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Maryland K. Washington Reg. of Deeds
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THIS DECLARATION OF COVENANTS, EASEMENTS, CONDITONS,
AND RESTRICTIONS FOR QUEENS HARBOR SECTION I is executed on of
this 27th day of August 2007, by Keystone Contractors, Inc ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the Developer of a subdivision in Onslow County, North Carolina
known as Queens Harbor Section I (the "Community"); and more particularly described as:

Being all the numbered Lots, 6 – 11, 22, 23, 24, 30 – 35, and
the Property Owners Association Lot and the streets that serve
the Lots as shown on the map entitled "Final Plat for Queens
Harbor - Section I", Swansboro Township, Onslow County,
North Carolina and prepared by Lanier Surveying Company
PLLC, and recorded in Map Book 53 Page 230 Slide M-104
as it appears in the Onslow County Registry of Deeds Office.

WHEREAS, it is the Declarant's desire to record the covenants as set forth herein, having
deemed such recording to be in the best interests of the Community.

WHEREAS, Declarant hereby declares that all of the properties described above shall be
held, sold and conveyed subject to the following easements, restrictions, covenants, and
conditions, which are for the purpose of protecting the value and desirability of, and which shall
run with, the real property and be binding on all parties having any right, title, or interest in the
described properties or any part thereof, their heirs, successors and assigns, and shall inure to the
benefit of each owner thereof.

NOW THEREFORE, the Covenants are hereby stated as follows:

ARTICLE I: Creation of the Community

- 1.1 **Purpose and Intent.** Declarant, as the owner of the real property more particularly described on Exhibit "A" attached hereto (or, to the extent it is not the owner, then with said owners' consent), intends by Recording this Declaration to create a general plan of development for the residential community in Swansboro Township, Onslow County, North Carolina, known as Queens Harbor. This Declaration provides a flexible and reasonable procedure for the future expansion of Queens Harbor to include additional real property as Declarant deems appropriate and provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising Queens Harbor. An integral part of the developmental plan is the creation of Queens Harbor Property Owners Association, (the "Association"), an association comprised of all owners of real property in Queens Harbor, to own, operate, or maintain common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.
- 1.2 **Binding Effect.** The property described in Exhibit "A", and any additional property which is made a part of Queens Harbor in the future by Recording one or more Supplemental Declarations, shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Queens Harbor, their heirs, successors, successors-in-title, and assignees. This Declaration, as it may be amended and supplemented from time to time, shall remain in effect and shall be enforceable by the Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, successors-in-title, and assignees, for a term of 20 years from the date this Declaration is recorded. After such time, this Declaration shall not be terminated, but shall be automatically renewed for successive periods of 20 years each, unless an instrument approved by a two-thirds (2/3) Vote of the Association has been Recorded within the year preceding the end of the original term or any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder thereof.
- 1.3 **Governing Documents.** The Governing Documents create a general plan of development for Queens Harbor. Additional restrictions or provisions (which are more restrictive than the provisions of this Declaration) may be imposed by Declarant on any portion of Queens Harbor; in which case, the more restrictive provisions will be controlling. However, no Person shall record any additional covenants, easements, conditions, or restrictions affecting any portion of Queens Harbor without Declarant's written consent during the Declarant Control Period. Thereafter, the same shall require approval by a two-thirds (2/3) Vote of the Association. Any instrument recorded without the required consent shall be void and of no force or effect. All provisions of the Governing Documents shall apply to all Owners and to all occupants of their Units, as well as their respective tenants, guests, and invitees. Any lease of a Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

ARTICLE II: Concepts and Definitions.

The terms used in the Governing Documents generally shall be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

- 2.1 **"Architectural Guidelines"**. - The architectural, design, and construction guidelines and reviews procedures adopted pursuant to Article V, as they may be amended or supplemented from time to time.
- 2.2 **"Areas of Common Responsibility"**. - The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable agreement or covenants.

- 2.3 "Articles of Incorporation" or "Articles". – The Articles of Incorporation for Queens Harbor Property Owners Association, Inc., a North Carolina nonprofit corporation.
- 2.4 "Association". – Queens Harbor Property Owners Association, Inc., a North Carolina nonprofit corporation, its successors, or assigns.
- 2.5 "Base Assessment". – Assessment levied on all Units subject to assessment under Article IX to fund Common Expenses, as determined in accordance with Section 9.1.
- 2.6 "Board of Directors" or "Board". – The body responsible for administering the Association, selected as provided in the By-Laws and serving the same role as the Board of Directors under North Carolina corporate law.
- 2.7 "By-Laws". – The By-Laws of Queens Harbor Property Owners Association, Inc., attached for informational purposes as Exhibit "D", as the same may be amended or supplemented from time to time.
- 2.8 "Common Area" or "Common Property". – All real and personal property, including easements, which the Association, owns, leases, or otherwise holds possessory or use rights in for the Owner's common use, benefit, or enjoyment, and which has been designated by Declarant as a common area by (a) recording either a plat or a Supplemental Declaration specifically designating such area as a common area; or (b) specifically designating such areas as a Common Area in a deed from Declarant to the Association.
- 2.9 "Common Expense". – The actual and estimated expenses the Association incurs, or expects to incur for all Owners' and/or the Community's general benefit, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Declarant Control Period for land acquisition or other original construction costs, unless approved by a Majority Vote of the Class "A" and Class "B" Members of the Association.
- 2.10 "Community-Wide Standard". – The standard of conduct, construction, maintenance, or other activity, or the minimum standards, established pursuant to the Covenants, the Architectural Guidelines, Rules and Regulations, and Board or membership resolutions. Declarant shall establish initially such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Queens Harbor change.
- 2.11 "Community" or "Queens Harbor". – The real property described in Exhibit "A", together with such additional property as is subjected to this Declaration in accordance with Article X.
- 2.12 "Declarant". – Keystone Contractors, Inc., or any successor or assign who takes title to any portion of the property described in Exhibit "A" for the purpose of development or sale, and who is designated as Declarant in Recorded instrument executed by the immediately preceding Declarant.
- 2.13 "Declarant Control Period". – The period of time during which Declarant is entitled to appoint a majority of the members of the Board as provided by the By-Laws. The Declarant shall have the right to appoint and remove the members of the Board, in accordance with the provisions of this Declaration and the By-Laws, until the first to occur of the following:
- a. When all of the land described in Exhibit "A" and "B" has been annexed into the Community pursuant to Article X hereof, and 90% of the Units permitted for development within the property described on Exhibit "A" and "B", have been conveyed to persons other than a successor Declarant, and a certificate of occupancy issued thereon;
 - b. Fifteen (15) Years after this Declaration is recorded; or
 - c. Upon Declarant's surrender in writing of the authority to appoint and remove directors and officers of the Association.

Notwithstanding its right to appoint and remove directors of the Association, Declarant reserves the right to approve or disapprove specified actions of the Association as provided in Section 3.18 of the By-Laws or as otherwise provided herein.

- 2.14 "Declaration". – This Declaration of Covenants, Easements, Conditions, and Restrictions for Queens Harbor, as it may be amended or supplemented from time to time.
- 2.15 "Governing Documents". – A collective term referring to this Declaration, any applicable Supplemental Declaration, the By-Laws, the Articles, the Architectural Guidelines, and the Rules and Regulations, as each may be amended or supplemented from time to time.
- 2.16 "Master Plan". – The land use plan for the development of Queens Harbor approved by the Onslow County Planning Department, as it may be amended or supplemented from time to time, which includes all property described in Exhibit "A" and all or a portion of the property described in Exhibit "B", and /or any general land use maps, advertising brochures, designs, and drawings, prepared by landscape architects, planners, designers, engineers, graphic illustrators and artists and similar professionals displaying possible future uses of Queens Harbor, prepared as an aid for orderly development of Queens Harbor or as part of its communications with the public and property purchasers, or as part of its research programs undertaken by Declarant for future development of Queens Harbor. Inclusion of property on the Master Plan shall not, under any circumstance, obligate Declarant to subject such property to this Declaration, nor shall the omission of the property described in Exhibit "B" from the Master Plan bar its later submission to this Declaration as provided in Article X. THIS DECLARATION DOES NOT DESIGNATE ANY PORTION OF THE PROPERTY FOR ANY PARTICULAR USE, ANY SUCH DESIGNATION TO BE MADE BY SEPARATE SUBSEQUENT SUPPLEMENTAL DECLARATION OR BY RECORDED PLAT WITH SUCH DESIGNATION CLEARLY AND UNEQUIVOCALLY SHOWN THEREON. THE COMPANY SHALL NOT BE BOUND BY ANY DEVELOPMENT PLAN, USE, OR RESTRICTION OF USE SHOWN ON ANY MASTER PLAN, AND MAY AT ANY TIME, CHANGE OR REVISE SAID MASTER PLAN. USES OF PROPERTY SHOWN N THE MASTER PLAN ARE PRELIMINARY AND ARE SUBJECT TO CHANGE IN THE SOLE DISCRETION OF THE DECLARANT OR, AFTER THE EXPIRATION OF DECLARANT'S RIGHTS TO ANNEX ADDITIONAL PROPERTY INTO QUEENS HARBOR, BY THE ASSOCIATION. DECLARANT SHALL NOT BE OBLIGATED TO PROVIDE ANY AMENITY OR COMMON AREA UNLESS AND UNTIL SUCH AMENITY OR COMMON AREA IS SPECIFICALLY DESIGNATED AS A COMMON AREA OR AMENITY ON A RECORDED PLAT OR SPECIFICALLY SPECIFIED AS A COMMON AREA OR AMENITY IN A RECORDED AMENDMENT TO THIS DECLARATION, AND, IF SO DESIGNATED, THE CONTINUED USE OF SUCH AREAS AS AN AMENITY OR COMMON AREA SHALL BE SUBJECT TO THE TERMS HEREOF.
- 2.17 "Member". – A person subject to membership in the Association pursuant to Section 7.3.
- 2.18 "Mortgage". – A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. "Mortgagee" shall refer to a beneficiary or holder of a Mortgage, "First Mortgage" shall be a Recorded mortgage having first priority over all other Mortgages encumbering a Unit, and "First Mortgagee" shall refer to a beneficiary or holder of a First Mortgage.
- 2.19 "Owner". – One or more Persons who hold the Recorded Title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a Recorded Contract of Sale, and the contract specifically so provides, the purchaser (rather than the fee owner) shall be considered the Owner during the continuation of such contract. When the context so requires, the term "Owner" shall include Class "A" Members of the Association.
- 2.20 "Person". – An individual, corporation, partnership, limited liability company, limited liability partnership, limited partnership, trustee, or any other legal entity.

- 2.21 "Private Amenity". – Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within Queens Harbor, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise. The Community may or may not have private amenities, at the discretion of the Declarant, or, after the expiration of the Declarant Control Period, at the Discretion of the Association.
- 2.22 "Record", "Recording", or "Recorded". – The appropriate recordation of filing of any document in the office of the Onslow County Register of Deeds, or any such other place which is designated as the official location for recording deeds and similar documents affecting title to real estate. The date of recording shall refer to that time at which a document, map, or plat is recorded.
- 2.23. "Rules and Regulations". – The initial rules and regulations set forth in Exhibit "C", as they may be supplemented, modified, and repealed pursuant to Article IV.
- 2.24. "Service Alley Group". – A Service Alley Group is the owner of a unit that adjoins any segment of a contiguous Drainage, Utility, and Access Easement.
- 2.25. "Special Assessments". – Assessments levied in accordance with Section 9.2.
- 2.26. "Specific Assessments". – Assessments levied in accordance with Section 9.3.
- 2.27. "Supplemental Declaration". – A Recorded instrument, which subject additional property to this Declaration pursuant to Article X, designates Neighborhoods pursuant to Article XI, or imposes additional restrictions and obligations on the land described in such instrument, or designate common areas of the Community. This term shall also include a deed that subjects additional property to this Declaration.
- 2.28. "Unit". – A portion of Queens Harbor, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached single –family residence. The term shall refer to the land, if any; which is part of the Unit as well as any improvements thereon. In the case of a building within a condominium or other structure containing multiple dwellings for individual sale, each such dwelling shall be deemed a separate Unit. In the case of a parcel of land upon which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by the Declarant, whichever is more recent.
- 2.29. "Vote of the Members" or "Vote of the Association". – Unless the context otherwise requires; means approved or ratified by the Members entitled to vote on the issue through either:
- a. The affirming vote of a majority of the members represented and voting at a duly held meeting at which a quorum is present, or the affirmative vote of the greater proportion, including the votes of any required proportion of the members of any class as this Declaration or the By-Laws may provide for specified types of Member action; or
 - b. A written ballot or written consent in conformity with the Alternative Voting Method defined herein.

In the event that this Declaration or the By-Laws require action or approval by a specified percentage Vote of the Association, i.e. "by a two-thirds (2/3) Vote of the Members", then such action or approval shall be deemed to have been given upon the affirmative vote of the specified percentage of those Members attending the duly called meeting and entitled to vote on the question, or upon the approval by such percentage of Members voting through the Alternative Voting Procedure, as applicable.

2.30. "Alternative Voting Procedures". –

- a. Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers a written ballot to every member entitled to vote on the matter. Written notice describing the matter to be voted upon, a ballot, and other material necessary to insure voting control and Member privacy shall be sent by mail to all Members eligible to vote not less than twenty (10) days, nor more than forty (40) days before the date established by the Board for counting votes. Notice shall be deemed complete and delivered when deposited in the United States Mail, first class mail, with appropriate and necessary postage affixed, addressed to the Member at his or her address as it appears on the records of the Association.
- b. A written ballot shall:
 - i) Set forth each proposed action; and
 - ii) Provide an opportunity to vote for or against each proposed action.
- c. Approval by written ballot pursuant to this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
- d. All solicitations for votes by written ballot shall:
 - i) Indicate the number of responses needed to meet the quorum requirements;
 - ii) State the percentage of approval necessary to approve each matter other than election of directors; and
 - iii) Specify the time by which a ballot must be received by the Association in order to be counted.
- e. A written ballot may not be revoked after it is submitted.
- f. Members shall cast their vote subject to their voting rights as defined in Section 2.1 of the By-Laws. They shall record their vote by marking and returning the ballot as instructed thereon. Specific voting instructions and materials shall insure that only ballots from eligible voters are counted, and that the privacy of the individual Member is maintained.
- g. Ballots, marked and returned in accordance with instructions shall be counted, and totals certified, either:
 - i) By a volunteer group of Members not currently serving on the Board of Directors and selected by the Nominating Committee; or
 - ii) By a professional firm employed for that purpose.
- h. Upon request by Declarant, Declarant shall be entitled to be present at the counting of the vote, and to inspect any ballots so counted.
- i. Voting results shall be given to the Board, which will announce the results to the Membership.

- 2.31. 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. Any terms, definitions, or Declarant's rights not specifically addressed herein shall have the meaning and effect as set forth in the Act.

ARTICLE III: Use, Occupancy, and Transfer

- 3.1 General. – Various restrictions on the use, occupancy, and transfer of the Units are set forth in this Article. Each Owner, by acceptance of a deed or other instrument granting an interest in any Unit, acknowledges and understands that the use of such Unit is subject to Rules and regulations and Restrictions on occupancy and transfer, as they may be expanded, modified, or otherwise amended in accordance with the procedures set forth in Article XVII.
- 3.2 Restrictions on Use. – Queens Harbor shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center, models, or sales office for any real estate broker designated by Declarant or builders approved by Declarant to assist in the sale or re-sale of real property, offices for any property manager retained by the Association, or business offices for the Declarant, approved builders, or the Association), consistent with the Governing Documents. Notwithstanding the above, home business use ancillary to the primary residential use of a Unit is permitted subject to the Rules and Regulations, and further, as provided in Section 11.2 of this Declaration .
- 3.3 Restrictions on Ownership and Occupancy. – All occupants of a single unit shall be members of a single housekeeping unit; provided, however, that an Owner may lease out a separate, detached guest house or garage apartment so long as all the occupants of the guest house or garage apartment are members of a single housekeeping unit. The number of occupants in each Unit shall be limited to a reasonable number based on the Unit's facilities and size and its fair use of the Common Area, as determined by the Board.
- 3.4 Restrictions on Transfer; Changes in Ownership of Units. – Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all the obligations of the Owner of the Unit, including assessment obligations, until the Board receives such notice, notwithstanding the transfer of title.
- 3.5 Guardhouse, Gates or Barriers. – The Declarant (or the Association, with the Declarant's consent during the Declarant Control Period) shall have the right, but not the duty, to construct and maintain a guardhouse, gates or barriers to limit access to the Community to authorized persons, including, but not limited to, Owners, their families and visitors. Reasonable rules and regulations may be adopted for car stickers or similar device identifying Owners and their families, for notification of the guardhouse by Owners of persons or service personnel expected to visit the Community, and for other matters necessary or desirable in order to facilitate the proper operation of any such guardhouse, gates or barriers.
- 3.6 Other Use Restrictions. – Other use restrictions are contained in the Rules and Regulations of the Community, attached hereto as Exhibit "C", and incorporated herein by reference.

Article IV: Conduct

- 4.1 Framework for Regulation. – The Governing Documents establish, as part of the general plan of development for Queens Harbor, a framework of affirmative and negative covenants, easements, and restrictions governing Queens Harbor, within which the Board and the Members shall have the ability to respond to problems and changes in circumstances, conditions, needs trends, and technology which inevitably will affect Queens Harbor, its Owners, and residents. In addition to the other covenants and restrictions set forth herein or in the other Governing Documents, all Owners of property within Queens Harbor covenant and agree to follow and comply with all the Rules and Regulations of Queens Harbor, as they may be amended from time to time, which Rules and Regulations are attached hereto as Exhibit "C" and incorporated herein by reference. Said Rules and Regulations shall be deemed to constitute covenant and restrictions for Queens Harbor. This Article also establishes procedures for modifying and expanding the initial Rules and Regulations set forth in Exhibit "C".

4.2 Regulation Making Authority. –

- a. Board Authority. – Subject to the terms of this Article and the Board's duty to exercise business judgment on behalf of the Association and its Members, the Board may adopt, repeal, and modify the Rules and Regulations governing matters of conduct, aesthetics, use of property and the activities of Members, residents, and guests with in Queens Harbor, The Board shall send notice by mail to all Members concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.
- b. Members' Authority. – Alternatively, members, by a majority Vote of the Association, at an Association meeting duly called for such purpose, may vote to adopt regulations, which modify, cancel, limit, create exception to, or expand the Rules and regulations then in effect. Such action shall require the Declarant's approval for as long as Declarant has the right unilaterally to annex property to the community.
- c. NOTICE: Opportunity to Disapprove. – Notice of any Board resolution or Member action adopting, repealing, or modifying regulations shall be sent to all Members at least (30) thirty days prior to the effective date. Subject to Declarant's disapproval rights under Section 3.18 of the By-Laws, the resolution or Member action shall become effective on the date specified in the notice unless:
 - (1) Members petition for a special meeting, in accordance with the By-Laws, to reconsider such resolution,
 - And
 - (2) The resolution is disapproved at the meeting by Members representing more than 50% of the total votes in the Association.
- d. Conflicts. – Nothing in this Article shall authorize the Board or the Members to modify, repeal, or expand the Architectural Guidelines or other provisions of this Declaration during the Declarant Control Period. In the event of a conflict between the Architectural Guidelines and the Rules and Regulations, the Architectural Guidelines shall control.
- e. Common Area Administration Rules. – The procedures required under this section 4.2 shall not apply to the enactment and enforcement of Board resolutions or administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility, and the method of allocating or reserving use of a facility (if Permitted) by particular individuals at particular times. The Board shall exercise business judgment and act in accordance with the business judgment rule, as described in Section 3.24 of the By-Laws, in the enactment, amendment, and enforcement of such administrative rules and regulations.
- f. Limitations. – Except as may be contained in this Declaration either initially or by amendment or in the initial Rules and regulations set forth in Exhibit "C", all Rules and Regulations shall comply with the following provisions:
 - i) Similar Treatment. – Similarly situated Owners shall be treated similarly.
 - ii) Signs, Banners and Displays. – The right of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Unit of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place and manner restrictions with respect to displays visible from outside the dwelling. No rules may regulate the content of political signs; however, rules may regulate the time, size, place, and manner of posting such signs (including design criteria) and limit to a reasonable number the number of signs that may be posted. Other signs may be posted in accordance with applicable Board rules and to the extent

not inconsistent with the terms of this Declaration, provided that such Owners shall be responsible for removing such signs in a timely manner and shall be subject to enforcement actions for failing to do so. No commercial signs, including "for rent" or "for sale" and other similar signs, shall be erected or maintained on or in said Property by anyone other than the Declarant, including, but not limited to, any Owner, realtor, contractor, or subcontractor, except with the written permission of the Architectural Review Board, or except as may be required by legal proceedings. If such permission is granted, the Architectural Review Board reserves the right to restrict size, color, and content of such signs.

- iii) Household Composition. – No rule established pursuant to this Article shall interfere with the Owner's freedom to determine the composition of their households, except that the rules may proscribe timesharing arrangements. Section 3.3 shall govern restrictions on occupancy.
- iv) Activities within Dwellings. – No rule established pursuant to this Article shall interfere with the activities carried on within the confines of dwellings, except that the Association may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of others, that generate excessive noise, parking congestion or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.
- v) Alienation. – No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; however, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease of any Unit greater than the amount reasonably based on the costs to the Association of administering that lease.
- vi) Reasonable Rights to Develop. – No rule or action by the Association shall unreasonably impede Declarant's right to develop the Community in accordance with their rights reserves to Declarant in this Declaration.

The limitations in subsections i) through iv) of this subsection 4.2(f) shall limit only regulations making authority exercised under Section 4.2; they shall not apply to amendments to this Declaration adopted in accordance with Article XVII.

- 4.3 Owners' Acknowledgement and Notices to Purchasers. – All Owners and prospective purchasers are given notice that use of their Units and the Common Area is limited by the Rules and Regulations, as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision, that the Rules and regulations may change from time to time, and that the current Rules and regulations may not be set forth in a Recorded instrument. All purchasers of Units are on notice that the Association may have adopted changes to the Rules and Regulations. The Association shall provide a copy of the current Rules and Regulations to any Owner, prospective Owner, or Mortgagee upon request and payment of the reasonable cost of such copy.

ARTICLE V: Architecture and Landscaping

5.1 General. –

- a. In order to preserve the natural beauty of Queens Harbor and its setting, to maintain a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of property:

- i) No building, fence, wall, sign, swimming pool, mail box, tennis court, roof, exterior, or other structure or improvement shall be erected, placed, added to, or altered on any Unit;
 - ii) No staking, clearing, excavation, grading, or other site work shall be performed on any Unit; and
 - iii) No trees having a diameter of over three (3") inches (measured 48" above the ground) shall be removed or significantly pruned (collectively, the "Activities") unless and until the proposed building plans, specifications (including height, color, and composition of roof, siding, or other exterior materials and finish), plot plan (showing proposed location of such buildings or structure, drives and parking areas), landscape plan, other applicable plans and construction schedule shall have been submitted and approved in writing by the Architectural Review Board as hereinafter provided.
- b. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her Unit without approval. However, modifications to the interior of a Unit visible from outside the structure shall be subject to approval.
- c. Any improvements constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect, and must be approved by Declarant or its designee in its sole discretion; provided, that the Architectural Review Board may waive the requirement of having an architect in its discretion. It is expressly understood that Declarant shall also have the right to require that the Owner plant, at the Owner's cost, specimen trees on the Unit in places adjacent to the right-of-way.
- d. This Article shall not apply to Declarant's activities, nor to the Association's activities after the Declarant Control Period.
- e. In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and shall owe no duty to any other Person.

5.2 Architectural Review Board. – The Declarant shall establish an Architectural Review Board (such boards hereinafter referred to as the "Architectural Review Board" or "ARB") which shall consist of three (3) members. The Declarant shall appoint the three (3) members during the Declarant Control Period, unless such right of appointment is earlier terminated in a written instrument executed and recorded by Declarant. The regular term of office for each member shall be one (1) year. The Declarant may remove with or without cause any member appointed by the Declarant at any time by written notice to such appointee. A successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member(s). Control of the Architectural Review Board shall be transferred to the Association at the end of the Declarant Control Period, at which time Declarant shall execute and record an instrument evidencing such transfer. When control of the Architectural Review Board functions is transferred to the Association, members or the ARB shall be elected by the Board of Directors of the Association and any member so elected may resign or be removed by the Board in the same manner as provided in the By-Laws of the Association for the resignation and removal of officers of the Board.

- a. Officers. – The Architectural Review Board shall select its own Chairman, and he/she, or in his or her absence, the Vice-Chairman, shall be the presiding officer of its meetings. All meetings shall be held upon call of the Chairman; all meetings shall be held at the offices of the Association in Onslow County, North Carolina or at such other places in Onslow County as may be designated by the Chairman. Two (2) members shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members of the Architectural Review Board present at the meeting at which there is a quorum shall constitute the action of the Architectural Review Board on any matter before it. The Architectural Review Board shall operate

in accordance with its own rules of procedure and guidelines, which shall be filed with the Association and maintained in the records of the Association.

- b. Professional Consultants. – The Architectural Review Board is hereby authorized to retain the services of one or more consulting architects, landscape architects, urban designers, and/or attorneys, and other professional consultants as it determines necessary to advise and assist the Architectural Review Board in performing the design review functions herein prescribed.
- c. Submission, Approval, and Refusal of Architecture, Site, Landscaping, and Other Building Plans. – Two (2) copies of all plans and related data shall be furnished to the Architectural Review Board. One (1) copy shall be retained in the records of the Architectural Review Board. The other copy shall be returned to the Property Owner marked “approved” or “disapproved”. The Architectural Review Board may establish a fee from time to time sufficient to cover the expense of reviewing plans and related data at the time they are submitted for review and to compensate any consulting architects, landscape architects, urban designers or attorneys retained in accordance to the provisions of this Article. Approvals shall be dated and shall not be effective for construction commenced more than twelve (12) months after such approval. A reasonable statement of items found unacceptable shall accompany disapproved Plans and related data. In the event approval of such plans is neither granted or denied within thirty (30) days following receipt by the Architectural Review Board of all of the required documents with written request for approval, such approval shall be deemed granted. Refusal of approval of plans, location or specification may be based by the Architectural Review Board upon any ground which is consistent with the objectives of this Declaration, including purely aesthetic considerations, so long as such ground is not arbitrary and capricious.

5.3 Guidelines and Procedures. -

- a. Declarant may prepare Architectural Guidelines applicable to Units, which may contain general provisions applicable to all Units as well as specific provisions that may vary among Units according to location, use, or other factors. The Architectural Guidelines may contain, without limitation, square footage requirements, lot setbacks, height restrictions, construction material restrictions, and requirements, landscaping requirements or other requirements and/or restrictions on construction, modification, or maintenance of improvements in the Community. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Architectural Review Board in considering applications hereunder. The Architectural Guidelines are not the exclusive basis for the Architectural Review Board’s decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application.
- b. Declarant shall have sole and full authority to amend the Architectural Guidelines during the Declarant Control period, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend. Upon termination or delegation of Declarant’s right to amend, the Architectural Review Board shall have the Authority to amend the Architectural Guidelines with the Board’s consent. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.
- c. The Association shall maintain a copy of the Architectural Guidelines, as they may exist from time to time, and shall make them available to Members or Owners for inspection and copying upon reasonable notice during the Association’s business hours. In Declarant’s discretion, such Architectural

Guidelines may be recorded, in which event the Recorded version, as it may be amended, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

- d. The Architectural Review Board may by resolution exempt certain activities from the application and approval requirements of the Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

5.4 No Waiver of Future Approvals. – Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Architectural Review Board may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5 Variances. – The Architectural Review Board may authorize variances from compliances with any of its guidelines and procedures when circumstances such as topography, obstructions, hardship, or aesthetic or environmental confederations require, but only in accordance with the rules and regulations (only the Board may grant a variance from compliance with the rules and regulations). No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) stop the Architectural Review Board from denying a variance in other circumstances. For purpose hereof, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

5.6 Limitation of Liability. – The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Architectural Review Board shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental requirements, (c) that Units are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners, (d) that views from any other Units or the Area of Common Responsibility are protected, or (e) that no defects exist in approved construction. Declarant, the Association, the Board, any committee, or any member thereof shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality of approval construction on or modification to any Unit. In all matters, the Association shall defend and indemnify the Board, the Architectural Review Board, and any members thereof as provided in Section 8.7.

5.7 Certificate of Compliance. – Any Owner may request that the Architectural Review Board issue a certificate of architectural compliance certifying that such Owner's Unit has no known violations of this Article or the Architectural Guidelines. The Association shall either grant or deny such request within 30 days after receipt of written request and may charge a reasonable administrative fee for issuing such certificate. Issuance of such certificate shall stop the Association from taking enforcement action with respect to any conditions as to which the Association had notice as of the date of such certificate.

5.8 View Impairment. – Neither Declarant nor the Association guarantee or represent that any view over and across any portion of the Community or any adjacent property will be preserved without impairment. Any additions or changes, whether occurring in the course of developing or maintaining the Community, may diminish or obstruct any view from Units,

and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

- 5.9 **Builder Program.** – The Declarant has established a Builder Program for Queens Harbor. The Declarant shall have the authority to set forth rules, regulations, and requirements for the Builder Program. Before any contractor or builder may perform or engage in any construction activity on a Unit, such Contractor or builder shall: (a) be required to submit a builder application to the Declarant; (b) be approved by the Declarant to participate in the Builder Program; and (c) agree to comply with all the terms and conditions of the Governing Documents and the rules, regulations and requirements of the Builder Program. Under terms of the Builder Program, all builders must pay to Declarant or its designee a fee equal to three percent (3%) to five percent (5%) of the final contract price for construction of the home. Approval of a contractor or builder shall not be construed as an endorsement of the contractor or builder by the Declarant, nor shall the Declarant be liable for any loss, damage, or injury, to any person arising out of the Owner's election to use such contractor or builder.

ARTICLE VI: Maintenance and Repair

- 6.1 **Maintenance of Units.** – Each Owner shall maintain his or her Unit and all landscaping, irrigation systems, and other improvements comprising the Unit in a manner consistent with the Governing Documents, the Community-Wide Standards, and all applicable covenants, unless the Association assumes and carries out such maintenance responsibility pursuant to any Supplemental Declaration or other Declaration of covenants applicable to such Unit except as provided in a Supplemental Declaration, each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between Unit boundary and any wall, fence, or curb located on the Common Area or right-of-way within 10 feet of the Unit boundary; however, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article V.
- 6.2 **Responsibility for Repair and Replacement.** – Unless the Governing Documents or other instruments creating and assigning maintenance responsibility specifically provide otherwise, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.
- a. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. If the Association assumes responsibility for obtaining any insurance coverage on the behalf of Owners, the premiums of such insurance shall be levied as a specific Assessment against the benefited Unit and the Owner Pursuant to Section 9.3.
- b. Each Owner further covenants and agrees that in the event of damage to or the destruction of structures on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct such structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article V. Alternatively, the Owner shall clear the damaged portions of the Unit and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that are not covered by insurance proceeds. Such repair, re-construction, or removal shall be completed within six (6) month from the date of such damage or destruction.

ARTICLE VII: The Association and Its Members

- 7.1 **Function of Association.** – The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcing the Governing

Documents. The Association shall perform its functions in accordance with the Governing Documents and North Carolina Law.

- 7.2 Board of Directors. – The Board shall govern the Association as more particularly described in the By-Laws. Except as to matters specifically requiring members' approval as set forth in the Governing Documents, the Board may exercise all rights and powers granted to the Association without membership approval.

7.3 Membership. –

- a. Qualification. – Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 7.3(b) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners under this Declaration and the other Governing Documents. The membership rights of an Owner that is not an individual may be exercised by any officer, director, partner, member, manager of a limited liability company, trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.
- b. Voting. – The Association shall have two (2) types of regular voting memberships:
 - (i) TYPE "A". – Type "A" Members (also known as Class "A" Members) shall be all those Owners of Units other than the Declarant. A Type "A" Member shall be entitled to one (1) vote for each Unit which he owns; provided, that in the event that more than one lot has been consolidated into one building site, such lots, in the aggregate, shall be considered one Unit for voting purposes, and shall entitle the Owner thereof to only one (1) vote, for so long as such additional lot is part of such consolidated building site.
 - (ii) TYPE "B". – Type "B" Members (also Known as Class "B" Members) shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Unit owned by the Declarant, plus one (1) additional vote: EXCEPT AS SPECIFICALLY PROVIDED IN ARTICLE III OF THE BY-LAWS OF THE ASSOCIATION, DURING THE DECLARANT CONTROL PERIOD, ALL VOTES BY TYPE "A" MEMBERS SHALL BE ADVISORY ONLY, AND SUCH ADVISORY VOTES SHALL NOT BE COUNTED IN DETERMINING ANY VOTE OF THE MEMBERS, CONSENT BY THE MEMBERS, OR OTHER ACTIONS OR DETERMINATION BY THE MEMBERS. DURING SUCH DECLARANT CONTROL PERIOD, ONLY VOTES BY THE TYPE "B" MEMBERS SHALL BE COUNTED IN DETERMINING ANY VOTE OF THE MEMBERS, CONSENT BY THE MEMBERS OR OTHER ACTIONS OR DETERMINATION BY THE MEMBERS. UPON THE EXPIRATION OF THE DECLARANT CONTROL PERIOD, BOTH TYPE "A" AND TYPE "B" MEMBERS SHALL BE ENTITLED TO HAVE THEIR VOTES COUNTED IN DETERMINING ANY VOTE OF THE MEMBERS, CONSENT BY THE MEMBERS OR OTHER ACTIONS OR DETERMINATION BY THE MEMBERS.
- c. Exempt Property. – At no time shall any Type "A" membership vote be exercised for any property that is exempt from assessment under Section 9.9.
- d. Co-Owners. – In any situation where a Member is entitled to exercise the vote for his or her Unit, and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determined among themselves and advise the Secretary of the Association in writing prior to the vote being taken.

Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

- e. Transfer of Membership. – Membership in the Association is appurtenant to Unit ownership and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except upon a transfer of title to such Unit, and then only to the transferee. Any prohibited transfer of an Association membership shall be void and of no force or effect. Any transfer of title or interest to a Unit shall operate automatically to transfer the appurtenant membership rights in the Association to the new Owner. Prior to any transfer of title to such Unit, the transferring Owner shall give seven days prior written notice to the Board of such transfer, which shall include the name and address of the acquiring Owner and the date of transfer.
- f. Consent to Membership. – By purchasing a lot or Unit in Queens Harbor, each Owner irrevocably consents to being a Member of the Association, and covenants to comply with all of the duties and responsibilities of membership, as provided for in this Declaration and in the By-laws.

ARTICLE VII: Association Powers and Responsibilities

8.1 Acceptance and Control of Association Property. –

- a. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of Sections 16.3.
- b. Declarant and its designees may convey to the Association personal property and fee title, leasehold, or other property interests in any real property, improved, or unimproved, of any property describes in Exhibits "A" or "B". The Association shall accept and maintain such property at its expense for the Member's benefit, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon Declarant's written request, the Association shall re-convey to Declarant any unimproved portions of the Community or Common Property originally conveyed by Declarant to the Association, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.
- c. The Association shall be responsible for management, operation, and control of the Area of Common responsibility, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association, and also subject to any restrictions or requirements of any governmental entity or applicable law. The Board may adopt such reasonable rules regulating use of Common Area, as it deems appropriate.
- d. Notwithstanding any other provision hereof or the provision of any plat or other document relating to the Community, the Association shall have the right to designate the use of any Common Area in the Community, and to change to use of and such Common Area. For instance, and without limitation, the Association shall have the Authority to change the use of a Common Area designated as "Open Space" or "Community Park" on a Recorded subdivision plat to another use, if the Association should determine that such change of use would be of benefit to the Community as a whole. All uses of Common Areas designated on any subdivision plat are preliminary and subject to change by the Association.

8.2 Maintenance of Area of Common Responsibility. –

- a. The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

- i.) All portions of, and structures situated on, the Common Area, including, but not limited to, the private streets and gates serving Queens Harbor, and street lights. The streets of the Community shall be maintained (unless same have been publicly dedicated by Declarant or the Association) whether or not owned by the Association in fee simple, so long as the Association and the Owners have a non-exclusive easement to use said streets;
 - ii) Landscaping within public right-of-way within or abutting Queens Harbor;
 - iii) Such portions of any additional property included within the Area of Common Responsibility as may be dictated by the Declaration, any Supplemental Declaration, or any contract, covenant, or agreement for maintenance thereof entered into by, or for the benefit of the Association;
 - iv) All pipes, structures, ponds, streams, or wetlands located within Queens Harbor, which serve as part of the Stormwater drainage system, and improvements and equipment installed therein or used in connection therewith;
 - v) Any part of the irrigation system for Queens Harbor, if any, installed by Declarant and located within Queens Harbor and all improvements and equipment used in connection therewith, including irrigation ditches, head gates, and siphons; provided, however, that each Unit Owner shall maintain any irrigation system which functions primarily to irrigate such Unit, whether or not originally constructed by Declarant; and
 - vi) Any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.
- b. The Association may maintain other property which it does not own, including, without limitation, publicly-owned property and easements held by it, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.
- c. Neither Declarant nor the Association guarantees that drainage will flow off the Area of Common Responsibility on the intended drainage course. Neither Declarant nor the Association shall bear any responsibility for ensuring that drainage follows intended drainage patterns off of the Area of Common Responsibility.
- d. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property, which it does not own, except to the extent that it has been negligent in the performance of its maintenance responsibilities.
- e. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any period necessary, as determined by the Board's sole discretion, to perform required repairs or maintenance, unless the discontinuance of such repairs and/or maintenance is (a) approved by a 67% Vote of the Members, and, (b) during the Declarant Control period, such discontinuance is approved by Declarant.
- f. Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with Declarant's prior written approval during the Declarant Control Period.

- g. The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof.

8.3 Insurance. –

- a. Required Coverage. – The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:
 - i.) Blanket Property Insurance for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent of a casualty, regardless of ownership. All property insurance policies the Association obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes. The Association shall have full power to receive and to deal with such proceeds. The insurance proceeds shall be used for any repairs or replacement of property for which the Association carried the insurance, except as otherwise provided in this Section;
 - ii.) Commercial General Liability Insurance on the Area of Common Responsibility. Coverage shall include, without limitation, liability for personal injuries and activities in connection with the ownership, operation, maintenance, and other use of the Area of Common Responsibility. The Board shall use its business judgment in deciding upon per occurrence limits for such coverage, and shall consider any applicable secondary mortgage guidelines relating to such coverage. The liability insurance shall name, as separately protected insured, Declarant, any property manager, the Association, the Board the Architectural Review Board, and their respective representatives, members, officers, agents, and employees with respect to any liability arising out of the maintenance or use of the Area of Common Responsibility;
 - iii.) Workers' compensation insurance and employers' liability insurance, if and to the extent required by law;
 - iv.) Directors' and officers' liability coverage, including coverage for sexual harassment, sex discrimination and similar coverage if available;
 - v.) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual; Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and
 - vi.) Such additional insurance as the Board, in its business judgment, determines advisable.

Premiums for all insurance shall be Common Expenses, unless the Board reasonably determines that other treatment of the premiums is more appropriate. The Association shall include such premiums in the assessments it levies. The Board shall review the limits of all Association insurance policies at least once a year and shall adjust the policy limits, as the Board deems necessary or appropriate.

- b. Policy Requirements. – The Board shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least once one of whom must be familiar with replacement costs in the Onslow County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association. The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such owner(s) and their Unit as a Specific Assessment pursuant to Section 9.3. All insurance coverage obtained by the Board shall, to the extent reasonable practicable:
- i. Be written this a company authorized to do business in North Carolina which satisfies the requirements of the Federal National Mortgage Associations, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
 - ii. Be written in the name of the Association, individually, and, to the extent applicable, as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association;
 - iii. Not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
 - iv. Contain an inflation guard endorsement;
 - v. Include an agreed amount endorsement, if the policy contains a co-insurance clause;
 - vi. Provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association or interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than the right to use same to the extent permitted hereby);
 - vii. Include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer conditioning recovery on account of an act or omission of any one or more Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and
 - viii. Include an endorsement precluding the insurer from denying a claim by Owner or conditioning recovery under the policy based upon or due to the negligent acts or omissions of the Association or any other Owner.
- c. Other Coverage. – In addition, the Board shall use reasonable efforts to secure insurance policies, which list the Owners (as a class) as additionally insured for claims arising in connection with the ownership, existence, use, or management of the Common Area and provide:
- i. a waiver of subrogation as to any claims against the Association's board of directors, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
 - ii. a waiver of the insurer's right to repair and reconstruct instead of paying cash; and

- iii. an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

8.4 Repair and Reconstruction of Association Property. – The Association shall have the authority and the duty to repair or reconstruct Common Area or other property, which the Association is obligated to insure (“Insured Property”) that is damaged or destroyed unless such repair or reconstruction would be illegal under any state or local ordinance governing health or safety, or Members representing 67% of the total vote of the Associations vote not to repair or reconstruct.

- a. Except as otherwise provided in this Section the Board shall diligently pursue to completion the repair or reconstruction of that part of the Insured Property damaged or destroyed. The Association may take all necessary or appropriate action to affect such repair or reconstruction. Such repair or reconstruction shall be generally in accordance with the original plans and specifications unless other plans are approved by a majority Vote of the Association and by the Architectural Review Board pursuant to Article V.
- b. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction of Insured Property. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, then the Board, pursuant to Section 9.3, may levy in advance a Special Assessment to provide funds to pay such estimated or actual costs or repair or reconstruction. Such assessment shall be allocated and collected as provided in Article IX.
- c. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Article IX constitute a fund for payment for costs of repair or reconstruction after casualty. If a balance exists after payment of all costs of such repair and reconstruction, such balance shall be deposited into the Association's general funds.
- d. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the Association shall clear the affected property of all debris and ruins and thereafter shall maintain such improvements in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The cost of removal and landscaping shall be paid for with insurance proceeds, if any. The Association shall retain the remaining proceeds in its general or other funds or shall allocate or distribute such funds as the Board determines appropriate, provided any such distribution of insurance proceeds shall be proportionate to Members' interests.

8.5 Compliance and Enforcement. – Every Owner and Occupant of a Unit shall comply with the Governing Documents.

- a. The Board may impose sanctions for violating the Governing Documents after notice and an opportunity for a hearing in accordance with the procedures set forth in Section 3.23 of the By-Laws. Such sanctions may include, without limitations:
 - i. imposing reasonably monetary fines shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest, or invitee of an Owner violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; however, if the violator does not pay the fine within the time period the Board sets, the Owner shall pay the fine upon notice from the Board);
 - ii. Suspending an Owner's right to vote;
 - iii. suspending any services the Association provided to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessments or other charges owed to the Association;

- iv. suspending an Owner's right to use the recreational amenities provided by the Association;
 - v. exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;
 - vi. requiring an Owner, at its own expense, to remove any structure or improvements on such Owner's Unit that violates Article V and to restore the Unit to its previous condition and upon, the Owner's failure to do so, the Board or its designee shall have the right to enter the property, remove the violation, restore the property to substantially the same condition as previously existed, and levy a Specific Assessment against the Owner's Unit in accordance with Section 9.4 for the cost of the same, including a reasonable administrative fee. Any such action shall not be deemed a trespass;
 - vii. without liability to any Person, precluding any contractor, subcontractor, agent employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article V and the Architectural Guidelines, or any other provision of this Declaration or other Governing Documents, from continuing or performing any further activities in the Community; and
 - viii. levying a Specific Assessment against an Owner in the manner provided in Section 9.4 to collect any costs the Association incurs in curing any violation, plus a reasonable administrative fee, or to collect any fine that remains unpaid for a period of 10 days or more.
- b. In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of complying with the procedures set forth in Section 3.23 of the By-Laws:
- i. exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both; and
 - ii. requiring any Owner to reimburse the Association for any costs incurred by the Association in enforcing this Declaration or the other Governing Documents, or in responding to any litigation or claim instituted by such Owner, including any attorneys fees, expenses of litigation or costs incurred by the Declarant or the Association for such enforcement, and/or levying a Special Assessment against such Owner for the same.
- c. In no event shall Declarant be subject to any fine or other sanction under this Section.
- d. In addition to any other enforcement rights, if an Owner fails to perform his or her maintenance responsibility properly, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs the Association incurs against the Unit and the Owner as a Specific Assessment pursuant to Section 9.3. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.
- e. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitations, attorneys' fee and court costs, reasonably incurred in such action.
- f. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing

sentence, the Board may determine that, under the circumstance of a particular case:

- i. the Association's position is not strong enough to justify taking any further action;
- ii. the covenant, restriction, or rule being enforced is inconsistent with applicable law;
- iii. although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- iv. that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time or under other circumstances, or preclude the Association from enforcing any other covenant, restriction, or rule.

- g. The Association, by contract or other agreement, may enforce applicable county ordinances and Onslow County may enforce its ordinances within the Community.

8.6 Implied Rights; Board Authority. –

- a. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonable implied from or reasonable necessary to effectuate any such right or privilege.
- b. The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of on in the name of the Association or its Members.
- c. In exercising the Association's rights and powers, making decisions on the Association's behalf, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Section 3.24 of the By-Laws.

8.7 Indemnification of Officers, Directors, and Others. –

- a. Subject to North Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such person shall have no right of indemnity for liability caused by his or her individual willful misfeasance, malfeasance, misconduct, or bad faith.
- b. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association except to the extent that such officers or directors may also be Members. The Association shall indemnify and forever hold harmless each such

officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. The right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonable available.

- c. *Decisions whether to institute litigations are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in Section 3.24 of the By-Laws.*

8.8 Security. –

- a. *The Association may, but shall not be obligated to maintain certain activities, structures, or devices within Queens Harbor designed to make it safer, including a guardhouse. Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of security within Queens Harbor, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Neither Declarant nor the Association shall have any duty to provide security, and neither makes annul representation that any security measures will be provided or enforced. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Queens Harbor (e.g. a gated entry, guardhouse, etc.) will carry out any security function, or that any such mechanism or system cannot or will not be compromised or circumvented, not that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.*
- b. *Declarant reserves the right to install a separate security gate or similar device between any set aside lots to limit access.*
- c. *Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Unit that the Association, its Board and committees, and Declarant are not insurers of safety within Queens Harbor and that each person using Queens Harbor assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from Acts of third parties.*

8.9 Provision of Services. – The Association may provide, or provide for, services and facilities for the Members, their Guests, lessee, and invitees, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use and consumption fees for such services and facilities. By way of example, some services and facilities which may be offered include garbage removal, landscape maintenance, snow removal, pest control service, cable television service, security, caretaker services, transportation, fire protection, utilities, including access to fiber optic networks, community boat docks, and similar services and facilities. Nothing herein shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board, in its discretion, shall be permitted to modify or cancel existing services provided unless otherwise required by Governing Documents. No Owner shall be exempt from the obligation to pay for such services, if provided to all Owners as a Common Expense, based upon non-use or any other reason.

8.10 Relations with Other Properties. – The Association may enter into contractual agreements or covenants to share costs with any neighboring property to address issues of an area-wide concern. Examples of issues which may be addressed include road and right-of-way maintenance, drainage issues, open space, and to contribute funds for, among other things, shared or mutually beneficial property or services or a higher level of Common Area maintenance.

ARTICLE IX: Association Finances

9.1 Budgeting and Allocating Common Expenses. –

- a. Until the Association first levies assessments, Declarant shall be responsible for all Common Expenses; provided, that in no event shall Declarant be responsible for the payment of Common Expenses for more than one (1) year after the first lot in the community is conveyed to a third party purchaser. Thereafter, assessments for Common Expenses shall be levied at least annually in accordance with this Article.
- b. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. The budget shall include any contributions to be made to a reserve fund for repair and replacement of capital assets, based on a separate reserve budget which takes into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 9.4.
- c. The Association is hereby authorized to levy Base Assessments equally against all Units subject to assessment under Section 9.4 to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonable anticipated becoming subject to assessments during the fiscal year.
- d. Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by paying any deficit between the Common Expenses and Association funds collected pursuant to the current years budget, or any portion of any such deficit (in addition to any amounts paid by Declarant under Section 9.6), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such deficit payment shall be disclosed as a line item in the income portion of the budget. Payments of such deficit or portion thereof, in any year shall not obligate Declarant to continue payment of such deficit in future years, unless otherwise provided in a written agreement between the Association and Declarant.
- e. The Board shall send a summary of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner within 30 days of adoption of the proposed budget and at least 30 days prior to the effective date of such budget. The notice shall set a date for a meeting of the Members to consider the budget, which shall not be less than 14 nor more than 30 days after mailing of the summary. The budget automatically shall become effective unless disapproved by a 75% Vote of the Members.
- f. If members disapprove any proposed budget or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.
- g. The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the rights of the Members to disapprove the revised budget as set forth above.

9.2 Special Assessments. – In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against a Service Alley Group or the entire membership as it may apply. Except as otherwise specifically provided in this Declaration, any such Special Assessment shall require approval by a majority Vote of the Members, as well as the consent of Declarant during the Declarant Control Period. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.3 Specific Assessments. – The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

- a. to cover the costs, including overhead and administrative costs, of providing service to Units upon request of an Owner pursuant to any menu of special services, which the Association may offer (which might include the items identified in Section 8.9). The Association may levy Specific Assessments for special services in advance of the provision of the requested service; and
- b. to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

9.4 Authority to Assess Owners: Time of Payment. –

- a. Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following the sale of a Unit to a Person other than the Declarant; provided, however, in the event a Unit is conveyed by the Declarant to a builder approved by the Declarant solely for the purpose of constructing a residence thereon and sale thereof, such assessments shall commence as to such Unit one (1) year after the conveyance of such Unit to such builder. The first annual Base Assessment levied on each Unit, shall be adjusted according to the number of months remaining in a fiscal year at the time assessments commence on the Unit.
- b. Assessments shall be paid in such manner and on such dates as the board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board provides otherwise, the Base Assessment shall be due and payable in advance on the first day of the fiscal year. If any Owner is delinquent in paying assessments or other charges levied on his Unit, the board may require the outstanding balance on all assessments to be paid in full immediately.

9.5 Personal Obligation for Assessments. –

- a. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Community, covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of North Carolina law), late charges as determined by the Board resolution, costs, and reasonable attorneys' fees, shall be each Owner's personal obligation and a lien upon each Unit until paid in full. Upon a transfer of title to Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.
- b. The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner as assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay the assessments. In such event, each Owner shall continue to pay Base assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.
- c. No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The Obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action it takes.

9.6 Budget Deficits During Declarant Control – During the Declarant Control Period, Declarant may (but shall not be required to):

- a. Advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association and the sum of the Base, Special, and Specific Assessments collected by the Association in any fiscal year. Such advances shall upon request of Declarant be evidenced by promissory notes from the Association in favor of Declarant. The failure of Declarant to obtain a promissory note shall not invalidate the debt.
- b. Cause the Association to borrow any amount from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Area or any improvements maintained by the Association shall be given in connection with such loan, unless approved by a 67% Vote of Class "A" Members (for the purpose of this subparagraph only, the Votes of such Class "A" Members shall not be advisory, but shall be fully effective whether or not the Declarant Control Period has expired or been terminated);
- c. Acquire property for, or provide services to, the Association or the Common Area. Declarant shall designate the value of the property or the services provided and such amounts, at the request of the Declarant, shall be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

9.7 Statement of Account. – Upon written request of any Member, Mortgagees, prospective Mortgagees, or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit, the Amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statements shall be delivered to the requesting Person personally or by certified mail, first-class postage prepaid, return receipt requested. The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall be issued within 10 days after written request for same has been delivered to the Association. Such statements shall bind the Association in favor of Persons who rely upon it in good faith.

9.8 Lien for Assessments. –

- a. Subject to the limitations of any other applicable provisions of North Carolina law, the Association shall have a statutory lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges and costs of collection (including attorney fees). Such lien shall be perfected upon the Recordation of this Declaration.
- b. Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of the Mortgages under North Carolina law. All such costs and expenses of any such foreclosure, including but not limited to attorneys fees, shall be secured by the lien being foreclosed.
- c. The Association may bid for the Unit, as applicable, at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure:
 - 1) No right to vote shall be exercised on its behalf;
 - 2) No assessment shall be levied on it; and
 - 3) Each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessments that would have been charged such Unit had the Association not acquired it.

The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, and the respective owners of Units shall be personally liable for the same.

- d. Sale or transfer of any Unit shall not affect the assessments lien or relieve such Unit from the lien for any subsequent assessments.
- e. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage held by an Institutional Lender on a Unit, or any other mortgage approved in writing by the Association ("Approved Mortgage"). Sale or transfer of any Unit shall not affect the assessment lien. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof. Notwithstanding any provisions herein, no Unit shall be exempt from said assessments, charges, or liens except as provided hereinafter in Section 9.9. Notwithstanding all of the provisions of this Section 9.8, where an Institutional Lender or other holder of an Approved Mortgage obtains title to a Unit as a result of foreclosure of a first mortgage, or as a result of a deed given in lieu of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the Assessments levied by the Association pertaining to such Unit or chargeable to the former Owner of such Unit which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu of foreclosure, unless such assessment accrued prior to the recording of such Mortgage. Such unpaid share of the assessments shall be deemed to be collectible pro rata from all of the Members, including such acquirer, its successors and assigns. An Institutional Lender, or other holder of an Approved Mortgage, acquiring title to a Unit as a result of foreclosure or a deed in lieu of foreclosure, may not, during the period of ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of the assessments coming due during the period of ownership.

9.9 Exempt Property. – The following property shall be exempt from payment of Base Assessments, Specific Assessments, and Special Assessments:

- a. All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;
- b. Any Units or other property owned by the Declarant; and
- c. Any Property dedicated to and accepted by any governmental authority or public utility.

9.10 Capitalization of Association. –

- a. Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a Declarant-approved builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to the Annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed there from to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws. Such contribution to a builder approved by the Declarant solely for the purpose of constructing a residence thereon and sale thereof, and who meets the following requirements:
 - 1) Construction of the residence on the lot must be begun within 90 days after the Builder takes title to the Lot.
 - 2) The lot and residence must be conveyed by the Builder to a third party purchaser that is not related to the Builder by blood or marriage, and said third party purchaser must occupy the residence on said property as his or their principle residence, within two (2) years after the lot is conveyed by the Developer to the Builder.

- 3) The unit must not be occupied as a residence while owned by such builder.
- b. In event such requirements as set forth above are not met, or in the event that at any time such requirements cease to be met, such initial contribution shall become immediately due and payable with respect to the initial sale by the Developer to the Builder, and shall be secured by a lien on the subjects lot(s) as herein provided.
- c. For all purposes hereunder, a builder may be disapproved by the Declarant in its sole discretion if:
 - 1) Declarant determines that the Builder has failed to comply with the Governing Documents in the past, or similar governing documents in other developments in Onslow County; or
 - 2) In the opinion of the Declarant the builder does not have substantial experience building high quality houses in Onslow County; or
 - 3) If the Declarant believes that the Builder has failed to maintain good reputation for the quality of its work, or that the builder has failed to meet its obligations to its customers, including its warranty obligations; or
 - 4) If Declarant believes that the Builder does not have sufficient experience or financial net worth to provide reasonable assurance that it will meet its obligations to the Owners and/or to the Community.

9.11 Transfer Fee. –

- a. Authority. – The Board shall have the authority to establish and collect a “Transfer Fee” (resale assessment) from the purchaser upon each transfer of title to a Unit in the Community, which fee shall be payable to the Association at the closing of the transfer and shall be secured by the Association’s lien for assessments under Section 9.8. The transferring Owner and the prospective purchaser shall notify the Association’s secretary of a pending title transfer at least seven days prior to the transfer. Such notice shall include the name of the buyer, the date of the title transfer, and other information that may be required by the Board.
- b. Fee Limit. – The Board shall have the sole discretion to determine the amount and method of determining any such Transfer Fee. The Board is authorized, but is not required, to determine the resale assessment based upon a sliding scale, which varies in accordance with the “gross selling price” of the property, or any other factor the Board determines. However, in no event shall any such resale assessment exceed 0.25% of the gross selling price of the Unit. For the purpose of determining the amount of the resale assessment, the gross selling price shall be the total cost to the purchaser of the Unit, excluding taxes and title fees as shown by the amount of tax imposed by Onslow County, North Carolina. Such resale assessment shall be secured by lien on the subject Unit(s) in the same manner as the other assessments provided herein.
- c. Purpose. – All Transfer Fees, which the Association collects, shall be deposited into the Association’s general funds.
- d. Exempt Transfers. – Notwithstanding the above, no Transfer Fee shall be levied upon transfer of title to a Unit:
 - 1) By Declarant;
 - 2) By another party to Declarant;
 - 3) By a builder which purchased its lot directly from Declarant, who held title solely for the purpose of development and resale, and where such Unit has never been occupied as a residence;

- 4) By a Co-Owner to any Person who was a Co-Owner immediately prior to such transfer;
- 5) To the Owner's estate, spouse, surviving spouse, or child upon the death of the Owner;
- 6) From an Owner to an entity in which the Grantor has at least a 51% ownership interest; provided, upon any subsequent transfer of an ownership interest in such entity, the resale assessment shall become due;
- 7) To an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage;
- 8) To a revocable trust created by the Owner of which the Owner and/or Owner's spouse in the principle beneficiary;
- 9) Any conveyance, which is exempt from payment of a deed transfer tax to Onslow County.

ARTICLE X: Expansion of Community

10.1 Expansion by Declarant. –

- a. Until all property described in Exhibit "B" has been subjected to this Declaration or twenty years after the Recording of this Declaration, whichever is earlier, Declarant reserves the right, but not the obligation, to subject unilaterally to the provisions of this Declaration all or any portion of the real property described in Exhibit "B". Declarant may transfer or assign this right to subject property, provided that Declarant memorializes such transfer by executing a written, recorded instrument.
- b. Declarant shall subject property by Recording a Supplemental Declaration describing the property being subjected. Such Supplemental Declaration shall not require the Members' consent but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the Recording of such Supplemental Declaration unless otherwise provided therein.
- c. In no event shall any of the property described in Exhibit "B" be deemed to be a part of Queens Harbor, nor shall any of said property be subject to this Declaration or restricted or burdened hereby, unless and until a Supplemental Declaration specifically annexing such property has been executed and recorded.

10.2 Expansion by the Association. –

- a. After Declarant's right to unilaterally annex additional property into the Community expires as provided in Section 10.1, the Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property, an affirmative 67% Vote of the Members, and the consent of the Declarant during the Declarant Control Period. The Association shall subject such property by Recording a Supplemental Declaration describing the property being subjected.
- b. Any such Supplemental Declaration shall be signed by the president and Secretary of the Association, by the owner of the subjected property, and by the Declarant, if the Declarant's approval is required. Any such subjection of property shall be effective upon Recording unless otherwise provided therein.

10.3 Withdrawal of Property. – So long as Declarant owns property described in Exhibit "A" or "B", Declarant reserves the unilateral right to amend this Declaration to withdraw any portion of the Community from the coverage of this Declaration whether originally described in Exhibit "A" or added by Supplemental Declaration; however, the withdrawal of any property shall require the consent of the person(s) who hold title to the property to be so withdrawn, if other than Declarant. If the property is Common Area, the Association shall consent to such withdrawal upon the request of Declarant.

- 10.4 Additional Covenants and Easements. – So long as Declarant owns any property described in Exhibit “A” or “B”, Declarant unilaterally may subject any portion of the property submitted to this Declaration to additional covenants and easements. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the subjection of the property and shall require the written consent of the owners of such property, if other than Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.
- 10.5 Effect of Filing Supplemental Declaration. – A Supplemental Declaration shall be effective upon Recording unless such Supplemental Declaration specifies a later date. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessments liability in accordance with the provisions of this Declaration.
- 10.6 Amendment. – This Article shall not be amended without Declarant’s consent so long as it owns any of the property described in Exhibit “A” or “B”.

ARTICLE XI: Development Rights and Protections
And other Declarant Rights

- 11.1 Reasonable Rights to Develop. –
- a. *Declarant and Declarant’s builders may be undertaking the work of constructing improvements to and upon the Community, including Units. Completion of the construction and the sale of the Units is essential to the establishment and to the welfare of Queens Harbor as a residential community.*
 - b. Therefore, so long as Declarant owns any property described in Exhibit “A” or “B”, and notwithstanding any other provision hereof, nothing in this Declaration or the other Governing Documents shall:
 - 1) Prevent Declarant, its builders, or their contractors or subcontractors from doing in Queens Harbor or on any Unit, whatever is necessary or advisable in connection with the commencement or completion of the above-described work, or the development of the Community;
 - 2) Prevent Declarant or its representatives from erecting, constructing, and maintaining on any part of Queens Harbor such structures as reasonably may be necessary for the conduct of units business of completing the work, establishing Queens Harbor as a residential community, and disposing of the Units by sale, lease, or otherwise;
 - 3) Prevent Declarant from maintaining signs and conducting activities on any part of Queens Harbor owned by Declarant or the Association and Declarant may deem to be reasonable necessary for the sale, lease, or disposition of Units; or
 - 4) Prevent Declarant from Placing and utilizing on Units or other property, which it owns, mobile trailers or temporary structures as sales offices or for construction activities.
- 11.2 Marketing and Sales Activities. – Declarant and all Persons authorized by Declarant may construct, relocate, and carry on upon and Unit Declarant owns or upon portions of the Common Area, such facilities and activities as may be requires, convenient, or incidental to the construction, marketing, sale, or re-sale of Units and any other Real Property in Onslow County, North Carolina. Such facilities and activities may include, without limitation, business offices, signs, model Units, and sales offices. There shall be no limit on the number or size of such facilities. Declarant and authorized Person shall have easements for access to and use of such facilities.

11.3 Declarant's Right of First Refusal. – Before an Owner may sell or transfer a Unit or other property within Queens Harbor to any third party, the Owner must, in addition to complying with Section 11.2 hereof, first offer the property to Declarant by giving written notice of :

- 1) The name(s) of such prospective purchaser(s); and
- 2) The terms and conditions on which the Owner is willing to sell or transfer the property; and
- 3) That Owner offers to sell the Unit or other property to Declarant on the same terms and conditions.

Declarant will have thirty- (30) -days after the date of receipt of such offer within which to notify the Owner that Declarant accepts the offer of the Owner on the same terms and conditions described in the notice to Declarant. If the Declarant accepts the offer of the Owner, the closing of such sale and transfer to Declarant will take place in Onslow County, North Carolina, pursuant to the terms of such offer. If Declarant does not accept the offer in writing within thirty (30) days after the date of Declarant's receipt thereof, the Owner may sell or transfer the property to said third party at the price and on substantially the terms and conditions stated in the offer to Declarant within one hundred twenty (120) days after the date of the offer to Declarant. At the end of said one hundred twenty (120) days, the right of the Owner to sell or transfer the property free from the right of first refusal hereby granted will terminate, and such shall apply to any subsequent proposed sale of transfer of the property by the Owner. Nothing in this Section shall be construed to relieve any Owner from compliance with Section 11.2.

11.4 Construction of Improvements. – So long as Declarant owns any of the property described in Exhibit "A" or "B", Declarant and its employees, agents, and designees, shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area, or and property adjacent to such Common Area, as it deems appropriate in its sole discretion. Every Person that acquires any interest in Queens Harbor acknowledges that Queens Harbor is a planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to changes in the Master Plan.

11.5 Right To Approve Additional Covenants. – So long as the Declarant owns any of the property described in Exhibit "A" or "B", no Person shall Record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's review and written consent. Any instrument Recorded without such consent shall be void and of no force and effect unless Declarant subsequently consents in a Recorded instrument.

11.6 Right to Transfer or Assign Declarant Rights. – Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; however, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless Declarant executes a written, recorded instrument. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety. In such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

11.7 Exclusive Rights To Use Name of Development. – No Person shall use the name "Queens Harbor" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Queens Harbor" in printed or promotional matter where such term is used solely to specify that particular property is located within Queens Harbor, and the Association shall be entitled to use the words "Queens Harbor" in its name.

11.8 Right to Approve Changes in Community Standards. – So long as Declarant owns property described in Exhibit "A" or "B", no amendment to or modification of any Rules and

Regulations or Architectural Guidelines or the other Governing Documents shall be effective without the Declarant's prior written approval.

11.9 Right to Inspect and Right to Correct. –

- a. Easement. – Declarant reserves for itself and such other Persons as it may designate perpetual non-exclusive easements throughout Queens Harbor to the extent reasonably necessary for the purpose of access, inspecting, testing, redesigning, or correcting any portion of Queens Harbor, including Units and the Area of Common Responsibility. Declarant shall have the right to redesign or correct any part of Queens Harbor, including Units and the Area of Common Responsibility.
- b. Right of Entry. – Entry into a structure on a Unit shall be only after Declarant notifies the Unit's Owner and agrees with the Owner regarding a reasonable time to enter the structures on such Unit to perform such activities, except in an emergency.
- c. Damage. – Declarant shall promptly repair any damage to a Unit or the Area of Common responsibility resulting from the exercise of the easement or right of entry described in subsections (a) and (b) of this Section at its own expense. The exercise of these easements shall not unreasonably interfere with the use of any Unit and entry onto any Unit shall be made only after reasonable notice to the Owner or Occupant.

11.10 Neighborhoods. –

- a. Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, during the Declarant Control Period, to establish separately developed residential "Neighborhoods", recreational and amenity areas, or some, all or none of these, within the Community, and to designate "exclusive Common Area" for the exclusive use of one or more, but less than all Neighborhoods. Every Unit situated within a designated Neighborhood may be subjected to additional or amended covenants, conditions, restrictions, and additional assessments for services provided to Units within such designated Neighborhood.
- b. Any Neighborhood may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or combination thereof, of Owners of a majority of the Units within the Neighborhood, the Association may, at its option, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment. Said Neighborhood Assessment shall be secured by a lien on the applicable Unit(s), which shall be enforceable in the same manner as the other assessments provided for in Article IX hereof.

11.11 Times to Begin Construction; Right of Repurchase. – The Owner of any Unit must begin construction of a dwelling on their Unit within thirty-six (36) months from the date of their purchase from Declarant. Declarant shall retain the right to extend the time to begin construction. Should an Owner fail to begin construction within the required time period, and then Declarant shall have the right to repurchase the Unit from the Owner on the same terms and conditions and at the same price paid in the original purchase from Declarant. This obligation shall run with the land and be binding upon subsequent purchasers of the Unit, with the time period being measured from the date of the original purchase from Declarant.

ARTICLE XII: Easements

12.1 Easements in Common Area. – Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- a. The Governing Documents and any other applicable covenants, as the same may be amended pursuant to Article XVII hereof;
- b. Any restrictions or limitations contained in any deed conveying an interest in such property to the Association;
- c. The Association's right to:
 - 1) Adopt and enforce rules regulating use and enjoyment of the Common Area;
 - 2) Dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
 - 3) Mortgage, pledge, or hypothecate any or all of its real or personal property, including the Common Area, as security for money borrowed or debts incurred, subject to the approval requirements set forth in this Declaration;
 - 4) Lease any portion of the Common Area for a period of up to five (5) years, including the right to grant concession(s) at any swimming pool or other Common Area,
 - 5) Change the Use of any Common Area, notwithstanding the designation of such use on any Recorded Plat, Master Plat, or other document. For instance, the Association shall have the right to change any area designated as "Open Space" on a Recorded Plat to another Use, so long as such use is for the common use and/or benefit of the Community.
 - 6) Amend this declaration as provided herein.
- d. Any Owner may extend the Owner's Right of use to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the Lease.

12.2 Easement of Encroachment. – Declarant (or the Association, after the end of the Declarant Control Period) shall have the right, at its option, to grant reciprocal appurtenant easements of encroachment, and for the maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

12.3 Easement to Serve Additional Property. –

- a. Declarant hereby reserves, so long as Declarant owns any of the property described in Exhibit "A" or "B", for itself and its agents, successors, assigns, and Mortgagees, an easement over the Common Area, including all private roads, for the purposes of enjoyment, use, access, and development of the property described in Exhibit "A" or "B", whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities thereon.
- b. Declarant hereby reserves, so long as Declarant owns any of the property described in Exhibit "A" or "B", for itself and its duly authorized agents successors, assigns, and Mortgagees and their agents, employees, designees, invitees, and guests, an easement over the Common Area for the purposes of enjoyment, use, access, and development of property located adjacent to Common Area and owned by Declarant, its successors, or assigns, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.