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AT THE CURRITUCK CLUB

CHARLENE Y. COWDY
REGISTER OF DEEDS
CURRITUCK COUNTY N.C.

DECLARATION

OF

PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,

EASEMENTS, CHARGES AND LIENS OF

"THE HAMMOCKS"

At The Currituck Club

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Supp Declar.
632/609
C/Amend R/C
666/278
Supp. Decl
724/823
Amend to Decl
729/635
Supp RID
754/903

MADE BY: THE CURRITUCK ASSOCIATES RESIDENTIAL PARTNERSHIP

AND

LANDMARK BUILDING AND DEVELOPMENT OF NORTH CAROLINA, L.L.C.

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS - .

"THE HAMMOCKS"
At The Currituck Club

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STATE OF NORTH CAROLINA
COUNTY OF CURRITUCKDECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS OF"THE HAMMOCKS"
At The Currituck Club

THIS DECLARATION, made this 16th day of August, 2001 by THE CURRITUCK ASSOCIATES - RESIDENTIAL PARTNERSHIP, a North Carolina General Partnership (hereinafter "Owner-Declarant") and LANDMARK BUILDING AND DEVELOPMENT OF NORTH CAROLINA, L.L.C (hereinafter "Developer-Declarant").

WITNESSETH:

WHEREAS, the Owner-Declarant is the Owner of the real property described in Exhibit A of this Declaration, being Phase 5A, The Hammocks Subdivision at The Currituck Club, P.U.D., consisting of Lots 2 through 21 and Lots 53 through 56 inclusive, and all of the private streets adjacent thereto, including without limitation, Seafare Drive, Hammock Lane, Ridge Point Drive and Currituck Cay, all located in Poplar Branch Township, Currituck County, Corolla, North Carolina, together with an open space as shown and described on that certain plat entitled "The Currituck Club, P.U.D., Phase 5A-The Hammocks," prepared by William T. Robbins, Surveyor, dated May 29, 2001 and recorded on the July 19, 2001, in the office of the Register of Deeds of Currituck County, North Carolina in plat cabinet G, Slides 294, 295 and 296 (hereinafter the "Plat") a copy of which is attached hereto as Exhibit B for ease of reference; and

WHEREAS, Developer-Declarant desires to develop said lots into a residential community known or to be known as "The Hammocks" at The Currituck Club (hereinafter "The Hammocks"), upon which are or will be constructed residential dwelling Structures, which lots and structures will be individually owned and the Developer-Declarant desires that such open spaces and other common facilities shall remain available for the benefit of all members of the community; and

WHEREAS, the Owner-Declarant, in order to provide for the preservation of the values and amenities in The Currituck Club, has previously recorded a Declaration of Covenants, conditions and Restrictions for Phase 1 and Phase 2 of The Currituck Club, which have been recorded in the office of the Register of Deeds, Currituck County, North Carolina in Deed Book 377, Page 281, which Declaration was corrected and re-recorded by Declaration recorded in Book 381, Page 468, aforesaid county registry and was modified by Election to Modify recorded in Book 388, Page 569, aforesaid county registry and further modified by Election to Modify recorded in Book 396, page 639, aforesaid county registry and amended by Supplemental Declarations (collectively said Declarations and Modifications hereafter referred to as the "Master Declaration"); and

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WHEREAS, in order to carry out the overall intention of the Master Declaration relative to the development of The Hammocks, the Owner-Declarant and the Developer-Declarant desire to subject the property described in Exhibit A, as shown in Exhibit B, to all of the terms, conditions and restrictions of the Master Declaration including but not limited to the obligations of membership in the Currituck Club Property Owners Association, Inc. with all the rights and responsibilities and the liens of assessment appurtenant thereto, unless said terms, conditions or restrictions are expressly exempted from application by this Declaration or a reasonable interpretation of this Declaration is inconsistent therewith, in which case the provisions hereof shall govern; and

WHEREAS, the Owner-Declarant and the Developer-Declarant, in order to further provide for the preservation of the values and amenities in The Hammocks for the maintenance of the common properties specific to The Hammocks subdivision, have and do hereby subject the real property described in Exhibit A, as shown in Exhibit B, to this declaration of covenants, conditions, restrictions, easements, charges and liens, as set forth hereinafter, each and all of which is, and are, for the benefit of said real property and each owner of a portion thereof, which are herewith recorded in the office of the Register of Deeds, Currituck County, North Carolina, (these covenants hereinafter referred to as the "Declaration"); and

WHEREAS, the Developer-Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community property and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, The Developer-Declarant has caused to be incorporated The Hammocks Community Association, Inc., a nonprofit corporation formed under the Nonprofit Corporation Law of the State of North Carolina for the purpose of exercising the aforesaid functions.

NOW THEREFORE, the Owner-Declarant and the Developer-Declarant, for themselves, their successors and assigns, declare that the real property described in Section 2.01 hereof and such additional property described in Section 2.02 hereof, as may be brought under the scope of this Declaration from time to time, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") set forth in the Master Declaration of The Currituck Club, and subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth in this Declaration.

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DEFINITIONS

Section 1.01. Definitions. The following words, phrases or terms when used in this Declaration or in any instrument supplemental to this Declaration shall, unless the context otherwise prohibits, have the following meanings:

"Assessment(s)" or "Common Charges" shall mean and refer to the assessment(s) and charges levied by The Hammocks Community Association, Inc. against The Hammocks Community Association Members who are the Owners of The Hammocks Dwelling units in The Hammocks as applicable, and the words Assessment(s) or assessment(s) shall have the same meaning as Common Charges, unless the context requires otherwise.

"Association" shall mean and refer to The Hammocks Community Association, Inc.

"Association Property" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by or in possession of the Association.

"The Board" shall mean and refer to the Executive Board of The Hammocks Community Association, Inc.

"Common Expenses" shall mean and refer to:

- (a) expenses of administration, operation, maintenance, repair or replacement of The Hammocks Common Properties.
- (b) expenses declared Common Expenses by the provisions of this Declaration or The Hammocks Bylaws.
- (c) expenses agreed upon from time to time as Common Expenses by the Association and lawfully assessed against Members who are Owners of Dwelling Units in accordance with The Hammocks Bylaws or this Declaration.
- (d) any valid charge against the Association or against the Common Properties as a whole.

"Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Hammocks labeled as "Common Properties" or shown as Recreational Facilities, open space, pedestrian, walking easements (together with all improvements located thereon) which are a part of The Hammocks and as such intended to be devoted to the common use and enjoyment of the Members of The Hammocks Subdivision, subject to special rights and limitations, if any, granted to or imposed on

Owners of particular Lots or Dwelling Units in the Community.

"Community" shall mean and refer to that Planned Unit Development known as The Currituck Club, consisting of single family lots and residences, (including The Hammocks Subdivision) multi-family-parcels and recreational and supporting facilities and which includes commercial parcels and an eighteen hole golf course on the Currituck County Outer Banks of North Carolina, near the Village of Corolla, situated on an approximately 587 acre tract of land that was originally part of the Currituck Shooting Club property.

"Declaration" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens and as it may from time to time be supplemented, extended, or amended in the manner provided for herein.

"Developer-Declarant" shall mean and refer to Landmark Building and Development Of North Carolina, L.L.C. , its successors and assigns.

"Dwelling Unit" or "Dwelling" shall mean and refer to any improved property intended for use and occupancy as one (1) single family dwelling, irrespective of the number of Owners thereof (or the form of ownership) located within The Hammocks and shall, unless otherwise specified consist of single family detached homes.

"Limited Common Expense" shall mean and refer to expense of administration, operation, maintenance, repair or replacement of Limited Common Properties or Limited Common Area which shall be assessed against those Lots or Dwelling Units having the exclusive or special rights in the use or enjoyment thereof.

"Limited Common Properties" or "Limited Common Areas" shall mean and refer to those areas of land (including without limitation any joint driveways) and improvements (including without limitation any common entrances to a Dwelling Unit shown or designated as Limited Common Properties or Limited Common Areas on any recorded subdivision map of The Hammocks or intended for the use of the Owners of Dwelling Units to the exclusion of The Hammocks Owners and other Community Members as such intention is certified The Hammocks Board. Any property so designated shall be for the exclusive use of the Owners of The Hammocks Dwelling units so designated.

"Living Area" shall mean and refer to those heated and/or air-conditioned areas within a Dwelling Unit which shall not include garages, carports, porches, patios, breeze ways, terraces, or basements.

"Lot" shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the County of Currituck North Carolina or (ii) shown as a separate Lot upon any recorded or filed subdivision map.

"Member" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III of this Declaration.

"Owner(s)" shall mean and refer to the record Owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include one who has merely contracted to purchase any property or a lessee or tenant, of any apartment, Association, or single-family residence. The term "Owner" shall not include a Developer, who for this declaration shall be defined as a builder, contractor, investor, or other person or entity who purchases a Lot in The Hammocks for the purpose of resale thereof to a Public Purchaser, or for the purpose of constructing improvements thereon for resale to a Public Purchaser. For the purpose of the enforcement of the rules and regulations of the Association including but not limited to this Declaration and the Bylaws, "Owner" shall also include the family, invitees, licensees, and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any Lot (Note: "Member" and "Owner" are used interchangeably as semantics dictate throughout this Declaration).

"Property" or "Properties" shall mean and refer to all the property described on Exhibit B and any additions thereto as are made subject to this Declaration and by any Supplemental Declaration(s) under the provisions of Article II of this Declaration.

"Recreational Facilities" shall mean and refer to the area(s), if any, shown and designated as such on any recorded subdivision map The Subdivision, and any, improvements erected or to be erected upon any such area(s), but specifically not to include those properties and facilities of the Golf Club.

"Structure" shall mean and refer to each completed dwelling (as evidenced by issuance of a Certificate of Occupancy issued by the County of Currituck, North Carolina) including garage, situated upon the Property or any dwelling structure on the Property which has been occupied as a residence.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION ADDITIONS THERETO

Section 2.01. Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County of Currituck, and State of North Carolina, all of which property shall be hereinafter referred to as "Property". The real property initially subject to this Declaration is known as and is described in Exhibit A, attached hereto.

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Section 2.02. Additional Property. Other lands (Additional Property) in addition to the lands described in Exhibit A, if any, may become subject to this Declaration in the following manner:

2.02.1. **Lands added with consent of Owners.** The Owner of any lands who desires to add such lands to the scope of this Declaration and to subject them to the jurisdiction of the Association may do so upon (i) approval in writing of the Association pursuant to a vote of its Members as provided in its By-Laws and (ii) an amendment to this Declaration.

Such additional lands shall be added to this Declaration by the recording of a supplemental extending declaration which shall extend the scope of the covenants and restrictions of this Declaration to such additional lands and thereby subject to such additional lands and the owners of such lands to assessments for their fair share of the expenses of the Association. The supplemental extending declaration may also contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the provisions of this Declaration.

Any buildings or other improvements on such lands or to be constructed on such lands must be harmonious in style to those improvements on lands initially covered by this Declaration.

Section 2.02. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

ARTICLE III

**THE ASSOCIATION STRUCTURE, MEMBERSHIP,
VOTING RIGHTS AND DIRECTORS**

Section 3.01. Formation of the Association. Pursuant to the Nonprofit Corporation Law of the State of North Carolina, the Developer-Declarant has formed The Hammocks Community Association, Inc. (the "Association"), to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time

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to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations as set forth in the North Carolina Planned Community Act ("the Act"), being N.C.G.S. 47F-1-101 et seq., and in particular §47F-3-102.

Section 3.02. Membership. The Association shall have as members only Owners. All Owners shall, upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Owner" and "Developer-Declarant" as found in Article I of this Declaration.

3.02.1. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Developer-Declarant and builders, who shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. When more than one person holds an interest in any Lot, and such persons be unable to agree on how their vote is to be cast, then such vote shall not be counted.

Class B. Class B member(s) shall be the Developer-Declarant, its successors and assigns, and shall be entitled to three (3) votes for each platted Lot still owned by the Class B member(s). The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or (b) at the expiration of three (3) years after the date of this Declaration provided that if a tract Declaration is filed annexing additional land pursuant to this Declaration at any time or times prior to the expiration of said three (3) years (as same may have been extended by the filing of any Tract Declaration). Such period shall be extended each time until the expiration of three (3) years from the date of filing of the last such Supplemental Declaration.

Notwithstanding the foregoing, the Class B membership shall permanently terminate after eight years from the date of the recording of this Declaration and shall not thereafter be reactivated.

Upon the conversion of the Class B to Class A membership, no action may be taken by the Association which would serve to impede the installation of Common Area facilities substantially represented in plans of public record particularly as they may have been required and/or approved by public agencies except with the assent of such principal parties including the Developer-Declarant, the Federal Housing Administration, the Veterans Administration, and the County of Currituck NC.

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Section 3.03. Voting; Mortgagee's Control of Votes. Each Owner, including the Developer-Declarant, shall be entitled to vote(s) for each Lot owned in any portion of the Property covered by this Declaration in accordance with Section 3.02 of the declaration. There are 25 lots on the property initially covered by this Declaration. Accordingly, there shall initially be 75 votes in the Association. Owners of each Lot on additional properties added to the scheme of this Declaration pursuant to Section 2.02 hereof shall be entitled to one (1) vote for each Lot owned. Notwithstanding anything to the contrary which may be contained in this Declaration, if a mortgage lender whose name appears on the records of the Association (i) holds a mortgage on a Lot which prohibits the mortgagee from voting contrary to the interest of the mortgagee, and (ii) notifies the Association prior to the date or initial date of canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Lot Owner contrary to the position of such mortgage lender shall not be counted in such canvass.

Section 3.04. Interest in More Than One Lot. If any person or entity owns or holds more than one Lot such Owner shall be entitled to the appropriate number of votes for each Lot.

Section 3.05. Lots Owned or Held by More than One Person or by a Corporation. When any Lot is owned or held by more than one person as tenants by the entirety, in joint or in common ownership or interest, such Owners shall collectively be entitled to only that number of votes prescribed therein for such Lot and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot. In the case of a corporate Owner, votes may be cast by an appropriate officer of such corporation.

Section 3.06. Holder of Security Interest Not a Member. Any person or entity which holds an interest in a Lot merely as security for the performance of an obligation shall not be a Member.

Section 3.07. Assigning Right to Vote. Subject to the consent of not less than two-thirds (2/3) of all Lot Owners other than the Developer-Declarant (except for a transfer to a wholly owned subsidiary of the Developer-Declarant) and the filing of an amendment to the offering plan pursuant to which the Developer-Declarant has offered interests in the Association, the Developer-Declarant may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee of such membership, may make successive like assignments.

3.07.1. **Proxies.** In accordance with the provisions of §47F-3-110, votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot owner. If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy. A lot owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term. Any other Owner shall be entitled to assign his right to vote by proxy, provided that such assignment is made pursuant to the By-Laws of the Association, consistent with the provisions of the Act. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.08. Executive Board. Pursuant to §47F-3-103 of the Act, an Executive Board shall selected which shall act in all instances on behalf of the Association. The nomination and election of Directors and the filling of vacancies on the Executive Board shall be governed by the By-Laws of the Association, not inconsistent with the provisions of the Act.

Section 3.09. Powers and Duties of Directors; Officers. The powers and duties of the Executive Board shall be as set forth in the By-Laws of the Association, consistent with §47F-3-103 of the Act. Officers and Executive Board members shall discharge their duties in good faith. Officers shall act according to the standards for officers of a nonprofit corporation set forth in N.C.G.S. 55A-8-42. Executive Board members shall act according to the standards for directors of a nonprofit corporation set forth in N.C.G.S. 55A-8-30. The Executive Board may not act unilaterally on behalf of the Association to amend the declaration, to terminate the planned community or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may unilaterally fill vacancies in its membership for the unexpired portion of any term. Lot owners are entitled to vote at any meeting of the lot owners at which a quorum is present and may remove any member of the Executive Board with or without cause other than a member appointed by the Owner-Declarant or Developer-Declarant.

Section 3.10. Indemnification of Officers and Directors. Every director and officer of the Association shall be and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or, any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the board approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

3.11 Meeting and Voting Regulations. The Executive Board of the Association may make such regulations, consistent with the terms of this Declaration and the Articles of Incorporation and By-Laws of the Association and the Act as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.12 Quorum. The number of Owners present at a meeting which shall constitute a quorum is established by the By-laws, consistent with §47F-3-103 of the Act.

3.13. Association Budget. The Executive Board shall vote on a proposed budget. Within 30 days after adoption of any proposed budget, in accordance with the terms of §47F-3-103 of the Act, the

Executive Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Executive Board shall set a date for a meeting of the Owners to consider ratification of the budget, to be held 30 days after the mailing of the summary and notice. The budget shall be ratified unless at that meeting a majority of all Owners rejects the budget.

Section 3.14. Developer-Declarant's Written Consent Necessary for Certain Actions Taken by Executive Board. Notwithstanding anything to the contrary contained in this Declaration, so long as the Developer-Declarant or its successor owns or has under construction structures on lots described in Exhibits to this Declaration (whether or not covered by this Declaration) equal in number to 25% or more of the number of Lots to which title has been transferred to purchasers for occupancy, but in no event more than three (3) years from the date of recording of the Declaration, the Executive Board may not, without the Developer-Declarant's written consent (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to Association Property; (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the relevant phase or phases of the development; (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. Until three (3) years from the date of recording of this Declaration, if the Developer-Declarant owns or has under construction on lands described in Exhibits to this Declaration (whether or not such lands are then subject to this Declaration) dwelling Lots equal in number to 25% or more of the number of Lots to which title has been transferred to purchasers for occupancy, this Section shall not be amended without the written consent of the Developer-Declarant.

3.15 Fines and Suspension of Privileges or Services. In the event of violation of any provision of this Declaration, a hearing shall be held before the Executive board, or an adjudicatory panel appointed Executive Board. The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If a decision is reached that there is a violation, a fine of one hundred fifty dollars (\$150.00) shall be imposed for each day after the decision that the violation occurs, which shall be an assessment secured by lines as provided by §47F-3-116 of the Act, and privileges and services in the Common Properties shall .

ARTICLE IV

PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The Developer-Declarant intends to convey to the Association, subsequent to the recordation of this Declaration, and subject to the provisions

of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Members. Said tracts of land conveyed to the Association shall hereinafter be referred to as "Association Property". The Association must accept any such conveyance made by the Developer-Declarant provided such conveyance is made without consideration.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Member (and each Member's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject however, to the rights of the Association as set forth in Section 4.03 herein and the right of the Developer-Declarant as set forth in Sections 4.04 and 4.05 herein. Such easements shall be appurtenant to and shall pass with the interests of an Owner, as defined in Article I, Section 1.01 hereof.

Every Member shall also have an easement for ingress and egress by vehicle or on foot described in Section 4.06 hereof and the common utility and conduit easements described in Section 4.05 hereof. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein, provided however, that any conveyance or encumbrance referred to in Section 4.03(c) below shall be subject to said easement of each Member for ingress and egress.

Section 4.03 Rights of Association. With respect to the Association Property owned, and in accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the right to:

4.03.1. Promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members;

4.03.2. Grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration;

4.03.3. Dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit the Members) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of all Lot Owners other than the Developer-Declarant who shall vote by written ballot which shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association not less than thirty (30) days nor more than fifty (50) days in advance of the date or initial date of the canvass hereof. No such conveyance shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance that they are opposed to such conveyance, which opposition must not be unreasonable;

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4.03.4. Enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, Associations and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than ten (10) days nor more than sixty (60) days in advance of the date or initial date of the canvass thereof.

Section 4.04. Rights of Developer-Declarant. With respect to Association Property and in addition to the rights reserved in Section 4.05 below, the Developer-Declarant shall have the right until the completion of the construction, marketing and sale of all dwelling Structures to be constructed on lands described in Exhibits to this Declaration to:

4.04.1. Grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not necessarily limited to, water, gas, electric, telephone and sewer to service any Additional Property as referred to in Section 2.02.a. of this Declaration;

4.04.2. Connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of any Additional Property added pursuant to Section 2.02. of this Declaration;

4.04.3. Use the Association Property for ingress and egress to those portions of the Property (as described in Section 2.01 of this Declaration) and any Additional Property added pursuant to Section 2.02. of this Declaration;

4.04.4. Operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not necessarily limited to, the parking spaces; and

4.04.5. Grant to itself or to others such easements and rights of way as may be reasonably needed for the orderly development of any Additional Property added pursuant to Section 2.02.a. of this Declaration.

The easements, rights-of-way and other rights reserved herein shall be permanent, shall run with the land and shall be binding upon and for the benefit of the Association, the Developer-Declarant and its successors and assigns. With respect to its exercise of the above rights, the Developer-Declarant agrees (i) to repair any damages resulting within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs, and (ii) until development has been completed, to hold the Association harmless from all liabilities which are a direct result of the Developer-Declarant's exercise of its rights hereunder. This Section shall not be amended without the written consent of the Developer-Declarant.

Section 4.05. Common Utility and Conduit Easement. All pipes, wires, conduits and public utility lines located on each Lot shall be owned by the Owner of such Lot. Every Owner shall have an easement in common with the Owners of other Lots to maintain and use all pipes, wires, conduits, drainage areas and public utility lines located on other Lots or on Association Property and servicing

such Owner's Lot. Each Lot shall be subject to an easement in favor of the Owners of other Lots to maintain and use the pipes, wires, conduits, drainage areas and public utility lines servicing, but not located on, such other Lot. The Association shall have the right of access to each Lot for maintenance, repair or replacement of any pipes, wires, conduits, drainage areas or public utility lines located on any Lot and servicing any other Lot. The cost of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessment, except that, if occasioned by a negligent or willful act or omission of a specific Owner or Owners, it shall rather be considered a special expense allocable to the Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Owner or Owners and, as part of that Assessment, shall constitute a lien on the Lot, or Lots of such Owner or Owners to secure the payment thereof.

Section 4.06. Common Access Easement. The Developer-Declarant and all Owners and their guests, mortgagees, licensees and invitees shall have an easement for ingress and egress in common with one another over all walkways, driveways, and roadways located on the Association Property and the Association shall have an easement of access to each Lot for the maintenance, repair and replacement of walkways, driveways and roadways or any property or facilities, which are owned by the Association.

Section 4.07. Maintenance of Association Facilities. In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition and shall operate such facilities in accordance with high standards.

Section 4.08. Easement to Owners for Maintenance of Air Conditioning Condensers. Each Owner shall have an easement over the Association Property for the maintenance, repair and replacement, as necessary, of the air conditioning condenser unit located on the Owner's Lot.

Section 4.09. Right of Association to Contract Duties and Functions. The Association may contract with any person, corporation, firm, trust company, bank or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, Associations and cooperatives.

Any decision to discontinue independent professional management of certain Association duties and functions and establish self-management thereof shall require the prior written consent of 67% of all Lot Owners, written notice of which proposed decision shall be sent to all Lot Owners and to all lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon. No such decision shall be made if lending institutions which together are first mortgagees of 33 1/3% or more of the Lots advise the Association in writing prior to the date set for voting on the proposed change that they are opposed to such change, which opposition shall not be unreasonable.

Section 4.10. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles VII and IX herein, the Association and the Architectural Standards Committee shall consider the environmental impact of

any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

Section 4.11. Easements Reserved to Developer-Declarant for Benefit of Additional Property. Easements are reserved herein over all Property covered by this Declaration for the benefit of lands described as Additional Property in Section 2.01 of this Declaration for the following purposes:

- 4.11.1. Ingress and egress over roadways; and
- 4.11.2. Use and connection with utility lines and related facilities including, but not necessarily limited to: telephone, water, gas, electric, sewer and cable television. This easement shall not include the right to consume any water, gas, or electricity for which one or more individual Lot Owners are billed directly without the consent of the individual Lot Owners affected.

Upon the connection of lines and/or facilities servicing such land area comprising the Additional Property, should such lands not be added to the scope of this Declaration, such lands shall be responsible for the payment to the Association of a fair share of the cost of operation, maintenance, repair and replacement of those lines and facilities servicing such lands.

Section 4.12. Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Executive Board of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Executive Board shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration.

The Executive Board shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Lots whose names appear on the books or records of the Association.

In the event of any dispute with respect to the allocation of the award, the matter shall be submitted to arbitration in accordance with the arbitration statutes of the Commonwealth of State of North Carolina.

Section 4.12. Maintenance Of Dwelling Units. The Association shall provide all exterior maintenance to the unit including but not limited to the landscaping, The building structures, roofs, siding, windows and doors. This provision may not be changed by the Executive Board or any other authority without a vote of the owners of at least 66 2/3% of said owners.

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ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

Section 5.01. Imposition, Personal Obligation, Lien. Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

5.01.1. Annual assessments or charges for the maintenance and operation of Association Property, utility lines servicing two or more Lots (whether or not on Association Property) and the green areas located within the bounds of ("Maintenance Assessments"); and

5.01.2. Special assessments for capital improvements ("Special Assessments");

together hereinafter being referred to as "Assessments".

5.01.3. A Capital Contribution equivalent to 2 months assessments at the time of purchase.

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property, and the promotion of the recreation, safety and welfare of the Members of the Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty, liability and other insurance covering the Property, the Lots and the Association's officers, directors, Members and employees obtained pursuant to Article VIII of this Declaration, for the maintenance, repair and replacement of all facilities commonly servicing the Members, such as roadways and landscaped areas, the cost of labor, equipment, materials, management and supervision thereof, and for each other needs as may arise. The amount of any reserves shall be not less than the reasonable requirements of existing or proposed lenders, holders and insurers of first mortgages of the Lots and Lots.

Section 5.03. Date of Commencement and Notice of Assessments and Changes in Annual Assessments. The Assessments provided for herein shall commence on the day on which the first Lot is conveyed or on such date thereafter as determined by the Developer-Declarant. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Executive Board and such Assessments shall thereafter be on a full year basis. The Executive Board of the Association shall fix the amount of the Assessment against each Lot at

least thirty (30) days in advance of the beginning of each fiscal year. The Assessments shall be due and payable quarterly unless the Executive Board establishes other periods for payment. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least thirty (30) days before due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any, except that, the Maintenance Assessment on Lots owned by the Developer-Declarant shall be thirty three (33%) percent of the assessment set for all other lots.

Section 5.05. Basis for Maintenance Assessment. Subject to the deductions as permitted pursuant to Section 5.04 above, the annual Maintenance Assessment shall be the same for all Lots subject to this Declaration so that the number of Assessed Lots divided into the total amount which the Executive Board shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained) shall determine the annual Maintenance Assessment for each Lot.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than two-thirds (2/3) of the total votes of all Lot Owners, excluding the Developer-Declarant, voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon, except that: (i) until seven (7) years from the date of recording of this Declaration, if the Developer-Declarant owns or has under construction on lands described in Exhibits to this Declaration (whether or not such lands are then subject to this Declaration) dwelling Lots equal in number to 15% or more of the number of all Lots to which title has been transferred to purchasers for occupancy, any change in the basis of Assessment which adversely affects a substantial interest or right of the Developer-Declarant with respect to unsold dwelling Lots shall require the specific consent of the Developer-Declarant in writing, which consent shall not be unreasonably withheld; and (ii) no such change shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certification of any such change shall be executed by the Executive Board and recorded in the Office of the Register of Deeds of Currituck County, North Carolina.

Any change in the basis of Assessments shall be equitable and nondiscriminatory within the following classifications: (i) Lots paying full Maintenance Assessments and (ii) Lots paying less than full Maintenance Assessments pursuant to Section 5.04 above.

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Section 5.07. Special Assessments for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property or to any Property on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Lot Owners at least thirty (30) days in advance, setting forth the purpose of the meeting. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least thirty (30) days prior to the first such due date.

Section 5.08. Non-Payment of Assessment. If an Annual Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then the balance of the annual assessment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated future installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Executive Board deems reasonable, not to exceed 10% of the amount of such overdue Assessment or installment thereof, or Ten (\$10.00) Dollars whichever is greater, provided such late charges are equitable and uniformly applied.

If the Assessment or any installment thereof is not paid within thirty (30) days after the due date, (i) the Association may impose a late charge or charges in such amount or amounts as the Executive Board deems reasonable, not to exceed 10% of the amount of such overdue Assessment or installment thereof, or Ten (\$10.00) Dollars whichever is greater, and, if not paid within thirty (30) days after the due date; (ii) the Assessment shall bear interest from the due date at such rate as may be fixed by the Executive Board from time to time, such rate not to exceed the maximum rate of interest then permitted by law; (iii) the Executive Board may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner; and (iv) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: Attorney's fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall, under no circumstances, entitle any Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

There is hereby created a lien, with power of sale, on each and every Lot within the Development to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots under the Restrictions, together with interest thereon. If any assessment remains delinquent for thirty (30) days the Association may elect to record a lien on behalf of the Association against the Lot of the defaulting Owner in the appropriate Clerk's office. Such a claim of lien shall be executed by any officer or managing agent of the Association, and shall contain substantially the following information:

- 5.08.1. The name of the delinquent Owner;
- 5.08.2. The legal description and street address of the Lot against which claim of lien is made;
- 5.08.3. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset thereof);
- 5.08.4. That the claim of lien is made by the Association pursuant to this Declaration; and
- 5.08.5. That a lien is claimed against said Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such a lien shall have a priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing Lot, and the liens which are specifically described hereinafter. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of North Carolina, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey such Lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest, and all other costs and expenses shall be allowed to the extent

permitted by law. Each Owner, by becoming an Owner of a Lot in the Development, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 5.09. Notice of Default. The Executive Board, when giving notice to a Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Lot whose name and address appears on the Board's records. The mortgagee shall have the right to cure the Owner's default with respect to the payment of said Assessments.

Section 5.10. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance assessments in the succeeding year, but may carry forward from year to year such surplus as the Executive Board in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.11. Assessment Certificates. Upon written demand of an Owner or lessee with respect to a Lot which he or she owns or leases, or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot, the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to each Lot as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Executive Board, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee or title insurer of, or lender on the Lot or Lot on which such certificate has been furnished.

Section 5.12. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot or Lots pursuant to a decree of foreclosure. Sale or transfer of any Lot shall not affect the Assessment lien or liens established in this article; provided, however, that the sale or transfer of any Lot pursuant to a decree of foreclosure on such a first priority deed of trust or mortgage thereon or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability or liens arising from Assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first priority mortgage or deed of trust.

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Section 5.13. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the discretion, except that (i) any member of the Executive Board of the Association who has been elected or appointed by the Developer-Declarant shall not be permitted to vote affirmatively for any borrowing and the quorum of the Executive Board in any such vote shall be a majority of those Directors not elected or appointed by the Developer-Declarant; and (ii) any consent of the Developer-Declarant as required by Section 3.12 of this Declaration must be obtained.

Section 5.14. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power to:

5.14.1. Assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the maintenance assessments hereunder;

5.14.2. Enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:

- (a) Assess the maintenance assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate or rates;
- (b) Establish sinking funds and/or other security deposits;
- (c) Apply all funds received by it first to the payment of all principal and interest on such when due, or to apply the same to such purpose after providing for costs of collection;
- (d) Establish such collection, payment and lien enforcement procedures as may be required by the note-holders;
- (e) Provide for the custody and safeguarding of all funds received by it.

ARTICLE VI

MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. Except as specifically otherwise provided in this Section 6.01, all maintenance and repair of and replacements to the improvements

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on Association Property, the maintenance, repair and replacement of all parking areas, driveways and walkways on the Association Property, and the maintenance of all landscaped areas including any landscaped areas located within the bounds of any public roadway, and the maintenance, repair and replacement of any identification or directional signs installed by or at the direction of the Developer-Declarant or the Association shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines servicing more than one Lot and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) shall also be the responsibility of, and an expense of, the Association.

The Association shall be responsible for the maintenance of all shrubbery and other plantings installed by or at the direction of the Developer-Declarant or the Association on Association property but not for shrubbery or other plantings installed by or at the direction of any Lot Owner or Lot occupant.

With respect to the Lots and the Dwelling Units, the Association shall be responsible for any repairs or replacements to any portion of a Lot or Dwelling Unit but not including the interior finishes, fixtures, furniture or decor of said Dwelling Units. However, this shall not restrict the right of the Association to repair or replace any portion of a Lot or lot as provided for in Section 6.02 of this Article.

The Executive Board of the Association may, upon the affirmative vote of not less than three-fourths (3/4) of the entire Executive Board and upon an affirmative vote of not less than two-thirds (2/3) of the Owners, provide for additional maintenance with respect to the Lots or other improvements to the Lots to be undertaken by the Association or to discontinue the performance of some or all of the maintenance responsibilities of the Association with respect to the Lots or other improvements to the Lots.

Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Except as provided in Section 6.01 above, the Association shall not be responsible for (i) the maintenance, repair or replacement of any buildings or structures not owned by the Association; or (ii) the maintenance, repair or replacement of any sewer lines, water lines or other utility lines not servicing two or more Lots or which are maintained, repaired, and replaced by a municipality, public authority, special district or utility company.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act of omission of an Owner (including (i) any family member, tenant, guest or invitee of such Owner, (ii) any family member, guest or invitee of the tenant of such Owner, and (iii) any guest or invitee of (a) any member of such Owner's family; or (b) any family member of the tenant of such Owner)

or the Developer-Declarant shall be made at the cost and expense of such Owner or the Developer-Declarant, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Lot or Lot and such cost shall be added to that Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot or Lots, as the case may be, to secure the payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property.

Section 6.04. Access for Repairs. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s), have the right to enter upon any portion of the Property and into any Lot or Dwelling Unit at any reasonable hour to carry out its functions as provided for in this Article, except that, in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Lot or Dwelling Unit to make necessary repairs or to prevent damage to any Lot or any portion of the Property. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association.

ARTICLE VII

ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. After transfer of title by the Developer-Declarant to any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property shall be the responsibility of the Association, acting through the Architectural Standards Committee as provided in Section 7.02 below.

Section 7.02. Composition and Function of Architectural Standards Committee.

7.02.1. **Committee Composition.** The Architectural Standards Committee shall consist of three (3) regular members and two alternate members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Executive Board or an officer of the Association.

7.02.2. **Alternative Members.** In the event of the absence or disability of one or two regular members of said Committee, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

7.02.3. Initial Members. The Developer-Declarant shall name three persons who will be designated as the initial members of the Architectural Standards Committee

7.02.4. Terms of Office. Unless the initial members of the Architectural Standards Committee have resigned or been removed, their terms of office shall be for one year and until the appointment of their respective successors:

Thereafter the term of each Architectural Standards Committee member appointed shall be for the period of three years and until the appointment of his successors. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed.

7.02.5. Appointment and Removal. The right to appoint and remove all regular and alternate members of the Architectural Standards Committee at any time, shall be and is hereby vested solely in the Executive Board, provided, however that no regular or alternate member may be removed from the Architectural Standards Committee by the Executive Board except by the vote or written consent of two-thirds (2/3) of all the members of the Executive Board. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the Recordation of a Declaration identifying each new regular or alternate member appointed to the Committee and each regular or alternate member replaced or removed therefrom.

7.02.6. Resignations. Any regular or alternate member of the Architectural Standards Committee may at any time resign from the Committee by giving written notice thereof to Developer-Declarant or to the Executive Board, whichever then has the right to appoint Committee members.

7.02.7. Vacancies. Vacancies on the Architectural Standards Committee, however caused, shall be filled by the Developer-Declarant or the Executive Board, whichever then has the power to appoint Committee members. A vacancy or vacancies on the Architectural Standards Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

7.02.8. Duties. It shall be the duty of the Architectural Standards Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Standards Committee Rules, to perform other duties imposed upon it by the Restrictions. Developer-Declarant shall not be subject to the Committee's decisions.

7.02.9. Meetings and Compensation. The Architectural Standards Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of the Section above, the vote or written consent of any two regular members, at a meeting or

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otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of the Restrictions. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Standards Committee shall not be entitled to compensation for their services.

7.02.10. Waiver. The approval of the Architectural Standards Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Standards Committee under the Restrictions, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 7.03. Submission of Plans to Architectural Standards Committee. After transfer of title to any Lot or other portion of the Property by the Developer-Declarant, no exterior addition, modification or alteration shall be made on or to such Lot or other portion of the Property or to the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Standards Committee requires, have been submitted to, and reviewed and approved by, the Architectural Standards Committee. The Architectural Standards Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 7.04. Basis for Disapproval of Plans by Architectural Standards Committee. The Architectural Standards Committee may disapprove any plans submitted pursuant to Section 7.03 above for any of the following reasons:

- 7.04.1. Failure of such plans to comply with any protective covenants, conditions and restrictions contained in this Declaration or The Master Declaration of The Currituck Club and which benefit or encumber the Lot or other portion of the Property;
- 7.04.2. Failure to include information in such plans as requested;
- 7.04.3. Objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation colors or color scheme, finish, proportion, style of architecture, proposed parking;
- 7.04.4. Incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- 7.04.5. Failure of proposed improvements to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules and regulations;
- 7.04.6. Any other matter which in the judgment and sole discretion of the Architectural Standards Committee would render the proposed improvements, use or uses, inharmonious or incompatible with the general plan of improvement of the property or portion thereof or

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with improvement or uses in the vicinity.

Section 7.05. Approval of Architectural Standards Committee. Upon approval or qualified approval by the Architectural Standards Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Standards Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) the improvement or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or portion of the Property; and (iii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Standards Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 7.06. Written Notification of Disapproval. In any case where the Architectural Standards Committee disapproves any plans submitted hereunder, the Architectural Standards Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.04. In any such case, the Architectural Standards Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Standards Committee approving or disapproving any plans within 35 days after submission thereof, said applicant may notify the Committee in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Committee not later than the later of:

7.07.1. 15 days after the date of receipt of such second notice, if such second notice is given;

7.07.2. 70 days after the date the plans were originally submitted.

Section 7.08. Committee's Right to Promulgate Rules and Regulations. Subject to the provisions of Section 7.12 below, the Architectural Standards Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions or

modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Standards Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.09. Delegation of Functions. The Architectural Standards Committee may authorize its staff, subcommittees, or individual members of the Architectural Standards Committee to perform any or all of the functions of the Committee as long as the number and identity of such staff or members, the functions and scope of authority have been established by a resolution of the entire Architectural Standards Committee. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Standards Committee, in accordance with procedures to be established by the Committee.

Section 7.10. Liability of Architectural Standards Committee. No Action taken by the Architectural Standards Committee or any member, subcommittee, employee or agent hereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Architectural Standards Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Standards Committee agrees, by submission of such plans, that no action or suit will be brought against the Association or the Architectural Standards Committee (or any member, subcommittee, employee or agent thereof) in connection with such submission.

Section 7.11. Architectural Standards Committee Certificate. Upon written request of any Owner, lessee or occupant (or any prospective Owner, lessee, mortgagee, or title insurer) of a Lot or other portion of the Property, title to which has been previously transferred from the Developer-Declarant, the Architectural Standards Committee shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing ("Architectural Standards Committee Certificate") signed by a member of the Architectural Standards Committee stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Architectural Standards Committee, may be imposed for issuance of such Architectural Standards Committee Certificate. Any such Architectural Standards Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

Section 7.12. Restrictions on Change of Architectural Controls, Rules or Regulations. The controls set forth in this Article VII and any rules or regulations shall not, by act or omission, be changed, waived or abandoned, unless consented to in writing by not less than two-thirds (2/3) of the total votes of all Owners (excluding the Developer-Declarant) voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon and shall set forth the purpose of the vote. In addition, any such change, waiver or abandonment shall not be made if lending institutions which together are first mortgagees of 33 1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, waiver or abandonment, that they are opposed to such action, which opposition must not be unreasonable.

ARTICLE VIII

INSURANCE AND RECONSTRUCTION

Section 8.01. Insurance to be Carried. In accordance with the provisions of §47F-3-113 of the Act, the Executive Board of the Association shall obtain and maintain (1) fire and casualty insurance, if required, (2) liability insurance, (3) directors' and officer's liability insurance, (4) fidelity bond, and (5) workmen's compensation insurance, if required with coverages to be as follows:

8.01.1. **Fire and Casualty.** The policy, if required, shall cover the interests of the Association, the Executive Board and all Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value (without deduction for depreciation of all improvements on the Association Property under the "single entity concept, i.e. covering any common facilities as initially built.

The policy shall have the following provisions, endorsements and coverages: (i) extended coverage, including sprinkler leakage (if applicable), debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage; (ii) inflation guard; (iii) waiver of any right to claim by way of subrogation against individual Owners and the members of their households and families, the Association, the officers and directors of the Association, and the managing agent, if any, for the Association; (iv) an exclusion from the "no other insurance" clause of individual Owners' policies; (v) a provision that the policy cannot be canceled, invalidated or suspended because of the act or neglect of someone over whom the insured has no control; (vi) a provision that the policy may not be canceled (including cancellation for non-payment of premium), substantially modified, invalidated or suspended, without at least thirty (30) days prior written notice to all of the insured, including all mortgagees of Lots reported to the insurance carrier or its agent; (vii) a provision requiring periodic review at least every two years to assure the sufficiency of coverage; and (viii) a provision that adjustment of loss shall be made by the Executive Board.

Prior to obtaining any new fire and casualty insurance policy, the Executive Board shall obtain an appraisal from an insurance company or from such other source as the Executive

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Board shall determine to be acceptable as to the full replacement value (without deduction for depreciation) of the improvements on the Property (exclusive of land and foundations) for the purpose of determining the amount of fire and casualty insurance to be effected pursuant to this Section.

The proceeds of all policies of physical damage insurance, if \$50,000.00 or less, shall be payable to the Association, and if \$50,000.00 or more, to an insurance trustee (bank, trust company or law firm) selected by the Executive Board of the Association to be applied for the purpose of repairing, restoring, or rebuilding unless otherwise determined by the Lot Owner pursuant to Section 9.02 of this Declaration. This \$50,000.00 limitation shall increase automatically by 5% each calendar year after the year in which this Declaration is recorded and may be further raised or lowered from time to time upon approval of not less than two-thirds (2/3) of the entire Executive Board. All fees and disbursements of the insurance trustee shall be paid by the Association and shall be a common expense of all Lot Owners.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to a mortgagee as its interest shall appear; subject, however, to the loss payment provisions in favor of the Executive Board. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

The Association and each Owner shall be a named insured on the policy, as their interests may appear. Each Owner at the time of purchase and at the time of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing proof of insurance coverage.

8.01.2. Flood Insurance. If any portion of the Property is located in an area identified by the federal Secretary of Housing and Urban Development as having special flood hazards, the Executive Board shall obtain, if available, a policy of flood insurance covering the insurable improvements on the Property or portion thereof located entirely or partially in the flood hazard area. Such coverage shall be the maximum coverage available under the National Flood Insurance Program or 100% of the current replacement cost of all such Lots and other insurable property, whichever is less.

8.01.3. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners, but not the liability of Owners arising from occurrences within such Owner's Lot or on such Owner's Lot. Liability insurance obtained will be in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Properties. The policy shall include the following endorsements: (i) comprehensive general liability (including libel, slander,

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false arrest and invasion of privacy; (ii) personal injury; (iii) medical payments; (iv) cross liability under which the rights of a named insurer under the policy shall not be prejudiced with respect to such insured's action against another named insured; (v) "severability of interest" precluding the insurer from denying coverage to a Lot Owner because of negligent acts of the Association or any other Lot Owner; (vi) contractual liability; (vii) water damage liability; (viii) hired and non-owned vehicle coverage; (ix) liability for the property of others; (x) host liquor liability coverage with respect to events sponsored by the Association; (xi) deletion of the normal products exclusion with respect to events sponsored by the Association; and, if applicable, (xii) garage keeper's liability; and (xiii) water craft liability.

Coverage may not be canceled or suspended (including cancellation for nonpayment of premium) or substantially modified without at least thirty (30) days written notice to the insured, including all known mortgagees of Lots or Lots as shown on the records of the Association. Any deductible provision shall apply only to each occurrence rather than to each item of damage. The Executive Board shall review such coverage at least once each year.

Until the first meeting of the Executive Board elected by the Owner, this public liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence.

8.01.4. Directors and Officer Liability. The directors' and officers' liability insurance shall cover the "wrongful acts of a director or officer of the Association." The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Executive Board, and any deductible provision shall apply only to each occurrence and not to each item of damage. If obtainable at reasonable cost, the policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

Until the first meeting of the Executive Board elected by the Owners, the directors' and officers' liability coverage shall be in the amount of at least \$ 250,000.00.

8.01.5. Fidelity Bond. The fidelity bond or its equivalent shall cover all directors, officers and employees of the Association and the Association's managing agent, if any, who handle Association funds. The bond shall name the Association as Obligor and be in an amount not less than the estimated maximum of funds, including reserves, in the custody of the Association or managing agent at any given time, but in no event less than a sum equal to three months' aggregate assessments on all Lots, plus the amount of reserves and other funds on hand. It shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and shall provide that the bond may not be canceled or substantially modified (including cancellation for non payment of premium) without at least thirty (30) days' prior written notice to the Association and to all institutional first mortgagees of any Lot(s) whose names appear on the records of the Association.

Until the first meeting of the Executive Board elected by the Owners, the coverage shall be at least \$10,000.00 for dishonest acts and \$5,000.00 for forgery. Notwithstanding the above, the Executive Board shall, at the request of any Lot Owner, Lot mortgagee, or prospective Lot Owner or Lot mortgagee, increase the amount of such bond to meet the reasonable requirements of any existing or proposed holder or insured of any mortgage made or to be made on any Lot.

8.01.6. Workmen's Compensation. To the extent deemed reasonable and necessary by the Executive Board, workmen's compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person performing work on behalf of the Association.

8.01.7. Other Insurance. The Executive Board may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

8.01.8. No Liability For Failure to Obtain Above Coverages. The Executive Board shall not be liable for failure to obtain any of the coverages required by this Section 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 demonstrably unreasonable cost.

8.01.9. Deductible. The deductible, if any, on insurance policy purchased by the Executive Board shall be a common expense, provided, however, that the Executive Board of the Association may assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

Section 8.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any common property or facility of the Association, insured through insurance obtained by the Executive Board, as a result of fire or other casualty, the Executive Board shall (i) promptly send written notice to the insurance trustee, if any, and the Executive Board or the insurance trustee, as the case may be, shall (ii) arrange for the prompt repair and restoration of the damaged property and (iii) disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

Any repair or restoration as herein above described shall be in substantial accordance with the plans and specifications of the damaged improvements as originally built. Any proposed substantial deviation therefrom shall require written consent of institutional first mortgagees holding mortgages

on Lots which have at least 51% of the votes of all Lots affected which are subject to institutional first mortgages as indicated on the records of the Association.

Section 8.03. Insurance Carried by Owners. Each Owner has the right, at such Owner's expense, to obtain insurance for such Owner's benefit.

Section 8.04. Right of Mortgagees to Pay and be Reimbursed for Insurance and Property Taxes on Association Property. In the event the Association fails to obtain or maintain fire, casualty and liability insurance for Association Property as required under this Article IX, such insurance may be obtained by one or more mortgagees of Lots, singly or jointly. Such mortgagee or mortgagees shall be owed immediate reimbursement from the Association for any amount expended for such insurance, real property taxes or any other charges with respect to Association Property which are in default and which may become or have become a charge against the Association Property.

ARTICLE IX GENERAL COVENANTS AND RESTRICTIONS

Section 9.01. Advertising and Signs. Except for signs erected by or with the permission of the Developer-Declarant in connection with the initial development, lease or sale of Lots or Lots, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of the Property (including temporary signs displaying property for sale or rent) except with the consent of the Architectural Standards Committee.

Section 9.02. Animals, Birds and Insects. Except for one dog or one cat owned by an initial purchaser of a Lot or Lot at the time such initial purchaser entered into a contract for the purchase of a Lot or Lot, fish, or birds kept in a cage, no animals, birds or insects (including replacements, after demise or disposition of any dog or cat owned by an Owner at the time of entering into a contract for the purchase of a Lot or Lot) shall be kept or maintained on any Lot or other portion of the Property except with the consent of the Executive Board of the Association which may, from time to time, (i) impose reasonable rules and regulations setting forth the type of animals, birds or insects and (ii) prohibit certain types of animals, birds or insects entirely. The Executive Board of the Association shall have the right to require any Owner (or any tenant of any Owner, or any family member or guest of any Owner or tenant) to dispose of any animal, bird or insect, if, in its sole discretion, such animal, bird or insect is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled.

Section 9.03. Protective Screening and Fences. Any screen planting, fence enclosures or walls initially developed on a Lot or other portion of the Property shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Standards Committee. Except for the foregoing, no fence, wall, or screen planting of any kind shall be planted, installed or erected upon said parcel or other portion of the Property unless approved by the Architectural Standards Committee. Notwithstanding the foregoing, no fence, wall or screen

planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 9.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Architectural Standards Committee so as to provide access to persons making such pick-up. The Architectural Standards Committee may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property. All incinerators or other facilities for the storage or disposal of Trash, shall be kept in a clean and sanitary condition.

Section 9.05. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles and wires for the transmission of electricity or telephone message, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of the Architectural Standards Committee.

Section 9.06. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance in the area to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electro-magnetic radiation disturbances, shall be controlled so as not to (i) be detrimental to or endanger the public health, safety, comfort or welfare; (ii) be injurious to property, vegetation or animals; (iii) adversely affect property values or otherwise produce a public nuisance or hazard; or (iv) violate any applicable zoning regulation or other governmental law, ordinance or code.

Section 9.07. Oil and Mining Operations. No portion of the Property shall be used for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing oil or other Hydrocarbons, minerals, gravel or earth (except soil borings in connection with the improvement of said portion of the Property) and no derrick or other structure designed for use in boring for oil or natural gas or any other mineral shall be erected, maintained or permitted on any portion of the Property, except with the consent of the Architectural Standards Committee.

Section 9.08. Dwelling in Other than Residential Lots. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property except with the consent of the Architectural Standards Committee.

Section 9.09. Television and Radio Antennas. No outside television antenna shall be erected on any Lot or other portion of the Property except with the consent of the Architectural Standards Committee, except for antennas as permitted by FCC regulations and rules.

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Section 9.10. Trees and Other Natural Features. After the transfer of title by the Developer-Declarant to a Lot or other portion of the Property no trees shall be removed from any such transferred Lot or other portion of the Property except with the permission of the Architectural Standards Committee. The Architectural Standards Committee in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Architectural Standards Committee may designate certain trees, regardless of size, as not removable without written authorization.

Section 9.11 Use and Maintenance of Slope Control Areas. Within any slope control or wetlands area shown on any filed map or plat, no improvements, planting or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, or change the direction of flow of drainage channels. The slope control areas of any Lot or other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property, except in those cases where the Association or a governmental agency or other public entity or utility company is responsible for such maintenance.

Section 9.12. Motorcycles. No Motorcycle or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Executive Board. This does not preclude the use of said vehicle on public streets.

Section 9.13. Residential Use Only. Except as provided in Section 9.14 below, the Property shall be used only for residential purposes and purposes incidental and accessory thereto except that, prior to transfer of title by the Developer-Declarant to all of the Property, the Developer-Declarant may use one or more Lots or other portions of the Property for model homes and/or a real estate office.

Section 9.14. Commercial and Professional Activity on Property. No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the Property without the consent of the Architectural Standards Committee, except (i) by the Developer-Declarant in conjunction with the initial construction, development, lease and sale of Lots and Lots; and (ii) the conducting of business by telephone. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

Section 9.15. Outside Storage. Outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers shall be prohibited except as may be permitted by the Architectural Standards Committee, (unless prohibited altogether by the applicable zoning requirements).

Section 9.16. Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Developer-Declarant, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Architectural Standards Committee.

Section 9.17. Oversized, Commercial and Unlicensed Vehicles. Unless used in connection with the construction or sale of Lots by the Developer-Declarant, or maintenance of the Property, the following shall not be permitted to remain overnight on the Property.

9.17.1. Any vehicle which cannot fit into a garage of the size constructed with the Lots;

9.17.2. Commercial vehicles of a weight of two (2) tons or more, unless garaged.

9.17.3. Unlicensed motor vehicles of any type, unless garaged.

Section 9.18. Clotheslines. Outdoor clothes lines or other facilities for the drying or airing of any clothing or bedding shall not be erected in front of the rear foundation line on any property within the Development unless they are erected within a fenced service yard or otherwise concealed and shall not be visible from neighboring property. On corner Lots they shall not be located closer to the side street than the line of the foundation facing said side street.

Section 9.19. Garage Doors to be Closed. Owners and other occupants of Lots shall be required, to the extent practicable, to park motor vehicles owned by them or under their control in the garage of the Lot, if any, which they occupy and shall cause their garage door, if any, to be kept in a closed position except as required for ingress and egress to such garage.

ARTICLE X

ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 10.01. Declaration Runs With The Land. Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to the Declaration) covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration including personal responsibility for the payment of all charges and may become liens against his, her or its property and which become due while he, she or it is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 10.02. Enforceability.

10.02.1. **Actions at Law or Suits in Equity.** The provisions of the Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of and be enforceable by the Developer-Declarant and the Association (being hereby deemed the agent for all of its Members), and by any Member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries

hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

10.02.2. Penalties and Fines. In addition to or as an alternative to an action at law or suit in equity, the Executive Board of the Association may, with respect to any violation or of any committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Lot Owner or Tenant shall be deemed a Special Assessment against the Lot of such Owner or on which the Lot occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Lot Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

Section 10.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation, occurring prior or subsequent thereto. No liability shall attach to the Developer-Declarant, the Association (or any officer, director, employee, Member, agent, committee or committee member) or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 10.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (1) the Owner, or (2) any family member, tenant, guest or invitee of the Owner, or (3) a family member or guest or invitee of the tenant of the Owner, or (4) a guest or invitee of (i) any member of such Owner's family; or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot, Structure or other portion of the Property owned by such Owner, if any.

Section 10.05. Inspection and Entry Rights. Any agent of the Association (or the Architectural Standards Committee) may at any reasonable time or times, upon not less than 24 hours notice to the Owner, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, the Architectural Standards Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental

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to persons or property or obscures the view of street traffic or is otherwise in violation of this Declaration the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within thirty (30) days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 10.06. Default Notices to be Sent to Mortgagees. The Association shall be notified by each Lot Owner or such Lot Owner's mortgagee of the name of the mortgagee of any mortgage on such Owner's Lot. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation, by such Owner, of any provision of this Declaration. The Association shall give notice to any such mortgagee of any delinquency of greater than sixty (60) days.

Section 10.07. Amending or Rescinding. The Developer-Declarant, during the time the Developer-Declarant owns any Lots, may make amendments to this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Lot Owner without such Lot Owner's written consent. All other amendments or a rescission of this Declaration, unless otherwise specifically provided for herein, may be made by obtaining the consent in writing of the Owners of not less than one-half (2) of all Lots which are subject to this Declaration, including those Lots Owned by the Owner-Declarant and Developer-Declarant. In addition, and notwithstanding the above, until seven (7) years from the date of recording of this Declaration, so long as the Owner-Declarant and Developer-Declarant own or have under construction on lands described in Exhibits of this Declaration (whether or not such lands are covered by this Declaration) dwelling Lots equal in number to fifteen percent (15%) or more of the number of Lots to which title has been transferred to purchasers for occupancy, the written consent of the Owner-Declarant and Developer-Declarant will be required for any amendment which adversely affects a substantial interest or right of the Owner-Declarant or Developer-Declarant, which consent must not be unreasonably withheld.

In voting for such amendment or rescission, Owners shall have one (1) vote for each Lot owned.

The Owners of every Lot shall receive written notice of every proposed amendment or rescission at least thirty (30) days prior to the date or initial date set for voting on said proposed amendment or rescission.

In addition to the approval of the Owners and Developer-Declarant as provided for herein, no amendment or rescission which substantially affects the interest of any lending institution shall be effective if lending institutions which together are mortgagees on one-third or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagees shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least thirty (30) days prior to the date or initial date set for voting on the proposed amendment or rescission.

Section 10.08. Owner Responsible for Tenants. Any lease of a Lot shall provide that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant is in violation of such Declaration, By-Laws or rules and regulations, the Executive Board shall so notify the Owner of the Lot which such tenant occupies in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced against the tenant within fourteen (14) days after the Owner has received notice of such violation, the Executive Board may pursue any remedies which it may have pursuant to Section 10.02 of this Declaration.

Section 10.09. When Amendment or Rescission Becomes Effective. Any amendment or rescission to the Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Register of Deeds. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Executive Board of the Association that the consents required for such amendment have been received and filed with the Board.

Section 10.10. Duration. The provisions of this Declaration unless amended or rescinded as hereinbefore provided, shall continue with full force and effect against both the Property and the Owners thereof until, and shall, as then in force, be automatically, and without further notice, extended for successive periods of 10 years.

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Section 10.11. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited by the provisions hereof. Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association.

The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Owners and residents of the Property to the end that the Property shall be preserved and maintained as a high quality community.

In granting any permit, authorization, or approval, as herein provided, the Association may impose any conditions or limitations thereon as it shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

Section 10.12. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 10.13. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 10.14. Invalidity of Agreement or Declaration. The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

ARTICLE XI

GENERAL

Section 11.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretations of the content thereof.

Section 11.02. Right Reserved to Impose Additional or Amend Protective Covenants. The Developer-Declarant reserves the right to records additional protective covenants and restrictions or to amend same prior to the conveyance of all lands encumbered by this Declaration.

Section 11.03. Notice. Any notice required to be sent to the Developer-Declarant or to any Owner

or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as the Developer-Declarant, Owner or mortgagee on the records of the Association at the time of such mailing.

Section 11.04. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust and, upon such assignment, the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the extent as if the successor corporation or trust had been an original party and all references herein to the Executive Board shall refer to the Executive Board (or Trustees) of such successor corporation or trust. Any such assignment shall be accepted by the Successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition the court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibilities of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 11.05. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners' or residents' association or similar entity.

Section 11.06. Rights of Mortgages, etc. The holder, insurer, or guarantor of the mortgage of any Lot in the Development shall be entitled to timely written notice of:

- 11.06.1. Any condemnation or casualty loss that effects either a material portion of the Property or the Lot securing the mortgage.
- 11.06.2. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, and
- 11.06.3. Any proposed action that requires the consent of a specified percentage of the eligible mortgage holders.

The Association shall have no duty to provide the foregoing unless such parties keep the Association advised in writing as to their mailing address and the address of the Lot in which they have an interest.

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EXHIBIT A

Being Lots 1 through 21 and Lots 53 through 56 inclusive, as shown on that certain plat entitled "Final Subdivision Plat of the Currituck Club, P.U.D., Phase 5A, The Hammocks" prepared by William T. Robbins, Professional Land Surveyor, dated May 29, 2001, which plat is recorded in Plat Cabinet G, Slides 294, 295 and 296, in the office of the Register of Deeds, Currituck County, North Carolina

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THE CURRITUCK ASSOCIATES – RESIDENTIAL PARTNERSHIP, a North Carolina General Partnership

By: BODDIE-NOELL ENTERPRISES, INC., a North Carolina Corporation, General Partner

By: Charles J. Hayes, Jr. (SEAL)
Charles J. Hayes, Jr.
Attorney in Fact

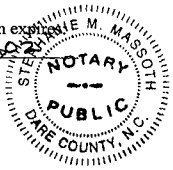
NORTH CAROLINA
DARE COUNTY

I, a Notary Public for said County and State do hereby certify that Charles J. Hayes, Jr. attorney in fact for Boddie-Noell Enterprises, Inc. personally appeared before me this day, and being duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said Boddie-Noell Enterprises, Inc. acting as general partner of THE CURRITUCK ASSOCIATES – RESIDENTIAL PARTNERSHIP, a North Carolina General Partnership, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged and recorded in the office of the Register of Deeds in the County Of Dare, State of North Carolina, on the 19th day of July, 1993, in Book 874, Page 612, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said Charles J. Hayes, Jr. acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said Boddie-Noell Enterprises, Inc. acting as general partner of THE CURRITUCK ASSOCIATES – RESIDENTIAL PARTNERSHIP, a North Carolina General Partnership.

Witness my hand and official seal, this 16th day of August, 2001.

Stephanie M. Marshall
Notary Public

My commission expires 3.10.02


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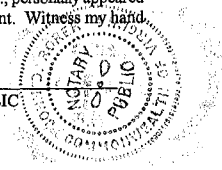
LANDMARK BUILDING AND DEVELOPMENT OF NORTH CAROLINA, L.L.C.

BY: [Signature], MANAGER
DAVID S. RUSSOTTO, MANAGER

STATE OF VIRGINIA;
CITY OF VIRGINIA BEACH to-wit:

I, a Notary Public of the County and State aforesaid, certify that DAVID S. RUSSOTTO, MANAGER of Landmark Building and Development of North Carolina, L.L.C., personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal this 13 day of August, 2001.

[Signature]
NOTARY PUBLIC



My Commission Expires: 8/31/2007

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NORTH CAROLINA, CURRITUCK COUNTY
The foregoing certificate(s) of Stephanie M. Wassoth, Notary of Dare Co., NC, and
John D. Rorer, Notary of the Commonwealth of VA is (are) certified
to be correct. This instrument was presented for registration at 4:26 o'clock PM, on August 27,
2001, and recorded in Book 542, Page 25.

[Signature]
Register of Deeds
[Signature]
Assistant Deputy Register of Deeds

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