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RECORDED & VERIFIED
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REGISTER OF DEEDS
NEW HANOVER CO. NC
DECLARATION FOR CARLETON PLACE TOWNHOMES

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DECLARATION FOR CARLETON PLACE TOWNHOMES

This Declaration made and entered into as of the ____ day of _____, 1998, by and between CARLETON ASSOCIATES, INC. (hereinafter "Declarant"); DIAMOND LAND COMPANY, a North Carolina corporation (hereinafter "Diamond"); ALL PROSPECTIVE PURCHASERS AND OWNERS of real property within the planned unit development generally known as "Carlton Place Townhomes"; SOUTHLAND ASSOCIATES, INC., Trustee as hereinafter stated; and, CENTRAL CAROLINA BANK AND TRUST COMPANY.

W I T N E S S E T H:

WHEREAS, Declarant and Diamond own in fee simple the real estate designated as Submitted Property and described on Exhibit A to this Declaration and have elected to subject the Submitted Property to certain covenants, restrictions, reservations, easements, servitudes, liens and charges, all of which are more particularly set forth hereinafter;

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

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

WHEREAS, to provide a means for meeting the purposes and intents set forth herein, Declarant has caused to be created Carleton Place Townhomes Association, a nonprofit corporation incorporated under Chapter 55A of the General Statutes of North Carolina (North Carolina Nonprofit Corporation Act).

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

ARTICLE 1

GENERAL PROVISIONS

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

(1) "Additional Property" means the real property designated on Exhibit B attached hereto and such real property as may be designated Additional Property in amendments to Exhibit B made by the Declarant from time to time which the Declarant may submit to this Declaration and to the jurisdiction of the Association, or any real estate that the Association may submit to the Declaration and assume jurisdiction over pursuant to Section 4.2.

(2) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of Carleton Place Townhomes Association, as may be amended from time to time.

(3) "Association" means Carleton Place Townhomes Association.

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

(5) "Bylaws" means the bylaws of the Carleton Place Townhomes Association.

(6) "Common Elements" means any real estate within the Property owned or leased by the Association other than a Lot and, any and all personal property and fixtures owned, leased, maintained or operated by the Association for the benefit of the Property or the Owners.

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

(8) "Common Expense Liability" means the liability for common expenses allocated to each Lot pursuant to Section 6.2.

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

(10) "Declarant" means Carleton Associates, Inc., its successors or assigns.

(11) "Declaration" means this Declaration for Carleton Place Townhomes and all amendments, restatements and revisions hereto including all amendments to the Declaration amending the provisions herein submitting Additional Property to the terms of this Declaration and the jurisdiction of the Association.

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(12) "Design Guidelines" means the standards developed by the Covenants Committee pursuant to Article 9 and any standards established by the Declarant prior to the submission of real estate to this Declaration by an amendment hereto adding Additional Property.

(13) "Development Period" means the period ending on the earliest of:

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

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

(14) "Development Plan" means the plan for development of the Property and Additional Property approved by the New Hanover County Planning Department, as amended from time to time, and such additional development as may be approved for any Additional Property. The total number of Lots which may be created pursuant to the Development Plan is the maximum number of Lots permitted by zoning regulations and ordinances, as may be amended and changed from time to time, of the City of Wilmington or other governmental entity having jurisdiction over the Additional Property.

(15) "Executive Board" or "Board" means the executive and administrative entity established by the Articles and the Bylaws to act on behalf of the Association and function as the governing body of the Association.

(16) "Limited Common Element" means any portion of the Common Elements designated or allocated for the exclusive use of one or more but fewer than all of the Lots (i) shown and designated on plats of the Property, (ii) as may be established by the Association from time to time, and (iii) as may be created by the operation of Section 3.9 of this Declaration.

(17) "Lot" means a separately numbered portion of the Property (but not including the real estate designated as Common Elements) on plats of the Property recorded in the office of the Register of Deeds of New Hanover County, North Carolina, and includes any improvements now or hereafter appurtenant to that real estate.

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

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

(19) "Mortgagee" means an institutional lender (commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies and any other lender regularly engaged in financing the

purchase, construction or improvement of real estate, or any assignee of loans made by such lenders) holding a first mortgage or first deed of trust ("Mortgage") encumbering a Lot.

(20) "Owner" means one or more Persons who own a Lot in fee simple but does not mean any Person having an interest in a Lot solely by virtue of a contract of purchase or as security for an obligation.

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

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

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

(24) "Section" means a portion of the Property designated as provided in Section 4.3 hereof.

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

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

Section 1.2. Construction of Association Documents.

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

(2) Severability. Each provision of the Association Documents is severable from every other provision and the validity

of any one or more provisions shall not change the meaning of or otherwise affect any other provision.

(3) Interpretation. If there is any conflict between the Association Documents, the Declaration shall control. Particular provisions shall control over general provisions. The provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted pursuant to any of the Association Documents.

Section 1.3. Carleton Place Townhomes Association.

(1) The Association. The Association is a nonprofit corporation organized and existing pursuant to Chapter 55A of the General Statutes of North Carolina charged with the duties and vested with the powers prescribed by law and set forth in the Association Documents.

(2) Membership. Members of the Association shall at all times be, and shall be limited to, the Persons who constitute Owners of the Lots. If more than one Person owns a Lot, then all of the Persons who own such Lot shall constitute collectively one Owner and be one member of the Association. Each Person is entitled to attend all meetings of the Association.

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

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

(a) Class A - Class A Members shall be the Owners of Lots with the exception of the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

(b) Class B - The Class B Member shall be the Declarant. The Class B Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership and, in addition, shall be entitled to appoint a majority of the members of the Executive Board of the Association during the Development Period as specified in the Bylaws. The Class B Member shall have a veto power over all actions of the Executive Board or any committee as may have been appointed by the Executive Board or established by the Bylaws. The Class B Membership shall terminate and become converted to Class A membership upon the earlier of (i) one hundred twenty (120) days after the conveyance of seventy-five percent (75%) of the Lots (including those Lots which may be created pursuant to the Development Plan) to Owners other than a declarant; (ii) two (2) years after all declarants have ceased to offer Lots for sale in the ordinary course of business; (iii) two (2) years following the last exercise of the rights of a declarant to add Additional Property or (iv) when, in its discretion, the Declarant so determines.

(c) Board Authority to Act. Unless otherwise specifically provided in the Association Documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Executive Board on behalf of the Association.

ARTICLE 2

COMMON ELEMENTS

Section 2.1. Conveyance and Title. Declarant shall convey the Common Elements in each Section of the Property to the Association, in fee simple released from any encumbrance securing the repayment of monetary obligations incurred by the Declarant,

but subject to all easements and other encumbrances appearing of the public records including those created by this Declaration. The conveyance of the Common Elements as contemplated herein Property shall occur prior to or simultaneously with the conveyance of the first Lot to an Owner.

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

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

Section 2.3. Regulation of Common Elements. The Association shall have the right to regulate the use of the Common Elements pursuant to Section 8.3 hereof and to charge fees for the use thereof. In the event the Association imposes fees for the use of the Common Elements, such fees to be charged to Persons entitled to use the Common Elements shall be uniform and shall not discriminate against any one or more Persons or groups of Persons entitled to use the Common Elements. The Association may also mortgage, dedicate, convey or grant easements across the Common Elements subject to the restrictions in Section 15.5 hereof.

Section 2.4. Leasing of Common Elements. The Association shall have the right to lease the Common Elements and improvements located thereon subject to rules, regulations and fees adopted by the Association from time to time.

Section 2.5. Additional Improvements on Common Elements. After construction of the initial improvements, if any, and conveyance of the Common Elements to the Association, the Declarant may, but is not obligated to, construct additional improvements on the Common Elements for the benefit of the Property pursuant to the

easements in Section 3.1 hereof; provided, however, that such construction is subject to the review and approval of the Executive Board.

ARTICLE 3

EASEMENTS

Section 3.1. Development Easements.

(1) Easements Reserved to the Declarant.

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

(b) Easement to Facilitate Sales. The Declarant hereby reserves to itself and its designees the right to: (i) use any Lots owned by the Declarant, any other Lot with the written consent of the Owner thereof, or any portion of the Common Elements as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; (ii) place and maintain in any location on the

Common Elements and on any Lot street and directional signs, temporary promotional signs, plantings, street lights, entrance features, "theme area" signs, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features; provided, however, that all signs shall comply with applicable governmental regulations and the Declarant shall obtain the consent of the Owner of any Lot upon which the improvements are to be located; and (iii) relocate, within the areas permitted by this paragraph, or remove all or any of the above from time to time at the Declarant's sole discretion. These rights and easements shall continue throughout the Development Period.

(c) Easement for Utilities and Related Services.

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

(d) Easements for Future Access and Utilities.

The Declarant hereby reserves for itself, its heirs, successors and assigns, non-exclusive easements for (i) ingress, egress and regress for pedestrian and vehicular access to and from the Additional Property, and (ii) the installation, maintenance and

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provision of utilities including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private, or for any other purposes necessary or desirable for the orderly development of the Additional Property, across, under, over and upon a portion of the Common Elements, more particularly described on Exhibit C to this Declaration.

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

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

(3) Assignment of Development Rights. The Declarant may assign its rights under Section 3.1, or share such rights with, one or more other Persons, exclusively, simultaneously or consecutively with respect to the Common Elements, or Lots and Additional Property owned by the Declarant or such Persons. The Declarant shall notify the Association of any such assignment or designation by the Declarant.

Section 3.2. Association Power to Make Dedications and Grant Easements. The Declarant, on behalf of itself and its successors and assigns, hereby also grants to the Association the equal rights and powers as reserved to the Declarant by Paragraphs

3.1(1) (a), (b) and (c) hereof. These rights and easements may be exercised by the Association, subject to Section 15.5 hereof; provided, however, that the limitations on duration applicable to the Declarant shall not apply to the Association. If the Declarant or any Owner requests the Association to exercise its powers under this section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

Section 3.3. Easement for Upkeep.

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

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

Section 3.4. Limitations on Exercise of Rights and Easements.

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

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

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

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

Section 3.5. Easements for Encroachments.

(1) General Encroachments. If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (1) the original construction thereof, (2) deviations within normal construction tolerances in the Upkeep of any improvement, or (3) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time any encroachment exists. The Owner of the encroaching improvement shall also have an easement for the limited purpose of Upkeep of the encroaching

improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

(2) Roof or Eave Overhang. If the original design and construction of any improvements on a Lot shall result in an encroachment by a roof or eave over and upon the Common Elements or an adjacent Lot, an easement is hereby granted to the extent of any such encroachment for the period of time such encroachment exists, which easement shall continue upon any reconstruction or repair of the Improvements in accordance with the original design and construction.

Section 3.6. Easement for Support. To the extent that any portion of the Property now or hereafter supports or contributes to the support of any other portion of the Property, the former is hereby burdened with an easement for the lateral and subjacent support of the latter.

Section 3.7. Emergency Access. The Declarant, on behalf of itself and its successors and assigns, hereby grants an easement (1) to all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies and (2) to the Association over and through all Lots, if emergency measures are required in any Lot to reduce a hazard thereto or to any other portion of the Property. The Association is hereby authorized but not obligated to take any such measures.

Section 3.8. Easement for Use of Common Elements.

(1) Use and Enjoyment. The Declarant hereby reserves to itself and, on behalf of itself and its successors and assigns, grants to each Owner and each Person lawfully occupying a Lot a non-exclusive right and easement of use and enjoyment in common with others of the Common Elements. Such right and easement of use and enjoyment shall be appurtenant to each Lot, whether or not

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(2) Vehicle and Pedestrian Access. The Declarant hereby reserves during the Development Period and for so long as the Declarant is an Owner and also, on behalf of itself and its heirs, successors and assigns, grants to each other Owner and each Person lawfully occupying a Lot a non-exclusive easement over all roadways, driveways, alleys, walkways, pathways and bicycle pathways on the Common Elements for the purpose of vehicular and/or pedestrian access, ingress and egress, as appropriate, to any portion of the Property to which such Person has the right to go, subject to any Rules and Regulations promulgated by the Association pursuant to Section 8.3 hereof. Any purported conveyance or other transfer of such rights and easements without the Lot to which such right and easement are appurtenant shall be void.

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

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

Section 3.9. Limited Common Elements. The Declarant shall have the power, for as long as the Declarant has the right to add Additional Property under Section 4.1 hereof, to restrict portions of the Common Elements in the nature of an easement for the exclusive use of one or more specific Lots by designating such portions of the Common Elements as Limited Common Elements. The Declarant may either: (1) indicate the locations of the Limited Common Elements appurtenant to one or more Lots by depicting such Limited Common Elements and the Lots to which it is appurtenant on the plats recorded to effect the inclusion of said Additional Property or (2) label a portion of the Common Elements as "Common Elements that may be assigned as Limited Common Elements" on plats of the additional Property and thereafter assign such Limited Common Elements to one or more specific Lots by unilaterally amending this Declaration to indicate the Limited Common Elements being assigned and the Lots to which it is appurtenant.

Section 3.10. Priority and Enforcement of Easements.

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

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

ARTICLE 4

DEVELOPMENT OF THE PROPERTY

Section 4.1. Expansion by the Declarant.

(1) The Declarant intends to develop the Property substantially in accordance with the Development Plan. The Declarant reserves the right to modify the Development Plan subject only to approval by the New Hanover County Planning Department or its duly constituted successor; provided, that the Declarant may not modify the Development Plan to increase the number of Lots.

(2) The Declarant hereby reserves an option during the Development Period to expand the Property from time to time without the consent of any Owner or Mortgagee by submitting all or any portion of the Additional Property to the provisions of this Declaration and the jurisdiction of the Association whether or not such real estate is owned by the Declarant. The option to expand prior to the end of the Development Period may be terminated only upon the recordation by the Declarant of an instrument relinquishing such option. When submitting any portion of the Additional Property, the Declarant reserves the right unilaterally to record additional amendments to the Declaration subjecting any Lot on such portion to such additional covenants and restrictions as may be necessary to reflect the different characteristics of such Lot or portion as are not inconsistent with the overall scheme of the Declaration; provided, however, that the Declarant shall not have such right after the conveyance of such Lot to an Owner other than the Declarant. The Declarant shall add Additional Property in accordance with the procedures set forth in Section 4.3 hereof. There are no limitations on the option to expand except as set forth in this Article.

(3) The Declarant may unilaterally amend the description of Additional Property set forth in Exhibit B hereto and record plats of the Additional Property to expand the land area referred

to as Additional Property whether or not such real estate is owned by the Declarant.

Section 4.2. Expansion by the Association. With the written consent of the fee simple owner (if not the Association) and any mortgagee or holder of a deed of trust on such real estate, a sixty-seven percent (67%) vote of the members and the written consent of the Declarant during any period of that the Declarant has the right to add Additional Property under Section 4.1 hereof, the Association may submit any real estate located immediately adjacent to the Property or across a public road from the Property to the provisions of this Declaration and the jurisdiction of the Association, in accordance with the procedures set forth in Section 4.3 hereof.

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

Limited Common Elements or Common Elements that may be assigned as Limited Common Elements and showing any new Lots.

ARTICLE 5

SPECIAL DECLARANT RIGHTS; TRANSFER

Section 5.1. Special Declarant Rights. Special declarant rights are those right reserved for the benefit of the Declarant as provided for in the Association Documents, and shall include without limitation the following rights: (1) to complete improvements on the Property; (2) to maintain improvements on the Property; (3) to maintain models, management offices, construction offices, sales offices, customer service offices and signs advertising the Property; (4) to use easements over and through the Property for the purpose of making improvements within the Property and the Additional Property; (5) to exercise the rights, votes and veto power of the Class B member of the Association; (6) to add Additional Property; (7) to remove and replace any director appointed by the Class B member until the meeting at which the Class A members are entitled to elect a majority of the directors; and (8) to exercise any other rights given to the Declarant by the Association Documents.

Section 5.2. Transfer of Special Declarant Rights.

The Declarant may transfer special declarant rights created or reserved under the Association Documents to any Person acquiring Lots or Additional Property previously owned by the Declarant by an instrument evidencing the transfer recorded in the office of the Register of Deeds of New Hanover County.

ARTICLE 6

COMMON EXPENSES AND ASSESSMENTS

Section 6.1. Determination of Common Expenses and Assessments.

- (1) Preparation and Approval of Budget.

(a) At least sixty (60) days before the beginning of each fiscal year, the Executive Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary for the ensuing fiscal year to pay the cost of management of the Association and management and Upkeep of the Common Elements and, to the extent provided in the Association Documents, Upkeep of the Lots, and the cost of other expenses that may be declared to be Common Expenses by the Association Documents or by resolution of the Executive Board.

(b) Such budget shall also include such reasonable amounts as the Executive Board considers necessary to provide working capital (available cash for day-to-day expenses which is otherwise uncommitted), a general operating reserve (including an amount to cover operating losses due to insurance deductibles) and reserves for contingencies (potential costs or liabilities which have not been incurred but which should be planned for) and replacements. At least thirty (30) days before the beginning of each fiscal year, the Executive Board shall make available a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Owner and provide a copy of such budget to each member. Such budget shall constitute the basis for determining the assessment against each Lot.

(c) Effect of Failure to Prepare or Adopt Budget.
For the first fiscal year of the Association following the first conveyance of any Lot to an Owner other than the Declarant, and for all fiscal years thereafter, the Executive Board shall establish the annual assessment against each Lot for Common Expenses. The failure or delay of the Executive Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay the allocable share of the Common Expenses as herein provided whenever the same shall

be determined. In the absence of any annual budget or adjusted budget, each Owner shall continue to pay assessments at the rate established for the previous fiscal year until notified of the new payment which is due on the first day of the next payment period which beings more than ten (10) days after such new annual or adjusted budget is adopted and the Owner receives such notice.

Section 6.2. Assessments and Common Expenses.

(1) Rate of Assessment and Payment. Subject to the provisions of Section 6.3 hereof, the total amount of the estimated funds required for the management and Upkeep of the Property set forth in the budget as an annual assessment or levied as an additional assessment shall be assessed against each Lot annually in amounts as determined by the Executive Board, which said amounts shall be equal for all Lots.

(a) Notwithstanding the foregoing, no Lot shall be liable for assessments until a map or plat showing said Lot has been duly recorded in the office of the Register of Deeds of New Hanover County, North Carolina, all in accordance with Section 4.3 hereof.

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

(c) Any and all such assessments and other charges shall be a lien against each Owner's Lot as provided in Section 12.2 hereof. On or before the first day of each fiscal year, and the first day of each succeeding payment period in such fiscal year, each Owner shall pay to the Association at such place as the Executive Board may direct that installment of the annual assessment which is due during such period. The Executive Board shall establish one or more payment periods and the due dates for

each such payment in each fiscal year; provided, however, that payments shall be due not less than quarterly or more frequently than monthly. All sums collected by the Executive Board with respect to assessments against the Lots or from any other source may be commingled into a single fund.

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

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

(4) Additional Assessments. The Executive Board may levy additional assessments on the Lots in the following manner: the Executive Board shall give written notice of any proposed additional assessment to the Owners specifying the amount and the reasons therefor, which said notice shall provide for a special meeting of the members of the Association to be held not less than fifteen (15) days following said notice, the sole purpose of said meeting to be to vote upon said proposed additional assessment. At the special meeting held for that sole purpose, said assessment must be approved by two-thirds (2/3) of the votes actually cast in person or by proxy of each Class of members.

Following the approval of said additional assessments on the Lots as herein specified, the Executive Board shall give notice

