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JOYCE M. SWICEGOOD  
REGISTER OF DEEDS  
PENDER COUNTY, NC

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR WATERS EDGE AT DEERFIELD**

This Declaration, Made the 8th day of July, 2004, by **UNIVERSITY GROUP, INC.**, a North Carolina corporation, hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated;

WITNESSETH:

Whereas, Declarant is the owner of certain real property in Pender County, North Carolina, known as **WATERS EDGE AT DEERFIELD**, which is shown on a plat recorded in the Office of the Register of Deeds of Pender County, North Carolina, in Map Book 37 Page 133, to which reference is made for a more particular description (the "Property").

NOW, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions.

**ARTICLE I.  
DEFINITIONS**

In addition to other terms defined herein, the following capitalized terms shall have the following meanings as used herein:

**SECTION 1.** Additional Property shall mean and refer to any lands, in addition to the above described Property, annexed to and made a part of the Planned Community.

**SECTION 2.** Allocated Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

Recorded and Verified  
Joyce M. Swicegood  
Register of Deeds  
Pender County, NC

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SECTION 3. Association shall mean and refer to Waters Edge HOA, Inc., a North Carolina non-profit corporation, its successors and assigns, the owners association organized pursuant to the Act for the purposes set forth herein.

SECTION 4. Boat Slips shall mean the 18 boat slips shown on the above referenced plat of the Community Boating Facility.

SECTION 5. Boat Slip Certificate shall mean the Boat Slip Certificate in the form attached hereto as Exhibit B.

SECTION 6. Common Elements or Open Space shall mean and refer to all lands and easements within or appurtenant to the Planned Community owned or enjoyed by the Association, other than a Lot, and intended for the common use and enjoyment of the Owners, including, without limitation, any private roads and storm water facilities within the Planned Community. Any streets and roads shown on the above referenced plat as public shall constitute Common Elements until such streets and roads are accepted for maintenance by the NC Department of Transportation. All Access Easements and Public and Private Utility Easements, including but not limited to those over Lots 2, 3, 17 and 18 as shown on the above referenced plat, constitute Common Elements (but the Owners of said Lots may use their land for any purpose that does not interfere with such easements, including access to their Lots). The easements granted by Lanwillo Development Company by Deed of Easement recorded in Book 1946, Page 183 of the Pender County Registry (the "Deed of Easement"), as amended, constitute Common Elements and shall be maintained by the Association as provided in the Deed of Easement.

SECTION 7. Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves, including but not limited to (i) the cost of irrigation for the Common Elements and (ii) the cost of electricity, water and irrigation for the Community Boating Facility (defined below).

SECTION 8. Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise.

SECTION 9. Community Boating Facility means the riparian easement, the pier, the floating dock, and 18 boat slips as to be shown on the plat referenced in the preamble to these covenants and labeled "Community Boating Facility". The Community Boating Facility shall be for the exclusive use and enjoyment of the subclass of Class A Members designated and defined hereinafter as "Class A Members-Boating". The Association is obligated pursuant to this Declaration to operate and maintain the Community Boating Facility with the cost thereof being assessed only against the Class A Members-Boating as is hereinafter provided.

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SECTION 10. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to University Group, Inc., its successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right.

SECTION 11. Declarant Control Period shall have the meaning set forth in Article III hereof.

SECTION 12. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 13. Executive Board or Board shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this Declaration or otherwise to act on behalf of the Association.

SECTION 14. Limited Common Elements shall mean areas and facilities within any Lot which are for the use of the Lot Owner as septic nitrification fields but which the Association is obligated to maintain pursuant to the terms of this Declaration. The Limited Common Elements shall consist of SF (septic fields) 3A, 6A, 9A, 10A, 18A and Reserve No. 1 as shown on the above referenced plat (if none, so state). The Declarant shall have the right to grant an easement for septic fields Reserve No. 1 to any Lots of Declarant's choice (subject to approval of applicable regulatory agencies). The Declarant may at any time release its right to grant septic field easements over Reserve No. 1 and upon such release, said Lots shall cease to be Limited Common Elements and shall become Common Elements.

SECTION 15. Lot(s) shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner.

SECTION 16. Lot Owner or Owner shall mean the Declarant or other Person who owns a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 17. Master Association means a master association as defined in the Act.

SECTION 18. Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

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SECTION 19. Planned Community shall mean and refer to the Property plus any Additional Property made a part of the Planned Community by the exercise of any Special Declarant Right.

SECTION 20. Purchaser means any Person, other than the Declarant or a Person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 21. Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

SECTION 22. Special Declarant Rights means rights reserved for the benefit of the Declarant including without limitation the right (i) to complete improvements intended or planned by Developer for the Property or Additional Property; (ii) to exercise any development or other right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain within the Planned Community sales offices, management offices, construction offices/trailers, signs advertising the Planned Community, and models; (iv) to use the Common Elements for the purpose of making improvements within the Planned Community; (v) to make the Planned Community part of a larger planned community or group of planned communities; (vi) to make the Planned Community subject to a Master Association; (vii) to appoint or remove any officer or Executive Board member of the Association or any Master Association during the Declarant Control Period or (viii) to permit other land to be annexed to and made part of the Planned Community in accordance with the terms of this Declaration.

SECTION 23. Stormwater Permit shall mean State Stormwater Permit # SW8 030110 issued by the North Carolina Division of Water Quality (DWQ), Department of Environment and Natural Resources (DENR).

## ARTICLE II. PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners;

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B. The Association may grant a security interest in or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least eighty percent (80%) of the Members, excluding the Developer; provided, however, that the Association may without the consent of the Owners grant easements, leases, licenses and concessions through or over the Common Elements. No conveyance or encumbrance of Common Elements shall deprive any Lot of its rights of access or support.

C. An easement of enjoyment in and over SF (septic fields) 3A, 6A, 9A, 10A, 18A (in favor of the Owners of Lots 3, 6, 9, 10 and 18, respectively) and in and over Reserve No. 1 (with Declarant being entitled to grant, subject to the approval of applicable regulatory agencies, septic field easements over Reserve No. 1 to such Lots as Declarant deems appropriate) as shown on the above referenced plat, for the purpose installing, operating and maintaining upon them septic nitrification fields with such piping and other facilities as appropriate. Any damage to any septic nitrification fields located upon any such Lot caused by the negligence of the Association or any Owner other than the Owner of the Lot in question shall be paid for by the Association (but the Association may recover from the Lot Owner causing such damage in accordance with the provisions of Article X, Section 2. A. hereof). Lot 3 only has an easement over SF3A, Lot 6 over SF6A, Lot 9 over SF9A, Lot 10 over SF10A and Lot 18 over SF18A.

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

A. Easements as necessary in the lands constituting the Common Elements and the rear, front and side ten feet of each Lot for the installation and maintenance of utilities and drainage facilities (including the right to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of the county where the Planned Community is located; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the Owner of such Lot). No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the

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installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. These easement areas (whether or not shown on the recorded plats for the Planned Community) but not the improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

B. Easements over all private streets, if any, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress, to and the installation of utilities for any Additional Property.

C. An easement of unobstructed access over, on, upon, through and across each Lot and the Limited Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Limited Common Elements required by this Declaration.

SECTION 3. Other Easements. The following additional easements are granted by Declarant:

A. An easement to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties.

B. In case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the immediate right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners.

C. The Association is granted an easement over each Lot for the purposes of providing Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration.

D. The Owners of Lots having an easement of enjoyment in and over SF 3A, 6A, 9A, 10A, 18A, and Reserve No. 1 shall be entitled to install, operate and maintain upon the "10' Utility Easement[s] for Public and Private Use" and "15' Utility Easement[s] for Public and Private Use" shown on the above referenced plat, and over Waters Edge and Great Oak Drives, pipelines to transport sewage from their septic tanks to their septic fields. Each Lot Owner installing and maintaining such pipelines shall restore the surface of the easements to the condition existing immediately before such installation or maintenance commenced and shall be responsible for any damage to any road surface, landscaping, other property, or to persons, occurring on account of such activities. The location of any such pipelines within Waters Edge Drive must be approved by the Declarant or the

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Architectural Control Committee. All easements granted or described herein are subject to being replaced by North Carolina Department of Transportation ("NCDOT") encroachment agreements at any time that NCDOT accepts Waters Edge Drive and/or Great Oaks Drive for maintenance. All septic fields (onsite and offsite), force mains, collection sewers and other sewer facilities shall be located (setbacks, etc) as required by North Carolina Administrative Code Section 15A NCAC 18A.1950, entitled "Location of Sanitary Systems".

E. The Owner of Lot 4 as shown on the above referenced plat is granted a non-exclusive easement over the land described on **Exhibit A** attached hereto and incorporated herein by reference, the same being portion of the "30' Access and Utility Easement" located on Lot 3 as shown on said plat for the purpose of to constructing/installing, operating and maintaining a driveway and landscaping over said easement.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Planned Community, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

### ARTICLE III. HOMEOWNERS' ASSOCIATION

SECTION 1. Formation of Association. The Association shall be incorporated no later than the date the first Lot in the Planned Community is conveyed. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

SECTION 2. Membership. Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

SECTION 3. Voting Rights. The Association shall have two classes of voting Membership.

*Class A.* Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The

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vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is prohibited. There shall be a subclass of membership within Class A Membership known as "Class A Membership-Boating". The subclass shall consist of those Class A Members who hold a Boat Slip Certificate.

*Class B.* The Declarant shall be a Class B Member and shall be entitled to three (3) votes for each Lot owned. 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) when the total vote outstanding in the Class A Membership equals the total vote outstanding in the Class B Membership; or

(b) on December 31, 2007; or

(c) upon the voluntary surrender of all Class B Membership by the holder thereof.

The period during which there is Class B Membership is sometimes referred to herein as the "Declarant Control Period".

**SECTION 4. Government Permits.** After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

**SECTION 5. Common Elements.** The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element within the Planned Community from the date of completion of its construction or improvement by the Developer, whether or not (i) such Common Element has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Element has been transferred from the



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Declarant to the Association or assumed by the Association. If the Declarant is required by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within 30 days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special Assessment to cover the amount of such bill if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment.

SECTION 6. Architectural Control Committee. The Executive Board shall perform all duties of the Architectural Control Committee if no such committee is appointed by it, subject, however, to the Special Declarant Rights. Any Architectural Control Committee appointed by the Executive Board shall consist of at least 3 members.

#### ARTICLE IV. INSURANCE AND BONDS

SECTION 1. Community Boating Facility Insurance. Commencing not later than the time of the first issuance of a Boat Slip Certificate to a Person that is not a Declarant, it shall be the duty of the Association to maintain in effect casualty and liability insurance covering the Community Boating Facility as follows, to the extent it is reasonably available:

A. Amount and Scope of Insurance. All insurance policies necessary or desirable (except personal property of an Owner) shall be secured by the Board of Directors, or its designee, on behalf of the Association. Such insurance shall at a minimum cover against (1) loss or damage by fire or other hazards normally insured against in an amount after application of any deductibles of not less than 80 percent of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date exclusive of land escalation, foundations and other items normally excluded from property policies, and (2) general liability insurance for each Lot, with limits of at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence.

B. Insurance Provisions. The Board of Directors shall make diligent efforts to insure that the insurance policies required by this section provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Lot Owners and their employees, agents, tenants and invitees;

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(2) a waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(3) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured and all mortgagees;

(4) coverage will not be prejudiced by act or neglect of the Lot Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Planned Community over which the Association has no control.

(5) the master policy cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Lot Owners;

(6) the master policy cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured;

(7) each Class A Member-Boating is an insured person under the policy to the extent of the Member's insurable interest;

(8) if at the time of a loss under the policy, there is other insurance in the name of a Class A Member-Boating covering the same risk covered by the policy, the Association's policy provides primary insurance.

C. Premiums. All premiums on the insurance policies required by this section and any deductibles payable by the Association upon loss shall be a Common Expense paid by the Class A Members-Boating.

D. Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of

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Directors who shall hold any such insurance proceeds in trust for Class A Members-Boating and lien holders as their interest may appear;

E. Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "A" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the Class A Members-Boating and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors.

F. Distribution of Insurance Proceeds. Subject to the provisions of Section 47F-3-113(g) of the Act, the proceeds of insurance policies maintained by the Association pursuant to this section shall be distributed to or for the benefit of the beneficial owners in the following manner:

(1) all reasonable expenses of the insurance trustee shall be first paid or provision may therefor;

(2) the remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

SECTION 2. Individual Home Insurance. All Owners shall purchase at their individual expense individual policies covering each Lot and Lot Owner individually.

SECTION 3. Common Element Insurance. The Board of Directors on behalf of the Association, as a Common Expense of all Lot Owners, may at all times keep the Common Elements and other assets of the Association insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. The Association at minimum shall maintain with regard to the Common Elements the insurance coverage(s) required by the Act.

SECTION 4. Fidelity Bond. The Association may maintain, as a Common Expense paid by all Owners, blanket fidelity bonds for all officers, directors, employees and all other

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persons handling or responsible for funds of the Association, as follows (provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association):

A. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds;

B. Fidelity bonds required herein must meet the following requirements:

(1) fidelity bonds shall name the Association as an obligee;

(2) the bonds shall contain waivers by the issuers of the bonds of all defenses upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;

(3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense;

(4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association, to any insurance trustee and each institutional holder of a first lien on any Lot.

#### ARTICLE V. COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Each Lot Owner covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

A. Annual Assessments;

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- B. Special Assessments;
- C. Insurance Assessments;
- D. Ad Valorem Tax Assessments; and
- E. Working Capital Assessments.

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**SECTION 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Planned Community and for the maintenance, repair and replacement of the Common Elements, the Community Boating Facility, and any Limited Common Elements. The maintenance of the Community Boating Facility shall include such dredging as is necessary to keep the boat channels and docking areas passable at all normal tides. The Association is authorized to enter into contracts with other property owners who utilize the boat channels for the sharing of the cost of maintenance/dredging thereof. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Operations, maintenance and improvement of the Common Elements, and any Limited Common Elements, including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization or Master Association of which the Association is a member; and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Elements, the Community Boating Facility and Limited Common Elements in good operating order and repair.

**SECTION 3. Annual Assessments.** The Executive Board shall adopt a proposed annual budget at least 90 days before the beginning of each fiscal year of the Association. Within 30 days after adoption of the proposed budget for the Planned Community, the Executive Board shall provide to all of the Lot Owners a summary of the budget, by components as established hereinafter in this Section, and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. Each component of the budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association entitled to vote on the component rejects the budget component. All members shall be entitled to vote on the Common Element Component (defined below).

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Only the Class A Members-Boating, shall be entitled to vote on the Community Boating Component (defined below). In the event the proposed budget (or component) is rejected, the periodic budget (or component) last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget (or component) proposed by the Executive Board. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Executive Board. The Executive Board shall have the authority to require the Assessments to be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

A. Budget and Assessment Components: The Board shall include as a separate component of the annual budget and of the Annual Assessments, the following:

- (i) Common Element Component consisting of the annual cost of operating and maintaining the Common Elements.
- (ii) Community Boating Component consisting of the annual cost of operating and maintaining the Community Boating Facility, including the annual premium for the insurance coverage required by Article IV, Section 1 hereof.

B. Calculation of Annual Assessments: The Common Element Component shall be paid equally by all Lots. The Community Boating Component shall be paid equally by the Class A Members-Boating.

SECTION 4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the following purposes:

A. To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements and any Limited Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

B. Without a vote of the Members, to provide funds to reimburse the Declarant as provided for in Article III, Section 5, hereof.

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SECTION 5. Insurance Assessments. All premiums on insurance policies purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may at any time levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

SECTION 6. Ad Valorem Tax Assessments. All ad valorem taxes levied against the Common Elements, if any, shall be a common expense, and the Association may at any time year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay ad valorem taxes not included as a component of the Annual Assessment.

SECTION 7. Working Capital Assessments. At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of \$100.00 to the Association as working capital to be used for operating and capital expenses of the Association. Class A Members-Boating shall pay an additional working capital assessment at closing of \$100.00. Such amounts paid for working capital are not to be considered as advance payment of the Annual or any other Assessments.

SECTION 8. Rate of Assessment. The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

SECTION 9. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

SECTION 10. Effect Of Nonpayment of Assessments And Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

SECTION 11. Lien for Assessments. The Association may file a lien against a Lot

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when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

A. The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 of the Act are enforceable as Assessments.

B. The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

C. The lien for unpaid assessments is extinguished unless proceedings to enforce the tax lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

D. Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

E. Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

F. A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

#### ARTICLE VI RIGHTS OF DEVELOPER

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



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SECTION 1. The Architectural Control Committee/Executive Board. All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property. The Declarant shall be entitled during the Declarant Control Period to appoint and remove the officers and members of the Executive Board.

SECTION 2. Plan of Planned Community. The right to change, alter, add to or re-designate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter, add to, or re-designate road, utility and drainage facilities and easements and to change, alter, add to, or re-designate such other present and proposed amenities, Common Elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts or Lots shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract or Lot (any Lot resulting from such recombination shall be treated as one Lot for purposes of Assessments); to eliminate from this Declaration or any plats of the Planned Community Lots that are not otherwise buildable or are needed or desired by Declarant for access or are needed or desired by Declarant for use as public or private roads or access areas, whether serving the Planned Community or other property owned by the Declarant or others, or which are needed for the installation of utilities, Common Elements or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Elements.

SECTION 3. Amendment of Declaration by the Declarant. This Declaration may be amended without Member approval by the Declarant, or the Board of the Association, as the case may be, as follows:

- A. In any respect, prior to the sale of the first Lot.
- B. To the extent this Declaration applies to Additional Property.
- C. To correct any obvious error or inconsistency in drafting, typing or reproduction.
- D. To qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.
- E. To incorporate or reflect any platting change as permitted by this

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Article or otherwise permitted herein.

F. To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.

SECTION 4. Annexation of Additional Property. Declarant may annex to and make a part of the Planned Community any other real property, whether now owned or hereafter acquired by Declarant or others, and whether developed by the Declarant or others (the "Additional Property"). Annexation of Additional Property to the Planned Community shall require the assent of 67 percent of the Class A Members who are voting in person or by proxy at a meeting called for this purpose; provided, however, Additional Property may be annexed to the Planned Community without the assent of the Members so long as the Additional Property is used for residential purposes and amenities related thereto.

ARTICLE VII.  
USE RESTRICTIONS, ARCHITECTURAL CONTROL  
AND MAINTENANCE

SECTION 1. Approval of Plans for Building and Site Improvements. No dwelling, wall or other structure (including driveway culvert pipes and headwalls) shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. If the Architectural Control Committee

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fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Architectural Control Committee for its records. The Architectural Control Committee shall not be responsible for any structural or other defects in plans and specifications submitted to it or in any structure erected according to such plans and specifications.

SECTION 2. Minimum Standards for Site Improvements.

A. Each dwelling shall have a minimum of 2,400 square feet of enclosed, heated dwelling area; provided, however, the Architectural Control Committee may permit a dwelling to have a minimum of 2,000 square feet if the Committee in its sole discretion finds that the variance will not adversely impact property values within the Planned Community. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

B. Since the establishment of inflexible building setback lines for location of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines shall be established by this Declaration, except for a minimum side set-back from all side property lines of 20 feet. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the Architectural Control Committee; provided, however, that no structure shall be constructed closer to a Lot line than is permitted by applicable governmental regulations.

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

D. All service utilities, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes shall be uniform in design. Design for mail and newspaper boxes shall be furnished by the Architectural Control Committee. Fences shall be permitted on any Lot; provided, however, that the design, placement, and materials of any fence are approved by the

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Architectural Control Committee. Clothes lines are not permitted on any Lot. All driveway culvert pipes must be installed below grade and must have headwalls.

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

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

G. The design of all driveway culverts shall be approved by the Declarant or the Architectural Control Committee. Driveway culverts shall have headwalls on both ends.

### SECTION 3. Use Restrictions.

A. Land Use And Building Type. No Lot shall be used for any purpose except for residential purposes, subject, however, to the rights of the Declarant contained herein. All numbered Lots are restricted for construction of one single-family dwelling (plus, a detached garage, if there is not one attached to the residence, and such other accessory buildings as may be approved by the Architectural Control Committee).

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

C. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Architectural Control Committee.

D. Vehicles/Boats/Piers. No boat, motor boat, camper, trailer, motor or mobile homes, tractor/trailer, or similar type vehicle, shall be permitted to remain on any Lot or on any street at any time, without the written consent of the Association. No inoperable vehicle or vehicle without current registration and insurance will be permitted on any Lot, street or Common Element. The Association shall have the right to have all such vehicles towed away at the owner's expense. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street. A Class A

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Member-Boating shall not be entitled to build any pier or dock over the waters adjacent to the Member's Lot.

E. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed or under the control of their owner and do not become a nuisance.

F. Statuary, TV Satellite Dishes and Outside Antennas. No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Architectural Control Committee; provided, however, satellite dishes not over 18" in diameter which cannot be seen from the street are permitted.

G. Construction in Common Elements. No Person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

H. Signs. No signs (including "for sale" or "for rent" signs) shall be permitted on any Lot or in the Common Elements without permission of the Executive Board; provided, however, the Declarant may, so long as Declarant owns any Lot, maintain for sale signs on Declarant's Lots and maintain signs on the Common Elements advertising the Planned Community.

I. Subdividing. Subject to any rights reserved to the Declarant herein, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the Declarant Control Period and thereafter by the Board of Directors.

J. Wells and Septic Tanks. The location of all wells, septic tanks or other sewerage disposal systems must be approved by the Architectural Control Committee.

SECTION 4. Maintenance. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse/dirt piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. All shrubs, trees, grass and plantings shall be kept neatly trimmed and properly cultivated. All septic tank drain fields shall be properly maintained in good working order and in accordance with the rules and regulations of applicable governmental agencies.

## ARTICLE VIII STORMWATER PERMIT/FACILITIES

SECTION 1. Stormwater Permit. The Association and each of its Members agree

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that at anytime after (i) all work required under the Stormwater Permit has been completed (other than operation and maintenance activities), and (ii) the Developer is not prohibited under DENR regulations from transferring the Stormwater Permit for the Planned Community to the Association, the Association's officers without any vote or approval of Lot Owners, and within 10 days after being requested to do so, will sign all documents required by DENR for the Stormwater Permit to be transferred to the Association; provided, however, that at the time the Developer requests that the Association accept transfer of the Stormwater Permit, the Developer has delivered to the Association a certificate from an engineer licensed in the State of North Carolina, dated no more than 45 days before the date of the request, that all stormwater retention ponds, swales and related facilities are constructed in accordance with the plans and specifications therefore. If the Association fails to sign the documents required by this paragraph, the Developer shall be entitled to specific performance in the courts of North Carolina requiring that the appropriate Association officers sign all documents necessary for the Stormwater Permit to be transferred to the Association. Failure of the officers to sign as provided herein shall not relieve the Association of its obligations to operate and maintain the stormwater facilities covered by the Stormwater Permit.

SECTION 2. Stormwater Facilities O & M. Any stormwater retention ponds and related facilities for the Planned Community which have or are to be constructed by or on behalf of Declarant constitute Common Elements and, subject only to the provisions of Section 3 of this Article VII, the Association, at its sole cost and expense, is responsible for the operation and maintenance of such facilities. Such O & M shall include, but not be limited to, compliance with all of the terms and obtaining any renewals of the Stormwater Permit. Except as provided in Section 3 of this Article VII, the Association shall indemnify and hold harmless the Developer from any obligations and costs under the Stormwater Permit for operation and maintenance of the stormwater retention ponds and related facilities.

SECTION 3. Damage to Storm Water Facilities. The Declarant shall at its sole cost and expense be responsible for repairing any damage to storm water facilities caused by the Developer's development activities. The Developer shall not be responsible for damages to stormwater retention ponds and related facilities caused by any other cause whatsoever, including but not limited to construction of residences or other activities by Owners, their agents and contractors, upon their Lots, acts of God, and the negligence of others. Lot Owners shall be responsible for damages to such stormwater facilities caused by construction of buildings or other activities upon the Owner's Lot. Each Owner, shall within 30 days after receipt of notice of damage to stormwater facilities, repair the damage at the Owner's sole cost and expense to return them to the state required by the storm water plans and specifications for the Planned Community. If the Lot Owner fails to do so within said 30-day period, the Association shall perform the work and the cost of the work shall be added to the Annual Assessment due from the Lot Owner.

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#### SECTION 4. Enforcement Of Storm Water Runoff Regulations.

A. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 030110, as issued by the Division of Water Quality under NCAC 2H.1000.

B. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.

C. These covenants are to run with the land and be binding on all persons and parties claiming under them.

D. 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.

E. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

F. The maximum allowable built-upon area per lot is 9,743 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, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.

G. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is strictly prohibited by any persons.

H. Each lot will maintain a 30' wide vegetated buffer between all impervious areas and surface waters.

I. All roof drains shall terminate at least 30' from the mean high water mark of surface waters.

J. Lots within CAMA's Area of Environmental Concern may have the permitted maximum built-upon area reduced due to CAMA jurisdiction within the AEC.

#### ARTICLE IX. COMMUNITY BOATING FACILITY

SECTION 1. Establishment of Facility. There is hereby established a Community Boating Facility as defined herein. The Community Boating Facility shall constitute a part of the Common Elements of the Development.

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SECTION 2. Use of Limited Common Elements. Each Boat Slip will be assigned by the Declarant to a Lot pursuant to a Boat Slip Certificate in the form attached hereto as **Exhibit B**. Only Lot Owners or persons renting the Lot Owner's residence shall be entitled to use the boat slips. Title to a Boat Slip Certificate may not be separated from Lot ownership but Boat Slips may be transferred among Lot Owners.

SECTION 3. Use Restriction. The Community Boating Facility may not be used for more than 18 Boat Slips. Boats of 21 feet or less with no cabins or head are permitted. No gasoline sales or other commercial activity shall be permitted. No motor vehicles or boat trailers shall be permitted on site and access shall be limited to the Access Easements over Lots 2, 3, 17 and 18 as shown on the above referenced plat. Notwithstanding the foregoing, motor vehicles may use the temporary parking spaces/drop-off area constituting a part of the Community Boating Facility. In addition to the other use restrictions contained in this Declaration, the following use restrictions shall also apply to the Community Boating Facility:

A. Nuisances. No noxious or offensive activity shall be carried on upon any boat, Boat Slip or Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Boat Slips. It shall be the responsibility of each holder of a Boat Slip Certificate to prevent the development of any unclean, unsightly or unkept condition of the Boat Slip or any boat using it.

B. Devices and Structures. No device, structure or other thing shall be located or maintained on any dock or other Common Area except one dock box per Boat Slip, the design and location of which must be approved by the Association. All fishing gear and other marine devices and equipment when not in use shall be stored on board or in a dock box.

C. Boats. No "tramp vessels", "derelict vessels", barges, or commercial vessels may be moored in any Boat Slip. All boats shall be maintained in a neat, clean, ship shape, and seaworthy condition. No inoperable boat without current registration and insurance, will be permitted in any Boat Slip. The Association shall have the right to have all prohibited boats towed away and stored at the expense of the holder of the Boat Slip Certificate. No major repairs or complete overhauls to any boat may be made at a Boat Slip. Boats may not be used as permanent residences.

D. Signs. No signs (including "for sale" or "for rent" signs) shall be permitted on any Boat Slip or in the Common Areas.



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E. Trash Disposal. Newspapers, magazines and other similar items must be placed in a solid waste container. Garbage and other perishable items shall be placed in a plastic bag secured at the top and placed in the solid waste container. Loose garbage shall not be deposited anywhere. No trash or empty boxes of any kind shall be left on the dockways. No one shall throw, discharge, pump or deposit from any boat or float any refuse, oil, spirits, flammable liquid or polluting matter in the harbor. All such matter shall be deposited at approved oil disposal facilities. Waste material such as paper, beer or drink cans, cigarette stubs, trash, etc., must not be thrown from the boats or dock areas.

F. Dockways. Children under twelve (12) years of age are not permitted on docks without the immediate presence of a parent or other responsible adult. Parents shall not allow children to run and play on the dockways. Dockways shall be kept clear and uncluttered.

G. Mooring/Storm Precautions. To prevent damage from weather or storms, adequate mooring lines must be properly secured and maintained, and all outside property shall be battened down, secured, or placed inside the boat. The Association may order boats immediately removed from their slips in the event of impending hurricanes or other storms in order to protect the docks and other Common Areas. Upon the issuance of any such order, each holder of a Boat Slip Certificate shall immediately remove his boat from the Boat Slip or cause any tenant using the Boat Slip to do so. Any damage caused to the common area on account of failure to remove a boat in accordance with such order shall be repaired by the Association at the sole cost and expense of the Boat Slip Certificate holder failing to remove or cause the removal of the boat.

H. Guests. Every holder of a Boat Slip Certificate shall insure that his guests and tenants abide by this Declaration and all rules and regulations and shall be responsible to the Association for any violation. The number of guests permitted at any one time may be limited by the Association.

I. Fish Cleaning. Fish cleaning of any kind will not be permitted at the Development except at a place or places designated by the Board of Directors.

J. Operation of Engines. Unnecessary operation of engines in slips is not permitted. Engines may not be operated in gear while boats are moored.

K. Water/Power Lines and Connections. Water or power lines shall not be left unattended across main walks. All connections to electrical receptacles shall be with marine grade cords only. All accessory cords shall be maintained in a good, safe operating condition. Frayed cords shall promptly be replaced at the Boat Slip Certificate holder's expense.

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L. Speed Limit. The speed limit within the Community Boating Facility shall be dead slow, or wakeless speed, whichever is slower.

M. Animals. Animals shall be leashed at all times when on the premises. No animals shall be tied to any part of the dock, including fingers or dock boxes. Animals shall be physically kept on board at all times. The owner of an animal is responsible for cleaning up pet feces and urine.

N. Alterations. No part of the docks, utility posts or any other Common Area may be altered in any way.

O. Safety and Compliance with Law. All persons using the facilities shall do so lawfully and in such fashion as to maintain and preserve those facilities and the Common Area. Each person shall be responsible for his/her own conduct and safety. All persons shall comply with all applicable governmental ordinances.

SECTION 4. Profits. Notwithstanding that the Boat Slip Certificates are issued by the Association, the proceeds, if any, from the initial sale or transfer of Boat Slip Certificates shall belong to and be the sole property of the Developer. When requested to do so by the Developer, the Association will issue Boat Slip Certificates without charge. The Association shall not issue any initial Boat Slip Certificate except at the direction of the Developer.

SECTION 5. Transfer of Certificate. Upon the transfer of a Boat Slip Certificate, the transferring holder shall surrender the applicable Certificate to the Association and a new Certificate shall be issued by the Association to the new holder. The Association shall be entitled to charge a reasonable administrative fee for handling the transfer.

## ARTICLE X

### LOTS SUBJECT TO DECLARATION/ENFORCEMENT

SECTION 1. Lots Subject to Declaration. The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of the Planned Community and the Lots. All present and future Owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, their heirs, successors and assigns, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be

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automatically extended for successive periods of ten (10) years, unless terminated by the Lot Owners.

**SECTION 2. Enforcement and Remedies.** The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The Executive Board shall be entitled to enforce its Articles of Incorporation, Bylaws and Rules and Regulations. In addition to the remedies otherwise provided for herein concerning the collection of Assessments, the following remedies shall be available:

**A. Association to Remedy Violation.** In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Charter or Rules and Regulations, the Executive Board, after 30-days notice, may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot, including collection costs and reasonable attorneys' fees. Such amounts shall be due and payable within 30 days after Owner is billed. If not paid within said 30 day period, the amount thereof may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common or Limited Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot.

**B. Fines.** The Association may in accordance with the procedures set forth in the Act establish a schedule of and collect fines for the violation of this Declaration or of the Association's Articles of Incorporation, Bylaws or Rules and Regulations. If an Owner does not pay the fine when due, the fine shall immediately become a part of and be added to the Annual Assessment against the Owner's Lot and may be enforced by the Association as all other Assessments provided for herein.

**C. Suspension of Services and Privileges.** The Association may in accordance with the procedures set forth in the Act suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner's lot remain unpaid for at least 30 days or for any period that the Owner or the Owner's Lot is otherwise in violation of this Declaration or the Association's Charter, Bylaws, or Rules and Regulations.

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SECTION 3. Miscellaneous. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.

## ARTICLE XI GENERAL PROVISIONS

SECTION 2. Rights of Institutional Note Holders. Any institutional holder of a first lien on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Planned Community or the property securing its loan, (e) receive written notice of any sixty-day (60) delinquency in the payment of Assessments or charges owed by any Owner of any property which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

SECTION 3. Utility Service. Water and Sewer for the Planned Community shall be by private well and septic system. The Declarant reserves the right to subject the Planned Community to a contract with Progress Energy Carolinas for the installation of street lighting requiring a continuing monthly payment to Progress Energy Carolinas by each Lot Owner.

SECTION 4. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 5. Amendment of Declaration. Except in cases of amendments that may be executed by the Declarant under this Declaration or by certain Lot Owners under Section 47F-2-118(b) of the Act, this Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or by the Declarant if necessary for the exercise of any Special Declarant Right or development or other right reserved to the Declarant herein.

SECTION 6. FHA/VA Approval. So long as there is Class B membership, annexation of Additional Properties, dedication of Common Elements and amendments to this Declaration must be approved by the Federal Housing Administration and/or the

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Department of Veterans Affairs, as the case may be, if either of those agencies has approved the making, insuring or guaranteeing of mortgage loans within the Planned Community.

SECTION 7. North Carolina Planned Community Act. It is the intent of the Declarant to comply with the requirements imposed on the Planned Community by the Act and to the extent any of the terms of this Declaration violate the Act, the terms of the Act shall control.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its corporate name by its president pursuant to authority of Declarant's Board of Directors as of the day and year first above written.

UNIVERSITY GROUP, INC

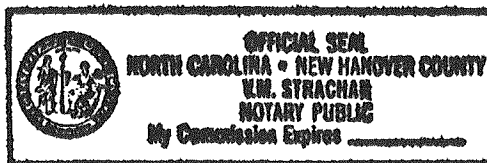
By: Terry F. Turner  
\_\_\_\_ President

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, V. M. Strachan, a Notary Public of the county and state aforesaid, certify that TERRY F. TURNER personally appeared before me this day and acknowledged that he is President of UNIVERSITY GROUP, INC., and further acknowledged the due execution of the foregoing instrument on behalf of the corporation. Witness my hand and official stamp or seal, this 8<sup>th</sup> day of July, 2004.

V. M. Strachan  
\_\_\_\_\_  
Notary Public

My commission expires: 2-20-2006  
(SEAL)

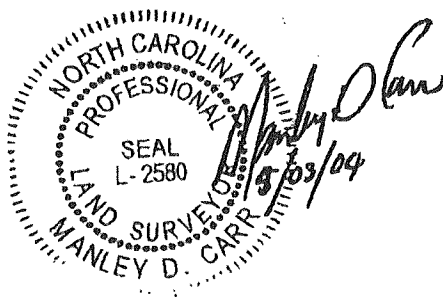


BK 2426 PG 277

EXHIBIT A

## Legal Description for the Easement to Lot No. 4, Waters Edge at Deerfield

Located in Topsail Township, Pender County, North Carolina and beginning at an iron rod set in the western right of way line of Waters Edge Drive where it is intersected by the western line of Lot No. 3 and the eastern line of Lot No. 4, Waters Edge at Deer Field. Running thence, from the said point of beginning and with the western right of way line of Waters Edge Drive as it curves to the left, South 46 degrees 12 minutes 09 seconds East - 12.42' chord distance ( $\Delta = 14^{\circ}16'16''$ ,  $Tangent = 6.26'$ ,  $Radius = 50.00'$ ) to a point on the edge of the asphalt pavement; thence, with the edge of the asphalt pavement, the following courses: South 19 degrees 30 minutes 26 seconds West - 13.29 feet, South 09 degrees 12 minutes 17 seconds East - 10.61 feet, South 27 degrees 22 minutes 37 seconds East - 9.39 feet, South 37 degrees 38 minutes 53 seconds East - 41.44 feet, South 36 degrees 14 minutes 58 seconds East - 29.92 feet, and South 37 degrees 23 minutes 32 seconds East - 33.33 feet to a point on the edge of the asphalt; thence, South 55 degrees 27 minutes 35 seconds West - 15.27 feet to an iron rod at the southeast corner of Lot No. 4; thence, with the dividing line of Lot No. 3 and Lot No. 4, North 36 degrees 39 minutes 00 seconds West - 100.26 feet to an iron rod; thence, with the said dividing line of Lot No. 3 and Lot No. 4 as it curves to the right, North 12 degrees 35 minutes 52 seconds West - 24.54 feet chord distance ( $\Delta = 48^{\circ}14'48''$ ,  $Tangent = 13.43'$ ,  $Radius = 30.00'$ ) to an iron rod; thence, North 08 degrees 12 minutes 47 seconds East - 27.92 feet to the point of beginning, containing 1970 square feet and being that area of Lot No. 3 lying west of the existing asphalt pavement and adjacent to and east of the eastern lot line of Lot No. 4, Waters Edge at Deerfield.



NORTH CAROLINA - PENDER COUNTY: The foregoing  
 (or annexed) certificate of V. M. Strachan, is  
 certified to be correct. This 8 day of July, A.D. 2004  
 JOYCE M. SWICEGOOD, Pender County Register of Deeds  
 By: Jahi P. - Muir Deputy/Assistant  
 Register of Deeds