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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR HOLLY GLEN ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HOLLY GLEN ESTATES (as may be amended or supplemented as set forth herein, "Declaration") is made this 22nd day of November, 2005 by HOLLY GLEN DEVELOPERS, LLC, a North Carolina Limited Liability Company, and HOLLY GLEN BUILDERS, LLC, a North Carolina Limited Liability Company, whose address is 6740-A Netherlands Drive, Wilmington, North Carolina (who together shall herein be called the "Declarant").

WITNESSETH:

A. Declarant is the owner and developer of certain real estate in New Hanover County, North Carolina, and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property" or "Subdivision"); and

B. Declarant is developing the Property known as "Holly Glen Estates" by subdividing it into "Lots" that are to be used for residential purposes as well as common real estate and improvements that are to be owned by a homeowners association to which the Owner of a Lot must belong and pay lien-supported maintenance assessments.

THEREFORE, the Declarant hereby declares that all of the Lots and Common Areas (defined below) located within the Subdivision are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of said Lots. All of these restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any of the Property.

ARTICLE I

DEFINITIONS

Section 1.1 "**Annual Meeting**" means the annual meeting of the Members held in New Hanover County, North Carolina, within the last quarter of each calendar year, upon proper notice, at a date, time and at a place from time to time designated by the Board. The first Annual Meeting of the Members shall be held within one (1) year from the date of incorporation on such date as the initial Board shall determine.

Section 1.2 "**Articles**" or "**Articles of Incorporation**" shall mean those articles, filed with the Secretary of State of North Carolina, incorporating Holly Glen Estates Homeowners Association, Inc., as a nonprofit corporation under the provisions of North Carolina State law, as the same may be amended from time to time.

Section 1.3 "**Assessments**" means Regular Assessments, Special Assessments, Working Capital Assessments, Individual Assessments and Fine Assessments.

Section 1.4 "**Association**" shall mean and refer to HOLLY GLEN HOMEOWNERS ASSOCIATION, INC., to be formed as a non-profit corporation, its successors and assigns.

Section 1.5 "**Board**" or "**Board of Directors**" shall mean and refer to the Board of Directors of the Association.

Section 1.6 "**Bylaws**" shall mean the Bylaws of the Association, as the same may be amended from time to time.

Section 1.7 "**Class A Members**" shall mean as defined in Section 4.5.1 below.

Section 1.8 "**Class B Members**" shall mean as defined in Section 4.5.2 below.

Section 1.9 "**Constituent Documents**" shall mean the Declaration, the Bylaws, the Articles of Incorporation, and the Rules and Regulations, if any, and any other basic documents used to create and govern the Subdivision.

Section 1.10 "**Common Areas**" shall mean all the real estate (including retention ponds, storm drainage improvements, entrance signage, streets (including any dedicated streets prior to their acceptance for public maintenance) and all landscaping and other improvements thereon) owned by the Association for the common use and enjoyment of the Owners. Common Areas shall include, but not be limited to, parcels designated on the Subdivision plat as "Conservation Area", "Open Space," "Common Area" or reserved as an access drive or private street.

Section 1.11 "**Common Expenses**" shall mean, refer to, and include all charges, costs and expenses incurred by the Association for and in connection with the administration of the Subdivision, including, without limitation thereof, operation of the Subdivision, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Areas; the costs of any additions and alterations thereto; all labor, services, common utilities, materials, supplies, and equipment therefor; all liability for loss or damage arising out of or in connection with the Common Areas and their use; all premiums for hazard, liability and other insurance with respect to the Subdivision; all costs incurred in acquiring a Lot pursuant to judicial sale; and all administrative, accounting, legal, and managerial

expenses. "Common Expenses" shall also include amounts incurred in replacing, or substantially repairing, capital improvements within the Common Areas of the Subdivision, including, but not limited to private road. "Common Expenses" shall also include all reserve funds or other funds established by the Association. "Common Expenses" shall be construed broadly.

Section 1.12 "Declarant" shall mean and refer to HOLLY GLEN DEVELOPERS, LLC, a North Carolina Limited Liability Company, its successors and assigns to whom its Declarant rights have been assigned, and HOLLY GLEN BUILDERS, LLC, a North Carolina Limited Liability Company, its successors and assigns, to whom its Declarant rights have been assigned.

Section 1.13 "Default" shall mean any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

Section 1.14 "Development Period" means the period commencing on the date on which this Declaration is recorded in the New Hanover County Register of Deeds and terminating on the earlier to occur of (i) when Declarant no longer owns a Lot in the Subdivision; (ii) the date that Declarant relinquishes in writing Declarant's right to appoint Directors; or (iii) the occurrence of the date ten (10) years from the date of recording the Declaration, renewable for an additional ten (10) year period with the consent of a majority of Lot Owners other than the Declarant.

Section 1.15 "Dwelling Unit" shall mean and refer to the individual family living unit on an individual Lot.

Section 1.16 "Fine Assessment" means the charge established by Section 5.5.2 of this Declaration.

Section 1.17 "Individual Assessment" means the charge established by Section 5.4 of this Declaration.

Section 1.18 "Lot" shall mean and refer to any parcel of land designated on the Plat upon which a Dwelling Unit has been or is to be constructed. There are one hundred fifteen (115) Lots in the Subdivision and the Declarant has the right to establish additional Lots in accordance with the terms of this Declaration.

Section 1.19 "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article IV below.

Section 1.20 "Owner" shall mean and refer to the record owner, including Declarant, whether one or more persons or entities, of a fee simple title to any Lot located within the Subdivision.

Section 1.21 "Plat" shall mean and refer to the record plats of the Subdivision recorded in Map Book 48 Page 349-351 of the New Hanover County Registry.

Section 1.22 "Planned Community Act" shall mean and refer to the North Carolina Planned Community Act, currently codified as Chapter 47F of the North Carolina General Statutes, as the same may be amended from time to time.

Section 1.23 "Property" or "Subdivision" shall mean and refer to that certain real estate described in Exhibit A and all other real estate that may be annexed into this Declaration and the Association by the Declarant.

Section 1.24 "Regular Assessment" means the charge established by Article V of this Declaration.

Section 1.25 "Resident" shall mean and refer to any person, not an Owner, living in the Owner's Dwelling Unit, including, but not limited to, temporary guests and Tenants.

Section 1.26 "Restrictions" shall mean all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation, all notices, rules and regulations issued in accordance with this Declaration.

Section 1.27 "Rules and Regulations" shall mean and include the rules and regulations made from time to time by the Board of Directors as provided in Section 4.3 below.

Section 1.28 "Special Assessment" means the charge established by Section 5.2 of this Declaration.

Section 1.29 "Tenant" means any person occupying any Lot pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

Section 1.30 "Working Capital Assessment" means the charge established by Section 5.3 of this Declaration.

When applicable for the sense of this instrument, the singular should be read as including the plural and the male, female, and neuter pronouns and adjectives should be read as interchangeable.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The Property, each portion thereof, and all Dwelling Units thereon shall be held, transferred, sold, conveyed, leased, mortgage and occupied subject to the terms, provisions, covenants and conditions of this Declaration.

ARTICLE III

PROPERTY RIGHTS IN COMMON AREAS

Section 3.1 Owner's Easements of Enjoyment. Except as herein otherwise provided, and further, subject to the terms and restrictions contained in the Conservation Agreement recorded in Book 4700 beginning at Page 614 of the New Hanover County Registry, each Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to his Lot. Each Tenant shall have a non-transferable right to use and enjoy the Common Areas, if any, which right shall terminate when such person ceases to have the status of a Tenant. Such rights and privileges shall be subject, however, to the following:

3.1.1 The right of the Board to suspend the right of any Owner or the privilege of any Resident to use such of the Common Areas that are recreational in nature as determined by

the Board for any infraction of the Rules and Regulations relating to the Common Areas for a period not to exceed sixty (60) days for each such infraction, or for any non-payment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such non-payment or delinquency;

3.1.2 The right of the Board to adopt and enforce and from time to time amend reasonable limitations upon use and Rules and Regulations pertaining to the use of the Common Areas, including regulations limiting guests of Owners and Tenants who may use the Common Areas at any one time;

3.1.3 The right of the Association to grant permits, licenses and public or private easements over Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; or

3.1.4 The right of Declarant or the Association to dedicate or convey portions of the Common Areas to applicable governmental authorities for park purposes.

Section 3.2 Extension of Use. Any Owner may extend his right of enjoyment to the Common Areas to the immediate and/or extended members of his family, his Tenants, guests or contract purchasers of the Owner's Lot.

Section 3.3 Title to Common Areas. The Declarant shall convey, or cause to be conveyed, by deed or cause to be all Common Areas to the Association in fee simple absolute after the final platting of all Lots in the Subdivision. Any such conveyance shall be subject to taxes for the year of conveyance, and to restrictions, conditions, limitations and easements of record.

Section 3.4 Use of Common Areas by Declarant. In addition to the specific rights and easements reserved herein, Declarant and its affiliates and associates shall have the same rights of use and enjoyment of the Common Areas as the Class A Members during the Development Period, and shall have the same right to use Common Areas for promotional, sales and similar purposes until all of the Lots have been sold.

ARTICLE IV

HOMEOWNERS ASSOCIATION

Section 4.1 Homeowners Association. There has been created a North Carolina non-profit corporation, known as Holly Glen Estates Homeowners Association, Inc., which shall be responsible for the maintenance, management and control of the Common Areas and upon each Lot and Dwelling Unit as more specifically set forth in this Declaration.

Section 4.2 Board of Directors and Officers. The Board of Directors, and such officers as the may elected or appointed in accordance with the Articles or the Bylaws, shall conduct the affairs of the Association. The Board of Directors may also appoint committees and managers or other employees and agents who shall, subject to the general direction of the Board of Directors, be responsible for the day-to-day operation of the Association.

Section 4.3 Rules and Regulations. By a majority vote of the Board of Directors, the Association may, from time to time adopt, amend and repeal Rules and Regulations with respect to all aspects of the Association's rights, activities and duties under this Declaration. The Rules and Regulations may, without limitation, govern use of the Subdivision, including prohibiting, restricting or

imposing charges for the use of any portion of the Subdivision by Owners, Residents or others, interpret this Declaration or establish procedures for operation of the Association or the administration of this Declaration; provided, however, that the Rules and Regulations shall not be inconsistent with this Declaration, the Articles, or the Bylaws. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be maintained in the office of the Association and shall be available to each Owner upon request.

Section 4.4 **Membership of Association.** Every Owner of a Lot shall be a Member of the Association. Such Owner and Member shall abide by the Association's Rules and Regulations, shall pay the Assessments provided for in this Declaration, when due, and shall comply with decisions of the Association's governing body. Conveyance of fee simple title to a Lot automatically transfers membership in the Association without necessity of further documents. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to Assessment.

Section 4.5 **Classes of Membership.** The Association shall have two (2) classes of Membership:

4.5.1 **Class A Members.** Every person, group of persons, or entity which is a record Owner of a fee interest in any Lot upon which a Dwelling Unit has been erected within the Property, shall automatically be a Class A Member of the Association except the Declarant during the Development Period (as defined in 4.5.2 below); provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot upon which a Dwelling Unit has been constructed that is subject to Assessment. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot portion shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

4.5.2 **Class B Member.** The Class B Member shall be the Declarant, and shall be entitled to exclusive voting during the period of Declarant control. Declarant control shall end and the Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) On December 31, 2020, or

(b) Upon the voluntary surrender of all Class B membership by the holder thereof.

4.5.3 **Voting.** Each Member shall have one vote with respect to each Lot owned by such Member, but a Class A Member shall not be entitled to exercise any vote until the expiration of the Development Period, unless sooner permitted by DECLARANT.

Section 4.6 **Maintenance Obligations of the Association.** The Association, at its expense, shall maintain, operate and keep in good repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the Common Areas and all improvements located thereon for the common benefit of the Subdivision. This shall include, without limitation, the maintenance, repair, replacement and painting of the following landscaping and improvements (to the extent that such improvements or landscaping are located upon or constitute Common Areas): (a) all

private roadways, driveways, pavement, sidewalks, walkways and uncovered parking spaces; (b) all lawns, trees, grass and landscape areas, shrubs and fences, except as otherwise set forth hereinbelow; and, (c) all Recreational Facilities, if any.

The Association shall make the determination as to when maintenance, repair, replacement and care shall be done, and its determination shall be binding. Declarant shall have the right to employ a manager to oversee and implement the Association's maintenance obligations, and any such management fees incurred thereby shall be paid by the Association. The Association shall also perform the other duties prescribed by this instrument or the Association's Rules and Regulations.

Further the Association may, in its discretion, cause a landscaping service or other lawncare maintenance company to provide lawncare services to each Lot, including mowing the yards and trimming of shrubs or bushes which are not enclosed in approved courtyard areas or are visible from any street within the subdivision. Notwithstanding the foregoing, it shall be the continuing responsibility of the Owner of each Lot to assure that the Lot is mowed regularly, including the area between the lot line and the edge of the paved street, and to maintain in a neat condition all landscaping and plant materials contained within their respective enclosed courtyards or inaccessible areas, if any. Additionally, each Owner shall keep the Lot clear of any unsightly objects, and in the event that the Owner of any Lot within the said Subdivision breaches this restriction, the DECLARANT and the Association reserve the right, and an easement, to enter upon the Lot to take such action as is necessary to clean up the Lot and remove unsightly structures and objects at the Owner's expense as provided herein. Where Lots border on or contain ditches, drainage canals or swales, ponds or detention/retention ponds, the Owner of each Lot shall maintain that area, including the slopes, down to the edge of the water in a neat well kempt condition. Washouts or erosions on the Lots adjoining ditch banks, channels, ponds, and swales shall be properly tended to by the respective Lot Owner. Notwithstanding the foregoing, no Lot Owner may do anything, or as the case may be, neglect to take any action, which may cause any modification of the storm water management system constructed in the Subdivision. This obligation and right may be enforced by the Association or any Owner as provided in Article XI herein.

Section 4.7 Maintenance Obligation of the Lot Owners. The responsibilities of each Lot Owner shall include:

4.7.1 To the extent not otherwise herein imposed upon the Association, cleaning, maintaining, keeping in good order, repairing and replacing at his or her expense all portions of his or her Lot and Dwelling Unit. Any repair, replacement and maintenance work to be done by an Owner must comply with the Architectural Control guidelines and any Rules and Regulations of the Association.

4.7.2 To perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the Subdivision.

4.7.3 Each Lot Owner shall be deemed to agree by acceptance of delivery of a deed to a Lot, to repair and/or replace at his or her expense all portions of the Common Areas which may be damaged or destroyed by reason of his or her own intentional or negligent act or omission, or by the intentional or negligent act or omission of any invitee, tenant, licensee family member, including, but not limited to any repairs necessary which result from damage incurred by pets or vehicles owned by the Lot Owner, or owned by any guest, invitee, Tenant or licensee of such Lot Owner. To the extent that any Common Area is damaged as an insurable loss and the proceeds from the Association's insurance policy are utilized to pay for the loss, the Owner shall be responsible for payment of the deductible as an Individual Assessment in accordance with Section 5.4 and Section 7.6 below.

Section 4.8 **Effect of Insurance or Construction Guarantees.** Notwithstanding the fact that the Association and/or any Lot Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of construction guarantee or insurance coverage shall not excuse any unreasonable delay by the Association or any Lot Owner in performing his obligation hereunder. Likewise, this **Section 4.8** is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by Association may be delayed if Association does not have the means or the funds to repair the defect or if, by repairing the defect, the Association would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

ARTICLE V

COVENANT FOR ASSESSMENTS

Section 5.1 **Regular Assessments.** Regular Assessments for the payment of the Common Expenses shall be made in the manner provided herein, and in the manner provided in the Bylaws. The Regular Assessment is established for the benefit and use of the Association and shall be used in covering all of the Common Expenses.

Section 5.2 **Special Assessment.** In addition to levying Regular Assessments, and to the extent that the reserve fund is insufficient, the Board of Directors may, with the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement upon or to the Common Area, including easement areas, fixtures, and personal property related thereto; provided, however that any such special assessments for the maintenance of sewer lines and other elements of the sewer system, the drainage and stormwater runoff systems, and other utility systems, as required by government permits or regulations, may be assessed by the Board of Directors without a vote of the members. All special assessments for capital improvements shall be fixed to a uniform rate for all Lots.

Section 5.3 **Working Capital Assessment.** Upon the initial transfer of record of the Lot from the Declarant (or successor Declarant or designated Declarant) to the Lot Owner (other than a successor Declarant or designated Declarant), the purchaser is required to pay a sum equal to two (2) full months of the Regular Assessment due on his or her Lot as his or her initial contribution to the working capital of the Association. This sum is not an advance payment of the monthly Regular Assessment; rather the sum is allocated to a working capital fund to meet unforeseen expenditures and operating expenses or to purchase any additional equipment or services. While the Declarant is in control of the Association, it cannot use any of the working capital funds to defray its expenses, reserve contributions, or construction costs. When control of the Association is transferred to the Lot Owners, the working capital fund or, as the case may be working capital account, shall be transferred to the Association for deposit to a segregated fund. After control of the Association is transferred to the Lot Owners the Declarant shall be responsible to collect the initial contribution to the working capital account and forward such funds to the Association. Additionally, at the closing, each purchaser of a Lot is required to pay a pro-rata share of the Regular Assessment due in the month of closing.

Section 5.4 **Individual Assessment.** In the event that the need for maintenance, repair or replacement of any improvement on the Property, for which the Association has the maintenance, repair and/or replacement obligation, is caused through the willful or negligent act of an Owner, his family, his

pet(s), Resident, the cost of such maintenance, repairs or replacements shall be paid by such Owner. The Board shall have the maintenance, repair or replacement done and the cost thereof shall be provided by the Board to said Owner and shall be paid by said Owner within thirty (30) days thereafter, unless an earlier date is otherwise set forth herein.

Section 5.5 **Date of Commencement of Assessments; Due Dates; Determination of Regular Assessments; Fine Assessments.**

5.5.1 The monthly Regular Assessment provided for herein shall commence as to each Owner of a Lot, except Declarant, on the first day following the initial conveyance of the Dwelling Unit to the Owner and shall be adjusted according to the number of days remaining in the month. The Declarant, its successors and assigns, shall not be required to pay the Regular Assessment for any Lot which it owns until such time as Declarant transfers the Lot to a third party. The Board of Directors shall fix the amount of the monthly Regular Assessment to be paid by each Class A Member against each Lot at the beginning of each calendar year. Written notice of the monthly Regular Assessment shall be sent to every Class A Member subject thereto. The Board of Directors shall establish the due dates.

5.5.2 The Board of Directors, or an adjudicatory panel established by the Board of Directors, may levy a reasonable Fine Assessment, as a fine or penalty for violation of this Declaration, all in accordance with the Planned Community Act. A lien may be filed for this Fine Assessment and this Fine Assessment may be enforced by foreclosure and otherwise treated as a Regular Assessment.

5.5.3 If the Association is paying the water and/or sewer bill(s) for the Subdivision or any Lot Owner within the Subdivision, the Association may assess each Lot Owner benefited for its share of the water and/or sewer bill(s). Each Lot Owner shall bear an equal share of the bill, but the Association can assess an extra amount against a Lot Owner to recover the cost of any extraordinary amount of water used by that Lot Owner. "Extraordinary" shall be as determined by the discretion by the Board of Directors. The Assessment for water and sewer shall be part of the Regular Assessment and shall be considered a Common Expense.

5.5.4 Both Regular and Special Assessments for a Lot Owner shall be determined by the Association based upon the proportion that each Lot bears to the aggregate number of Lots located on the Property, except those owned by Declarant which are not assessed in accordance with Section 5.5.1 above. The Association's governing body may, at its discretion, waive the Regular Assessment for any year or part of a year for any Lot not occupied as a residence.

Section 5.6 **Billing.** The Association shall inform each Lot Owner of the amount of the total Regular Assessment due from the Owner of that particular Lot. This Regular Assessment may be paid in monthly installments or as otherwise required by the Association. The Owner of each Lot must pay his Lot's required Regular Assessment in advance on the first calendar day of each month, unless the Association otherwise directs. Payment is to be made to such person at such an address as Association determines. Special Assessments are due thirty (30) days after the bill for the Special Assessment has been mailed or otherwise sent out by Association, unless the Association otherwise directs. The Owners of the initial Lots in the Subdivision, except Declarant, shall be obligated to begin paying the Regular Assessment as of the first day of the initial conveyance of the Lot from Declarant to the Owner. If the Subdivision is expanded and additional Lots are brought into the Subdivision during a given Assessment year, those additional Lots shall begin paying the Regular Assessment on the first day of the initial conveyance of the Lot from Declarant to the Owner.

Section 5.7 **Common Surplus.** If the Regular Assessment collected in any given year is in excess of the actual Common Expenses for that year, the Board may, at its sole discretion (a) return each Owner's share of the Common Surplus; (b) credit each Owner's share of the Common Surplus to each Owner's payment as for the Regular Assessment for the following year; or (c) apply the Common Surplus to the reserve.

Section 5.8 **Assessment Certificate.** The Association shall, upon demand, at any reasonable time, furnish to any Owner liable for Assessments a certificate in writing signed by an Officer or other authorized agent of the Association, setting forth the status of said Assessments; i.e., "current", and if not current, "delinquent" and the amount due. Such certificate shall be conclusive evidence of the payment of any Assessment therein stated to have been paid. A reasonable charge to cover labor and materials may be made in advance by the Association for each certificate.

Section 5.9 **Books and Records of the Association.** The Association shall keep full and correct books of account. The Association shall make available to all Lot Owners and the holders of all first mortgages on Lots, current copies of the books, records and financial statements of the Association upon reasonable request during normal business hours. All funds collected by the Association shall be held and expended solely for the purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Lot Owners. All books and records must be kept in accordance with good accounting procedures and must be reviewed at least once a year by an independent accounting firm.

Section 5.10 **Non-Payment of Assessment.** Any Assessments levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest and other costs as set out elsewhere in this Declaration, thereupon become a continuing lien upon the Lot which shall bind the Lot in the hands of the then Owner and the Owner's successors and assigns.

If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest at a reasonable rate of ten percent (10%) per year or at such other reasonable rate set by Association in its minutes, not to exceed the maximum amount allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, in either of which events interest, costs and reasonable attorneys' fees shall be added to the amount of each Assessment. No Owner may waive or otherwise escape liability for the Assessments by non-use or waiver of use of the Common Areas or by abandonment of his Lot.

Section 5.11 **Priority of Association Lien.** The lien provided for in this Article V shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages which have been filed of record before a claim of this lien hereunder has been docketed in the office of the clerk of superior court in New Hanover County, and may be foreclosed in the same manner as a mortgage on real property under power of sale in an action brought by the Association in accordance with the Planned Community Act. The Association is entitled to recover its reasonable attorneys' fees and court costs and collection costs, as part of the lien. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

Section 5.12 **Purchaser at Foreclosure Sale Subject to Declaration, Bylaws, Rules and Regulations of the Association.** Any purchaser of a Lot at a foreclosure sale shall automatically become a Member of the Association and shall be subject to all the provisions of this Declaration, the Bylaws and the Rules and Regulations.

Section 5.13 **Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses.** When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot acquires title to the Lot as a result of foreclosure of the first mortgage first deed of trust or by deed in lieu of foreclosure, such acquirer of title, his, her or its successors and assigns, shall not be solely liable for the share of the Common Expenses or other Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to the Lot by such acquirer, other than Assessments for which a claim of lien has been docketed with the New Hanover County clerk of superior court prior to the recordation of the lien being foreclosed. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Lots, including that of such acquirer, his, her or its successors or assigns. This provision shall not relieve the party acquiring title or any subsequent Owner of the subject Lot from paying future Assessments.

Section 5.14 **Liability for Assessments Upon Voluntary Conveyance.** In a voluntary conveyance of a Lot, any grantee or his or her first mortgagee shall inform the Board of Directors in writing of such contemplated conveyance and such grantee or first mortgagee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of all unpaid Assessments (including current Assessments) against the grantor due the Association. Neither the grantee nor the mortgagee shall be personally obligated for any delinquent Assessments, but such delinquent Assessments, along with interest, late charges, costs and reasonable attorneys fees shall be a lien against the Lot in accordance with Section 5.10 and Section 5.11 herein.

Section 5.15 **Late Charge.** The Association may impose a charge against any Lot Owner who fails to pay any amount assessed by the Association against his Lot within ten (10) days after such Assessments are due and payable and who fails to exercise his rights under this Declaration or under the laws of the State of North Carolina to successfully contest such Assessment. The amount of the late charge shall be the greater of (a) twenty and 00/100 Dollars (\$20.00), or (b) twenty percent (20%) of the delinquent amount, or such other amount as may be determined by the Association from time to time. Additionally, if a Lot Owner shall be in Default in payment of an installment upon an assessment or of a single monthly assessment, the Association has the right to accelerate all monthly Assessments remaining due in the current fiscal year. The total of such Assessments, together with the delinquent Assessments shall then be due and payable by the Lot Owner no later than ten (10) days after the delivery of written notice of such acceleration to the Lot Owner or twenty (20) days after mailing of such notice to him by certified mail, whichever occurs first. If such acceleration amount is not paid by the due date, the above-described late charge may be imposed on the part of such accelerated amount not paid by the due date.

Section 5.16 **Miscellaneous.**

5.16.1 The Association may change the interest rate due on delinquent Assessments (including any late charges), except that the rate cannot be changed more often than once every six (6) months. As of its effective date, the new interest rate will apply to all Assessments then delinquent.

5.16.2 The Owner has the sole responsibility of keeping the Association informed of the Owner's current address if different from the Lot owned. Otherwise notice sent by Association to the Lot is sufficient for any notice requirement under this Declaration.

5.16.3 The lien under this Article V arises automatically, and no notice of lien need be recorded to make the lien effective.

5.16.4 The Assessment lien includes all collection costs, including demand letters, preparation of documents, reasonable attorneys' fees, court costs, filing fees, collection fees, and any other expenses incurred by the Association in enforcing or collecting the Assessment.

5.16.5 Any Assessment otherwise payable in installments shall become immediately due and payable in full without notice upon Default in the payment of any installment. The acceleration shall be at the discretion of the Board.

5.16.6 No Owner of a Lot may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his or her Lot.

5.16.7 This Section 5.17 applies to every type of Assessment.

ARTICLE VI

EASEMENTS AND ENCUMBRANCES

Section 6.1 Easement for Encroachments. The Dwelling Units, all utility lines, and all other improvements as originally constructed by or on behalf of Declarant or its assigns shall have an easement to encroach upon any setback, Lot or Common Area as a result of the location of the building, utility lines and other improvements across boundary lines between and along Lots and/or the Common Areas, or as a result of building or improvement movement or alterations or additions from time to time, provided that such alterations or additions have complied with the requirements of this Declaration.

Section 6.2 Lot's Utility Easements. Easements are granted in favor of each Lot Owner to and throughout the Common Areas and, if necessary, the setback areas of any other Lots, as may be necessary for the installation, maintenance, repair and use of underground water, gas, sewer, power and other utilities and services including power and communication, now or hereafter existing, including maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components. The foregoing notwithstanding, no Lot Owner (other than Declarant) may exercise the easement rights reserved in this Section 6.2 without the prior written approval of the Board as described in Section 6.6 below and the Declarant, so long as it owns a Lot in the Subdivision.

Section 6.3 Utility Easements. Easements are reserved and/or granted hereby in favor of the Declarant and/or the Association through each Lot (provided that such easements shall not materially and unreasonably interfere with the use of any dwelling located upon any Lot) and the Common Areas for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components throughout the Common Areas. Each Lot Owner and/or his respective mortgagee by acceptance of a deed conveying such ownership interest and each mortgagee encumbering such ownership interest, as the case may be, hereby irrevocably appoint Declarant, or the Association, as the case may be, as his attorney in fact, coupled with an interest, and authorize, direct and empower such attorney, at the option of the attorney, to execute, acknowledge and record for and in the name of such Lot Owner and his mortgagee, such easements or other instruments as may be necessary to effect the purpose of this Section 6.3. The easements may be assigned and/or granted by the Declarant and/or the Association to any utility or service company.

Section 6.4 **General Easements.** An easement is hereby reserved and/or granted in favor of the Declarant and/or the Association in, on, over and through the Common Areas, the Lots and/or Dwelling Units for the purposes of maintaining, cleaning, repairing, improving, regulating, operating, policing, replacing and otherwise dealing with the Common Areas, Lots and/or Dwelling Units, including all improvements thereon as required or permitted by the Constituent Documents or applicable law. An easement is hereby reserved in favor of Declarant over the Common Areas for the purpose of advertising or promoting sales of Lots or Dwelling Units in the Subdivision.

Section 6.5 **Access Easement.** Appurtenant to each Lot is an easement over any Common Area for necessary pedestrian and vehicular ingress and egress to and from any such Lot over the Common Areas, to and from a thoroughfare. The easement shall be over such walkways, driveways, or other ways as are designated by the Declarant and/or the Association and shall be subject to the terms of the Constituent Documents.

Section 6.6 **Use of Easement.** Any use of the rights and easements granted and reserved in this Article VI shall be reasonable. If any damage, destruction, or disturbance occurs to a Lot or Common Area as a result of the use of any easement or right, the Lot or Common Area shall be restored by, or at the direction of, the Association promptly in a reasonable manner at the expense of the person or persons making the use of the easement or right that resulted in the damage, destruction or disturbance. Before beginning work, Association may require all or any part of the expected expense to be prepaid by that person or those persons liable for the expense. Additionally, should any Lot Owner other than Declarant elect to exercise its easement rights hereunder, it shall be required to obtain the Board's prior written approval (not to be unreasonably withheld), after providing the Board with detailed plans of its proposed work, as well as evidence of appropriate insurance and other such reasonable information or assurances as the Board may require. No easement may be granted across, through, over, or under any Lot or Common Area, which materially restricts ingress and egress to the Lot or Common Area, unless reasonable alternate ingress and egress is provided or unless the restrictions is only temporary. All easements reserved hereunder shall be perpetual and non-exclusive.

Section 6.7 **Reservation of Access Easement by Declarant.** Declarant reserves an easement for itself, its grantees, successor and assigns, to enter upon the Subdivision for access, including ingress and egress for both vehicles and pedestrians, to and from any public street, road, land, walkway or right-of-way. The easement shall be over all the streets and other access ways of the Subdivision. Declarant further reserves the right to connect, at Declarant's expense, to any street, roadway, walkway or other means of access that are located on the Common Areas of the Subdivision. This reservation of access easements and the right of connection should be construed liberally in favor of the Declarant, in order to facilitate the development of all or any portion of Holly Glen Estates.

Section 6.8 **Reservation of Construction Easement by Declarant.** The Declarant reserves the non-exclusive right and easement to temporarily go upon the Subdivision in order to complete the development of the Subdivision and the construction of the improvements to be located therein, and to develop other neighboring land. The easement should be construed broadly in favor of the Declarant, including giving Declarant the right to store temporarily construction materials, equipment or dirt. After the construction is finished, Declarant must, at Declarant's cost, repair any damage done to the Subdivision including to any landscaping. As soon as reasonably possible after Declaration has completed construction on the neighboring land, Declarant must remove all debris, equipment, materials and dirt from the Subdivision.

Section 6.9 **Declarant's Easements: General.** The easements and grants reserved for and granted to the Declarant also benefit and bind any heirs, successors and assigns of Declarant and their

respective guests, invitees or lessees, including, without limitation, assignees of Declarant who do not own property within Holly Glen Estates.

Section 6.10 Easements to Run with Land. All easements and rights described in this Article VI are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Owner, purchaser, mortgagee, and other person or entity now or hereafter having an interest in the Subdivision, or any part or portion of it.

Section 6.11 Reference to Easements and Deeds. Reference in the respective deeds of conveyance or any mortgage or trust deed or other evidence of obligation, to this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees in said instruments as fully and completely as those such easements and rights were recited fully and set forth in their entirety in such instruments.

ARTICLE VII

INSURANCE

Section 7.1 General Insurance. The Association shall carry a master policy of fire and extended coverage, vandalism, malicious mischief and liability insurance on any insurable interest in the Common Areas; and if required by law, workmen's compensation insurance with respect to the Subdivision and the Association's administration thereof in accordance with the following provisions:

7.1.1 All Common Areas now or at any time hereafter constituting a part of the Subdivision shall be insured against fire and other perils covered by a standard extended coverage endorsement, in an amount not less than one hundred (100%) percent of the replacement value thereof, with a deductible agreed to by the Board of Directors, exclusive of the cost of the land, foundations, footings, excavation, and architect's fees, without deduction for depreciation. The policy shall have cost of demolition, water damage (excluding floods, backing up of sewers and drains, the running off of surface water, and the overflow of a body of water), and agreed amount endorsements and a deductible on any single loss or group of losses within one year in such amounts as shall be found reasonable by the Board of Directors, after carefully considering and comparing the increased premium costs resulting from a low deductible with the lower premium costs but higher per loss risk resulting from a high deductible, together with all other pertinent factors.

7.1.2 The Board of Directors shall review the insurance coverage required under this Section 7.1 at least annually, and if any of such insurance coverage becomes impossible or impractical to obtain, the Association shall obtain coverage that most closely approximates the required coverage with the deductible provisions as determined by the Board of Directors. In any event, all such insurance must comply, at a minimum, with the applicable requirements set forth in the North Carolina Planned Community Act.

7.1.3 The Association shall also maintain liability insurance 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 Areas. The Association shall try to have its liability insurance contain cross-liability

endorsements or appropriate provisions to cover liability of the Lot Owners, individually and as a group (arising out of their ownership interest in the Common Areas), to another Lot Owner.

Section 7.2 **Fidelity Insurance.** The Association must have fidelity coverage against dishonest acts on the part of Officers and employees, Members of the Association, members of the Board, trustees, employees or volunteers responsible for the handling of funds collected and held for the benefit of the Lot Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than the insured's total Regular Assessment, plus all accumulated reserves and all other funds held by the Association either in its own name or for the benefit of the Lot Owners.

Section 7.3 **Directors' and Officers' Errors and Omissions Insurance.** The Association shall purchase insurance to protect itself and to indemnify any Director or Officer, past or present against expenses actually and reasonably incurred by him/her in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such Director or Officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the Association; or to obtain such fuller protection and indemnification for Directors and Officers as the law of North Carolina permits. The policy or policies shall be in an amount to be reasonably determined by the Association.

Section 7.4 **Premiums.** All premiums upon insurance purchased by the Association shall be Common Expenses. Notwithstanding the foregoing, the Lot Owners may be responsible for certain deductibles to the insurance policies purchased by the Association as outlined in Section 7.1 and Section 7.6 herein.

Section 7.5 **Proceeds.** Proceeds of all insurance policies owned by the Association shall be received by the Association; provided, however, the proceeds of any insurance received by the Association because of property damage shall be applied to repair and reconstruction of the damaged property, except as may otherwise be permitted by this Declaration.

Section 7.6 **Responsibility of Lot Owner.** The Association shall not be responsible for procurement or maintenance of any insurance covering any Lot or Dwelling Unit, or the contents of and Lot or Dwelling Unit nor the liability of any Lot Owner for injuries not caused by or connected with the Association's operation, maintenance or use of the Common Areas or other property located in the Subdivision. Each Lot Owner shall, at his or her own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of or occurring within his Lot or Dwelling Unit. In addition, each Lot Owner shall maintain fire and extended coverage insurance on his Dwelling Unit, and the contents of his Dwelling Unit. The Association may request the Lot Owner to provide a copy of the policy(s) to the Association evidencing this insurance coverage at any time.

Each Lot Owner agrees that if any Owner(s) damages a building or other improvements now or at any time hereafter constituting a part of the Common Areas of the Subdivision which is covered under the Association's insurance policy, the Owner or Owners causing such damage shall be responsible for paying the lesser of: (a) the cost of repair or replacement of such Common Areas that is not covered under the Association's insurance policy; or (b) the cost to repair and/or replace any damage to a building or other improvements, which amount shall be due within ten (10) days after the delivery of written notice of such deductible due or replacement/repair costs by the responsible Lot Owner(s) or twenty (20) days after mailing of such notice by certified mail, whichever occurs first. In the event a Lot Owner refuses or fails to pay the insurance deductible or replacement/repair costs in the time period provided in the preceding sentence, the amount thereof may be advanced by the Association and the amount so advanced

by the Association shall be assessed to such Owner as an Individual Assessment, which shall be due and payable following seven (7) days written notice.

Section 7.7 **Release.** All policies purchased under this Article VII by either the Association or the individual Lot Owners shall provide for the release by the issuer, thereof, of any and all rights of subrogation or assignment and all causes and rights of recovery against any Lot Owners, member of their family, their employees, their tenants, servants, agents and guests, the Association, any employee of the Association, the Board, or any occupant of a Dwelling Unit in the Subdivision, for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under the insurance policy.

Section 7.8 **Approximate Coverage.** If any of the required insurance coverage under this Article VII becomes or is impossible to obtain or can be obtained only at an unreasonable cost, the Association shall obtain coverage which most closely approximates the required coverage, if such substitute insurance is available.

Section 7.9 **Additional Policy Requirements.** All such insurance coverage obtained by the Association shall be written in the name of the Association, for the use and benefit of the Association, the Lot Owners and their mortgagees, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

7.9.1 Exclusive authority to adjust losses under policies in force on the Subdivision obtained by the Association shall be vested in the Association provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

7.9.2 In no event shall the insurance coverage obtained by the Association hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

7.9.3 All casualty insurance policies shall have an agreed amount endorsement with an annual review by one or more qualified persons.

7.9.4 The Association shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

7.9.4.1 a waiver of subrogation as discussed in Section 7.7;

7.9.4.2 that no policy may be canceled, invalidated, or suspended on account of the acts of any one or more individual Owners;

7.9.4.3 that no policy may be canceled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee; and

7.9.4.4 that any "other insurance" clause in any policy exclude individual Owner's policies from consideration.

ARTICLE VIII

ASSOCIATION

Section 8.1 **Association.** The administration of the Subdivision shall be vested in the Association. The Owner of any Lot, upon acquiring title, shall automatically become a Member of the Association and shall remain a Member until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association shall automatically cease. The Association shall have full power and responsibility to administer, operate, sustain, maintain, and govern the Subdivision including but not limited to, the powers and responsibilities to make prudent investments of funds held by it; to make reasonable Rules and Regulations; to borrow money; to make Assessments; to bring lawsuits and defend lawsuits; to enter into contracts; to enforce all of the provisions of this Declaration, the Bylaws and any other documents or instruments relating to the establishment, existence, operation, alternation of the Subdivision. The powers of the Association shall be construed liberally and shall include, without limitation, all of the powers set forth in *Section 47F-3-102* of the Planned Community Act.

Section 8.2 **Board of Directors.** Unless otherwise specifically stated in this Declaration, the Association shall act exclusively through its Board of Directors (the "**Board**"). The Association in accordance with the Bylaws shall choose the Board. The Board shall be authorized to delegate the administration of its duties and powers by written contract to a managing agent or administrator employed for that purpose by the Board.

Section 8.3 **Limitations on Association's Duties.**

8.3.1 The Association did not construct the improvements, including the Dwelling Units. The Association does not warrant in any way or for any purpose, the improvements in the Subdivision. Construction defects are not the responsibility of the Association.

8.3.2 The Association shall have a reasonable time in which to make any repair or do any other work, which it is required to do under the Constituent Documents. The Association must first have actual knowledge of a problem. Any determination of the reasonableness of the Association's response, must allow for the facts that the Association is volunteer and that the funds available to the Association are limited.

8.3.3 In case of ambiguity or omission, the Board may interpret the Declaration and the other Constituent Documents, and the Board's interpretation shall be final if made without malice or fraud. Notwithstanding the foregoing, the Declarant may overrule any interpretation affecting it, for so long as Declarant owns any portion of the Property, and such interpretation cannot be enforced against the Declarant, its successors or assigns.

ARTICLE IX

HARMONY, ENVIRONMENTAL CONTROLS

Section 9.1 **Architectural Control Committee.** The following design and architectural control restrictions shall apply for all lots:

9.1.1 No structure shall be erected, altered, placed or permitted to remain on any lot other than a detached single-family dwelling not to exceed two (2) stories in height, plus one or more accessory buildings, which may include a detached private garage; provided, however, that no garage apartments shall be permitted; and, provided that any said accessory building may not be constructed prior to the construction of the single-family dwelling and without the prior written approval of the Declarant or its assignee; multi-family dwellings of any type are expressly forbidden.

9.1.2 . No dwelling, building, fence, wall, or mail receptacle or other structure, of whatever nature or kind, or any portion thereof, shall be erected, placed or altered on any lot, nor shall the grade or elevation or physical characteristics of any such lot, or portion thereof, be altered in any way whatsoever, UNTIL the proposed building plans, specifications, finishes, materials, site and grading plan (showing the proposed location of such buildings or structures, drives, parking areas, fences, walls, mail receptacles, and any proposed alterations to the grade, elevation or physical characteristics of the site), and the construction schedule shall have been APPROVED IN WRITING BY THE DECLARANT, OR ITS ASSIGNEE. Approval or disapproval of any of the above may be based by the Declarant upon any ground, including purely aesthetic and environmental considerations that in the sole and uncontrolled discretion of the Declarant shall seem sufficient.

9.1.3 Due to the fact that the establishment of standard inflexible building set back lines for locations of dwellings on lots tends to force construction of dwellings directly to the side of one another with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, NO SPECIFIC SET BACK LINES are established by these Articles. In order to assure, however, that the foregoing considerations are given maximum effect, the Declarant reserves the right to control and approve absolutely, as stated in Paragraph B hereinabove, the site and location of any dwelling and/or structure upon any lot.

9.1.4 No single-family dwelling design or plan will be approved by the Declarant unless the proposed dwelling will have the minimum required square footage of "enclosed dwelling area". The term "enclosed dwelling area" as used in these minimum size requirements shall mean the total enclosed area within a dwelling, provided, however, that such term does not include garages, terraces, decks, porches, and like areas; provided, however, that shed-type porches, even though attached to the house, are specifically excluded from the definition of the aforesaid term "enclosed dwelling area". Said minimum square footage shall be 1600 square feet.

9.1.5 Any structure erected on the lots shall be of wood, stone, brick veneer, tiles, stucco, or concrete and stucco, and the design, as well as the materials used, as stated hereinabove in Paragraph B, shall be subject to the prior written approval of the Declarant.

9.1.6 Each lot owner shall provide receptacles for garbage in a screened area on his lot not generally visible from any street or road or other lots, or provide underground garbage receptacles for similar facilities.

9.1.7 No fuel tanks or similar storage facilities may be exposed to view on any lot. Any such facility must be installed only within the main residential dwelling, within an accessory building, within a screened area, or buried underground.

9.1.8 No trees of any size, exceeding three (3) inches in diameter measured one (1) foot above the ground, may be removed from any lot without the prior written approval of the Declarant or its assignee; said approval to be based upon a site plan, landscaping plan, or planting plan submitted to the Declarant, or its assignee, by the lot owner.

9.1.9 Potable water is and shall be supplied to all lots within the development by the city of Wilmington or some other community water system provider. No Owner of a lot in Holly Glen Estates shall be permitted to drill or otherwise construct any water well on said Owner's lot. However, an Owner may drill a private well for the purpose, and only for the purpose, of providing a water supply for a lot or lawn sprinkler system, provided, however, that such lot owner shall obtain the permission of the Declarant or the Architectural Control Committee, its successors or assigns, for the drilling, installation and maintenance of such sprinkler system, which such permission shall not be unreasonably withheld.

Section 9.2. Stormwater Runoff/NCDNR Permit Restrictions.

The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 040504, as issued by the Division of Water Quality under NCAC 2H.1000. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit. These covenants are to run with the land and be binding on all persons and parties claiming under them. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality. The maximum allowable built-upon area (the "BUA") per lot is set forth on the Schedule attached hereto as Exhibit "B", and is expressed in terms of square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina, and parking areas but does not include raised, open wood decking, or the water surface of swimming pools. Lots within CAMA's Area of Environmental Concern may be subject to a reduction in their allowable built upon area due to CAMA regulations. All runoff on the lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales and directing them into the pond or street. Lots that naturally drain into the system are not required to provide these measures.

ARTICLE X

USE RESTRICTIONS

Section 10.1 Use and Occupancy. The Association shall make Rules and Regulations to govern the use and occupancy of the Subdivision. In addition, the following covenants, conditions, and restrictions, as to use and occupancy shall run with the land and shall be binding upon each Lot Owner, his heirs, tenants, licensees and assigns.

Section 10.2 Purpose of Subdivision. Except as otherwise provided in this Declaration, no part of the Subdivision shall be used for other than housing and the common recreational purposes for which the property was designed, and each Lot shall be used only for residential purposes, unless the Board of Directors authorizes some other use. Except for the construction, sales and management activities (including, without limitation, the right of Declarant to maintain one or more model Dwelling Units, or sales offices) of the Declarant, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, may be conducted, maintained, or permitted on any part of the Subdivision property. To the extent permitted by law, an Owner may use a portion of his or her Dwelling Unit for an office or studio (other than a music and/or dance studio) provided that the activities conducted therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant; and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Subdivision or in and out of said Owner's Lot.

Section 10.3 **Obstruction of Common Areas.** There shall be no storage or parking of any items, including baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs in any part of the Common Areas, except as permitted by the Rules and Regulations. Patios porches (except screened in and/or enclosed porches) and decks, may be used only for their intended purposes.

Section 10.4 **Parking.** Except for vehicles being used by persons providing services to the Declarant, the Association, the Lot Owners or otherwise used or authorized to be used at the Subdivision by the Declarant, no part of the Subdivision may be used for the parking of any trailer coach, house trailer, mobile home, automobile trailer, motorcycle, camp car, recreational vehicle, camper, truck which exceeds 3/4 ton, boat, boat trailer, or any vehicle with letters or other markings over four inches tall or wide, or any other similar vehicle (collectively, "**Special Vehicles**"), unless such Special Vehicles are parked in the garage of the Lot Owner who owns such Special Vehicle and the garage door of such Lot Owner is completely closed at all times when a Special Vehicle is parked therein. Operative vehicles, other than Special Vehicles, used by a resident of a Lot as a primary source of transportation may be parked in the driveway of such Lot Owner or in any garage space owned by the Owner of such Lot. However, the residents of any one Lot may not collectively park more than three (3) operative vehicles other than Special Vehicles in the Subdivision. Inoperative vehicles may not be parked within the Subdivision unless these inoperative vehicles are parked in the garage and the garage door is completely closed. No auto maintenance and/or repairs may be performed on the Subdivision except if performed inside the garage of a Lot Owner. Vehicles, whether owned by a Lot Owner or not, parked in violation of any part of this Declaration or in violation of any Rules or Regulations, shall be towed away and stored at the Owner's risk and expense. By parking in the Project, the Owner of the vehicle or other vehicle user hereby waives any claim against the Association resulting directly or indirectly out of the towing, unless the towing can be shown beyond a reasonable doubt to have been done maliciously by the Association. Note that the Association is not obliged to try to determine the owner of a vehicle and first give notice, before towing the vehicle.

Section 10.5 **Compliance With Insurance Policies and Waste.** Nothing shall be done or kept in any Dwelling Unit, in the Common Areas or on a Lot which will increase the rate of insurance of the buildings, or contents thereof, applicable for residential use, without the prior written consent of the Association. No Lot Owner shall permit anything to be done or kept in his or her Dwelling Unit, in the Common Areas or on a Lot which will result in the cancellation of insurance on the buildings, or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Areas. All laws shall be obeyed.

Section 10.6 **Animals and Pets.** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed and personally escorted. No animals, livestock or poultry of any kind may be raised, bred or kept in any Common Area. Pets must be restrained or confined within the Lot and shall not become a nuisance or offend reasonable sensibilities of other Owners. Owners must promptly remove any and all animal excrement from any and all Common Areas and Lot(s) and keep such area(s) clean and free of pet debris. All animals must be properly tagged for identification.

Section 10.7 **Nuisances.** No noxious or offensive activity shall be carried on in any Dwelling Unit or in the Common Areas or on the Lot of an Owner, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Lot Owners or occupants.

Section 10.8 **Laundry or Rubbish and Open Fires in Common Areas and Facilities.** No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas, or on any Lot in a manner visible from any Common Area, neighboring Lot or street. All Lots shall be kept free and clear of rubbish, debris and other unsightly materials. All trash, garbage or other rubbish shall be deposited only in covered sanitary containers as provided in Section 10.13 below. No open fires shall be permitted on any part of the Subdivision other than fires in charcoal grills or other similar cooking devices located upon Lots or grills or similar devices (if any), owned by the Association and constituting a portion of the Recreational Facilities, provided the use of such devices does not violate any local governmental rules or regulations.

Section 10.9 **Signage.** Except as otherwise provided in this Declaration, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, shall be conducted, maintained or permitted on any part of the Subdivision. A Lot Owner is permitted to place and maintain a standard "For Sale" or "For Rent" sign in that Lot Owner's yard on the Dwelling unit side of any sidewalk that may be installed; provided, however it is of a typical size within the industry or within an area expressly permitted by the Board of Directors. No other sign that is visible from the outside of Dwelling Units may be placed on any part of the Subdivision except as expressly permitted by the Board of Directors. Declarant and/or the Board shall have the right to immediately remove and dispose of those items in violation of this Declaration. A Lot Owner must obtain the prior written consent of the Board of Directors in the event a Lot Owner desires to maintain a "For Sale" or "For Rent" sign which is not of a typical size within the industry, or desires to maintain other displays or advertising, unless otherwise provided for under the Rules and Regulations. The right is reserved by the Declarant to use any such unsold or unoccupied Dwelling Units or other structures in the Subdivision as models and/or offices in connection with the construction, sale or rental of Dwelling Units.

Section 10.10 **Antennas/Satellite Dishes.** No outside antennas or satellite dishes shall be erected on any Lot or structure unless and until permission for the same has been granted by the Committee or Declarant. Any such antennas or satellite dishes shall be screened from view by adjoining property Owners and the users of any street or recreation area or Common Area. The design and location of the screening shall be approved by the Committee or the Declarant.

Section 10.11 **Utility Connections.** All dwelling connections for all utilities, including, but not limited to, water, electricity, gas, telephone, and television shall be run underground from the proper connecting points to the dwelling structure in such manner as may be acceptable to the appropriate utility authority. The cost for such underground service shall be shared by the Owner and utility company in conformity with existing utility company policy if any.

Section 10.12 **Alteration of Common Areas.** Nothing shall be altered or constructed in or removed from the Common Areas except as otherwise provided in this Declaration and except upon the written consent of the Association. In addition, a Lot Owner must obtain the prior written consent of the Board prior to installing and landscaping or planting any flowers, herbs or vegetables, on any portion of the Subdivision (including any Lot).

Section 10.13 **Trash Disposal.** Each Lot Owner shall deposit all trash, garbage, or other rubbish by as directed and instructed by the Board. Lot Owners shall keep trash containers at all times in each Lot Owner's garage (if applicable), or in such other location as designated by the Board, except on the days which trash, garbage, or other rubbish is collected by the local waste removal authorities. Any trash containers placed outside by the Lot Owners in the location designated for collection by the local waste removal authorities shall only remain in such location for a period not to exceed twenty-four (24) hours. The Board shall have the right to dispose of any trash, garbage, or other rubbish of a Lot Owner in

violation of this Article X, and may assess the Lot Owner for the cost of such removal, which amount shall be payable on the date the next installment of the regular assessment is due.

ARTICLE XI

ENFORCEMENT

Section 11.1 **Enforcement.**

11.1.1 The Association or any Lot Owner may enforce these covenants, conditions and restrictions. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate ("Violating Party") any covenant, condition or restriction, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants. In addition to all other amounts due on account of said violation or attempted violation, the Violating Party shall be liable to the parties enforcing the covenants and/or restrictions of this Declaration (the "Enforcing Parties") for all reasonable attorney's fees and court costs incurred by the Enforcing Parties. Failure or forbearance by the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any lawsuit filed to enforce this Declaration by injunction or restraint, there shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants, conditions or restrictions cannot be adequately remedied by action at law or by recovery of damages.

11.1.2 In addition to all other remedies of the Association, the Association shall have the right to assess a maximum fine of \$150.00 per day (or such higher amount as may be allowed by law) per violation against any Owner who violates any provision of this Declaration or the Articles, Bylaws or Rules and Regulations of the Association after such Owner has been given notice of the violation and an opportunity to be heard with respect to the violation in accordance with such policies and procedures as may be adopted from time to time by the Board of Directors or as may be set forth in the Bylaws.

11.1.3 In addition to the above rights, the Association may also enter upon a Lot or any land upon which a violation exists to remove any violation, perform maintenance or make repairs thereon which is the responsibility of a Lot Owner who has failed to remove said violation or to perform such maintenance or make such repairs (i) after having given such owner at least ten (10) days prior notice, or (ii) without giving notice in the event of an emergency.

Any action brought by the Association hereunder may be brought in its own name, in the name of its Board or in the name of its managing agent. In any case of flagrant or repeated violation by a Lot Owner, he or she may be required by the Association to give sufficient surety or sureties for his or her future compliance with the covenants, conditions and restrictions contained in this Declaration, the Bylaws and the Rules and Regulations.

Section 11.2 **Severability.** Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 11.3 **Restrictions Run With Land.** The easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Dwelling Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns.

Section 11.4 **Amendment.** The Association (the Declarant controlling the Association until the expiration of the Development Period) may amend this Declaration at any time, as long as consistent with the design, scheme and purposes of this Declaration, by the affirmative vote or written agreement of the Owners to whom not less than seventy-five percent (75%) of all of the votes in the Association are allocated in accordance with Section 4.4 and Section 4.5 above. Any amendment must be recorded in the New Hanover County Register of Deeds. Following the end of the Development Period, no such agreement to amend, in whole or in part, shall be effective unless written notice of the proposed amendment is sent to every Member at least thirty (30) days in advance of any action taken, and no such amendment shall be effective with respect to any permanent easements or other permanent rights or interests relating to the Common Areas herein created (unless such amendment is consented to in writing by Declarant and all other beneficiaries of such permanent easements, rights of interests).

Section 11.5 **Reservation of Special Declarant Rights.** Declarant reserves the right to maintain sales and management offices, model units, construction trailers, storage or staging areas, and advertising signs upon Lots or the Common Areas and upon Lots owned by it until the expiration of the Development Period and to exercise all other "Special Declarant Rights" as defined in the Planned Community Act. Without limiting the foregoing, and notwithstanding anything herein to the contrary, during the Development Period, Declarant shall have the right to annex additional Lots or Common Areas into the Subdivision by filing a supplement to this Declaration in the New Hanover County Public Registry together with an amendment to the Plat (if applicable). Such additional Lots or Common Areas need not be contiguous to the Property. Declarant shall have the right to assign all or a portion of any rights or easements reserved herein by a written assignment thereof, recorded in the New Hanover County Public Registry.

Section 11.6 **Management and Service Contracts.** Any agreement for the professional management of the Subdivision of the Common Areas may not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee upon reasonable notice.

Section 11.7 **Binding Determination.** In the event of any dispute or disagreement with or between any Owner(s) relating to, or of any other disputes, disagreements or questions regarding, the interpretation or application of the provisions of this Declaration or the Articles or Bylaws of the Association, the determination thereof (i) by Declarant for so long as Declarant retains control of the Association; and (ii) thereafter by the Board of Directors of the Association shall be final and binding on each and all such Owners; providing that any determination which directly or indirectly affects Declarant shall require Declarant's prior consent to become binding upon Declarant.

Section 11.8 **Captions and Titles.** All captions, titles or headings in this Declaration are for the purpose of reference and convenience only and are not deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

Section 11.9 **Notices.** Except as otherwise provided in this Declaration, any notice to any Owner under this Declaration shall be in writing, shall be effective on the earlier of (i) the date when received by such Owner, or (ii) the date which is three days after mailing (postage prepaid) to the last address of such Owner set forth in the books of the Association. The address of an Owner shall be at his

Lot (or any of them if more than one) unless otherwise specified in writing to the Association. The Articles and Bylaws shall specify the permissible manner of giving notice for voting and all other Association matters for which the manner of giving notice is not prescribed in this Declaration.

Section 11.10 **Governing Law.** This Declaration shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the State of North Carolina, and suit to enforce any provision hereof or to obtain any remedy with respect hereto shall be brought in state court in New Hanover County, and for this purpose each Owner by becoming such hereby expressly and irrevocably consents to the jurisdiction of said court.

ARTICLE XII

MORTGAGEE'S RIGHTS

Section 12.1 **Notice of Rights of Mortgagee of a Lot.** As used herein, the term "Mortgagee" shall mean the holder of a first lien mortgage or deed of trust on a Lot who provides notice to the Association with its name and address with a request to receive any notices and other rights provided to "Mortgagees" under this **Article XII**. A Mortgagee of a Lot shall be entitled to receive written notification of any default, not cured within sixty (60) days after its occurrence, by the Owner of the Lot with respect to any obligation of the Owner under the Declaration, the Bylaws of the Association or the Articles of Incorporation of the Association. Any Mortgagee of a Lot can make the request for notification. The notification shall be sent not later than the 65th day after the occurrence of an uncured Default.

Section 12.2 **Rights of First Refusal.** Any right of first refusal now or hereafter contained in this Declaration or any amendment or modification hereto or otherwise arising in favor of the Association or certain Owners shall not apply to or preclude or impair in any way the right of the first Mortgagee to (i) foreclose or take title to the Lot pursuant to the remedies provided in its mortgage; (ii) accept a deed or assignment in lieu of foreclosure in the event of a default under the Mortgage; or (iii) sell or lease a Lot and Dwelling Unit acquired by the Mortgagee.

Section 12.3 **Rights of Mortgagee.** Unless at least seventy five percent (75%) of the Mortgagees (based upon one vote for each first mortgage or deed of trust owned), and a vote of seventy-five percent (75%) of the votes allocated to the Members entitled to vote hereunder, the Association shall not:

12.3.1 by an act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Subdivision or Common Areas or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Lots (the granting of easements for public utilities or for other purposes consistent with the intended use of the Subdivision, or the conveyance of Common Area (not including the Recreational Facilities) to a local governmental authority for public park purposes or the conveyance or dedication of Roadways shall not be deemed a transfer within the meaning of this clause);

12.3.2 change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

12.3.3 by act or omission change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the Dwelling

Units, the exterior maintenance of the Dwelling Units, the maintenance of common fences or driveways or the upkeep of lawns and plantings in the Subdivision;

12.3.4 fail to maintain fire and extended coverage insurance on insurable Common Areas on current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

12.3.5 use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement or reconstruction of such Common Areas.

Section 12.4 Right to Examine Books and Records. Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association.

Section 12.5 Taxes and Insurance. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Lot and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Lot, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Lot Owner.

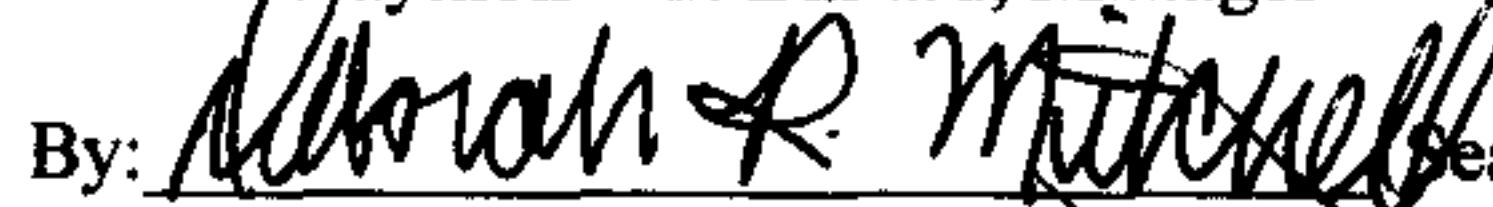
Section 12.6 Insurance Proceeds and Condemnation Awards. No provision of this Declaration or any other document or instrument affecting the title to the Property, Common Areas, any Lot or the organization or operation of the Association shall give an Owner or any other party priority over any rights of first mortgagees of Lots within the Subdivision pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Common Areas.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the day and year first above written.

HOLLY GLEN DEVELOPERS, LLC
a North Carolina Limited Liability Company

By:  (Seal)
Jay S. Milam, Manager

By:  (Seal)
Raymond L. Ballard, Manager

By:  (Seal)
Deborah R. Mitchell, Manager

By:  (Seal)
Mark D. Mitchell, Manager

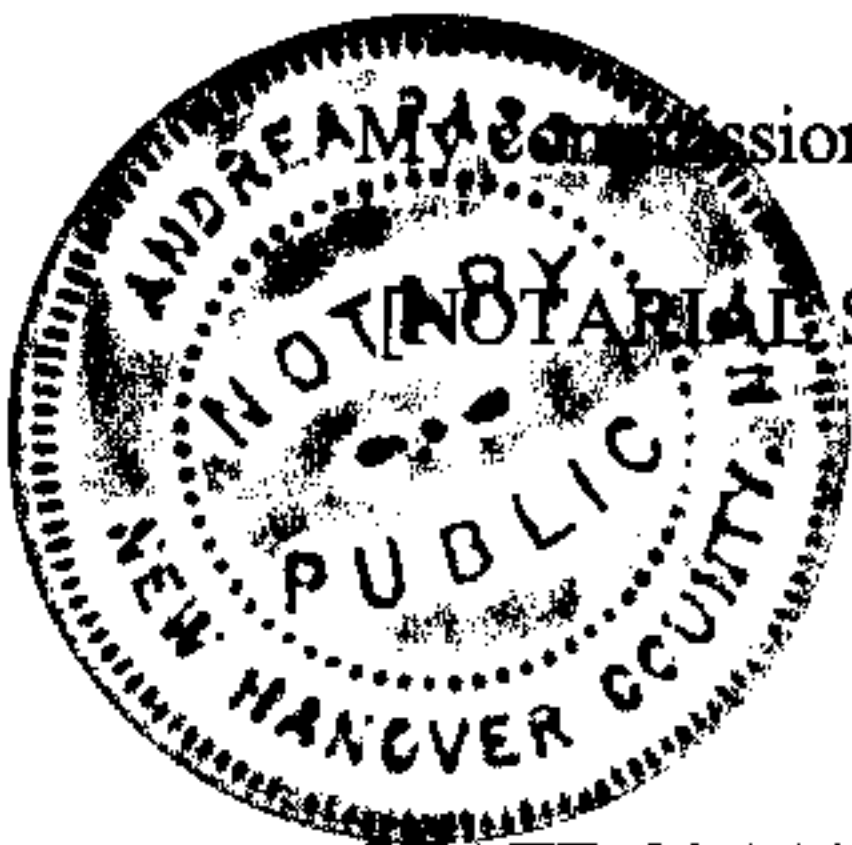
STATE OF NORTH CAROLINA

COUNTY OF New Hanover

I, Andrea Pass, a Notary Public of the State and County aforesaid, certify that Deborah R. Mitchell, personally came before me this day and acknowledged that they are MANAGERS of HOLLY GLEN DEVELOPERS, LLC, a North Carolina limited liability company with its principal office in New Hanover County, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed by them on behalf of and as an act of the Company.

WITNESS my hand and official seal this 22 day of November, 2005.

Andrea Pass
Notary Public



My commission expires: July 21, 2007

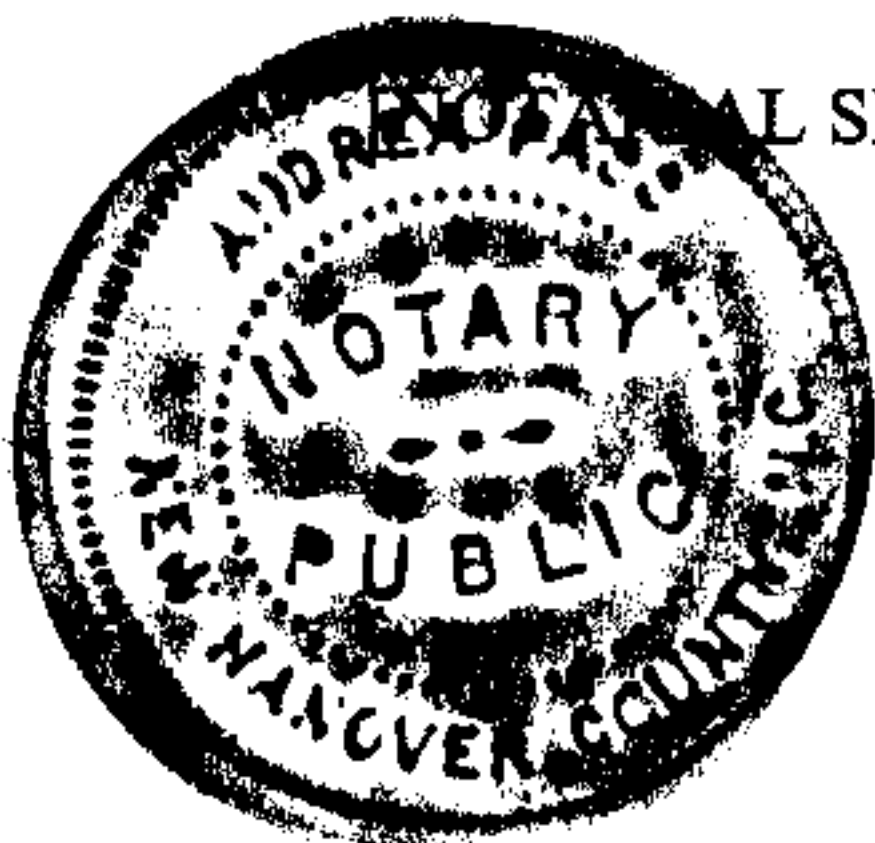
STATE OF NORTH CAROLINA

COUNTY OF New Hanover

I, Andrea Pass, a Notary Public of the State and County aforesaid, certify that Mark D. Mitchell, personally came before me this day and acknowledged that they are MANAGERS of HOLLY GLEN DEVELOPERS, LLC, a North Carolina limited liability company with its principal office in New Hanover County, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed by them on behalf of and as an act of the Company.

WITNESS my hand and official seal this 22 day of November, 2005.

Andrea Pass
Notary Public



My commission expires: July 21, 2007

STATE OF NORTH CAROLINA

COUNTY OF New Hanover

I, Andrea Pass, a Notary Public of the State and County aforesaid, certify that Jay S. Milan, personally came before me this day and acknowledged that they are MANAGERS of HOLLY GLEN BUILDERS, LLC, a North Carolina limited liability company with its principal office in New Hanover County, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed by them on behalf of and as an act of the Company.

WITNESS my hand and official seal this 22 day of November, 2005.



Andrea Pass
Notary Public

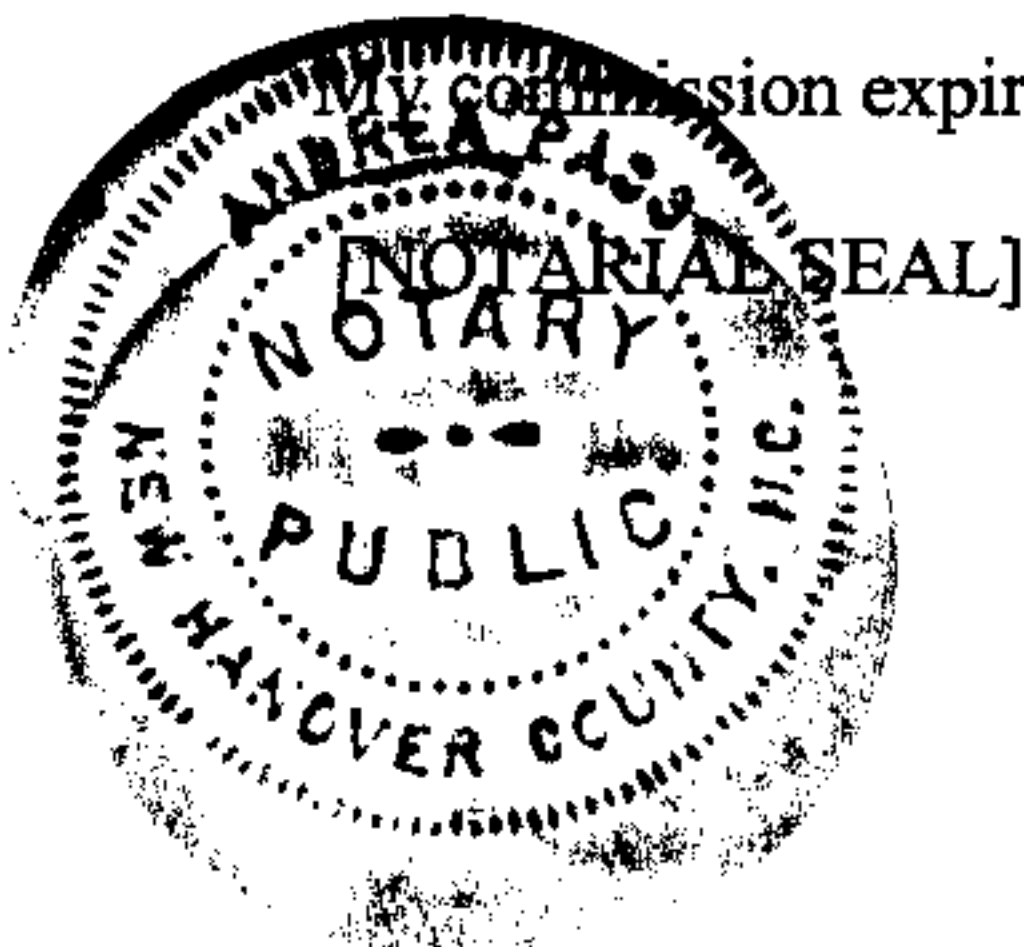
My commission expires: July 21, 2007

STATE OF NORTH CAROLINA

COUNTY OF New Hanover

I, Andrea Pass, a Notary Public of the State and County aforesaid, certify that Raymond L. Ballard, personally came before me this day and acknowledged that they are MANAGERS of HOLLY GLEN BUILDERS, LLC, a North Carolina limited liability company with its principal office in New Hanover County, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed by them on behalf of and as an act of the Company.

WITNESS my hand and official seal this 22 day of November, 2005.



Andrea Pass
Notary Public

My commission expires: July 21, 2007

HOLLY GLEN BUILDERS, LLC
a North Carolina Limited Liability Company

By: [Signature] (Seal)
Jay S. Milam, Manager

By: [Signature] (Seal)
Raymond L. Ballard, Manager

By: [Signature] (Seal)
Deborah R. Mitchell, Manager

By: [Signature] (Seal)
Mark D. Mitchell, Manager

STATE OF NORTH CAROLINA

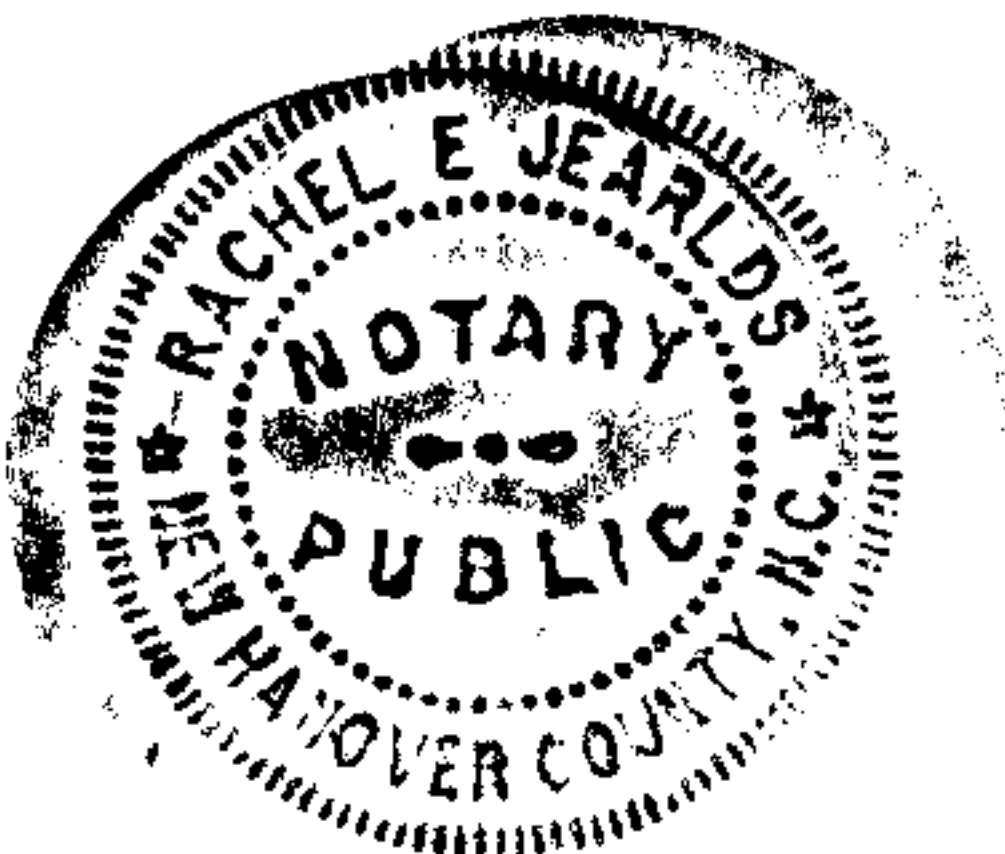
COUNTY OF New Hanover

I, Rachel E. Jearlds, a Notary Public of the State and County
aforesaid, certify that Jay Milam,
personally came before me this day and acknowledged that they are MANAGERS of HOLLY GLEN
DEVELOPERS, LLC, a North Carolina limited liability company with its principal office in New
Hanover County, and that by authority duly given and as the act of the limited liability company, the
foregoing instrument was signed by them on behalf of and as an act of the Company.

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

[Signature]
Notary Public

My commission expires: July 13, 2010
[NOTARIAL SEAL]



STATE OF NORTH CAROLINA

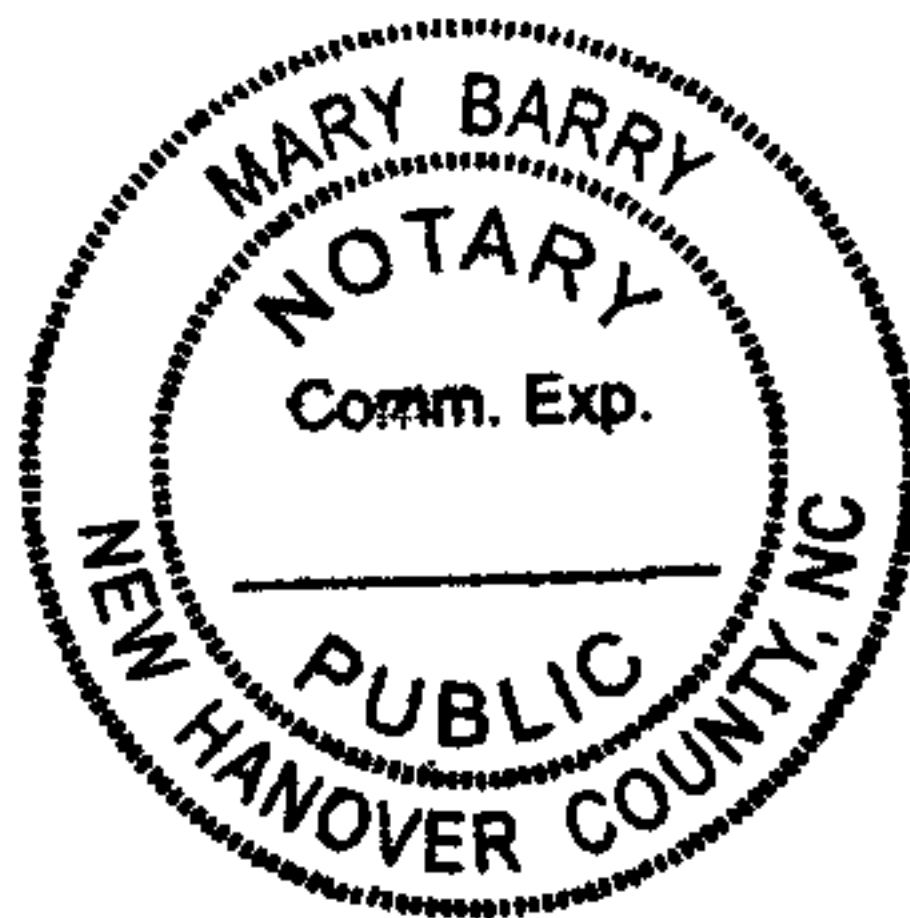
COUNTY OF New Hanover

I, ~~Mark D. Mitch~~ Mary Barry, a Notary Public of the State and County aforesaid, certify that Mark D. Mitchell personally came before me this day and acknowledged that they are MANAGERS of HOLLY GLEN BUILDERS, LLC, a North Carolina limited liability company with its principal office in New Hanover County, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed by them on behalf of and as an act of the Company.

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

Mary Barry
Notary Public

My commission expires: 2-27-2010



CONSENT OF MORTGAGEE

STATE OF NORTH CAROLINA

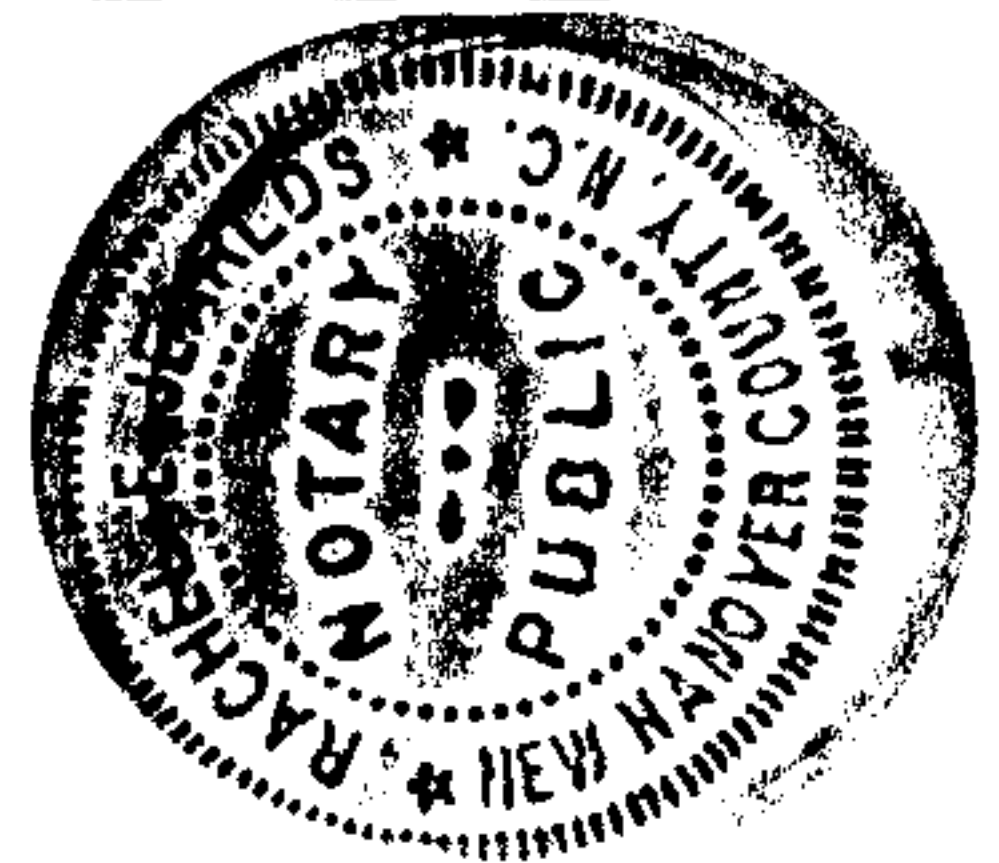
COUNTY OF New Hanover

I, Rachel E. Jearlds, a Notary Public of the State and County aforesaid, certify that Raymond Ballard, personally came before me this day and acknowledged that they are MANAGERS of HOLLY GLEN DEVELOPERS, LLC, a North Carolina limited liability company with its principal office in New Hanover County, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed by them on behalf of and as an act of the Company.

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

Rachel E. Jearlds
Notary Public

My commission expires: July 13, 2010



STATE OF NORTH CAROLINA

COUNTY OF New Hanover

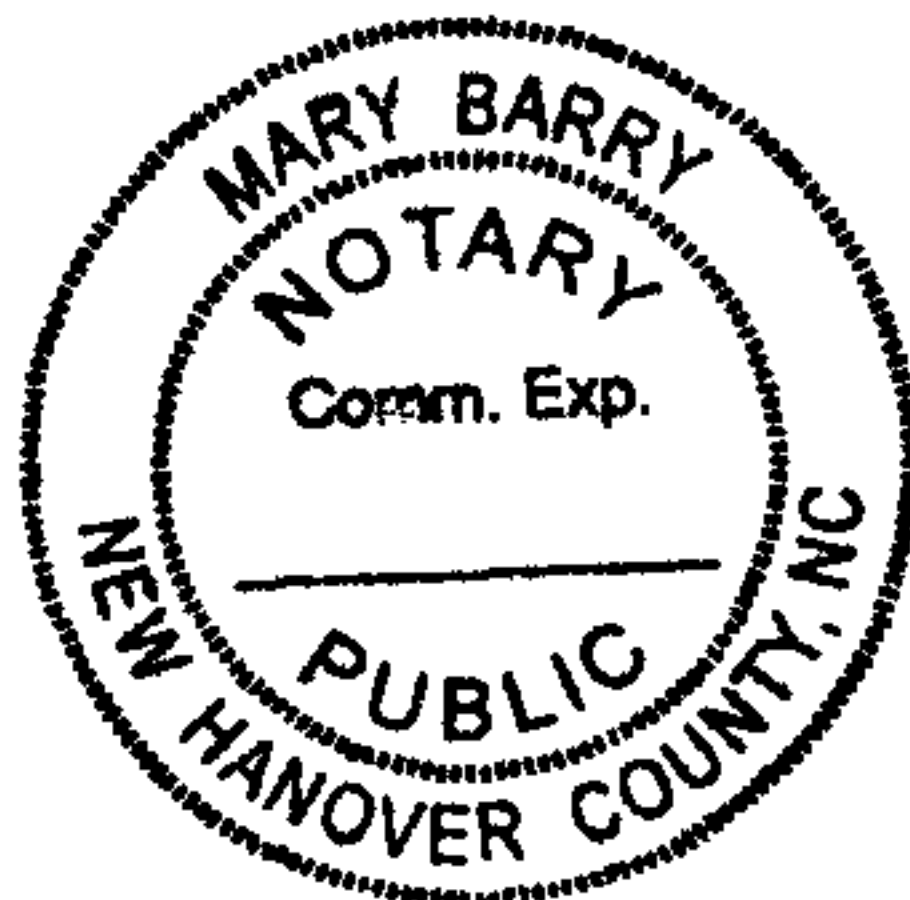
I, Mary Barry, a Notary Public of the State and County aforesaid, certify that Deborah B. Mitchell, personally came before me this day and acknowledged that they are MANAGERS of HOLLY GLEN BUILDERS, LLC, a North Carolina limited liability company with its principal office in New Hanover County, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed by them on behalf of and as an act of the Company.

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

Mary Barry
Notary Public

My commission expires: 2.27.2010

[NOTARIAL SEAL]



Cooperative Savings Bank, a North Carolina banking corporation and the holder of certain Deeds of Trust recorded in the Office of the New Hanover County, North Carolina Register of Deeds, in Book 4806, Page 360, Book 4806, Page 385, and Book 4878, Page 4038 and FREDERICK WILLITTS, III, in his capacity as trustee under the aforesaid deeds of trust, hereby consent to the execution and delivery of the foregoing Declaration of Covenants, Conditions and Restrictions, with exhibits thereto (the "Declaration"), and to the filing thereof, in the office of the County Recorder of New Hanover County, North Carolina, and further subject and subordinate the above-described deed of trust to the provisions of the foregoing Declaration with attached exhibits (including, without limitation, any easements reserved therein).

IN WITNESS WHEREOF, COOPERATIVE SAVINGS BANK, by its authorized officer, and the undersigned Trustee have caused this Consent to be executed this ____ day of _____, 2005.



COOPERATIVE SAVINGS BANK

By: [Signature]
Name: GEORGE B. CHURCH
Title: VICE PRESIDENT

[Signature]
Name: FREDERICK WILLITTS, III
Title: Trustee under each of the aforesaid Deeds of Trust

STATE OF North Carolina

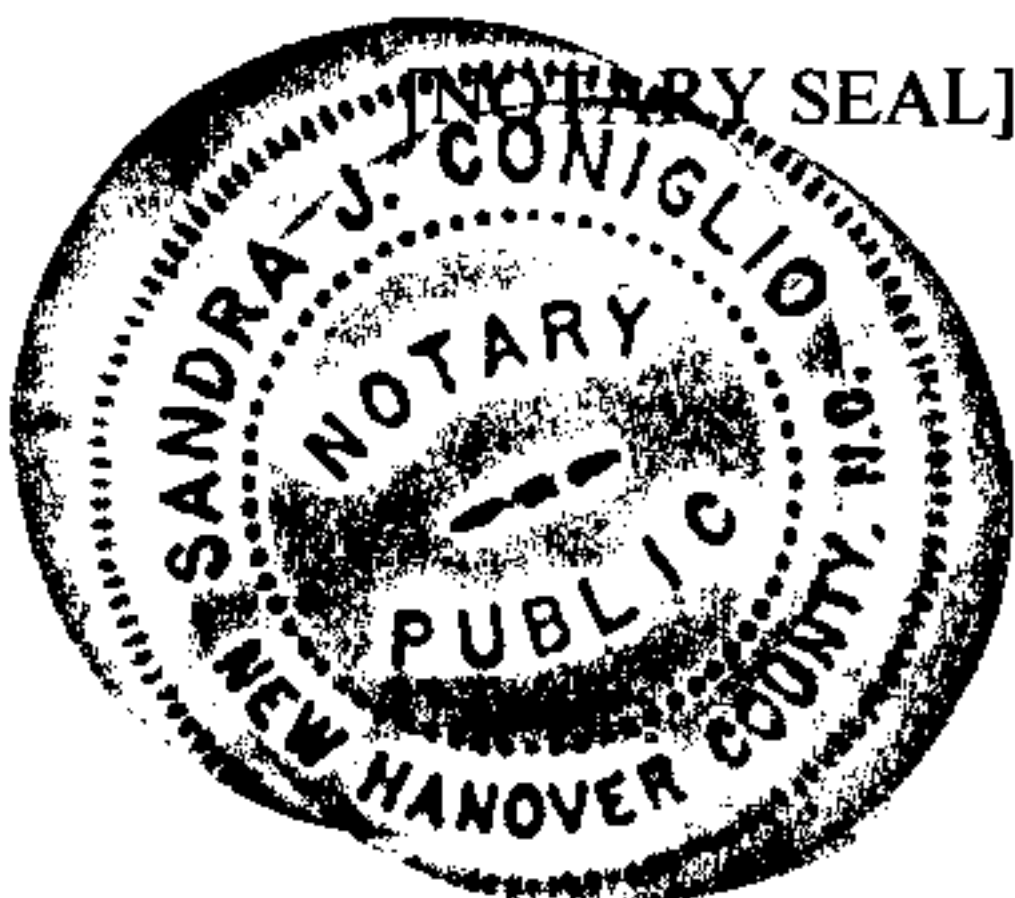
COUNTY OF New Hanover

I, Sandra J. Coniglio, a Notary Public of New Hanover County, State of North Carolina, certify that George B. Church, personally came before me this day and, being duly sworn, acknowledged that he/she is Vice President of Cooperative Bank, an _____ corporation and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him/her in behalf of said corporation by its authority duly given. And the Vice President acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official stamp or seal this 21st day of November, 2005.

My Commission Expires:
4-18-09

[Signature]
Notary Public



STATE OF North Carolina

COUNTY OF New Hanover

I, Sandra J. Coniglio, a Notary Public of New Hanover County, State of North Carolina, do hereby certify that Frederick Willetts III, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this 21st day of November, 2005.

My Commission Expires:
4-18-09

Sandra J. Coniglio
Notary Public

[NOTARY SEAL]

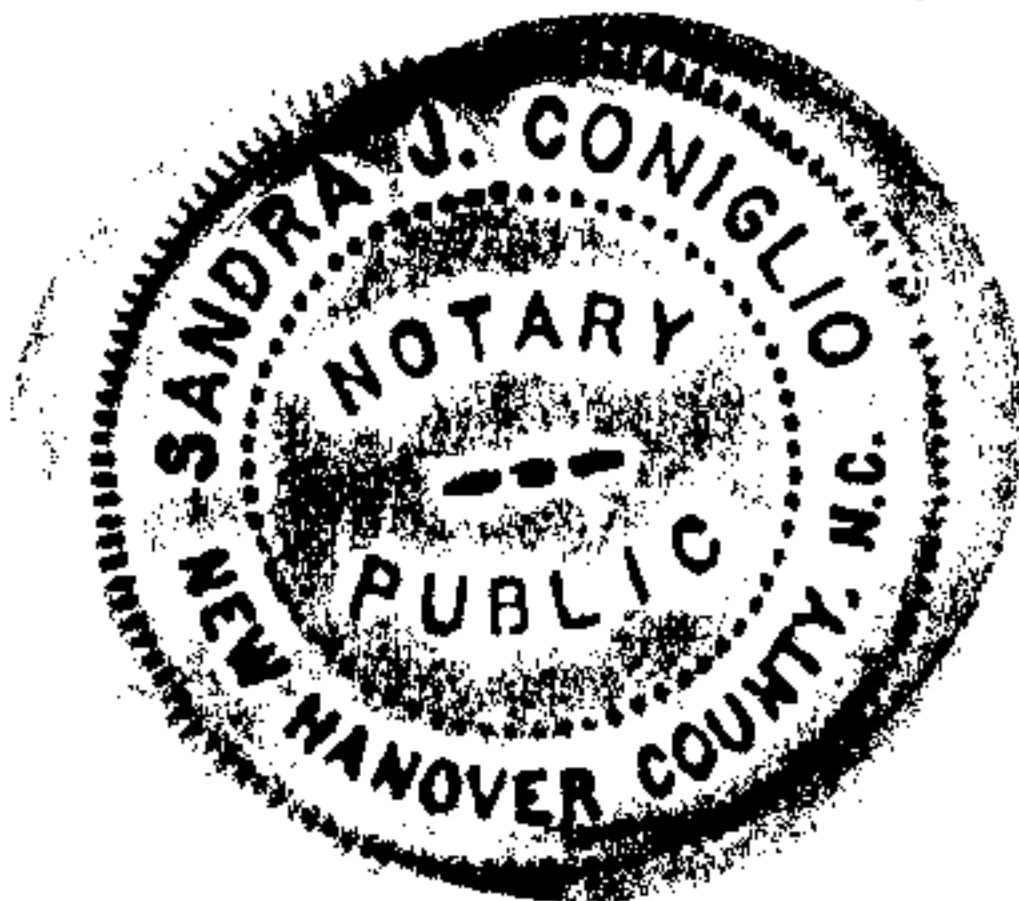


EXHIBIT A
PROPERTY DESCRIPTION

All that certain lot or parcel of land lying and being situate in Wilmington, New Hanover County, North Carolina and being more particularly described as follows (the "Property"):

The real property acquired by Grantor in a Deed dated December 5, 2003 recorded in Book 4119, Pages 873-877 and shown on a map recorded in Map Book 44, Page 319 as two (2) tracts consisting of the Cameron Co., LLC/TRASK ET AL tract (35.325 acres) and Virginia C. Trask tract (24.359 acres), but saving and excepting therefrom the real property conveyed by the Grantor to Stevens Building Company by a Deed dated March 29, 2005 recorded in Book 4737, Pages 333, and shown on a map recorded in Map Book 47, Pages 236 and 237, all in the office of the Register of Deeds, New Hanover County, North Carolina.

The Property is conveyed together with a perpetual, non-exclusive easement appurtenant to the Property and encumbering portions of the adjacent tract conveyed by Grantor to Stevens Building Company as above described consisting of 19.195 acres ("Townhome Property") identified as "Active Recreation Area" as shown on the plat recorded in Map Book 47, Pages 236 and 237 in the office of the Register of Deeds, New Hanover County, North Carolina ("Townhome Tract"), together with all such estate, right, title and interest in and to such Active Recreation Areas as is necessary to develop and use the Property as 160, more or less, single family detached residential lots in accordance with the ordinances of the City of Wilmington (including the right of all of the owners of the single family detached residential lots to have access to and use of the Active Recreation Areas as required by the ordinances of the City of Wilmington). Except as required by the City of Wilmington for the development and use of the Property as single family detached residential lots, no use shall be made of the Active Recreation Areas by the owners of the Property without the agreement of the Grantee and Stevens Building Company, or agreement of the property owner's associations for the Property and the Townhouse Property (it being contemplated that Grantee will transfer title to the Active Recreation Areas to the property owner's association for the single family development in the Property, and that there will be a property owner's association for the detached single townhome development of the Property). In connection with this easement, Grantor also conveys hereby a perpetual, non-exclusive easement of ingress, egress and regress over and upon that portion of the Property identified on the Townhome Plat as "Common Area 1.236 Acres" that lies south of Townhome Lot 1 as shown on the Plat, including the "20' Buffer Easement adjoining the right of way of Holly Tree Road, for the purposes of pedestrian and non motorized vehicle access from that 0.115 acre area identified as "Open Space Active Recreation Area" adjoining the southern boundary of townhome Lot 1 and from Holly Tree Road to and from that 0.595 acre area identified as "Open Space Active Recreation Area that adjoins the northern boundary of said 20' Buffer Easement.

The Property further is conveyed together with a perpetual non-exclusive easement appurtenant to the Property in, over, under, through, and upon the Townhome Property (excluding portions of the Townhome Property shown on the Townhome Plat as a townhome lot except for any portion of a townhome lot subject to any utility or drainage easement shown on the Townhome Plat) as necessary to complete the development of the Townhome Property and to complete development of the Property into 160, more or less, single family detached residential building lots, all in accordance with the ordinances of the City of Wilmington.

Seller hereby reserves an easement to enter the Property in order to (1) repair any defects or deficiencies as defined in the agreement pursuant to which the Grantee acquired the Property and (2) discharge any obligations in connection with improvements dedicated to the City of Wilmington, North Carolina (the "City") on the Property required to induce the City to accept such improvements for maintenance.

The foregoing rights are intended to benefit the Property and to run with such Property.

EXHIBIT "B"**STORMWATER MANAGEMENT PERMIT****IMPERVIOUS SURFACE "BUA"**

Lot No.	Allowable BUA	Lot No.	Allowable BUA	Lot No.	Allowable BUA
44	3500	45	4100	46	4100
47	3500	48	3500	49	3500
50	3500	51	4000	52	4100
53	4100	54	4100	55	4100
56	4300	57	4000	58	4400
59	4100	60	4100	61	4000
62	3600	63	3500	64	4600
65	4700	66	4800	67	4800
68	4600	69	4300	70	4000
71	4200	72	4400	73	4300
74	4100	75	4600	76	4400
77	4300	78	4400	79	4300
80	4100	81	4100	82	4200
83	4200	84	4000	85	3500
86	3500	87	3500	88	3500
92	4000	93	3500	94	3500
95	3500	96	3500	97	3500
98	3500	99	3500	100	3500
101	3500	102	3500	103	4100
104	4100	105	4100	106	3300
107	3300	108	3300	109	3300

110	3300	111	3300	112	3400
113	3600	114	3600	115	3900
116	3800	117	3500	118	3600
119	3600	120	3600	121	3600
122	3600	123	3600	124	3600
125	3500	126	3500	127	3400
128	3400	129	3400	130	3400
131	3400	132	3400	133	3400
134	3400	135	3600	136	3500
137	3300	138	3300	139	3300
140	3300	141	3300	142	3500
143	4000	144	4500	145	4200
146	3900	147	3600	148	3500
149	3300	150	3300	151	3300
152	3300	153	3300	154	3300
155	3300	156	3300	157	3300
158	3300	159	3300		

EXHIBIT C
TITLE EXCEPTIONS

1. Taxes for the year 2005, not yet due and payable.
2. Easement(s) to Carolina Power and Light Company recorded in Book 672, Page 143, office of the Register of Deeds, New Hanover County, North Carolina.
3. Boundary Line Agreement(s) recorded in Book 861, Page 830, office of the Register of Deeds, New Hanover County, North Carolina.
4. Easement(s) to New Hanover County recorded in Book 1195, Page 1240; and Book 1194, Page 1246, office of the Register of Deeds, New Hanover County, North Carolina.
5. All rights of the City of Wilmington under that Consent Judgement filed in Book 1673, Page 638, office of the Register of Deeds, New Hanover County, North Carolina, including but not limited to the easements described therein.
6. Existing easements for public roads and utilities now in use.
7. A General Utility Easement to the City of Wilmington recorded in Book 4700, Page 634, in the office of the Register of Deeds, New Hanover County, North Carolina.
8. A Conservation Agreement recorded in Book 4700, Page 614 in the office of the Register of Deeds, New Hanover County, North Carolina.
9. Easement dated March 22, 2005 to Progress Energy Carolinas, Inc. recorded in Book 4728, Page 886 in the office of the Register of Deeds, New Hanover County, North Carolina.
10. The easement and other rights reserved in Exhibit A hereto.
11. Such matters as are shown on the map recorded in Map Book 47, Page 234 in the office of the Register of Deeds, New Hanover County, North Carolina.



REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 11/22/2005 02:39:38 PM
Book: RE 4941 Page: 536-572
Document No.: 2005069455
DECL 37 PGS \$119.00
Recorder: NELSON, JACQUELINE

State of North Carolina, County of New Hanover

YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

2005069455

2005069455