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STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR SOUTHWEST PLANTATION

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SOUTHWEST PLANTATION HOMEOWNERS (as may be amended or supplemented as set forth herein, "Declaration") is made this 14<sup>th</sup> day of August, 2007 by Carolina Investments, Inc., a North Carolina corporation, whose address is 966 Cypress Creek Road, Wallace, North Carolina, 28466 (the "Declarant").

WITNESSETH:

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

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

C. At the time of the conveyance of a Lot to an Owner, the Declarant intends to make available the common amenities on the Property, if any, as they are built, and, at the time of completed development, the entire Property, excluding the Lots and dedicated streets, if any, shall be conveyed without cost or charge to the Association.

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

## ARTICLE 1

### DEFINITIONS

Section 1.1 "Annual Organizational Board Meeting" means the annual organizational board meeting of the Board, which shall take place immediately after each Annual Meeting of the Members.

Section 1.2 "Annual Meeting" means the annual meeting of the Members held in Onslow County, North Carolina, within the last quarter of each calendar year, upon proper notice, at a date, time, and at a place from time to time designated by the Board. The first Annual Meeting of the Members shall be held within eighteen (18) months from the date of incorporation on such date as the initial Board shall determine.

Section 1.3 "Articles" or "Articles of Incorporation" shall mean those articles filed with the Secretary of State of North Carolina, incorporating Southwest Plantation Homeowners Association, Inc., as a nonprofit corporation under the provisions of North Carolina State law, as the same may be amended from time to time.

Section 1.4 "Assessments" means Regular Assessments, Special Assessments, Sewer Assessments, Working Capital Assessments, Individual Assessments and Fine Assessments. The Assessment for all Lots owned by Declarant shall be one-third (1/3) of the Assessment established for all Lots pursuant to Article V.

Section 1.5 "Association" shall mean and refer to SOUTHWEST PLANTATION HOMEOWNERS ASSOCIATION, INC., to be formed as a non-profit corporation, its successors and assigns.

Section 1.6 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.7 "Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.

Section 1.8 "Class A Members" shall mean as defined in Section 4.5.1 below.

Section 1.9 "Class B Members" shall mean as defined in Section 4.5.2 below.

Section 1.10 "Constituent Documents" shall mean the Declaration, the Bylaws, the Articles of Incorporation, and the Rules and Regulations, if any, and any other basic documents used to create and govern the Subdivision.

Section 1.11 "Common Areas" shall mean all the real estate (including retention ponds, storm drainage improvements, entrance signage, streets (including any dedicated streets prior to their acceptance for public maintenance), and all landscaping and other improvements thereon owned by the Association for the common use and enjoyment of the Owners. Common Areas shall include, but not be limited to, the Recreational Facilities and parcels designated on the Subdivision plat as such (unless such parks are later dedicated to the public by a subsequent dedication plat or conveyance), "Open Space," "Alley" (Private), "Common Area" or reserved as an access drive or private street.

Section 1.12(a) "Common Expenses" shall mean, refer to, and include all charges, costs, and expenses incurred by the Association for and in connection with the administration of the Subdivision, including, without limitation thereof, operation of the Subdivision, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Areas; the costs of any additions and alterations thereto; all labor, services, common utilities, materials, supplies, and equipment therefore; all liability for loss or damage arising out of or in connection with the Common Areas and their use; all premiums for hazard, liability, and other insurance with respect to the Subdivision; all costs incurred in acquiring a Lot pursuant to

judicial sale; and all administrative, accounting, legal, and managerial expenses. "Common Expenses" shall also include the cost of operation, maintenance, improvement, and replacement of any Recreational Facilities, including establishing reserves therefore. "Common Expenses" shall also include amounts incurred in replacing, or substantially repairing, capital improvements within the Common Areas of the Subdivision, including, but not limited to private road and parking lot resurfacing. "Common Expenses" shall also include the cost of operation, maintenance, improvements, and replacement of any sewage disposal and treatment system serving Southwest Plantation including establishing reserves therefore. "Common Expenses" shall also include all reserve funds or other funds established by the Association. "Common Expenses" shall be construed broadly.

Section 1.12 (b) "Sewer Assessment". In the event the Association is the Owner or Lessee of the sewage disposal system to be constructed to serve the Southwest Plantation property, A sewer assessment shall be levied against all Lot Owners, not otherwise exempt for such assessments, to pay for the operation, maintenance and replacement of the sewage disposal system as hereinafter provided. All Assessments for the operations, maintenance and replacement of the sewer disposal system shall be kept separate from all other Assessments. The Association may impose an Assessment on Lot Owner whether or not a dwelling is located thereon.

Section 1.13 "Declarant" shall mean and refer to Carolina Investments, Inc., a North Carolina corporation, its successors and assigns as a Declarant.

Section 1.14 "Default" shall mean any violation or breach of, or any failure to comply with, the Restrictions, this Declaration, or any other Constituent Documents.

Section 1.15 "Development Period" The period ending on the earliest of (a) twenty-five (25) years from the date this Declaration is recorded in the Register of Deeds; provided, that if Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond Declarant's control, then the aforesaid period shall be extended for the length of the delay plus an additional two (2) years upon written notice to the Association of such extension; or (b) the date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date so stated.

Section 1.16 "Dwelling Unit" shall mean and refer to the individual family living unit (single unit, townhomes or condominium units) on an individual Lot or specified parcel of land.

Section 1.17 "Fine Assessment" means the charge established by Section 5.5.2 of this Declaration.

Section 1.18 "Individual Assessment" means the charge established by Section 5.4 of this Declaration.

Section 1.19 "Lot" shall mean and refer to any parcel of land designated on the Plat upon which a Dwelling Unit has been or is to be constructed. The Declarant has initially created Lots in the Subdivision and has the right to establish additional Lots in accordance with the terms of this Declaration.

Section 1.20 (a) "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article IV below.

Section 1.20 (b) "Associate Members" Associate members of the Association shall be those persons who may live outside of Southwest Plantation but who receive sewer services from the Association as herein provided. Associate Members shall only be subject to sewer related assessments which shall be at the same rate as other members of the Association. Associate members shall have no vote on Association Matters. Associate members shall abide by all rules and regulations which may be established by the Association regarding use of the sewage disposal system.

Section 1.21 "Owner" shall mean and refer to the record owner, including Declarant, whether one or more persons or entities, of a fee simple title to any Lot located within the Subdivision.

Section 1.22 "Plat" shall mean and refer to the record plat of the Subdivision recorded by Declarant, as the same may be amended or supplemented by Declarant from time to time.

Section 1.23 "Planned Community Act" shall mean and refer to the North Carolina Planned Community Act, currently codified as Chapter 47F of the North Carolina General Statutes, as the same may be amended from time to time.

Section 1.24 "Property" or "Subdivision" shall mean and refer to that certain real estate described in Exhibit A and all other real estate that may be annexed into this Declaration and the Association by the Declarant.

Section 1.25 "Recreational Facilities" shall mean and refer to the common community and recreational facilities, if any, as may be located upon the Property and so designated. Declarant is not required by this provision to build any Recreational Facilities on the Property.

Section 1.26 "Sewage Collection and Treatment System" shall mean the sewage treatment facility and all matters incident thereto which will provide sewer service to the Lot Owners of Southwest Plantation. The Sewage Collection and Treatment System shall be owned or leased by the Association unless and until the ownership of the said system is transferred to a utility company or governmental body or agency.

Section 1.27 "Regular Assessment" and "Sewer Assessment" means the charge established by Article V & Article XIII of this Declaration.

Section 1.28 "Resident" shall mean and refer to any person, not an Owner, living in the Owner's Dwelling Unit, including, but not limited to, temporary guests and Tenants.

Section 1.29 "Restrictions" shall mean all covenants, conditions, restrictions, easements, charges, liens, and other obligations provided for in this Declaration, including, without limitation, all notices, rules and regulations issued in accordance with this Declaration.

Section 1.30 "Rules and Regulations" shall mean and include the rules and regulations made from time to time by the Board of Directors as provided in Section 4.3 below.

Section 1.31 "Special Assessment" means the charge established by Section 5.2 of this Declaration.

Section 1.32 "Tenant" means any person occupying any Lot pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

Section 1.33 "Working Capital Assessment" means the charge established by Section 5.3 of this Declaration.

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

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

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

### **ARTICLE III**

#### **PROPERTY RIGHTS IN COMMON AREAS**

**Section 3.1 Owner's Easements of Enjoyment.** Except as herein otherwise provided, each Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to his Lot. Each Tenant shall have a non-transferable right to use and enjoy the Common Areas, if any, which right shall terminate when such person ceases to have the status of a Tenant. Such rights and privileges shall be subject, however, to the following:

**Section 3.1.1** The right of the Board to suspend the right of any Owner or the privilege of any Resident to use such of the Common Areas that are recreational in nature as determined by the Board for any infraction of the Rules and Regulations relating to the Common Areas for a period not to exceed sixty (60) days for each such infraction, or for any non-payment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such non-payment or delinquency;

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

**Section 3.1.3** All applicable provisions of valid easements and/or agreements of the Association relating to the Common Areas, including, without limitation, the Roadway Declaration;

**Section 3.1.4** The right of the Association to grant permits, licenses, and public or private easements over Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; or

**Section 3.1.5** The right of Declarant or the Association to dedicate or convey portions of the Common Areas to applicable governmental authorities for park purposes.

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

**Section 3.3 Title to Common Areas.** The Declarant may convey by deed all Common Areas to the Association in fee simple absolute at any time. However, Declarant shall convey all common areas to the Association no later than after the final platting of all Lots (final phase) in the Subdivision. Any such conveyance shall be subject to taxes for the year of conveyance and to restrictions, conditions, limitations, and easements of record.

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

**Section 3.5 View Impairment.** Neither Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. Any express or implied easement for view purposes or for the passage of light and air are hereby expressly disclaimed.

### **ARTICLE IV**

#### **HOMEOWNERS ASSOCIATION**

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

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

Section 4.3 Rules and Regulations. By a majority vote of the Board of Directors, the Association may, from time to time, adopt, amend, and repeal Rules and Regulations with respect to all aspects of the Association's rights, activities, and duties under this Declaration. The Rules and Regulations may, without limitation, govern use of the Subdivision, including prohibiting, restricting, or imposing charges for the use of any portion of the Subdivision by Owners, Residents, or others, interpret this Declaration or establish procedures for operation of the Association or the administration of this Declaration; provided, however, that the Rules and Regulations shall not be inconsistent with this Declaration, the Articles, Bylaws, or the terms of the Roadway Declaration. A copy of the Rules and Regulations, as they may from time to time be adopted, amended, or repealed, shall be maintained in the office of the Association and shall be available to each Owner upon request.

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

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

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

Section 4.5.2 Class B Members. The Class B Member during the Development Period shall be the Declarant. The Class B Membership shall cease and be converted to Class A Membership upon the expiration of the Development Period.

Section 4.5.3 Voting. Each Member shall have one vote with respect to each Lot owned by such Member, but a Class A Member shall not be entitled to exercise any vote until the expiration of the Development Period. All votes by members during the Development Period shall be advisory only.

Section 4.6 Maintenance Obligations of the Association. The Association, at its expense, shall maintain, operate, and keep in good repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the Common Areas and all improvements located thereon for the common benefit of the Subdivision. This shall include, without limitation, the maintenance, repair, replacement, and painting of the following landscaping and improvements (to the extent that such improvements or landscaping are located upon or constitute Common Areas): (a) all private roadways, driveways, pavement, sidewalks, walkways, and uncovered parking spaces; (b) all lawns, trees, grass and landscape areas, shrubs and fences, except as otherwise set forth herein below; (c) the Recreational Facilities; (d) all conduits, ducts, utility pipes, plumbing, wiring, and other facilities which are part of or located

in, or for the furnishing of utility services including the sewer septic, collection and disposal system to the Lots and Common Areas.

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

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

Section 4.7.1 To clean, maintain, keep in good order, repair, and replace at his or her expense all portions of his or her Lot and Dwelling Unit. Any repair, replacement, and maintenance work to be done by an Owner must comply with any Rules and Regulations of the Association including architectural control and visual harmony. Any damage to a structure shall be either repaired or removed from the Lot by the Lot Owner within one-hundred twenty (120) days of said damage.

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

Section 4.7.3 Not to paint or otherwise alter, decorate, or change the appearance of any exterior portion of his Dwelling Unit, without the written consent of the Association.

Section 4.7.4 Not to impair the use of any easement without first obtaining the written consents of the Association and of the Owner or Owners for whose benefit such easements exists.

Section 4.7.5 Each Lot Owner shall be deemed to agree by acceptance of delivery of a deed to a Lot, to repair and/or replace at his or her expense all portions of the Common Areas which may be damaged or destroyed by reason of his or her own intentional or negligent act or omission, or by the intentional or negligent act or omission of any invitee, tenant, licensee family member, including, but not limited to any repairs necessary which result from damage incurred by pets or vehicles owned by the Lot Owner, or owned by any guest, invitee, Tenant, or licensee of such Lot Owner. To the extent that any Common Area is damaged as an insurable loss and the proceeds from the Association's insurance policy are utilized to pay for the loss, the Owner shall be responsible for payment of the deductible as an Individual Assessment in accordance with Section 5.4 and Section 7.7 below.

Section 4.8 Construction Defects. The obligations of the Association and of Owners to repair, maintain and replace the portions of the Subdivision for which they are respectively responsible shall not be limited, discharged, or unreasonably postponed by reason of the fact that any maintenance, repair, or replacement may be necessary to cure any latent or patent defects in materials or workmanship in the construction of the project. The undertaking of repair, maintenance, or replacement by the Association or Owners shall not constitute a waiver of any rights against any warrantor but such rights shall be specifically reserved. Likewise, this Section 4.8 is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by Association may be delayed if Association does not have the means or the funds to repair the defect or if by repairing the defect, Association would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

Section 4.9 Effect of Insurance or Construction Guarantees. Notwithstanding the fact that the Association and/or any Lot Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of a construction guarantee or insurance coverage shall not excuse any unreasonable delay by the Association or any Lot Owner in performing his obligation hereunder. Likewise, this Section 4.9 is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by

Association may be delayed if Association does not have the means or the funds to repair the defect or if, by repairing the defect, the Association would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

## ARTICLE V

### COVENANT FOR ASSESSMENTS

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

Section 5.1 (b) Sewer Assessment. Sewer Assessment for the payment of the operation, maintenance, and replacement of the sewage collection and disposal system shall be made in the manner provided herein and in the manner provided in the ByLaws of the Association.

Section 5.2 Special Assessment. In addition to levying Regular Assessments and to the extent that the reserve fund is insufficient, the Board of Directors may levy Special Assessments to construct, structurally alter, or replace improvements which are a part of the Common Areas, or a part of the sewer disposal and treatment facility provided that funds shall not be assessed for any capital improvement in excess of Ten Thousand and 00/100 Dollars (\$10,000.00) for any one item or in excess of Twenty Thousand and 00/100 Dollars (\$20,000.00) in the aggregate in any one calendar year ("Capital Expenditure Limit") without the prior written consent of two-thirds (2/3) of the votes of each Class of Members who are voting either in person or by proxy at a meeting duly called for such purpose or unless expressly stated in the annual budget. The Board of Directors shall have the authority to adjust the Capital Expenditure Limit annually to account for inflation, which adjustment shall be effective each January (hereinafter referred to as the "Adjustment Date") commencing January 1 of the next year following the year during which the sale of the first Lot by Declarant. As of each Adjustment Date, the Capital Expenditure Limit shall be increased from the Capital Expenditure Limit on the date of this Declaration ("Effective Date") by a percentage equal to the percentage increase, if any, in the Consumer Price Index, All Urban Consumers ("CPI-U"), (1982-1984=100), All Items, as compiled and published by the Bureau of Labor Statistics, U.S. Department of Labor ("CPI") from the Effective Date to the Adjustment Date. If after the date of this Declaration the CPI is converted to a different standard reference base or otherwise revised or ceases to be available, the determination of any new amount shall be made with the use of such conversion factor, formula, or table for converting the CPI as may be published by any other nationally recognized publisher or similar statistical information reflected by the Board. Until the expiration of the Development Period or the date on which Declarant no longer owns a Lot, whichever is earlier, Declarant shall be one of the consenting Members, or the capital improvement shall not be made. The Board of Directors shall calculate each Lot's proportionate share of the Special Assessment for the capital improvements, and shall give the Lot Owner(s) written notice of the proportionate share and of the date(s) that the Special Assessment is due and payable. Notwithstanding the foregoing, Declarant shall have no obligations to pay any Special Assessment with respect to any Lot owned by it unless there is a Dwelling Unit located upon the Lot that is occupied as a residence.

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



**Section 5.4 Individual Assessment.** In the event that the need for maintenance, repair, or replacement of any improvement on the Property for which the Association has the maintenance, repair and/or replacement obligation, is caused through the willful or negligent act of an Owner, his family, his pet(s), or Residents, the cost of such maintenance, repairs, or replacements shall be paid by such Owner. The Board shall have the maintenance, repair, or replacement done and the cost thereof shall be provided by the Board to said Owner and shall be paid by said Owner within thirty (30) days thereafter, unless an earlier date is otherwise set forth herein.

**Section 5.4.1 Empty Lot Assessment.** The Association may impose an annual empty lot assessment of \$150.00 against Lot owners who have not built on their Lot at the time of assessment. The purpose and use of the Assessment will be for mowing, policing and maintaining the vacant Lot. The amount of the Assessment may be increased by the Association but only in such amount as to pay for the actual cost of said mowing, policing or maintenance.

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

**Section 5.5.1** The monthly Regular Assessment and Sewer Assessment provided for herein shall commence as to each Owner of a Lot, except Declarant, on the first day following the initial conveyance of a Lot or Dwelling Unit to the Owner and shall be adjusted according to the number of days remaining in the month. The Board of Directors shall fix the amount of the monthly Regular Assessment and Sewer Assessment to be paid by each Class A Member against each Lot at the beginning of each calendar year. Notice of the monthly Regular Assessment and Sewer Assessment shall be sent to every Class A Member subject thereto by U.S. Mail or by electronic mail. The Board of Directors shall establish the due dates and whether payments are to be made monthly quarterly, etc.

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

**Section 5.5.3** Regular Sewer and Special Assessments for a Lot Owner shall be determined by the Association based upon the proportion that each Lot bears to the aggregate number of Lots located on the Property. The Association's governing body may, at its discretion, waive or reduce the amount of the Regular Sewage or Special Assessment for any year or part of a year for any Lot not occupied as a residence.

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

**Section 5.7 Common Surplus.** If the Regular Assessment collected in any given year is in excess of the actual Common Expenses for that year, the Board may, at its sole discretion (a) return each Owner's share of the Common Surplus; (b) credit each Owner's share of the Common Surplus to each Owner's payment as for the Regular Assessment for the following year; or (c) apply the Common Surplus to the reserve. All Sewer Assessments shall be kept in a separate account and those funds can not be used for any other purpose.

**Section 5.8 Assessment Certificate.** The Association shall, upon demand, at any reasonable time, furnish to any Owner liable for Assessments a certificate in writing signed by an

Officer or other authorized agent of the Association, setting forth the status of said Assessments; i.e., "current", and if not current, "delinquent" and the amount due. Such certificate shall be conclusive evidence of the payment of any Assessment therein stated to have been paid. A reasonable charge to cover labor and materials may be made in advance by the Association for each certificate.

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

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

If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest at a reasonable rate of fifteen percent (15%) per year or at such other reasonable rate set by Association in its minutes, not to exceed the maximum amount allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, in either of which events interest, costs, and reasonable attorneys' fees shall be added to the amount of each Assessment. No Owner may waive or otherwise escape liability for the Assessments by non-use or waiver of use of the Common Areas or by abandonment of his Lot.

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

Section 5.12 Disputes as to Common Expenses; Adjustments. Any Owner who believes that the portion of Common Expenses chargeable to his Lot for which an assessment lien has been filed by the Association has been improperly charged against his or her Lot may bring action in an appropriate court of law.

Section 5.13 Purchaser at Foreclosure Sale Subject to Declaration, Bylaws, Rules and Regulations of the Association. Any purchaser of a Lot at a foreclosure sale shall automatically become a Member of the Association and shall be subject to all the provisions of this Declaration, the Bylaws, and the Rules and Regulations.

Section 5.14 Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses. When the holder of a first mortgage or first deed of trust or other purchaser of a Lot acquires title to the Lot as a result of foreclosure of the first mortgage first deed of trust or by deed in lieu of foreclosure, such acquirer of title, his successors or assigns, shall not be solely liable for the share of the Common Expenses or other Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to the Lot by such acquirer, other than Assessments for which a claim of lien has been docketed with the Onslow County Clerk of Superior Court prior to the recordation of the lien being foreclosed. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Lots, including that of such acquirer, his successors or assigns. This provision shall not relieve the party acquiring title or any subsequent Owner of the subject Lot from paying future Assessments.

Section 5.15 Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Lot, any grantee or his or her first mortgagee shall inform the Board of Directors in writing of such contemplated conveyance and such grantee or first mortgagee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of all unpaid Assessments (including current Assessments) against the grantor due the Association. Neither the grantee nor the mortgagee shall be personally obligated for any delinquent Assessments, but such delinquent Assessments, along with interest, late charges, costs, and reasonable attorneys fees shall be a lien against the Lot in accordance with Section 5.10 and Section 5.11 herein.

Section 5.16 Late Charges. The Association may impose a charge against any Lot Owner who fails to pay any amount assessed by the Association against his Lot within ten (10) days after such Assessments are due and payable and who fails to exercise his rights under this Declaration or under the laws of the State of North Carolina to successfully contest such Assessment. The amount of the late charge shall be the greater of (a) twenty and 00/100 Dollars (\$20.00), or (b) twenty percent (20%) of the delinquent amount, or such other amount as may be determined by the Association from time to time. Additionally, if a Lot Owner shall be in Default in payment of an installment upon an assessment or of a single monthly assessment, the Association has the right to accelerate all monthly Assessments remaining due in the current fiscal year. The total of such Assessments, together with the delinquent Assessments shall then be due and payable by the Lot Owner no later than ten (10) days after the delivery of written notice of such acceleration to the Lot Owner or twenty (20) days after mailing of such notice to him by certified mail, whichever occurs first. If such acceleration amount is not paid by the due date the above-described late charge may be imposed on the part of such accelerated amount not paid by the due date.

Section 5.17 Miscellaneous.

Section 5.17.1 The Association may change the interest rate due on delinquent Assessments (including any late charges), except that the rate cannot be changed more often than once every six (6) months. As of its effective date, the new interest rate will apply to all Assessments then delinquent.

Section 5.17.2 The Owner has the sole responsibility of keeping the Association informed of the Owner's current address if different from the Lot owned. Otherwise notice sent by Association to the Lot is sufficient for any notice requirement under this Declaration.

Section 5.17.3 The lien under this Article V arises automatically and no notice of lien need be recorded to make the lien effective.

Section 5.17.4 The Assessment lien includes all collection costs, including demand letters, preparation of documents, reasonable attorneys' fees, court costs, filing fees, collection fees, and any other expenses incurred by the Association in enforcing or collecting the Assessment.

Section 5.17.5 Any Assessment otherwise payable in installments shall become immediately due and payable in full without notice upon Default in the payment of any installment. The acceleration shall be at the discretion of the Board.

Section 5.17.6 No Owner of a Lot may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Lot.

Section 5.17.7 This Section 5.17 applies to every type of Assessment.

Section 5.18 Declarant Obligation for Assessments. During the Development Period, Declarant may annually elect either to pay (i) the annual Assessment attributable to all of its unsold platted Lots or (ii) the shortage for such fiscal year. The "shortage" shall be the difference between

(a) the amount of all income and revenue of any kind received by the Association, including but not limited to, assessments collected on all other Lots, use fees, advances made by Declarant, and income from all other sources, and

(b) the amount of all actual expenditures incurred by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds. Calculation of the shortage shall be performed on a cash basis of accounting. Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

The Association is specifically authorized to enter into subsidy contract or contracts for "in kind" contribution of services, material, or a combination of services and materials with Declarant or other entities for payment of Common Expenses. After termination of the Development Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

## **ARTICLE VI**

### **EASEMENTS AND ENCUMBRANCES**

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

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

**Section 6.3 Utility Easements.** Easements are reserved and/or granted hereby in favor of the Declarant and/or the Association through each Lot (provided that such easements shall not materially and unreasonably interfere with the use of any dwelling located upon any Lot) and the Common Areas for the purpose of installing, laying, maintaining, repairing, and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power, or communication lines, equipment, or other components throughout the Common Areas. Without limiting any other provision in this Article 6, it is understood that Declarant's easement rights reserved herein may be utilized for the benefit of property within or outside of the Subdivision. In addition, the Declarant and/or the Association may use the Utility Easement for the creation of a sidewalk / or walking trail along the front, side, and/or back of any Lot in the Subdivision. Each Lot Owner and/or his respective mortgagee by acceptance of a deed conveying such ownership interest and each mortgagee encumbering such ownership interest, as the case may be, hereby irrevocably appoint Declarant or the Association, as the case may be, as his attorney in fact, coupled with an interest, and authorize, direct, and empower such attorney, at the option of the attorney, to execute, acknowledge, and record for and in the name of such Lot Owner and his mortgagee, such easements or other instruments as may be necessary to effect the purpose of this Section 6.3. The easements may be assigned and/or granted by the Declarant and/or the Association to any utility or service company.

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

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

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

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

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

Section 6.9 Roadway Easement. Declarant hereby reserves for the benefit of all Lot Owners the non-exclusive right of ingress and egress on, over, and across all public and private roadways (the "Roadways") located on or to be located on a portion of the Subdivision which private roadways extend between one or more publicly dedicated streets. Roadways (other than those (if any) that have been accepted by applicable governmental authorities for maintenance, constitute Common Areas and shall be maintained, insured, and repaired by the Association in accordance with this Declaration and the Roadway Declaration. Homeowners Association shall have any responsibility for the costs of maintaining, and insuring. The Declarant hereby reserves the right (but not the obligation), in its sole discretion, to annex additional Roadways into the Subdivision. Notwithstanding the foregoing to the contrary, no part of the Roadway shall be dedicated or transferred to a unit of local government without acceptance by the unit of local government involved.

Section 6.10 Declarant's Easements: General. The easements and grants reserved for and granted to the Declarant also benefit and bind any heirs, successors, or assigns of Declarant and their respective guests, invitees, or lessees, including, without limitation, assignees of Declarant who do not own property within Southwest Plantation.

Section 6.11 Easements to Run with Land. All easements and rights described in this Article VI are easements appurtenant, running with the land, perpetually in full force and effect,

and at all times shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Owner, purchaser, mortgagee, and other person or entity now or hereafter having an interest in the Subdivision, or any part or portion of it.

Section 6.12 Reference to Easements and Deeds. Reference in the respective deeds of conveyance or any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees, and trustees in said instruments as fully and completely as those such easements and rights were recited fully and set forth in their entirety in such instruments.

Section 6.14 Golf Course Drainage Easement. Drainage and utility easements are hereby reserved by Declarant for the use and benefit of the property known as Bear Trail Golf Course. Declarant shall have the right to convey said easements to subsequent owners of the Bear Trail Golf Course property.

Section 6.15 Declarant Easement. If any encroachment shall occur subsequent to subjecting the Property to this Declaration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding utilities, grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 6.16 Emergencies Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot that endangers any building or any portion of the Common Elements.

Section 6.17 Declarant Shall Grant Rights of Ingress, Egress and Regress to Others. The Declarant, for itself and the Association, reserves the right to grant onto property owners of properties adjacent to or near Southwest Plantation, the right of ingress, egress and regress through Southwest Plantation as it now exists or as it may be expanded as set forth herein. The Declarant and/or the Association, may cause any and all roads constructed in The Southwest Plantation development, or which may be constructed, to become a servient estate to other real property for the purpose of ingress, egress and regress to said dominate estate property. The Declarant may grant said easements without the consent of the Association, except these easements must be granted within 20 years after the date of this instrument. For example, certain easement rights have been or will be granted by Declarant to the adjacent property owners. All Members shall abide by and will not interfere with any easement rights granted by Declarant to others. Declarant hereby creates no obligation to grant any easement rights but merely reserves the ability to do so.

## ARTICLE VII INSURANCE

Section 7.1 General Insurance. In addition to such insurance as is required to be maintained by the Association pursuant to the Roadway Declaration and the Recreational Facilities Easement Agreement, the Association shall carry a master policy of fire and extended coverage, vandalism, malicious mischief, and liability insurance, and if required by law, workmen's compensation insurance with respect to the Subdivision and the Association's administration thereof in accordance with the following provisions:

Section 7.1.1 The Association shall purchase a master policy for the benefit of the Association, the Lot Owners, and their mortgagees as their interest may appear, subject to the provisions of this Declaration and the Bylaws. The "master policy" may be made up of several different policies purchased from different agencies and issued by different companies.

Section 7.1.2 All Common Areas now or at any time hereafter constituting a part of the Subdivision shall be insured against fire and other perils covered by a standard extended coverage endorsement in an amount not less than one hundred (100%) percent of the replacement value thereof with a deductible agreed to by the Board of Directors, exclusive of the cost of the land, foundations, footings, excavation, and architect's fees, without deduction for depreciation. The policy shall have cost of demolition, water damage (excluding floods,

backing up of sewers and drains, the running off of surface water, and the overflow of a body of water), and an agreed amount of endorsements and a deductible on any single loss or group of losses within one year in such amounts as shall be found reasonable by the Board of Directors, after carefully considering and comparing the increased premium costs resulting from a low deductible with the lower premium costs but higher per loss risk resulting from a high deductible, together with all other pertinent factors. The policy providing such coverage shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Such policy shall provide coverage for built-in fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement cost thereof (subject to the deductible provisions described above) and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Lot Owner as hereinafter permitted. Such policy shall also contain either a waiver by the insurer of any increased hazard clause, a severability of interest endorsement, or a provision stating that the coverage will not be affected by the act, omission, or neglect of any person unless such act, omission, or neglect is within the knowledge and control of the Association prior to the occurrence of the loss. Such policy shall not provide coverage for any items of personal property owned by any Lot Owner.

Section 7.1.3 Such master policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice to the Association and to any mortgagee or mortgagees of any Lot Owner who may request the same not less than thirty (30) days prior to any expiration, substantial modification, or cancellation of such coverage.

Section 7.1.4 Such insurance by the Association shall not prevent an Owner of a Lot to obtain insurance on its own property, but no Lot Owner may at any time purchase individual policies of insurance covering any item which the Association is required to insure. If any Lot Owner does purchase such a policy, he shall be liable to the Association for any damages, expenses, or losses which it suffers or incurs as a result thereof, and the Association shall have the same lien rights provided by Article V hereof for Common Expense payments with respect to any such damages, expenses, or losses not paid to it by such Owner.

Section 7.1.5 The Board of Directors shall review the insurance coverage required under this Section 7.1 at least annually, and if any of such insurance coverage becomes impossible or impractical to obtain, the Association shall obtain coverage that most closely approximates the required coverage with the deductible provisions as determined by the Board of Directors. In any event, all such insurance must comply, at a minimum, with the applicable requirements set forth in the North Carolina Planned Community Act.

Section 7.1.6 If the required insurance coverage under this Section 7.1 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Subdivision may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association, they shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Subdivision, and they shall be due and payable to the mortgagee by the Association immediately. The repayment of this obligation shall be secured by a Special Assessment against all Lot Owners under Article V of this Declaration and shall not require a vote of the Members of the Association, anything to the contrary in this Declaration notwithstanding.

Section 7.1.7 The Association shall also maintain liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas. The Association shall try to have its liability insurance contain cross-liability endorsements or appropriate provisions to cover liability of the Lot Owners, individually and as a group (arising out of their ownership interest in the Common Areas), to another Lot Owner.

Section 7.2 Fidelity Insurance. The Association must have fidelity coverage against dishonest acts on the part of Officers, Members of the Association, Members of the Board, trustees, employees or volunteers responsible for the handling of funds collected and held for the benefit of the Lot Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no

event less than the insured's total Regular Assessment, plus all accumulated reserves and all other funds held by the Association either in its own name or for the benefit of the Lot Owners.

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

Section 7.4 Premiums. All premiums upon insurance purchased by the Association shall be Common Expenses. Notwithstanding the foregoing, the Lot Owners may be responsible for certain deductibles to the insurance policies purchased by the Association as outlined in Section 7.1 and Section 7.7 herein.

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

Section 7.6 Power of Attorney. Each Lot Owner shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of the master policy or any other insurance policy obtained by the Association. Without limitation on the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefore, to collect proceeds and to distribute the same to the Association, the Lot Owners, and their respective mortgagees as their interest may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Lot Owners and the Subdivision as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters.

Section 7.7 Responsibility of Lot Owner. The Association shall not be responsible for procurement or maintenance of any insurance covering any Lot or Dwelling Unit, or the contents thereof, nor the liability of any Lot Owner for injuries not caused by or connected with the Association's operation, maintenance, or use of the Common Areas or other property located in the Subdivision. Each Lot Owner shall, at his or her own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of, or occurring, within his Lot or Dwelling Unit. In addition, each Lot Owner shall maintain fire and extended coverage insurance on his Dwelling Unit, and the contents of his Dwelling Unit. The Association may request the Lot Owner to provide a copy of the policy(s) to the Association evidencing this insurance coverage at any time. Any damage structure shall be either repaired or removed from a Lot by the Lot Owner within one hundred twenty (120) days of said damage.

Each Lot Owner agrees that if any Owner(s) damage(s) a building or other improvements now or at any time hereafter constituting a part of the Common Areas of the Subdivision which is covered under the Association's insurance policy, the Owner(s) causing such damage shall be responsible for paying the lesser of: (a) the insurance deductible due under the Association's insurance policy; or (b) the cost to repair and/or replace any damage to a building or other improvements, which amount shall be due within ten (10) days after the delivery of written notice of such deductible due or replacement/repair costs by the responsible Lot Owner(s) or twenty (20) days after mailing of such notice by certified mail, whichever occurs first. In the event a Lot Owner refuses or fails to pay the insurance deductible or replacement/repair costs in the time period provided in the preceding sentence, the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such Owner as an Individual Assessment, which shall be due and payable following seven (7) days written notice.



Section 7.8 Release. All policies purchased under this Article VII by either the Association or the individual Lot Owners shall provide for the release by the issuer, thereof, of any and all rights of subrogation or assignment and all causes and rights of recovery against any Lot Owners, members of their family, their employees, their tenants, servants, agents, guests, the Association, any employee of the Association, the Board, or any occupant of a Dwelling Unit in the Subdivision, for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under the insurance policy.

Section 7.9 Approximate Coverage. If any of the required insurance coverage under this Article VII becomes or is impossible to obtain or can be obtained only at an unreasonable cost, the Association shall obtain coverage which most closely approximates the required coverage, if such substitute insurance is available.

Section 7.10 Additional Policy Requirements. All such insurance coverage obtained by the Association shall be written in the name of the Association, for the use and benefit of the Association, the Lot Owners, and their mortgagees, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

Section 7.10.1 Exclusive authority to adjust losses under policies in force on the Subdivision obtained by the Association shall be vested in the Association provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

Section 7.10.2 In no event shall the insurance coverage obtained by the Association hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

Section 7.10.3 All casualty insurance policies shall have an agreed amount endorsement with an annual review by one or more qualified persons.

Section 7.10.4 The Association shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

Section 7.10.4.1 a waiver of subrogation as discussed in Section 7.3;

Section 7.10.4.2 that no policy may be canceled, invalidated, or suspended on account of the acts of any one or more individual Owners;

Section 7.10.4.3 that no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee; and

Section 7.10.4.4 that any "other insurance" clause in any policy exclude individual Owner's policies from consideration.

## ARTICLE VIII

### ASSOCIATION

Section 8.1 Association. The administration of the Subdivision shall be vested in the Association. The Owner of any Lot, upon acquiring title, shall automatically become a Member of the Association and shall remain a Member until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association shall automatically cease. The Association shall have full power and responsibility to administer, operate, sustain, maintain, and govern the Subdivision including, but not limited to, the powers and responsibilities to make prudent investments of funds held by it, to make reasonable Rules and Regulations, to borrow money, to make Assessments, to bring lawsuits and defend lawsuits, to enter into contracts, to enforce all of the provisions of this Declaration, the Bylaws, and any

other documents or instruments relating to the establishment, existence, operation, or alteration of the Subdivision. The powers of the Association shall be construed liberally and shall include, without limitation, all of the powers set forth in *Section 47F-3-102* of the Planned Community Act. In addition, the Association shall have the authority to provide or contract for trash removal, lawn care, maintenance service, and all other services for the Lots or a portion thereof within the Subdivision and to charge or impose assessments for these services.

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

Section 8.3 Limitations on Association's Duties.

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

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

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

## ARTICLE IX

### HARMONY ENVIRONMENTAL CONTROLS

Section 9.1 Architectural Control Committee ("ACC"). Except for original, ongoing, and future construction performed by or on behalf of Declarant or as otherwise in these covenants provided, no building, fence, electric pet fence, sidewalk, drive, mailbox, or other structure, or improvement or anything attached thereto visible from the outside of the structure or improvement (including, without limitation, storm doors, windows, drapes, or window coverings) shall be erected, placed, altered, or maintained within the Subdivision nor shall any exterior addition to or change (including any change in color) or alteration therein be made until the proposed building plans, specifications, exterior color and finish, plot plans (showing the proposed location of such building or structure, drives, and parking areas), general contractor and all subcontractors, and construction schedule shall have been submitted to and approved in writing by the Board of Directors of the Association, or by any architectural control committee appointed by said Board of Directors. Refusal of approval of plans, location, or specification by said Board of Directors or architectural control committee may be based upon any reasonable ground, including, without limitation, lack of harmony of external design, color, location, or relation to surrounding structures and topography and purely aesthetic considerations which, in the discretion of said Board of Directors or architectural control committee shall deem sufficient. After approval by the Board of Directors or architectural control committee is given, no alterations may be made in such plans except by and with their prior written consent. Two copies of all plans, specifications, and related data shall be furnished the Board of Directors or architectural control committee for its records.

Section 9.2 Development Standards. The Committee is empowered to publish or modify from time to time, design and development standards for the Properties, including, but not limited to, standards for the following ("Standards"): (i) architectural design of Improvements, including, but not limited to, design standards for any Dwelling or other Improvement constructed upon a Lot, (ii) fences, walls, and similar structures, (iii) exterior building materials and colors, (iv) exterior appurtenances relating to utility installation, (v) signs

and graphics, mailboxes, satellite dishes, and exterior lighting, (vi) decks, pools, pool decks, side yards, and related height bulk and design criteria, (vii) pedestrian and bicycle ways, sidewalks, and pathways, and (viii) all buildings, landscaping, and Improvements on lands owned or controlled by the Association. After the Termination of Declarant Control, Standards promulgated by the Committee shall be subject to approval of the Board. After the Board of Directors approval, a copy of the Standards will be made available to all Members.

**Section 9.3 Requirement of Committee Approval.** No Improvement shall be erected, placed, or maintained, and no addition, alteration, modification, or change to any Improvement shall be made without the prior written approval of the Committee. For purposes of this Declaration, Declarant Improvements means any Improvement erected, placed, or maintained with the approval of Declarant, including, without limitation, any building, wall, fence, swimming pool, or screened enclosure, constructed, installed, or placed by or with the approval of Declarant prior to the Termination of Declarant Control (collectively, "Declarant Improvements"). Notwithstanding anything to the contrary contained above, Declarant Improvements are not subject to the approval of the Committee and are deemed to conform to the plan of development for the Properties.

**Section 9.4 Obtaining Committee Approval.** In order to obtain the approval of the Committee, two complete sets of plans and specifications ("Plans") and appropriate forms for proposed Improvements shall be submitted to the Committee for its review. The Committee shall have the right to charge a reasonable fee, not to exceed \$500.00, for reviewing the Plans and/or Submissions and processing each application for approval of proposed Improvements. The Plans shall include, as appropriate, the proposed location, grade, elevations, shape, dimensions, exterior color plans, approximate costs, and nature, type, and color of materials to be used. The Committee may also require the submission of additional information and materials as may be reasonably necessary for the Committee to evaluate the proposed Improvement or alteration ("Submissions"). The Committee shall have the right to refuse to approve any proposed Plans which, in its sole discretion, are not suitable or desirable. Any and all approvals or disapprovals of the Committee shall be in writing and shall be sent to each respective Owner submitting same. In the event the Committee fails to approve or to disapprove in writing any Plans and/or Submissions after (i) submission to the Committee of the last item of the Plans and Submissions requested by the Committee, so that the Committee has a complete package of all Plans and Submissions requested by the Committee, and (ii) thirty (30) days have elapsed since submission and written request for approval or disapproval was delivered to the Committee by the Owner, then said Plans and Submissions shall be deemed to have been approved by the Committee provided, however, that no Improvement shall be erected or shall be allowed to remain which violates any conditions or restrictions contained in this Declaration, or which violates any applicable zoning or building ordinance or regulation. The approval by the Committee relates only to the aesthetics of the Improvements shown on the Plans and Submissions and not to their sufficiency or adequacy. Each Owner shall be responsible for obtaining all necessary technical data and to make application to and obtain the approval of the appropriate governmental agencies prior to commencement of any construction. The Committee shall also have the right to require a deposit of up to \$1,000 from a Lot Owner prior to the start of construction to insure that no damage is done to common areas during construction. The deposit shall be returned to the Lot Owner once construction is completed and verification that no damage has been done to the common areas of the Association and that no violations of the Development Standards have occurred.

**Section 9.5 Scope of Review.** The Committee shall review and approve or disapprove all Plans and Submissions solely on the basis of aesthetic standards as to the aesthetic quality of materials and workmanship to be used, suitability, and harmony of location, structure, and external design in relation to surrounding topography and structures, and the overall benefit or detriment which would result to the immediate vicinity and to the Properties as a whole, and any other factors deemed relevant to the review by the Committee in its opinion, reasonably exercised. The Committee shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, color schemes, exterior finishes, materials, and similar features, and shall not be responsible for reviewing, nor shall its approval of any Plans be deemed approval of any design or plan from the standpoint of structural safety or conformance with building or other codes.

**Section 9.6 Variance from Standards.** The Committee may authorize in a reasonable manner so as not to destroy the general scheme or plans of the development of the Subdivision, variances from compliance with any Standards which it has promulgated pursuant to its authority when circumstances such as topography, natural obstructions, hardship, aesthetics, or environmental considerations may require. If any such variances are granted, no violation of the restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to that particular property and particular provision hereof, or

Standards promulgated hereby which are covered by the variance. Such variance shall be evidenced in writing.

Section 9.7 Enforcement. There is specifically reserved onto the Committee the right of entry and inspection upon any Lot or other portion of the Properties for the purpose of determination by the Committee whether there exists any Improvement which violates the terms of any approval by the Committee or the terms of this Declaration. Except in emergencies, any exercise of the right of entry and inspection by the Committee hereunder should be made only upon reasonable notice given to the Owner of record at least twenty-four (24) hours in advance of such entry. The Association, acting pursuant to the direction of the Committee, is specifically empowered to enforce the provisions of this Declaration (including all Development Standards) by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any Improvement, or to remove any unapproved Improvements, the prevailing party in such litigation shall be entitled to recover all attorney's fees and court costs incurred in connection therewith. The Association shall indemnify and hold harmless any member of the Committee from all costs, expenses, and liabilities, including attorneys fees, incurred by virtue of any member's service as a member of the Committee, provided such member acted in good faith and without malice.

Section 9.8 Subcommittees and Delegation of Authority. The Committee may establish subcommittees for the purpose of acting on behalf of the Committee with respect to similar circumstances, situations, or types of Improvements, such as a subcommittee which would deal with modifications of existing Improvements or additional new Improvements ancillary to an existing Dwelling, in contrast to the construction of Initial Improvements upon a previously unimproved Lot. All rights and powers of the Committee may be delegated to such subcommittee with regard to the subject matter of the subcommittee. The rights and powers of the Committee may be assigned to a management company, an architect, design professional, or other entity, or any portion of such rights and powers applicable to a particular subcommittee or area of similar circumstance may be so assigned.

## ARTICLE X

### USE RESTRICTIONS

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

Section 10.2 Purpose of Subdivision. Except as otherwise provided in this Declaration, no part of the Subdivision shall be used for other than housing and the common recreational purposes for which the property was designed, and each Lot shall be used only for residential purposes, unless the Board of Directors or Declarant authorizes some other use. Except for the construction, sales, and management activities (including without limitation, the right of Declarant to maintain one or more model Dwelling Units, or sales offices) of the Declarant, no business, trade, industry, occupation, or profession of any kind, whether for profit or not for profit, may be conducted, maintained, or permitted on any part of the Subdivision property. To the extent permitted by law, an Owner may use a portion of his Dwelling Unit for an office or studio (other than a music and/or dance studio) provided that the activities conducted therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant, and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Subdivision or in and out of said Owner's Lot. Nothing contained herein shall prohibit Declarant or its assigns from using a Lot as a street.

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

Section 10.4 Parking. Except for vehicles being used by persons providing services to the Declarant, the Association, the Lot Owners, or otherwise used or authorized to be used at the Subdivision by the Declarant, no part of the Subdivision may be used for the parking of any trailer coach, house trailer, mobile home, automobile trailer, motorcycle, camp car, recreational vehicle, camper, truck which exceeds 1 ton, boat, boat trailer, or any vehicle with letters or other markings over four inches tall or wide, or any other similar vehicle (collectively, "Special Vehicles"), unless such Special Vehicles are parked in the garage of the Lot Owner who owns such Special Vehicle and the garage door of such Lot Owner is completely closed at all times when a Special Vehicle is parked therein. Operative vehicles, other than Special Vehicles, used by a resident of a Lot as a primary source of transportation may be parked in the driveway of

such Lot Owner or in any garage space owned by the Owner of such Lot. However, the residents of any one Lot may not collectively park more than four (4) operative vehicles other than Special Vehicles in the Subdivision. Inoperative vehicles may not be parked within the Subdivision unless these inoperative vehicles are parked in the garage and the garage door is completely closed. No auto maintenance and/or repairs may be performed (unless such repairs can be completed in one day) on the Subdivision except if performed inside the garage of a Lot Owner. Vehicles, whether owned by a Lot Owner or not, parked in violation of any part of this Declaration or in violation of any Rules or Regulations, shall be towed away and stored at the Owner's risk and expense. By parking in the Project, the Owner of the vehicle or other vehicle user hereby waives any claim against the Association resulting directly or indirectly out of the towing, unless the towing can be shown beyond a reasonable doubt to have been done maliciously by the Association. Note that the Association is not obliged to try to determine the owner of a vehicle and first give notice, before towing the vehicle. If a Lot Owner is not sure about the right to park at any particular area or space, the Lot Owner should request, in writing, a written opinion from the Board. If the Board gives the approval sought by the Lot Owner or if the Board does not answer the written request by the Board, the Lot Owner may park in the space until further written notice to the contrary from the Board. Note that the Association's right to tow a vehicle includes the right to immobilize it. Declarant may however designate a Lot or parcel within Subdivision for the parking or storage of those items herein above prohibited.

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

Section 10.6 Exterior Surfaces of Buildings. Lot Owners shall not cause or permit anything to be hung or displayed on the inside or outside of windows (except as provided herein) or hung on the outside of the Dwelling Unit doors (including but not limited to decorative door arrangements) or placed on the exterior walls of a building, and no sign (other than those described in Section 10.11 hereof and directional signs or signs concerning the use of the Common Areas), awning, canopy, flag (except the American flag of a normal size attached to a home), shutter, or radio or television antenna shall be affixed to or placed upon the exterior walls, roof, or any part of the building or Common Areas without the prior written consent of the Association. Subdivision for the parking or storage of those items herein above is prohibited. Unless otherwise approved in writing by the Association, Lot Owners shall not cause or permit any curtains, shades, or other window coverings to be hung inside or outside any windows, doorways, and/or patio doors which will show any color on the outside other than white or beige tones.

Section 10.7 Animals and Pets. No animals or snakes of any kind shall be raised, bred, or kept on any Lot or in any Dwelling Unit or in the Common Areas, except that two dogs, two cats or one of each, or two other household pets may be kept in a Dwelling Unit, subject to the Rules and Regulations, provided that it is not kept, bred, or maintained for any commercial purpose, and that it is kept subject to the Rules and Regulations of the Association. Dogs, cats, or other household pets must be kept within the confines of the Owner's Dwelling Unit except when being held on hand leash by the pet owner of the animal or in a fence that has been approved by the ARC for the animals. No Lot Owner shall install a fence and/or electric fence on any portion of the Common Area without the prior written consent of the Board. No pet may be "staked", housed, tied up or otherwise left in any Common Area. A Lot Owner shall be responsible for cleaning up after his household pet. Notwithstanding the above, the Association shall have the right to promulgate Rules and Regulations pertaining to the size, number, and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pets. Additionally, the right of an occupant to maintain an animal in a Dwelling Unit shall be subject to termination if the Board in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Subdivision or occupants. No dog house or other structure used or intended for the housing or keeping of animals may be constructed, placed, or maintained on any part of the Common Areas.

Section 10.8 Nuisances. No noxious or offensive activity shall be carried on in any Dwelling Unit or in the Common Areas or on the Lot of an Owner, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Lot Owners or occupants.

Section 10.9 Impairment of Structural Integrity of Building. Nothing shall be done in any Dwelling Unit, on any Lot, or in, on, or to the Common Areas which will impair the structural integrity of any building or which, absent the prior written approval of the Board, would structurally change any building.

**Section 10.10 Laundry or Rubbish and Open Fires in Common Areas and Facilities.** No clothes, sheets, blankets, laundry of any kind, or other articles shall be hung out or exposed on any part of the Common Areas, or on any Lot in a manner visible from any Common Area, neighboring Lot, or street. The Common Areas shall be kept free and clear of rubbish, debris, and other unsightly materials. All trash, garbage, or other rubbish shall be deposited only in covered sanitary containers as provided in Section 10.14 below. No open fires shall be permitted on any part of the Subdivision other than fires in charcoal grills or other similar cooking devices located upon Lots, grills, or similar devices (if any), owned by the Association and constituting a portion of the Recreational Facilities, provided the use of such devices does not violate any local governmental rules or regulations.

**Section 10.11 Prohibited Activities.** Except as otherwise provided in this Declaration, no business, trade, industry, occupation, or profession of any kind, whether for profit or not for profit, shall be conducted, maintained, or permitted on any part of the Subdivision except for areas or Lots designated as commercial Lots or areas on the recorded plat. This provision shall not prohibit a home occupation with little or no public traffic. The Board or Declarant may allow one "For Sale" sign provided the maximum size does not exceed 24" x 30" and is set back at least 15' from the roadway. Declarant and/or the Board shall have the right to immediately remove and dispose of those items in violation of this Declaration. The right is reserved by the Declarant to use any such unsold or unoccupied Dwelling Units or other structures in the Subdivision as models and/or offices in connection with the construction, sale or rental of Dwelling Units. So long as the Declarant owns a Lot, no action may be taken nor may any Rule or Regulation be adopted or amended that would (a) directly or indirectly alter the exterior appearance of any part of the Subdivision; (b) reduce or discontinue any maintenance standard or practice in effect as of the date when the Declarant no longer controls the Board; (c) adversely affect the Declarant's sale or leasing of any Lots; or (d) otherwise adversely affect the Declarant, any of its rights, or any Lot owned by it without, in each case, first obtaining the Declarant's written consent.

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

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**Section 10.13 Rental of Lots.** All leases of any Dwelling Unit shall be in writing and shall provide that they are subject to all of the provisions of the Declaration, the Bylaws, and the Rules and Regulations and that any failure by the lessee to comply with any of such provisions shall constitute a default under the lease. A copy of each such lease shall be given to the Declarant and the President of the Association immediately after it is executed.

If any lessor or lessee is in violation of any of the provisions of the foregoing documents, the Association may bring an action in its own name and/or in the name of the lessor to have the lessee evicted and/or to recover damages. If the Court finds that the lessee is or has violated any of the provisions of the Declaration, the Bylaws, or the Rules and Regulations, the Court may find the lessee guilty of forcible detainer notwithstanding the facts that the lessor is not a party to the action and/or that the lessee is not otherwise in violation of lessee's lease or other rental agreements with lessor. For purposes of granting the forcible detainer against the lessee, the Court may consider the lessor a person in whose name a contract (the lease or rental agreement) was made for the benefit of another (i.e., the Association). The remedy provided by this Section 11.13 is not exclusive and is in addition to any other remedy or remedies that the Association has. If permitted by present or future law, Association may recover all of its costs, including Court costs and reasonable attorney's fees, and such costs shall be a continuing lien upon the Lot which shall bind the Lot in the hands of the then Lot Owner and the Lot Owner's successors and assigns.

**Section 10.14 Trash Disposal.** Each Lot Owner shall deposit all trash, garbage, or other rubbish by as directed and instructed by the Board. Lot Owners shall keep trash containers at all times in each Lot Owner's garage (if applicable), or in such other location as designated by the Board, except on the days which trash, garbage, or other rubbish is collected by the local waste removal authorities. Any trash containers placed outside by the Lot Owners in the location designated for collection by the local waste removal authorities shall only remain in such location for a period not to exceed twenty-four (24) hours. The Board shall have the right to dispose of any trash, garbage, or other rubbish of a Lot Owner in violation of this Article X, and may assess the Lot Owner for the cost of such removal, which amount shall be payable on the date the next installment of the regular assessment is due.

**Section 10.15 Garage.** All dwellings must have a two car attached garage. No detached garage or storage shed shall be permitted.

Section 10.16 Single Family Home. No more than one (1) single family house shall be allowed per lot, except for areas or lots designated as town homes or multifamily lots.

Section 10.17 Square Footage. The minimum square footage of heated, enclosed living space for each approved residential structure shall not be less than 1,700 square feet in Phase 1A and 2200 square feet in Phase 1B of the development.

Section 10.18 Setback Requirements. The front, side, and back yard set back requirements are those shown on the recorded plat(s) of the Subdivision.

Section 10.19 Unlicensed Vehicles. No unlicensed motorcycles, dirt bikes, go carts, all terrain vehicles, or any of the like shall be operated on the Subdivision streets or common areas.

Section 10.20 Tanks. All fuel storage tanks, LV gas tanks, and the like shall be buried, screened, or concealed in such a fashion that they are not visible from adjacent Lots or streets.

Section 10.21 Explosives. No discharge of fire arms or explosive devices shall be permitted.

Section 10.22 Antennas/Satellite Dishes. Except as stated below, no radio or television transmission or reception towers, antennas, or satellite reception dishes or discs shall be erected on a Lot unless approved as provided in Article IX of this Declaration. Notwithstanding the above, a satellite dish or disc may be located on a Lot, provided that (i) the disc or dish is not more than two feet in diameter, (ii) the disc or dish is located on the side of the Lot facing away from the street and within the building setback lines applicable to that Lot, and (iii) the disc or dish is located or screened in such a way that it cannot be seen from any street within the subdivision.

Section 10.23 Fences. No fence shall be allowed on any Lot without prior written approval of the Declarant or the ACC, which permission and/or style may be denied in their sole discretion. In any event, No fence shall be allowed on Lots that adjoin the golf course.

Section 10.24 Swimming Pools. No above-ground swimming pools shall be permitted in the Subdivision, except that small, inflatable wading pools may be permitted.

Section 10.25 Mail Boxes and Newsletter Holder. No mailboxes or newsletter boxes shall be placed or maintained on any Lot unless the same has been approved in accordance with the provisions of Article IX of this Declaration. If a central mail station is established by Declarant or Association, individual mailboxes and newspapers holders may be prohibited by the Association.

Section 10.26 Septic Tanks and Wells. No septic tank shall be installed, used, or maintained on any Lot. No well shall be installed, used, or maintained on any Lot for human domestic water consumption, nor shall any well be connected in any manner whatsoever to the water mains, laterals, and piping serving the Dwelling which mains furnish domestic water from sources beyond and boundaries of the Lot. No drilling or mining shall be allowed on any Lot.

Section 10.27 Nondiscrimination. No owner (including the Declarant), or any employee, agent, or representative thereof, shall discriminate upon the basis of sex, race, age, color, creed, or national origin in the sale, lease, or rental of any Lot nor in the use of the common Areas.

Section 10.28 No Hunting. No Owner or guest shall hunt any wild bird, game or other animals within the subdivision.

Section 10.29 Sod & Irrigation System. All yards shall be sodded and an irrigation system shall be installed and approved by the ACC prior to occupying any dwelling located thereon.

Section 10.30 Phase 1-A and Phase 1-B Use Restrictions. The Restrictions contained under this Article X shall apply only to Phase 1-A and Phase 1-B of Southwest Plantation unless otherwise determined by Declarant.

## **ARTICLE XI**

### **STORMWATER MANAGEMENT PERMIT**

**Section 11.1** Limitations. The State of North Carolina has imposed limitations on the amount of impervious surfaces that may be created on any Lot to manage the run off of rain or storm water. The limitations and regulations are currently enforced by the North Carolina Department of Environmental Health and Natural Resources ("DEHNR"). The amount of impervious surface allocated to each Lot will be set forth in this Declaration as to Phase One, and as to additional Phases, will be set out in an amendment or supplemental to this Declaration. Impervious surfaces are defined from time to time by DEHNR, but generally include the utilization of any surface area that has a substantial impact on the ability of such surface to percolate rainwater, and includes areas under roof, driveways, walkways, and other hardened surfaces, including designated parking areas, but generally excluding wood decking. The ARC shall not approve any proposed improvements on any Lot that, when combined with other improvements, exceed the allowed impervious surface limitations. The maximum allowable built-upon area per lot is 7,000 square feet for Phase I-A and Phase I-B. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.

**Section 11.2** Filling. In addition to all other restrictions contained within this Declaration, and in accordance with limitations imposed by the State of North Carolina as set out herein, filling in or piping of any vegetated conveyances (ditches, swells, etc.) associated with the development, with the exception of average driveways crossings, is strictly prohibited, unless approved by the Declarant and the State of North Carolina if applicable.

**Section 11.3** Amendments. Declarant reserves the right to amend this Declaration, and any amendment or supplemental hereto, to keep the Property and any Phase in compliance with the Storm Water permit for the development. Therefore, notwithstanding any provision to the contrary in this Declaration, Declarant shall have the absolute right to, in its sole discretion, amend this Declaration to include any or part of its approval of a storm water plan for the Property. Any such amendments shall become operative and binding upon all Owners, and their properties when set forth in an amendment or supplement to this Declaration and recorded in the office of the Register of Deeds of Onslow County, North Carolina. The Association shall have the obligation and responsibility of maintaining the Common Properties in accordance with such additional restrictions and storm water plans.

## **ARTICLE XII**

### **BEAR TRAIL GOLF COURSE**

**Section 12.1** Golf Course. The Owner of each Lot acknowledges that owning property adjacent or in close proximity to a golf course involves certain risk which may have an affect on the utilization or enjoyment of such Lot. Owner acknowledges that such risk may include (as examples and not as a limitation on the generality of such risk) golf balls being hit into a Lot, with the potential of causing bodily injury or physical damage on property, and further including golfers coming onto a Lot to look for errant golf balls. Owner hereby expressly assumes such risk and agrees that neither Declarant nor any other entity owning or managing the golf course shall be liable to any owner of any Lot or anyone claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the proximity of any Lot to the golf course, including, without limitation, any claim arising in whole or in part from the negligence of Declarant or any other entity owning or managing the golf course. The owner of each Lot hereby agrees to indemnify and hold harmless Declarant or any other entity owning or managing the golf course against any and all claims by the owner of any Lot and his guests, invitees, or licensees with respect to the above. Nothing in this paragraph shall restrict or limit any power of Declarant or any other entity owning or managing the golf course to change the design of the golf course, and such changes, if any, shall not nullify, restrict, or impair the covenants and duties of the owner of any Lot contained herein. Declarant shall use its best efforts to have the entity managing or operating the golf course conspicuously denote all property on any Lot as out of bounds. Every owner of every Lot, by acceptance of delivery of a deed to a Lot, assumes all risks associated with errant golf balls, and each such owner agrees and covenants not to make any claim or institute any action whatsoever against Declarant, the golf course designer, operator, or any other party relating to the design and utilization of the golf course relating to any errant golf ball, any damages caused thereby, or for negligent design of the golf course or siting of the Lot.



Section 12.2 Golf Club. The Owner of each Lot acknowledges that memberships entitling use of the Bear Trail Golf Course recreational facilities ("Club Facilities") will be offered by the owner of the club Facilities in accordance with such terms and conditions as established from time to time in the sole discretion of the owner of the Club Facilities. When memberships are made available, the owner of each Lot may apply for membership on the terms made available by the owner of the Club Facilities. The Owner of each Lot acknowledges that, by purchasing or paying for the Property, or by acquiring membership in the Association, the purchaser does not acquire any vested right or easement, prescriptive or otherwise, to use the Club Facilities, nor does the Purchaser acquire any ownership or membership interest in the Club Facilities. Furthermore, the Association has no vested right or easement, prescriptive or otherwise, or any ownership interest in the Club Facilities. The Club Facilities include specifically, but are not limited to, the Bear Trail Golf Course.

### ARTICLE XIII

#### SEWER COLLECTION SYSTEM

Section 13.1 Operation. In the event the sewage collection and/or disposal system is owned or leased by the association, the management, maintenance and operation of the sewer system shall be by the Board of Directors of the Association. A separate assessment shall be imposed against all Lot Owners not otherwise exempt for the actual cost of operating and maintaining the system. The sewer assessment shall not be commingled with any other assessments collected by the Associates for other common area expenses. The sewer charges shall be collected in an amount and at intervals as determined by the Board of Directors or the Declarant.

Section 13.2 Disbursements. Funds collected for the sanitary sewer assessment, dues or service charges shall be disbursed only in payment for expenses of this system.

Section 13.3 Suspension of Service. Suspension of services provided by the Association shall be permitted for the period of time bills are due to the Association and have not been paid.

Section 13.4 Sewer to serve all of Southwest Plantation. The sewer system shall be for the benefit of all properties within Southwest Plantation, the adjoining Golf Course Property and such additional properties as may be annexed as provided for in this Declaration. Notwithstanding anything contained in this Declaration to the contrary, this Declaration shall not be amended in any way so as to deprive or unduly restrict the availability of sewer to all properties comprising Southwest Plantation and additions thereto.

Section 13.5 Excess Sewer Capacity. Declarant, its successor and assigns shall have the right at its sole expense to expand the capacity of the sewage system (if need be) in order to serve such additional properties outside of Southwest Plantation as Declarant in its sole discretion may determine. In this event, all such users shall become Associate Members of the Association and shall pay all assessments relating to the sewer system as determined by the Association. Associate Members shall be subject to the same fines, rules and regulations as other members of the Association. Notwithstanding anything contained in this Declaration to the contrary, this Declaration shall not be amended in any way so as to impede or restrict the right reserved by the Declarant in this Section 13.5 pertaining to excess sewer capacity. Declarant, its successors and assigns shall have the right to allocate excess sewer capacity to such other properties lying outside of Southwest Plantation as Declarant in its sole discretion may choose.

Section 13.6 Grinder Pump. Each Lot Owner shall be responsible for the purchase, installation and maintenance of the sewer grinder pump to be located on his or her lot. The make or model of the grinder pump must be approved by the HOA prior to installation.

### ARTICLE XIV

#### ENFORCEMENT

Section 14.1 Enforcement.

Section 14.1.1 The Association or any Lot Owner may enforce these covenants, conditions, and restrictions. Enforcement of these covenants, conditions, and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate ("Violating Party") any covenant, condition, or restriction, either to restrain or enjoin violation, or to recover damages, and against the land to enforce any lien created by these covenants. In addition to all other amounts due on account of said violation or

attempted violation, the Violating Party shall be liable to the parties enforcing the covenants and/or restrictions of this Declaration (the "Enforcing Parties") for all reasonable attorney's fees and court costs incurred by the Enforcing Parties. Failure or forbearance by the Association or any Owner to enforce any covenant, condition, or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any lawsuit filed to enforce this Declaration by injunction or restraint, there shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants, conditions, or restrictions cannot be adequately remedied by action at law or by recovery of damages.

Section 14.1.2 In addition to all other remedies of the Association, the Association shall have the right to assess a maximum fine of \$150.00 per day (or such higher amount as may be allowed by law) per violation against any Owner who violates any provision of this Declaration or the Articles, Bylaws, or Rules and Regulations of the Association after such Owner has been given notice of the violation and an opportunity to be heard with respect to the violation in accordance with such policies and procedures as may be adopted from time to time by the Board of Directors or as may be set forth in the Bylaws.

Section 14.1.3 In addition to the above rights, the Association may also enter upon a Lot or any land upon which a violation exists to remove any violation, perform maintenance, or make repairs thereon which is the responsibility of a Lot Owner who has failed to remove said violation or to perform such maintenance or make such repairs (i) after having given such owner at least ten (10) days prior notice, or (ii) without giving notice in the event of an emergency.

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

Section 14.2 Severability. Invalidity of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 14.3 Restrictions Run With Land. The covenants and restrictions of this Declaration, including the easements, other permanent rights, or interests herein created, shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Dwelling Unit subject to this Declaration, their respective legal representatives, heirs, successors, or assigns.

Section 14.4 Amendment. The Association (the Declarant controlling the Association until the expiration of the Development Period) may amend this Declaration at any time, as long as consistent with the design, scheme, and purposes of this Declaration, by the affirmative vote or written agreement of the Owners to whom not less than seventy-five percent (75%) of all of the votes in the Association are allocated in accordance with Section 4.4 and Section 4.5 above. Any amendment must be recorded in the Onslow County Register of Deeds. Following the end of the Development Period, no such agreement to amend, in whole or in part, shall be effective unless written notice of the proposed amendment is sent to every Member at least thirty (30) days in advance of any action taken, and no such amendment shall be effective with respect to any permanent easements or other permanent rights or interests relating to the Common Areas herein created (unless such amendment is consented to in writing by Declarant and all other beneficiaries of such permanent easements, rights of interests).

Section 14.5 Reservation of Special Declarant Rights. Declarant reserves the right to maintain sales and management offices, model units, construction trailers, storage, or staging areas, and advertising signs upon Lots or the Common Areas and upon Lots owned by it until the expiration of the Development Period and to exercise all other "Special Declarant Rights" as defined in the Planned Community Act. Without limiting the foregoing, and notwithstanding anything herein to the contrary, during the Development Period, Declarant shall have the right to annex additional Lots or Common Areas into the Subdivision by filing a supplement to this Declaration in the Onslow Public Registry together with an amendment to the Plat (if applicable). Such additional Lots or Common Areas need not be contiguous to the Property. Declarant, in its sole discretion shall have the right to assign all or a portion of any rights or easements reserved herein by a written assignment thereof, recorded in the Onslow Public Registry.

Section 14.6 Management and Service Contracts. Any agreement for the professional management of the Subdivision of the Common Areas may not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee upon reasonable notice.

**Section 14.7 Binding Determination.** In the event of any dispute or disagreement with or between any Owner(s) relating to, or of any questions regarding, the interpretation or application of the provisions of this Declaration or the Articles or Bylaws of the Association, the determination thereof (i) by Declarant for so long as Declarant retains control of the Association; and (ii) thereafter by the Board of Directors of the Association shall be final and binding on each and all such Owners; providing that any determination which directly or indirectly affects Declarant shall require Declarant's prior consent to become binding upon Declarant.

**Section 14.8 Captions and Titles.** All captions, titles, or headings in this Declaration are for the purpose of reference and convenience only and are not deemed to limit, modify, or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

**Section 14.9 Notices.** Except as otherwise provided in this Declaration, any notice to any Owner under this Declaration shall be in writing, shall be effective on the earlier of (i) the date when received by such Owner, by direct or electronic means or (ii) the date which is three days after mailing (postage prepaid) to the last address of such Owner set forth in the books of the Association. The address of an Owner shall be at his Lot (or any of them if more than one) unless otherwise specified in writing to the Association. The Articles and Bylaws shall specify the permissible manner of giving notice for voting and all other Association matters for which the manner of giving notice is not prescribed in this Declaration.

**Section 14.10 Street Lighting/Utility.** The Declarant may subject the Property to a contract with Jones Onslow Electric Membership Cooperative for the installation of underground electrical utilities which may require an initial contribution from an Owner, and/or the installation of street lighting, which will subject an Owner to continuing monthly payment to Jones Onslow Electric Membership Cooperative.

**Section 14.11 Governing Law.** This Declaration shall be deemed to be made under, and shall be construed in accordance with, and shall be governed by, the laws of the State of North Carolina, and suit to enforce any provision hereof or to obtain any remedy with respect hereto shall be brought in state court in Onslow County, and for this purpose each Owner by becoming such hereby expressly and irrevocably consents to the jurisdiction of said court.

## **ARTICLE XV**

### **MORTGAGEE'S RIGHTS**

**Section 15.1 Notice of Rights of Mortgagee of a Lot.** As used herein, the term "Mortgagee" shall mean the holder of a first lien mortgage or deed of trust on a Lot who provides notice to the Association with its name and address with a request to receive any notices and other rights provided to "Mortgagees" under this Article XIV. A Mortgagee of a Lot shall be entitled to receive written notification of any default, not cured within sixty (60) days after its occurrence, by the Owner of the Lot with respect to any obligation of the Owner under the Declaration, the Bylaws of the Association, or the Articles of Incorporation of the Association. Any Mortgagee of a Lot can make the request for notification. The notification shall be sent not later than the sixty-fifth (65<sup>th</sup>) day after the occurrence of an uncured Default.

**Section 15.2 Rights of First Refusal.** Any right of first refusal now or hereafter contained in this Declaration or any amendment or modification hereto or otherwise arising in favor of the Association or certain Owners shall not apply to or preclude or impair in any way the right of the first Mortgagee to (i) foreclose or take title to the Lot pursuant to the remedies provided in its mortgage; (ii) accept a deed or assignment in lieu of foreclosure in the event of a default under the Mortgage; or (iii) sell or lease a Lot and Dwelling Unit acquired by the Mortgagee.

**Section 15.3 Rights of Mortgagee.** Unless at least seventy-five (75%) percent of the Mortgagees (based upon one vote for each first mortgage or deed of trust owned), and a vote of seventy-five (75%) percent of the votes allocated to the Members entitled to vote hereunder, the Association shall not:

**Section 15.3.1** By an act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Subdivision, Common Areas, or Improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Lots (the granting of easements for public utilities or for other purposes consistent with the intended use of the Subdivision, or the conveyance of Common Area not including the Recreational Facilities) to a local governmental authority for public park purposes or the conveyance or dedication of Roadways shall not be deemed a transfer within the meaning of this clause;

**Section 15.3.2** Change the method of determining the obligations, assessments, dues, or other charges which may be levied against a Lot;

Section 15.3.3 By act or omission change, waive, or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the Dwelling Units, the exterior maintenance of the Dwelling Units, the maintenance of common fences or driveways, or the upkeep of lawns and plantings in the Subdivision;

Section 15.3.4 Fail to maintain fire and extended coverage insurance on insurable Common Areas on current replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value (based on current replacement cost); or

Section 15.3.5 Use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement, or reconstruction of such Common Areas.

Section 15.4 Right to Examine Books and Records. Mortgagees, their successors, or assigns, shall have the right to examine the books and records of the Association.

Section 15.5 Taxes and Insurance. Mortgagees may jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Lot and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Lot, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Lot Owner.

Section 15.6 Insurance Proceeds and Condemnation Awards. No provision of this Declaration or any other document or instrument affecting the title to the Property, Common Areas, any Lot, or the organization or operation of the Association shall give an Owner or any other party priority over any rights of first mortgagees of Lots within the Subdivision pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Common Areas.

## ARTICLE XVI

### NON-DEDICATED STREETS

Section 16.1 Use. All non-dedicated streets constructed within the Subdivision are reserved as easements of public access for the common use of Owners and (pursuant to the Roadway Declaration) the Owners of units within Southwest Plantation Homeowners Association and their families, guests and invitees, by commercial vehicles authorized to make pick-ups and deliveries, by public and private utilities personnel, trucks and equipment, by postal authorities and mail carriers, by emergency personnel and vehicles such as police, fire, and ambulance, and by such other persons or classes of persons authorized by the Board of Directors of the Association, as a means of ingress or egress, and for such other uses as may be authorized from time to time by said Board. Such non-dedicated streets may also include underground utility lines, mains, sewers, or other facilities to transmit and carry sanitary sewerage and storm water drainage. Except as provided by this Declaration, no acts shall be taken or things done by an Owner or the Association which are inconsistent with the reservation and grant of use and enjoyment hereinabove provided.

Section 16.2 Snow Removal, Maintenance, Reconstruction, or Resurfacing. The Association, at the cost and expense of the Association, shall provide snow removal from, maintenance to, and resurfacing or reconstruction of any non-dedicated streets or any storm water drainage facilities included as a part thereof or installed thereunder as it deems necessary or appropriate from time to time within its sole discretion.

## ARTICLE XVII

### DECLARANT RIGHTS

Section 17.1 Declarant Rights Declarant's Rights are those rights reserved for the benefit of Declarant as in this Declaration and include but are not limited to the following rights:

- (a) To complete improvements on the Property;
- (b) To maintain models, management offices, construction offices, sales offices, customer service offices, and signs advertising the Property;
- (c) To designate any portion of the Property as Common Elements or Limited Common Elements;
- (d) To exercise all rights of architectural review and establishment of Design Guidelines and all other rights as set forth in Article VIII of this Declaration;

(e) To construct improvements within portions of the Property and to operate the same as public or private facilities in the sole discretion of Declarant;

(f) To disapprove actions of the Board or any committee during the Development Period;

(g) To disapprove any amendment or change in any Association Documents during the Development Period; and

(h) To enforce any covenants, restrictions and other provisions of the Association Document during the Development Period.

(i) To amend this Declaration,

(j) To add or annex additional land within the area described in the Deed Book 1614, Page 745 and Deed Book 2318, Page 646, and/or lands located within three (3) mile thereof without the consent of members of the Association, provided that HUD-FHA and the VA determines that the annexation is in accordance with the general plan hereto approved by them.

(k) Declarant shall not be liable nor responsible for any construction defects.

(l) To determine use restrictions for future annexations and to form sub-homeowners association for those areas if it deems appropriate. To allow and permit mix uses such as Town homes, Condominiums, Patio homes, and commercial within the overall development plan of Southwest Plantation.

Section 17.2 Transfer of Declarant's Rights. Any or all Declarant's Rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall neither reduce an obligation nor enlarge a right. No such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Register of Deeds.

Section 17.3 Modification of Development Plan. Each Owner, by accepting title to a Lot and becoming an Owner, and each other Person, by acquiring any interest in the Property, acknowledges awareness that Southwest Plantation is a planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to use of or changes in density of the Property, or (b) changes in any conceptual or master plan for the Property, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time).

Section 17.4 Development Easements. Declarant, its employees, agents and designees, specifically reserve a non-exclusive easement over, upon, under and above the Common Elements and other portions of the Property (expressly excluding a Dwelling Unit) for any and all purposes deemed reasonably necessary or desirable by Declarant for the development of the Property, any Contiguous Property including, but not limited to, easements of access, the installation and maintenance of utilities and easements as may be required from time to time by any governmental agency or pursuant to the Permit. Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Elements for the purpose of making, constructing, installing, modifying, expanding, replacing, and removing such improvements to the Common Elements as it deems appropriate in its sole discretion.

Section 17.5 Marketing and Sales. During the Development Period or so long as Declarant owns any portion of the Property or Contiguous Property, Declarant and its designees may maintain and carry on upon the Common Elements and any property owned by Declarant such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, sales offices, and storage of building materials. Declarant and its designees shall have easements for access to and use of such facilities. Declarant's or any designee's unilateral right to use the Common Elements for purposes stated in this section shall not be exclusive and shall not unreasonably interfere with use of such Common Elements by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent.

Section 17.6 Declarant Approval to Changes in Association Documents. During the Development Period the Association shall not, without the prior written approval of Declarant, adopt any policy, rule or procedure that:

(a) Limits the access of Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Elements of the Association, the sewer treatment facility, or to any property owned by any of them:

(b) Limits or prevents Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Elements or any property owned by any of them in promotional materials;

(c) Limits or prevents new Owners from becoming members of the Association or enjoying full use of its Common Elements and Recreational Facilities, subject to the membership provisions of the Association Documents;

(d) Discriminates against or singles out any group of Members or prospective Members or Declarant. This provision shall expressly prohibit the establishment of a fee structure (i.e., assessments and other mandatory fee or charge) that discriminates against or singles out any group of Members or Declarant, but shall not prohibit the establishment of Benefited Assessments;

(e) Impacts the ability of Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for Southwest Plantation as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete Southwest Plantation shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or

(f) Impacts the ability of Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

Section 17.7 Unimpeded Accesses. The Association shall not exercise its authority over the Common Elements (including, but not limited to, any gated entrances and other means of access to the Property to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Property, or over the streets and other Common Elements within the Property.

Section 17.8 Additional Declarations/Restrictions. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent during the Development Period. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

Section 17.9 Governmental Interests. During the Development Period, Declarant may designate sites within the Property for fire, police and utility facilities, and parks, and other public facilities in accordance with applicable laws. The sites may include Common Elements.

## ARTICLE XVIII

### DISCLAIMER

Section 18.1 Disclaimer of Liability. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote the health, safety and welfare of Owners and occupants of any Lot.

Section 18.2 Notwithstanding anything contained herein or in the Association Documents or the Act, neither the Association, the Board, the management company of the Association, Declarant nor any successor Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such persons. Each Owner and Occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Property, including all Recreational Facilities.

Section 18.3 Neither the Association, the Board, the management company of the Association, Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Property. Each Owner and occupant of a Lot and each family member, tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility illness or utility sub-stations and further acknowledges that the Association, the Board, the management company of the Association, Declarant or any successor Declarant have made no representation or warranties, nor has any Owner or occupant, or any family member, tenant,

guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

Section 18.4 No provision of the Association Documents shall be interpreted as creating a duty of the Association, the Board, the management company of the Association, Declarant nor any successor Declarant to protect or further the health, safety or welfare of any person(s), even if the funds of the Association are used for any such purpose.

Section 18.5 Each owner (by virtue of his or her acceptance of title to his or her Lot) and each other person having an interest in or line upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, the management company of the Association, if any, Declarant and any successor Declarant, their directors, officers, committee and Board members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

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

Carolina Investments, Inc.,  
a North Carolina Corporation

BY: Billy W. Elston  
Billy W. Elston, President

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

I, a Notary Public of said County and State, do hereby certify that Billy W. Elston personally appeared before me this day and acknowledged that he is the President of Carolina Investments, Inc., a North Carolina Corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal this 16th day of August, 2007.

Karina Olson  
Notary Public

My commission expires: 6-27-09  
Karina Olson  
[NOTARIAL SEAL]

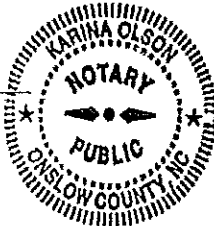




EXHIBIT A

Legal Description

Lying and being in Jacksonville Township, Onslow County, North Carolina and more particularly described as follows:

Being all of Southwest Plantation, Phase I, Section A, as shown on a plat recorded in Map Book 53, Page 225, Slide M-99, Onslow County Registry.

CONSENT OF MORTGAGEE

Cape Fear Farm Credit, ACA a corporation organized and existing under the laws United States of America and the holder of a deed of trust recorded in the Office of the Onslow County, North Carolina Register of Deeds, in Book 2555, Page 103, and Henry T. McDuffie, in his capacity as trustee under the aforesaid deed of trust, hereby consent to the execution and delivery of the foregoing Declaration of Covenants, Conditions and Restrictions, with exhibits thereto (the "Declaration"), and to the filing thereof, in the office of the County Recorder of Onslow County, North Carolina, and further subject and subordinate the above-described deed of trust to the provisions of the foregoing Declaration with attached exhibits (including, without limitation, any easements reserved therein).

IN WITNESS WHEREOF, Cape Fear Farm Credit, ACA a corporation organized and existing under the laws of the United States of America, by its authorized officer, and the undersigned Trustee have caused this Consent to be executed this 14 day of August, 2007.

Cape Fear Farm Credit, ACA a corporation  
organized and existing under the laws of the United  
States of America

By: Gerald B. Wilson  
Name: Gerald B Wilson  
Title: Vice President

Matthew J. Currin (SEAL)  
Name: Matthew J. Currin  
Title: Trustee under the aforesaid Deed of Trust

STATE OF North Carolina )  
 : ss:  
COUNTY OF Duplin )

I, Shannon W Price, a Notary Public of Duplin County, State of NC, certify that Gerald B Wilson, personally came before me this day and, being duly sworn, acknowledged that he/she is Vice President of Cape Fear Farm Credit, ACA a corporation organized and existing under the laws of the United States of America and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him/her in behalf of said corporation by its authority duly given. And the Vice President acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official stamp or seal this 14th day of August, 2007.

My Commission Expires:  
November 15, 2011



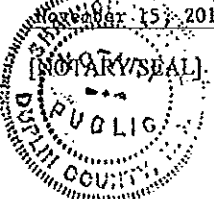
Shannon W Price  
Notary Public

STATE OF North Carolina )  
 : ss:  
COUNTY OF Duplin )

I, Shannon W Price, a Notary Public of Duplin County, State of North Carolina, do hereby certify that Matthew J. Currin, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this 14th day of August, 2007.

My Commission Expires:  
November 15, 2011



Shannon W Price  
Notary Public

20.00  
LAF

Doc ID: 004247230003 Type: CRP  
Recorded: 02/20/2008 at 10:10:27 AM  
Fee Amt: \$20.00 Page 1 of 3  
Onslow County, NC  
Maryland K. Washington Reg. of Deeds  
BK 3024 PG 793-795

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

AMENDMENT TO DECLARATION OF  
CONDITIONS, AND RESTRICTIONS  
FOR SOUTHWEST PLANTATION

THIS DECLARATION of Amendment made this 28<sup>th</sup> day of February, 2008 by  
Carolina Investments, Inc., a North Carolina corporation, (the "Declarant").

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions for Southwest  
Plantation (the "Declaration") dated August 14, 2007 was duly recorded in the Onslow County  
Registry in Book 2931, Page 854-888; and

WHEREAS, Article XVII of the said Declaration gives to the Declarant the right to  
Amend the Declaration.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. A new Section 1.33 is hereby added to Article I of the Declaration to read as  
follows:

**"Section 1.33 Builder.** A person who holds a Contractor's license in the State of North  
Carolina, who purchases one or more lots for the purpose of constructing dwelling units for  
resale to consumers in the ordinary course of its business, or who purchases one or more parcels  
of land within the property for further development and/or resale in the ordinary course of its  
business."

2. By adding the following paragraph to Section 5.3 of Article V of the Declaration  
to read as follows:

"Notwithstanding anything contained herein to the contrary, a Builder will not be  
required to pay the Working Capital Assessment at the time a lot is transferred to it by the  
Declarant provided the Builder meets the following requirements:

- a. Construction of the residence on the lot must begin within 180 days after the  
Builder takes title to the lot. Declarant may in its sole discretion waive or modify  
this requirement for Builders who purchase more than two lots at the same time.
- b. The residence must not be occupied while owned by the Builder.
- c. The Working Capital Assessment shall be due at such time as the Builder  
transfers the lot to another owner or at such time as the dwelling located on the  
Lot is occupied, whichever shall first occur.
- d. In the 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 contributions shall  
become immediately due and payable with respect to the initial sale by Declarant  
to Builder and shall be secured by a lien on the subject lot(s) as herein provided.
- e. 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 homes 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 the 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.

f. Notwithstanding anything contained herein to the contrary, the Working Capital Assessment shall be due and payable 24 months from the date of transfer of a Lot by Declarant to a Builder."

3. Section 10.15 of Article 10 of the Declaration is deleted in its entirety and the following inserted in lieu thereof:

"Section 10.15 Garage. All dwellings must have a two car attached garage. No detached garage shall be permitted. No detached storage shed shall be permitted except for lots located in Phase 1 Section A of the Development as shown on plat recorded in Map Book 53 Page 225, Onslow County Registry, provided the following conditions are met:

- a. A storage shed shall not exceed 12 feet by 16 feet in width and 10 feet in height.
- b. All building plans, specifications for the shed including building materials and lot location shall be submitted to the Declarant for approval prior to construction. The Declarant in its sole discretion may approve or disapprove the size and location of shed, or whether or not a shed can be located on a particular lot, on a lot by lot basis."

4. By adding the following paragraph to Section 5.5.1(a) of Article V of the Declaration:

"In the event a Builder as defined in Section 1.33 of Article I of the Declaration purchases two or more Lots, the monthly Assessment shall not begin for such lots until such time as the Working Capital Assessment becomes due as provided in Section 5.3 of Article V of the Declaration as above Amended or twenty-four months following the date of transfer of said Lot(s) by the Declarant to Builder, whichever shall first occur. All conditions and requirements contained in Section 5.3 of Article V of the Declaration shall apply to the application of this provision."

5. Survival. Except as specifically amended or altered by this Declaration of Amendment all provisions, restrictions and covenants contained in the original Declaration as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal, this the 28<sup>th</sup> day of February, 2008.

CAROLINA INVESTMENTS, INC.,  
A North Carolina Corporation

By: Billy W. Elston (SEAL)  
Billy W. Elston, President

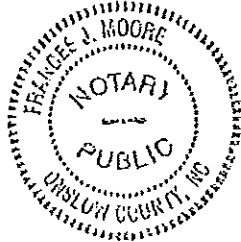
STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

I, a Notary Public of said County and State, do hereby certify that BILLY W. ELSTON personally appeared before me this day and acknowledged that he is President of CAROLINA INVESTMENTS, INC., a North Carolina Corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation

Witness my hand and seal, this 28<sup>th</sup> day of February, 2008.

My commission expires:  
2/17/2012

Frances J. Moore  
Notary Public



Doc ID: 007243180002 Type: CRP  
Recorded: 04/27/2009 at 09:13:00 AM  
Fee Amt: \$17.00 Page 1 of 2  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK 3216 PG 804-805

Prepared by and return to: Lanier, Fountain & Ceruzzi/dh

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

**ANNEXATION AND THIRD AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR SOUTHWEST PLANTATION**

THIS DECLARATION of Annexation and Amendment made this the 2<sup>nd</sup> day of April 2009, by Carolina Investments, Inc., a North Carolina Corporation, (the "Declarant").

**WITNESSETH**

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions for Southwest Plantation (the "Declaration") dated August 14, 2007 was duly recorded in the Onslow County Registry in Book 2931, Page 854-888; and

WHEREAS, the Declaration was amended by instruments recorded in Book 3024, Page 793-795 and in Book 3195, Page 758-761, respectively; and

WHEREAS, Article XVII (i) of the said Declaration gives the Declarant the right to amend the said Declaration; and

WHEREAS, Article XVII (j), of the said Declaration gives to the Declarant the right to annex additional lands to be subject to the Declaration.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. **ANNEXATION.** The provisions of the Declaration are hereby made applicable to the following described property, except as hereinafter provided. Except as specifically amended by a provision of this Third Amendment, all of the terms and provisions of the Declaration, as amended, shall be fully binding and applicable to all said lots as though such lots were described in the Declaration at the time of its recordation. The property is described as follows:

Being all of Lo 2, 17, 18, 19, 20, and 21 as shown on survey entitled "FINAL PLAT FOR, SOUTHWEST PLANTATION, PHASE I, SECTION C, LOT 2 AND LOTS 17-24" prepared by Johnny J. Williams Land Surveying, P.C. dated March 25, 2009 and recorded in Map Book 57, Page 212, Onslow County Registry.

2. The Declaration is hereby amended to include the following restrictions for the property described in paragraph 1 above.

a. The minimum square footage of heated, enclosed living space for each approved residential structure shall not be less than 1,100 square feet.

b. **Section 10.15 Garage** Shall not apply to the property described in paragraph 1 above.

c. Section 10.22 Antennas/Satellite Dishes. No radio or television transmission or reception towers, antennas, or satellite reception dishes or discs shall be erected in the front yard of any Lot unless approved by the Architectural Control Committee.

d. Section 10.29 Sod & Irrigation System. All yards shall be sodded prior to occupying any dwelling located thereon.

e. Section 11.1 Limitations. The State of North Carolina has imposed limitations on the amount of impervious surfaces that may be created on any Lot to manage the run off of rain or storm water. The limitations and regulations are currently enforced by the North Carolina Department of Environmental Health and Natural Resources ("DEHNR"). The amount of impervious surface allocated to each Lot will be set forth in this Declaration as to Phase One and as to additional Phases will be set out in an amendment or supplemental to this Declaration. Impervious surfaces are defined from time to time by DEHNR, but generally include the utilization of any surface area that has a substantial impact on the ability of such surface to percolate rainwater, and includes areas under roof, driveways, walkways, and other hardened surfaces, including designated parking areas, but generally excluding wood decking. The ARC shall not approve any proposed improvements on any Lot that, when combined with other improvements, exceed the allowed impervious surface limitations. The maximum allowable built-upon area per lot is 6,000 square feet for Phase 1C. This allotted amount includes any build-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.

3. SURVIVAL. Except as specifically amended or altered by this Declaration of Annexation and Amendment all provisions, restrictions and covenants contained in the original Declaration shall remain in full force and effect as to all property described in the said Declaration, as amended.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal, this the 24th day of April, 2009.

Carolina Investments, Inc.,  
a North Carolina Corporation

BY: Marion Dean Brown, Jr. (SEAL)  
Marion Dean Brown, Jr., President

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document in the capacity indicated thereon:

Marion Dean Brown, Jr.

Date: 4-24-09

My commission expires: 4-3-2011

Donna L. Haskell  
Notary Public  
Print Name: Donna L. Haskell

