documents, at law or in equity.

4. Interest. In the event of a default by any Owner in paying any sum due the Association assessed against such Owner's Lot or any Owners Association in paying any amount to be collected from such Owners Association which continues for a period in excess of fifteen (15) days, interest from the due date at a rate not to exceed ten percent (10 %) per annum may be imposed in the discretion of the Executive Board on the principal amount unpaid from the date due until paid; provided, however, that if the Executive Board does not impose interest, the Board shall set forth its reasons for not charging such interest in a written record of its decision. The interest to be imposed pursuant to this subsection shall be in addition to the late charge permitted under Section 6.5.

5. Abating and Enjoining Violations. The violation of any of the Rules and Regulations adopted by the Executive Board or the breach of any other provision of the Association Documents shall give the Executive Board the right, in addition to any other rights set forth in the Association Documents: (a) to enter the portion of the Property on which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner or member, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the Association Documents, and the Executive Board shall not thereby be deemed guilty in any manner of trespass; (b) to use self-help to remove or cure any violation of the Association Documents on the Property (including without limitation the towing of vehicles); or (c) to enjoin, abate or remedy by appropriate legal proceedings, either



at law or in equity, the continuance of any such breach; provided, however, that before any construction may be altered or demolished (except in emergencies) judicial proceedings shall be instituted.

6. Legal Proceedings. Failure to comply with any of the terms of the Association Documents shall be grounds for relief, including without limitation an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in the Association Documents and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Executive Board, the managing agent or, if appropriate, by any aggrieved Owner or member and shall not constitute an election of remedies.

7. Other Remedies. The Executive Board may suspend an Owner's voting rights pursuant to the Bylaws. The Board may also suspend the right of an Owner or other resident, and the right of such Person's household, guests, employees, customers, tenants, agents and invitees, to use the Common Elements for a reasonable period not to exceed sixty (60) days for any violation of any provision of any of the Association Documents or for any period during which any assessment against an Owner's Lot remains unpaid; provided, however, that the Association shall not suspend the right to use the Common Elements for pedestrian ingress and egress to and from such Owner's Lot or to suspend any easement over the Common Elements for storm water drainage, electricity, water, sanitary sewer, natural gas, television reception, telephone service, data transmission, computer service or similar utilities and services to the Lots.

8. Charges and Suspension of Rights. The Executive Board, or the Covenants Committee created by the Executive Board for this purpose, shall constitute a subcommittee having the power to impose charges and suspend the right to vote in the Association in the case of an Owner or an Owners Association found by the subcommittee to be responsible for a violation of the Association Documents (personally or under the provisions of the Association Documents). No such penalty shall be imposed until the Owner charged with such a violation has been given notice and an opportunity for a hearing as set forth herein. No charge may be imposed for failure to pay an assessment except as otherwise provided in the Declaration. Charges are special assessments and shall be collectible as such and shall also constitute a lien against an Owner's Lot in accordance with Section 6.6 hereof.



Section 12.2. Hearing Procedures. Except as may be otherwise specifically authorized by the Declaration, and permitted by the Declaration, the Executive Board shall not (i) impose a fine or penalty, (ii) undertake permitted remedial action, or (iii) suspend voting or infringe upon other rights of a member or other occupant for violations of the Association Documents, or for assessments or other amounts due and owing to the association remaining unpaid for a period of thirty (30) days, or longer, unless and until the following procedure is completed:

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than five (5) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation may result in the imposition of a sanction after notice and hearing if the violation is not continuing.

(b) Notice. At any time within twelve (12) months following such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board or its delegate shall serve the violator with a written notice of a hearing to be held by the Covenants Committee if such committee is appointed, and if not the Executive Board of the Association in executive session. The notice shall contain: (i) the nature of the alleged violation; (ii) the time and place of the hearing, which shall not be less than ten (10) days from the giving of the notice; (iii) an invitation to attend the meeting and produce any statement, evidence and witness on his or her behalf; and (iv) the proposed sanction to be imposed. The notice prescribed herein may be served by mailing a copy of said notice to the alleged violator by placing said notice in the United States mail, postage prepaid, by any method as permitted for the service of summons as set forth in Rule 4 of the North Carolina Rules of Civil Procedure or by the delivery of said notice by an officer, director or agent of the Association to the alleged violator or to any person who may be served on the alleged violator's behalf as provided in said Rule 4.

(c) Hearing. The hearing shall be held in executive session of the Covenants Committee, if such committee is appointed, or if not, the Executive Board of the Association pursuant to the notice affording the member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard



shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of deliver, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. In addition, a written statement of the results of the hearing and the sanction, if any, imposed shall be mailed by the United States mail, postage prepaid, by the Association to the violator.

(d) Appeal. Following a hearing before the Covenants Committee of the Association, if such committee is appointed, the violator shall have the right to appeal the decision to the Executive Board. To perfect this right, a written notice of appeal must be received by the managing agent of the Association, President or Secretary of the Association within thirty (30) days following the hearing date, said written notice to contain information by which the Executive Board may notify the alleged violator of the date of the appeal hearing. If no Covenants Committee is appointed by the Executive Board, no right of appeal shall exist.

(e) Sanction as Assessment. Pursuant to the provisions of this Section, a fine may be imposed by the Association is an amount not exceeding One Hundred Fifty and No/100 Dollars (\$150.00) (or as may be provided otherwise by law) per violation of the Association Documents and without further hearing, for each day after the decision to impose such fine that the violation occurs. Any such fine shall be an assessment as set forth in this Declaration and the Act. If it is decided pursuant to the provisions of this Section that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

ARTICLE 13

MORTGAGES

Section 13.1. Notice of Executive Board. Upon request, an Owner who mortgages such Owner's Lot shall notify the Executive Board of the name and address of the Mortgagee. No Mortgagee shall be entitled to any Mortgagee rights under the Association Documents unless such Mortgagee has notified the Board of its address as required by Section 13.2 below and has requested all rights under the Association Documents.

Section 13.2. Notices to Mortgagees. Any Mortgagee who desires notice from the Association shall notify the Secretary of the Association to that effect by certified or



registered United States Mail. Any such notice shall contain the name and post office address of such Mortgagee and the name of the person to whom notices from the Association should be directed. The Executive Board shall notify Mortgagees of the following:

1. Any default of an Owner of a Lot, upon which the Mortgagee has a Mortgage, in paying assessments for Common Expenses (which remains uncured for sixty (60) days) or any other default, simultaneously with the notice sent to the defaulting Owner;
2. All actions taken by the Association with respect to reconstruction of the Common Elements or a Lot upon which the Mortgagee has a Mortgage;
3. Any lapse in an insurance policy held by the Association on the Common Elements;
4. Any taking in condemnation or by eminent domain of the Common Elements and the actions of the Association pursuant to Article 14 hereof.
5. Any proposal to terminate the Declaration, at least sixty (60) days before any action is taken to terminate in accordance with Section 16.1 hereof; and
6. Any proposal to amend materially the Articles of Incorporation, this Declaration or the Bylaws, at least seven (7) days before any action is take.

Section 13.3. Other Rights of Mortgagees. All Mortgagees or their representatives shall have the right to receive notice of and to attend and to speak at meetings of the Association. All such Mortgagees shall have the right to examine the Association Documents and books and records of the Association and to require the submission of annual financial reports and other budgetary information.

ARTICLE 14

CONDEMNATION

Section 14.1. Definition. For the purposes of this Article, "Taking" means an acquisition of all or any part of the Common Elements or of any interest therein or right accruing thereto as result of, in lieu of or in anticipation of the exercise of the right of condemnation or eminent domain, or a change of grade caused by action of a governmental entity affecting the value of any portion of the Common Elements or severely as to amount to condemnation.

Section 14.2. Taking of Common Elements. If there is a Taking of all or any part of the Common Elements, then the Association shall notify the members and Owners, but the Executive Board shall act on behalf of the Association in connection therewith and no member



or Owner shall have a right to participate in the proceedings incident thereto. The award made for such Taking shall be payable to the Association, to be disbursed as follows. If the Taking involves a portion of the Common Elements on which improvements have been constructed, then the Association shall restore or replace such improvements so taken in another portion of the Common Elements, to the extent land is available therefore, in accordance with plans approved by the Board, unless within sixty (60) days after such Taking the Declarant (during the Development Period) or the members by an affirmative vote of sixty-seven percent (67%) of the votes entitled to be cast (after the Development Period) shall otherwise agree. The provisions of Article 11 hereof regarding the disbursement of funds following damage or destruction shall apply.

ARTICLE 15

AMENDMENT; EXTRAORDINARY ACTIONS

Section 15.1. Amendment by the Declarant. During the Development Period, the Declarant may unilaterally amend any provision of this Declaration for any purpose. After the expiration of the Development Period, the Declarant may amend any provision of this Declaration to: (1) make non-material changes; and (2) satisfy the requirements of any government, governmental agency, including, without limitation, the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association and Federal Home Loan Mortgage Corporation.

Section 15.2. Amendment by the Association.

1. Subject to Section 15.4 hereof, the Association may amend this Declaration by an affirmative vote of the members of at least sixty-seven percent (67%) of the votes entitled to be cast.

2. An amendment shall not be effective until certified by the President as to compliance with the procedures set forth herein, executed and acknowledged by the President and attested by the Secretary or Assistant Secretary of the Association, and recorded in the office of the Register of Deeds of Dare County.

Section 15.3 Governmental Agency Approval. Notwithstanding the provisions of Section 5.1, during the Development Period if Declarant desires that the Property be eligible for loans made, guaranteed or insured by any governmental agency or lending agency including, without limitation, the Federal Housing Administration, the Veterans Administration, Federal



Housing Administration, Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, the following actions will require prior approval of such governmental or lending agency: annexation of properties other than set forth on Exhibit , mergers and consolidations, mortgaging the Common Elements, dedication of Common Elements and amendment of this Declaration.

Section 15.4. Prerequisites. Written notice of any proposed amendment under Section 15.2 shall be sent to every member and Owner at least thirty (30) days before any action is taken. No amendment shall be made to the Declaration during the Development Period without the prior written consent of the Declarant. No amendment shall increase the financial obligations of an Owner in a discriminatory manner or further restrict development permitted on a Lot. No amendment to the Declaration shall diminish or impair the rights of the Declarant, including voting or veto rights, under the Declaration without the prior written consent of the Declarant. No amendment to the Declaration shall diminish or impair the express rights of the Mortgagees under the Declaration without the prior written approval of at least of fifty-one percent (51%) of the Mortgagees. No amendment may modify this Article or the rights of any Person hereunder. Except as specifically provided in the Declaration, no provision of the Declaration shall be construed to grant to any Owner or to any other Person any priority over any rights of Mortgagees.

Section 15.5. Extraordinary Actions of the Association. Unless the members by an affirmative vote of at least sixty-seven percent (67%) of the votes entitled to be cast have given their prior approval, the Association shall not, by act or omission: (i) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (except for making dedications or granting easements for utilities or other public purposes consistent with the intended use of such Common Elements); (ii) change the method of determining the obligations, assessments or other charges which may be levied against an Owner or voting rights of any members; provided, however, that such provisions shall not be changed with respect to any class of members representing a specific type of Lot without a Majority Vote of such class of members; (iii) abandon architectural control or requirements for Upkeep of the Property; (iv) fail to maintain fire and extended coverage on insurable Common Elements on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (base on current replacement cost), in accordance with Section 10.2 hereof; (v) use hazard insurance



proceeds for losses to the Common Elements for any purpose other than repair, replacement or restoration of such Common Elements substantially in accordance with the Association Documents and the original plans and specification; or (vi) add or amend any material provisions of the Association Documents, except for amendments adding Additional Property with respect to real estate being added, which establish, provide for, govern or regulate any of the following: (1) voting procedures; (2) assessment liens or subordination of such liens; (3) reserves for maintenance, repair and reconstruction of the Common Elements; (4) insurance or fidelity bonds; (5) rights to use of the Common Elements; (6) maintenance responsibility; (7) boundaries of any Lot; (8) leasing of Lots; (9) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey such Owner's Lot; (10) expansion or contraction of the Property or the addition, annexation or withdrawal of real estate to or from the Property; or (11) the convertibility of Lots into Common Elements or vice versa.

Any amendment to the Association Documents shall not be considered material if only for the purpose of correcting technical errors or for clarification. The provisions of this section shall not be construed to reduce the vote that must be obtained from members where a larger vote is required by the North Carolina Nonprofit Corporation Act or other provisions of the Association Documents.

ARTICLE 16

TERMINATION

Section 16.1. Termination by the Association. Subject to Section 15.4 hereof, the Association may terminate this Declaration only by a vote of the members entitled to cast at least eighty percent (80%) of the total number of votes as certified by the President or with the written approval of members entitled to cast at least eighty percent (80%) of the total number of votes. In either case the termination shall not be effective until certified by the President as to compliance with the procedures set forth herein, executed and acknowledged by the President and Secretary of the Association and recorded in the office of the Register of Deeds of Dare County.

Section 16.2. Prerequisites. Written notice of the proposed termination shall be sent to every member, Owner and Mortgagee at least sixty (60) days before any action is taken. The Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. Such termination shall not affect any permanent easements or other



permanent rights or interests relating to the Common Elements created by or pursuant to the Association Documents. To the extent necessary, the termination agreement shall provide for the transfer assignment of the easements, rights or interests granted to the Association herein to a successor entity which is assuming the Association's maintenance and regulatory responsibilities. Any lien which has arisen pursuant to the provisions of the Declaration shall remain in full force and effect despite termination of the Declaration until the amounts secured thereby are paid in full. Upon termination of the Declaration and the dissolution of the Association, the Association shall dispose of or distribute the real and personal property owned by the Association to such nonprofit corporation as may have been established upon termination to hold and administer the real and personal property formerly owned by the Association or public body or agency which shall perform the same functions.



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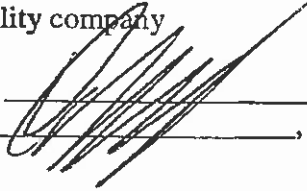
ARTICLE 17

JOINDER OF TRUSTEE AND BENEFICIARY

Trustee and Lender join in the execution of this Declaration to consent to the terms of the same and subordinate the lien of any deed of trust to the Trustee for the benefit of Lender encumbering the Property to the provisions of this Declaration.

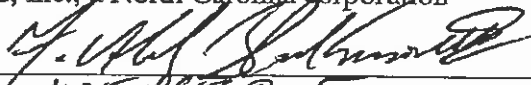
IN TESTIMONY WHEREOF, the parties hereto have caused this instrument to be executed in such form as to be binding, all by authority duly give, this the day and year first above written.

BERMUDA BAY, L.L.C., a North Carolina limited liability company (SEAL)

By:  _____, Manager


TRUSTEE

TRSTE, Inc., a North Carolina corporation

By:  _____, Officer
VICE PRESIDENT

LENDER

Wachovia Bank, a National Association

By:  _____, Officer
SENIOR VICE PRESIDENT



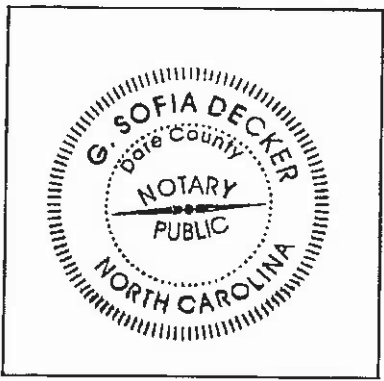
STATE OF NORTH CAROLINA
COUNTY OF Currituck

I, G. Sofia Decker, a Notary Public in and for said County and State, do hereby certify that DAVID S. RUSSOTTO before me this day personally appeared, who being by me first duly sworn, says that he is a manager of BERMUDA BAY, L.L.C., the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto; and that the instrument is the act and deed of said limited liability company.

WITNESS my hand and notarial seal, this the 11 day of August, 2005.

G. Sofia Decker
Notary Public

My Commission Expires:
11-19-09



Notary seal or stamp must appear within this box.



~~STATE OF NORTH CAROLINA~~
VIRGINIA
COUNTY OF Richmond
CITY

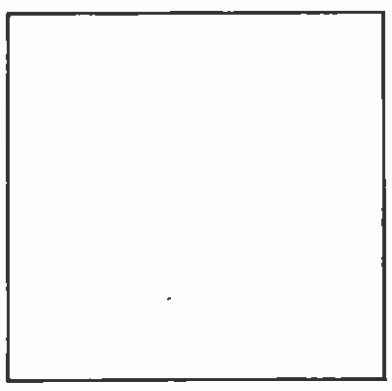
I, Sherrie W. Jones, a Notary Public in and
for said ~~County~~ and State, do hereby certify that F. Arnold Blackmon, III personally
appeared before me this day and acknowledged that he is V.P. an officer of TRSTE, INC., a
corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its Vice President, sealed with its corporate seal, and
attested by him as its _____ Secretary.

WITNESS my hand and notarial seal, this the 18th day of August, 2005.

Sherrie W. Jones

Notary Public

My Commission Expires:
6/30/08



Notary seal or stamp must appear within this box.

VIRGINIA
STATE OF NORTH CAROLINA
COUNTY OF Richmond
City



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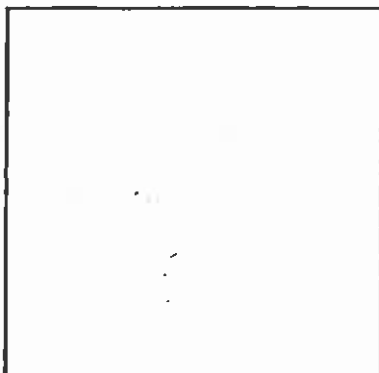
City I, Sherrie W. Jones, a Notary Public in and for said ~~County~~ and State, do hereby certify that T. Mark Smith personally came before me this day and acknowledged that he/she is Sr. Vice President of WACHOVIA BANK, NATIONAL ASSOCIATION, a corporation, and that he/she, as Sr. Vice President being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the 18th day of August, 2005.

Sherrie W. Jones
Notary Public

My Commission Expires:

6/30/08



Notary seal or stamp must appear within this box.

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EXHIBIT A
SUBMITTED PROPERTY

PARCEL 1 That tract or parcel of land lying and being situate in Kill Devil Hills, Atlantic Township, Dare County, North Carolina, beginning at a point located the following courses and distances from the northeastern corner of PARCEL C and the northwestern corner of PARCEL B as shown on the map entitled "SUNSET BAY", recorded in Plat Cabinet F, at Slide 247, in the office of the Register of Deeds of Dare County, North Carolina: South 61°30' 33" West 708.84 feet to a control corner and South 16° 53' 07" West 190.81 feet to the point or place of beginning. THENCE, FROM SAID POINT OF BEGINNING, SO LOCATED, South 16° 53' 07" West 152.44 feet to a point; thence North 73° 06' 53" West 140.57 feet to a point; thence, North 16° 53' 07" East 71.86 feet to a point; thence, North 28° 30' 16" West 13.48 feet to a point; thence, North 61° 29' 44" East 23.33 feet to a point; thence, South 28° 30' 16" East 2.60 feet to a point; thence, South 73° 27' 41" East 5.01 feet to a point; thence, North 60° 34' 07" East 91.66 feet to a point; thence, South 73° 06' 53" East 63.61 feet to the point or place of beginning.

PARCEL 2 That tract or parcel of land lying and being situate in Kill Devil Hills, Atlantic Township, Dare County, North Carolina beginning at a control corner located South 61° 30' 33" West 708.84 feet from the northeastern corner of PARCEL C and the northwestern corner of PARCEL B as shown on the map entitled "SUNSET BAY" recorded in Plat Cabinet F, at Slide 247, in the office of the Register of Deeds of Dare County, North Carolina. THENCE, FROM SAID POINT OF BEGINNING, SO LOCATED, South 16° 53' 07" West 343.25 feet to a point; thence, South 73° 06' 53" East 30.00 feet to a point; thence, North 16° 53' 07" East 308.65 feet to the point of curvature of a curve to the right; thence, along and with said curve to the right, said curve having a radius of 158.39 feet and a delta angle of 44° 37' 26", a chord bearing and distance of North 39° 11' 50" East 120.27 feet to a point; thence, South 61° 30' 33" West 107.71 feet to the point or place of beginning.

EXHIBIT B
ADDITIONAL PROPERTY

That tract or parcel of land lying and being situate in Kill Devil Hills, Atlantic Township, Dare County, North Carolina and being all of PARCEL C as shown and designated on the map entitled "SUNSET BAY," recorded in Plat Cabinet F, at Slide 247, in the office of the Register of Deeds of Dare County, North Carolina.

SAVING AND EXCEPTING FROM THE ABOVE DESCRIBED TRACT OR PARCEL THAT PORTION THEREOF DESCRIBED IN EXHIBIT A TO THIS DECLARATION.



