



Prepared by and return to:  
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**SOUTHERN SHORES LANDING, PLANNED UNIT DEVELOPMENT**  
Dwelling Units 1-36  
Town of Southern Shores, Dare County, North Carolina

KNOW ALL MEN BY THESE PRESENTS, that this Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made and entered into on this 15th day of November, 2001, by Southern Coastal Associates of Dare County, Inc., a North Carolina Corporation, and Boddle-Noell Enterprises, Inc., a North Carolina Corporation, (together hereinafter referred to as the "Declarant") of P.O. Box 1908, Rocky Mount, NC 27802-1908.

WHEREAS, Declarant, in order to provide for the preservation of the values and amenities in the Southern Shores Landing, Planned Unit Development ("The Landing" or "Landing" hereafter) community in general, and to provide for the maintenance of the facilities specific to The Landing subdivision has and hereby does subject the real property described in Exhibit A to this declaration of covenants, conditions, restrictions, easements, charges and liens, as set forth hereinafter, each and all of which is, and are, for the benefit of said real property and each owner of a portion thereof, (these covenants hereinafter referred to as "The Landing Covenants"); and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Landing subdivision, to create an agency to which should be delegated and assigned the powers of maintaining, administering, operating and replacing the common properties and The Landing Facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS Declarant caused to be incorporated under the laws of the State of North Carolina a non-profit corporation, The Southern Shores Landing Property Owners Association, Inc. ("The Landing Association") for the purpose of exercising the functions aforesaid; and

NOW THEREFORE, the Declarant declares that the real property described in Article One, is and shall be held, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of the covenants, conditions, restrictions, charges and liens (sometimes referred to herein as "covenants and restrictions" or "Declaration") as hereinafter set forth.



## ARTICLE ONE: PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration (the "Existing Landing Property") is located in Dare County, North Carolina, and is commonly known as The Southern Shores Landing Planned Unit Development, as depicted on the maps and plats prepared for Declarant by Coastal Engineering and Surveying, Inc., dated August 15, 2002, last revised August 28, 2002 and recorded in the office of the Register of Deeds of Dare County, North Carolina in Plat Cabinet E-1 at Slides 710-713 (hereinafter the "Plat").

Section 2. Annexation by the Declarant. During the Period of Declarant Control, the Declarant reserves the right to add any real property contiguous to or in the near vicinity of The Landing Subdivision without the consent of the Members. Declarant shall have no obligation to add any additional property nor shall Declarant have any obligation of any kind to annex any additional property in any sequential order. Annexations by Declarant shall be evidenced by the filing of a Supplemental Declaration in the office of the Public Registry of Dare County, North Carolina which shall submit the annexed property to the terms and provisions of the Governing Documents of The Landing. Declarant's right of annexation during the Period of Declarant Control shall include the right to add additional Common Areas and upon any said dedication and/or conveyance of said additional Common Area property to the Association, such Common Area additional property shall be held and maintained by the Association as Common Area.

Section 3 Annexation by Members. Except as permitted by Section 2 additional property may be annexed to The Landing only with the consent of the Members entitled to two-thirds (2/3) of the votes of the Landing Association for voting by person or proxy at meeting; provided, during the Period of Declarant Control the Declarant must also consent to such actions.

## ARTICLE TWO: DEFINITIONS

Section 1. Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Act" refers to the North Carolina Planned Community Act as codified in Chapter 47F of the North Carolina General Statutes.

(b) "Annexation" refers to adjacent property contiguous to or near the existing Landing Property which is permitted to be annexed to this Declaration as additional phases.

(c) "Articles of Incorporation" shall mean the Articles of Incorporation of Southern Shores Landing Property Owners' Association, Inc. filed in the office of the Secretary of State of North Carolina.

(d) "Assessments" shall mean and refer to any assessments levied by the Landing Association in accordance with the governing documents

(e) "Bylaws" shall mean and refer to the Bylaws of The Landing Association, Inc., as adopted by the Board of Directors, as amended from time to time.

(f) "Common Area" shall refer to all real property owned or hereafter owned by conveyances or dedications by the Declarant to the Landing Association for the use or enjoyment of the Members. Common Area does not include any reference to "Open Space" as shown on the Subdivision Plat.



(g) "Declarant" shall mean and refer to Southern Coastal Associates of Dare County, Inc., a North Carolina Corporation, and Boddie-Noell Enterprises, Inc. d/b/a Kitty Hawk Land Company and their successors in interest.

(h) "Declaration" shall mean and refer to the Covenants, Covenants and Restrictions of Southern Shores Landing Planned Unit Development Dwelling Units 1-36, Town of Southern Shores, Dare County, North Carolina.

(i) "Governing Documents" shall refer to this Declaration, the Articles of Incorporation and Bylaws of the Landing Association.

(j) "Landing Assessment(s)" or "Landing Assessment(s)" or "The Landing Common Charges" shall mean and refer to the assessment(s) and charges levied by The Landing Association against the Landing Members who are the Owners of the Landing Dwelling Units in The Landing as applicable, and the words Assessment(s) or assessment(s) shall have the same meaning as Common Charges, unless the context requires otherwise.

(k) "Landing Association" shall mean and refer to the Southern Shores Landing Property Owners Association, Inc., and "Landing Bylaws" shall mean and refer to the Bylaws of the Southern Shores Landing Association.

(l) "Landing Association Board" shall mean and refer to the Board of Directors of the Landing Association.

(m) "Landing Common Expenses" shall mean and refer to:

(i) Expenses of administration, operation, maintenance, repair or replacement of Landing Common Properties.

(ii) Expenses declared Landing Common Expenses by the provisions of this Declaration or The Landing Bylaws.

(iii) Expenses agreed upon from time to time as Landing Common Expenses by The Landing Association and lawfully assessed against The Landing Members who are owners of Landing Dwelling Units in accordance with Landing Bylaws or this Declaration.

(iv) Any valid charge against The Landing Association or against The Landing Common Properties as a whole.

(n) "The Landing Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Landing, labeled as "The Landing Common Properties" or shown as Recreational Facilities, open space, pedestrian walking easements (together with all improvements located thereon) which are a part of The Landing Subdivisions and as such are intended to be devoted to the common use and enjoyment of the Members of The Landing Subdivision, subject to special rights and limitations, if any, granted to or imposed on Owners of particular The Landing Dwelling Units in the Community. The Landing Common Property shall at all times be available for the disposal of reuse quality landscape irrigation water by The Landing wastewater treatment provider, Gulgulte Woods Water Reclamation Association, Inc., as per the Association's permit #WQ0017224 issued by the North Carolina Utilities Commission; it being the intent of this reservation to create and affirm a perpetual and inalienable easement over all The Landing Limited Common Property to facilitate the application of landscape irrigation reuse water being generated as effluent byproduct by the Gulgulte Woods Water Reclamation Association, Inc., and based on the design for such application as approved by the North Carolina Utilities Commission in the permit granted by the Commission to Gulgulte Woods Water Reclamation Association, Inc.



(o) "Landing Limited Common Properties" shall mean those driveways appurtenant to each Landing Lot as more particularly described within the shaded areas on Page 4 of the Plat which are to the exclusive use of the designated Landing Lot.

(p) "Landing Lot" shall mean and refer to any unimproved parcel of land within The Landing, which is intended for use as a site for a single family attached or detached dwelling, as shown upon any recorded subdivision map of any part of The Landing. A parcel of land shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved property, i.e., a Southern Shores Landing Dwelling Unit.

(q) "Landing Dwelling Unit" or "Dwelling Unit" shall mean and refer to any improved property intended for use and occupancy as one (1) single family dwelling, irrespective of the number of Owners thereof (or the form of ownership) located within The Landing.

(r) "Landing Limited Common Expense" shall mean and refer to expense of administration, operation, maintenance, repair or replacement of Limited Common Properties or Limited Common Area which shall be assessed against those Landing Dwelling Units having the exclusive or special rights in the use or enjoyment thereof.

(s) "Living Area" shall mean and refer to those heated and/or air-conditioned areas within The Landing Dwelling Unit which shall not include garages, carports, porches, patios, breezeways, terraces, or basements.

(t) "Landing Member" shall mean a member of the Landing Association and shall refer to all Landing Owners.

(u) "Landing Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Landing Dwelling Unit situated in The Landing Properties, but notwithstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to Foreclosure or any proceeding in lieu of foreclosure. (Note: the words "Landing Member" and "Landing Owner" are meant to describe all Landing owners interchangeably as semantics dictate throughout this Declaration.)

(v) "Landing Recreational Facilities" shall mean and refer to the area(s), if any, shown and designated as such on any recorded subdivision map of The Landing, and any improvements erected or to be erected upon any such area(s).

(x) "Landing Properties" shall mean and refer to all the property described on Exhibit A and any additions thereto as are made subject to this Declaration by any Supplemental Declaration(s) under the provisions of Article One of this Declaration.

(y) "Period of Declarant Control" shall mean and refer to the period of time commencing on the day the Declaration is recorded in the Office of the Register of Deeds of Dare County and continuing until the earlier of: (i) such time as Declarant shall cease to own at least one percent (1%) of the lots shown in the initial filing; provided, however, if after the expiration of such period of time, there are annexations to The Landing Subdivision and Declarant shall own more than one percent (1%) of the lots shown in The Landing Subdivision as amended by the terms of such annexation, then such period of time shall be reinstated and continue until the earlier of: (i) ten (10) years from the date this Declaration is recorded in the Register of Deeds of Dare County, North Carolina; or (ii) such time as Declarant or any successor in interest shall cease to own at least one percent (1%) of all lots within The Landing Subdivision.

(z) "Special Declarant Rights" means rights reserved for the benefit of the Declarant including, without limitation, any right (i) to complete improvements indicated on plat and plans

filed with the Declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising, and models; (iv) to use easements through the common elements for the purpose of making improvements within The Landing or within real estate that may be added to the Landing by annexations; (v) to make The Landing part of a larger subdivision; (vi) to make a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any Period of Declarant control.

### ARTICLE THREE: GENERAL PROVISIONS

Section 1. Duration . The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by The Landing Association or any Landing Owner, its and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by two-thirds (2/3) of the Members of The Landing Association has been recorded agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless proper written notice of the proposed agreement is sent to every Landing Member at least fifty (50) days in advance of any action taken.

Section 2. Notices . Any notice required to be sent to any Landing Member or Landing Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, registered or certified mail, return receipt requested, or deposited with an overnight courier such as, but not limited to Federal Express, and addressed to the person at the last known address of the person who appears as a Landing Member or Landing Owner on the records of the Association at the time of such mailing. Notice to any one of the Owners, if title to a Landing Dwelling Unit is held by more than one owner, shall constitute notice to all Owners of a Landing Dwelling Unit.

Section 3. Enforcement . Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain, or to recover damages, or both, and against the land to enforce any lien created by these covenants and restrictions; and failure by The Landing Association or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

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

### ARTICLE FOUR: PARTY WALLS

Section 1. General Rules of Law to Apply . Each wall which is built as a part of the original construction of a Dwelling Unit within The Landing Properties and placed on the dividing line between Dwelling Units shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance . The costs of reasonable repair and maintenance of a party shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty . If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner(s) thereafter make use of the wall, they shall contribute to the cost of

restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability or negligence or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be that of the majority of all the arbitrators.

#### ARTICLE FIVE: RESTRICTIONS ON USE AND RIGHTS OF THE LANDING ASSOCIATION, DECLARANT AND THE LANDING OWNERS

Section 1. Permissible Uses. None of The Landing property shall be used except for residential purposes (with the exception of any sales center; office, building or model home constructed or used by the Declarant or his Agent), and no building of any type shall be erected, altered, placed or permitted to remain on any property other than a Landing Dwelling Unit and its approved accessory buildings, if any, which shall comply with any applicable zoning regulations and the requirements of Articles Four and Five of this Declaration.

Section 2. Minimum Square Feet in The Landing Dwelling Unit. Each Landing Dwelling Unit shall contain a minimum of 1,200 square feet of Living Area. Measurements shall be made to exterior walls.

Section 3. Utilities and Other Easements. All utility lines of every type, including but not limited to water, electricity, gas, telephone, sewage and television cables, running from the main trunk line or service location to a Dwelling Unit must be underground. The Declarant reserves unto itself, its successors and assigns, a perpetual inalienable and releasable easement and right on, over and under the ground to erect, maintain and use water irrigation, electric, gas, telephone, sewage, potable water lines and television cables and any other utility lines and conduits for the purpose of bringing public or other services, at this time known and unknown, to The Landing Properties on, in and over the streets or roads and on, in and over all common area or limited common area as shown on any recorded plat of The Landing Properties. In addition, the Declarant reserves unto itself, its successors and assigns, a perpetual inalienable and releasable easement and right over all The Landing Common Property to facilitate the application of landscape irrigation reuse water being generated as effluent byproduct by the Ginguite Woods Reclamation Association, Inc., and based on the design for such application as approved by the North Carolina Utilities Commission in the permit granted by the Commission to Ginguite Woods Water Reclamation Association, Inc.

Section 4. No Time Sharing. No residence or Dwelling Unit, or unit of Landing Ownership or Ownership interest may be subdivided to permit time sharing or other devices to effect Interval Ownership unless approved by The Landing Association subject to conditions which may be imposed by the Association. For purpose of this Section, "time sharing" or "other devices to effect Interval Landing Ownership" shall include, but not be limited to, The Landing Ownership arrangements, including uses of corporations, trusts, partnerships or tenancies in common, in which four or more persons or entities, not members of a single household, have acquired, by means other than will, descent, inheritance or operation of law, a Landing Ownership interest (directly



or indirectly, equitable or legal) in the same Landing Dwelling Unit and such Landing Owners have a formal or informal right-to-use or similar agreement.

Section 5. Water and Sewer Facilities . Sewer treatment and services shall be provided to The Landing, by a State-licensed and regulated utility company or companies, with fees set and regulated by the North Carolina Utilities Commission. Water services will be provided by Dare County. Water and sewer services will be extended to all Landing Dwelling Unit prior to transfer of title of such Landing Dwelling Unit to the Landing Owner.

Section 6. Garbage and Storage Receptacles . Except as required by any appropriate governmental authority, each Landing Owner shall provide receptacles for garbage (and recyclables, if such a program is in place in Dare County), and all garbage receptacles, tools and equipment for use on The Lot by any Landing Owner, shall be placed in a screened-in area or approved accessory building to shield same from general visibility from roads and neighbors abutting a Landing Dwelling Unit. No fuel tanks or similar storage receptacles or related storage facilities, may be exposed to view. No underground storage tanks for natural gas, propane, chemicals, petroleum products or any other mineral or toxic product will be allowed anywhere in The Landing.

Section 7. Debris . No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority. No garbage, trash; construction debris or other unsightly or offensive materials shall be placed upon any portion of The Landing Properties, except as is temporary and incidental to the bona fide improvement of any portion of The Landing Properties.

Section 8. Antennas . No television antennas, radio receiver or sender antenna or other similar device shall be attached to or installed on the exterior portion of any Landing Dwelling Unit or structure, or placed on any Common Properties within The Landing Properties; provided, however, that the provisions of this paragraph shall not apply to the installation by The Landing Association of equipment necessary for a CATV and/or mobile radio system within The Landing Properties. A satellite dish not to exceed eighteen (18) inches in diameter may be installed so long as it is appropriately screened from view.

Section 9. Unsightly Conditions . It is the responsibility of each Landing Owner to prevent any unclean, unsightly or unkempt conditions to exist on his Landing Dwelling Unit, or grounds which shall tend to decrease the beauty of The Landing Properties in general or The Landing subdivision in particular. In the event The Landing Owner or his agent or employee (including, without limitation, any contractor or subcontractor) shall allow such unclean, unsightly or unkempt conditions to exist at his dwelling unit or allow damage to occur and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant or The Landing Association, Declarant or The Landing Association shall have the right, exercisable in its sole discretion, to summarily abate any unsightliness, make needed repairs, and to remove any rubbish, refuse and/or unsightly debris from the Dwelling Unit and adjoining area. In the event the Declarant or The Landing Association, after such notice, causes the subject work to be done, the costs of such shall be reimbursed by The Landing Owner to The Landing Association and will become a continuing lien on the Dwelling Unit until paid.

Section 10. No Offensive Activity or Fires . No noxious or offensive activity or excessive noise shall be carried on upon any portion of The Landing Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any other Landing Owner, tenant or guest thereof, in any portion of The Landing Properties. Fires on Properties are prohibited unless procedures adopted by The Landing Association are strictly followed.

**Section 11. Certain Plants, Animals and Pets.** Except as otherwise permitted herein, or in any amended Declaration, no plants, animals, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may tend to diminish or destroy the enjoyment of any Landing Dwelling Unit Owner, or tenants and guests thereof, may be maintained at any Landing Lot. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Landing Lot or in any Landing Dwelling Unit except that a reasonable number, but no more than a total of three dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. At no time will any household pets be allowed to run free, and at all times when away from the Landing Dwelling Unit, such household pets will be on a leash.

**Section 12. Discharge of Firearms.** Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or the firing of bows and arrows within The Landing Properties is prohibited unless required for public safety.

**Section 13. Signage.** No "For Sale" or "For Rent" signs or other signs of any kind shall be displayed in public view on any Landing Lot or Landing Dwelling Unit, facility, appurtenance, short or long term parked vehicle, accessory building or structure unless approved by the Declarant, who shall also from time to time provide design criteria and color schemes for approved signage. Notwithstanding the foregoing, the Declarant shall have the right to locate a sign or signs indicating the location of sales and rental centers, identify model homes or living units and their builder, any Landing recreational facilities and such other informational signs of any type as may be necessary or desirable, in Declarant's sole opinion, to facilitate Declarant's plans for development and sales at The Landing Properties.

**Section 14. Pavement of Driveways.** Any Driveway shown on any recorded subdivision map of The Landing Subdivision, if and when improved, shall be improved and maintained by The Landing Owner of the Dwelling Unit the driveway serves.

**Section 15. Fences.** Fences are subject to the complete jurisdiction of the Declarant as to location, style, materials and height. The Declarant shall only approve the construction of a fence upon a determination that the fence is aesthetically pleasing, does not detract from the reasonable value of any Landing Dwelling Unit, does not unreasonably impede the view of any attractive feature from any other Landing Dwelling Unit, and does not interfere with the spray pattern required for the application of landscape irrigation reuse water by the Ginkulte Woods Reclamation Association, Inc., in the easement provided therefor.

**Section 16. Architectural Standards Committee.**

(a) **Membership:** The Architectural Standards Committee (the "ASC") shall be that ASC appointed by the Declarant during the Period of Declarant Control and thereafter appointed by the Board.

(b) **Procedure:** At least thirty (30) days prior to the proposed commencement of any construction, the plans shall be submitted to the ASC. The ASC's approval, disapproval or waiver as required in these covenants shall be in writing and the decision of a majority of the ASC in case of any disagreement among ASC members as to the approval, disapproval or waiver by the ASC shall be controlling. In the event the ASC or its designated representatives fail to approve or disapprove within thirty (30) days after plans have been received by it, approval of the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with. Further, in the event any construction is commenced on any Landing Lot without submission to the ASC of the plans with respect thereto, and no action or suit is instituted against the Owner of such Landing Lot by the Association or any Owner of any other Landing Lot constituting a portion of the Subdivision within ninety (90) days after the foundation of any building being constructed on any such Landing Lot is





completed, then, and in any such event, approval by the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with.

#### Section 17. Approval of Plans.

(a) Submission of Plans. No building, wall, driveway, swimming pool, tennis court, or other structure, site work or clearing preparatory to construction shall be begun, altered, added to, maintained or reconstructed on any Landing Lot until the plans and specifications for such work have been reviewed and approved by the Architectural Standards Committee (hereinafter referred to as the "ASC"). Before commencing such review, a Lot Owner shall submit to the ASC three (3) completed sets of plans and specifications, including, but not limited to: foundation plan, floor plan or plans, the four directional elevations, a schedule of proposed exterior colors and material, shingle colors, grade and weight, plan showing driveway, parking, and proposed commencement date of construction and expected completion of improvement. The ASC shall have the absolute and exclusive right to refuse to approve any such plans and specifications which are not suitable or desirable in the opinion of the ASC for any reason, including purely aesthetic reasons which, in the sole and uncontrolled discretion of the ASC, shall be deemed sufficient. If construction of any improvement required to be approved shall not have been begun before the expiration of six (6) months following approval, said approval shall be void and of no effect. In such event, the plans of such improvement shall be resubmitted to the ASC for reconsideration and the ASC may, in its discretion either confirm its earlier approval of plans or disapprove.

(b) Review Fee to Declarant. The Owner must submit a non-refundable review fee of \$200.00 to the Declarant and a security deposit in the amount of \$500.00. Subsequent to the Period of Declarant Control, the review fee shall be submitted to the Association. The Security Deposit will be refunded to the owner in a timely manner after the owner has complied with the Guidelines for Building and Development and has notified the Association that construction on the property has been completed.

(c) Variance. The ASC may from time to time grant the Owners of the property in Southern Shores Landing a waiver or variance of the provisions of this Declaration. The conditions under which such a waiver or variance may be granted shall be in the total discretion of the ASC. The expressed purpose of the powers as described in the paragraph is to enable the committee to alleviate hardships created by the terms of this Declaration under circumstances which are beyond control or fault of the parties and would create irreparable harm or unnecessary hardship without such action; or under conditions where title to the property in question is clouded, encumbered or detrimentally affected by the existence of conditions which cannot otherwise be corrected.

(d) Procedure. At least thirty (30) days prior to the proposed commencement of any construction, the plans shall be submitted to the ASC. The ASC's approval, disapproval or waiver as required in these covenants shall be in writing and the decision of a majority of the ASC in case of any disagreement among ASC members as to the approval, disapproval or waiver by the ASC shall be controlling. In the event the ASC or its designated representatives fail to approve or disapprove within thirty (30) days after plans have been received by it, approval of the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with. Further, in the event any construction is commenced on any Landing Lot without submission to the ASC of the plans with respect thereto, and no action or suit is instituted against the Owner of such Landing Lot by the Association or any Owner of any other Landing Lot constituting a portion of the Subdivision within ninety (90) days after the foundation of any building being constructed on any such Landing Lot is completed, then, and in any such event, approval by the ASC will not be required and



the related covenants and conditions of this Declaration shall be deemed to have been fully complied with.

Section 18. Approval Not a Guarantee. No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as presenting or guaranteeing that any Dwelling Unit or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, nor the Architectural Standards Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of Sections 16 through 18 herein this Article Five, nor any defects in construction undertaken pursuant to such plans and specifications.

**ARTICLE SIX: MEMBERSHIP, VOTING RIGHTS IN THE LANDING ASSOCIATION, RIGHTS AND RESPONSIBILITIES OF THE LANDING ASSOCIATION**

Section 1. Membership. Every person or entity who is a record owner of a fee simple interest in any Landing Dwelling Unit is subject by this and any other declaration(s) to all rights, responsibilities and assessments of The Landing Association and shall be a Member of The Landing Association; provided, however, that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

Section 2. Voting Rights. The Landing Association shall have two (2) classes of voting members:

(a) Class I. Class I Members shall be all Landing Owners, other than the Declarant. In the case of multiple ownership of any single property, those multiple owners shall be treated collectively as one Landing Owner. Class I Members shall be entitled to one (1) vote for each Landing Dwelling Unit which he owns.

(b) Class II. The Class II Member shall be the Declarant, who shall be entitled to six (6) votes for each pad for a Dwelling Unit in The Landing Properties or a Landing Dwelling Unit owned by it within The Landing Subdivision, including any additions to the existing Landing Properties. The Class II Membership shall cease and be converted to Class I Membership on the happening of the first to occur of the following events.

(1.) Declarant has sold and closed the sale of all Dwelling Units within The Landing Properties; as originally platted or as enlarged by any Supplemental Declaration.

(2.) December 31, 2008.

Section 3. Rights and Responsibilities of The Landing Association. Subject to the rights of The Landing Owners and Declarant as set forth in this Declaration, The Landing Association has exclusive management and control of The Landing Common Properties and all improvements thereon and all furnishings, equipment and other personal property relating thereto.

The Landing Association's duties with respect to such Common Properties include, but are not limited to, the following:

(a) Maintenance, replacement and repair of The Landing Common Properties, to include all streets, walkways, paths, and recreational facilities;

(b) Management, operation, maintenance, repair, servicing, replacement and renewal of all landscaping, improvements, equipment and personal property constituting



part of The Landing Common Properties or located upon The Landing Common Properties so as to keep all of the foregoing in good, clean, attractive, sanitary, safe and serviceable condition, order and repair;

(c) Maintenance of all landscaping of The Landing Common Properties;

(d) Maintenance of adequate public liability, property casualty or hazard insurance for the benefit of The Landing Association with respect to The Landing Common Properties; and

(e) Payment of all taxes and assessments validly levied, assessed or imposed with respect to The Landing Common Properties.

(f) The Landing Association may obtain and pay for the services of any personnel to manage its affairs to the extent The Landing Association Board of Directors deems advisable, as well as such other personnel as The Landing Association Board of Directors determines is necessary or desirable, whether such personnel are furnished or employed directly by The Landing Association or by any person with whom it contracts. Without limitation, The Landing Association Board of Directors may obtain and pay for legal, accounting, engineering or other professional services necessary or desirable in connection with the management of The Landing Common Properties or the enforcement of this Declaration, The Landing Association's Articles of Incorporation, Bylaws, rules or regulations.

(g) The Landing Association may acquire, hold, and dispose of real property and tangible and intangible personal property, subject to such restrictions as from time to time may be contained in The Landing Association's Articles of Incorporation and Bylaws.

(h) The Landing Association, from time to time, may adopt, alter, amend rescind and enforce reasonable rules and regulations governing use and operation of The Landing Common Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The validity of The Landing Association's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of The Landing Properties.

(i) The Landing Association may, acting through its Board of Director, contract with other residential associations or commercial entities, neighborhoods or clubs to provide services or perform services on behalf of The Landing Association and its Members. In addition The Landing Association may contract with other residential associations or commercial entities, neighborhoods or clubs to provide services in or perform services on behalf of such other associations, neighborhoods or clubs.

(j) The Landing Association's duties with regard to The Landing Dwelling Units shall be the following: to provide for the upkeep, painting, care, maintenance, repair and replacement of the roofs and exterior finishes and surfaces of the buildings and the rear, front and side yard landscaped areas of such Landing Dwelling Unit.

(k) the right of the Landing Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes in the Landing Association, to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Landing Association's Board; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Landing Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded; provided further that for so long as Declarant shall own any portion of The Landing or shall have the right to annex additional properties pursuant to Article II, Section 2.02

hereof, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Dwelling Units or any remaining Common Area or cause any Dwelling Unit or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances;

(l) the right of the Landing Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes in the Landing Association, to dedicate to any public agency, authority or utility, or to transfer to any other party, fee simple title to all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances; and further provided for so long as the Declarant shall own any portion of The Landing or shall have the right to annex additional properties pursuant to Section 2 hereof, Declarant must also consent to such action.

#### ARTICLE SEVEN: PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment . Subject to the provisions of Section 3 of this Article Seven, every Landing Member shall have a right and easement of enjoyment in and to all Landing Common Properties and such easement shall be appurtenant to and shall pass with the title to every Landing Dwelling Unit in the Subdivision.

Section 2. Title to Common Properties . The Declarant will initially hold the legal title to any Landing Common Properties shown on any recorded plat of The Landing Subdivision, and retain such title until such time as it has completed the improvements, if any, thereon and until such times as Declarant so wishes and/or, in the opinion of the Declarant, The Landing Association is able to maintain the same. Notwithstanding any provision to the contrary herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey, and upon such conveyance, The Landing Association shall accept, any such Landing Common Properties to The Landing Association not later and December 31, 2008.

Section 3. Extent of Members' Easements . The rights and easements of enjoyment created therein shall be subject to the following:

(a) The right of the Declarant in its sole discretion, to grade, pave or otherwise improve any road or street shown on any recorded plat of The Landing Properties.

(b) The right of The Landing Association, as provided in its Articles of Incorporation or Bylaws, to suspend the enjoyment rights of any Landing Member for any period during which any assessment of that Landing Member remains unpaid, and for any period not to exceed thirty (30) days for any infraction of any published rules and regulations adopted by The Landing Association Board of Directors.

(c) The right of The Landing Association or its assignee to charge reasonable admission and other fees for use of any Landing Association's Recreational Facilities situated upon The Landing Common Properties; and

(d) The right of The Landing Association to dedicate or transfer all or any part of The Landing Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by The Landing Members; provided, however, that no such dedication, transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless fifty-one percent



(51%) of the votes of The Landing Members entitled to vote, at a Special Meeting of The Landing Members called in accordance with the Bylaws (any consents in writing presented to the Secretary or other officer of The Landing Association at or prior to such meeting shall constitute votes of The Landing Members) consent to and approve of such dedication, transfer, purpose or condition. If so agreed to and approved by The Landing Members, such dedication and/or transfer, specifying the purposes(s) and conditions(s) thereof, shall be executed by way of a document signed by the President and Secretary of The Landing Association with the same formalities of a deed and recorded in the Office of the Register of Deeds of Dare County.

The rights of Members of The Landing Association shall in no way be altered or restricted because of the location of The Landing Common Properties in any additions to The Landing Subdivision in which such Landing Member is not a resident. The use of any and all Landing Common Properties belonging to The Landing Association shall be a membership entitlement.

Section 4. Private Roads. In the development of The Landing, the Declarant may construct certain private streets or roads within The Landing Properties connecting it to public rights of way. The owners of Landing Dwelling Units shall have no more than an easement for ingress and egress for themselves, their tenants, agents, employees, representatives, invitees and assigns over such private streets and roads, and there shall be no public rights of any kind therein, unless approved by The Landing Members in accordance with the provisions of Section 3 of this Article Six. Declarant reserves the right to name and revise from time to time the names or other designations given to such private streets or roads.

Section 5. Easements for Declarant. As long as the Declarant retains ownership of any Landing Lots within The Landing, Declarant shall have alienable and transferable right and easement, for purposes of ingress and egress of all roads within the Subdivision for the purpose of constructing any improvements in and to the Dwelling Units and for installing, maintaining, repairing and replacing such other improvements to The Landing Subdivision which may be undertaken by Declarant but for which in no event shall Declarant have any obligation to do any of the foregoing.

Section 6. Easements for Utilities and Drainage. The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric, gas, water, sewer, drainage facilities, telephone systems, cable television services, and conduits for the purpose of bringing public services to The Landing Subdivision, on, in or over those made on The Landing Subdivision Plat. Declarant reserves unto itself The Landing Subdivision and the right on, over and under the ground to cut drainways for surface water and make any grading of the soil whenever and wherever such action may appear to Declarant to be necessary to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

Section 7. Maintenance Easement. There is hereby reserved for the benefit of Declarant, its respective agents, employees, successors and assigns, the right to enter upon any Lot, such entry to be made by personnel with tractors or other suitable devices, for the purposes of mowing, removing, clearing, cutting or pruning underbrush, weeds or unsightly growth for the purpose of building or repairing any land contour or other earth work which in the opinion of the Declarant or its agents detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed as trespass. Declarant, and its successors, and/or assigns or designees may likewise enter upon any Lot to remove any trash which is collected without such entrance and removal being deemed as trespass. The

provisions of this paragraph shall not be construed as an obligation on the part of the Declarant and/or any designee of Declarant to undertake any of the foregoing.

**Section 8. Environmental Easement.** It is hereby reserved for the benefit of Declarant, and its respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all Landing Lots for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated by any governmental entity or instituted by the Landing Board or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

#### ARTICLE EIGHT: COVENANT FOR PAYMENT OF ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligations for Assessments.** Each Landing Member, other than the Declarant, who is the owner of a Landing Dwelling Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay, as limited below, to The Landing Association:

- (a) Annual assessments or charges as herein or in the Bylaws provided;
- (b) Special assessments for capital improvements (such annual and special assessments to be fixed, established, and collected from time to time as herein or in the Bylaws provided); and
- (c) Any liquidated damages or summary charges imposed under authority contained in the Bylaws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by The Landing Association incidental to the enforcement of any rules and regulations, collection of assessments (both annual and special) or collection of damages or charges arising under the Bylaws.

The annual and special assessments of a Landing Owner and any liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon The Landing Dwelling Unit against which each such assessment is made. Each such assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons jointly and severally, who is (are) Landing Owner(s) of such properties at the time when the Assessment fell due.

**Section 2. Purpose of Assessments.** The Assessments levied by The Landing Association shall be used exclusively to promote the recreation, health, access, maintenance of property values, security, safety and welfare of the residents of The Landing, and in particular for:

- (a) Improvement, maintenance and replacement of any of The Landing Common Properties including, without limitation, The Landing Recreational Facilities, roads, paths, landscaping and all other improvements to The Landing Common Properties and payment of The Landing Common Expenses;
- (b) Provide for the upkeep, painting, care, maintenance, repair and replacement of the roofs and exterior finishes and surfaces of the buildings and the rear, front and side yard landscaped areas of each Landing Dwelling Unit.
- (c) Establishment of capital replacement reserves; and
- (d) Acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of The Landing Common Properties, including but not limited

to, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against those Landing Common Properties, the procurement and maintenance of insurance related to those Landing Common Properties, its recreational facilities and use in accordance with the Bylaws, the employment of the attorneys to represent The Landing Association if necessary, and such other requirements as are necessary to perform all of the aforesaid functions and purposes.

Section 3. Assessment of Uniform Rates Within Different Categories or Forms of The Landing Ownership. Both annual and special assessments shall be fixed at uniform rates for every Landing Dwelling Unit within The Landing Subdivision.

Section 4. Application of Minimum and Maximum Assessment. The minimum regular annual assessment, as set forth in the schedule below, shall be levied by The Landing Association unless The Landing Association Board of Directors by majority vote, determines that the important and essential functions of The Landing Association may be properly funded only by an assessment above the minimum but not more than the applicable maximum regular assessment, as set forth in the schedule below. If The Landing Association Board of Directors shall levy the applicable minimum assessment for any assessment year and thereafter, during such assessment year, determine that the important and essential functions of The Landing Association cannot be funded by the minimum assessment, The Landing Association Board of Directors, by unanimous decision, may levy a supplemental assessment, but in no event shall the sum of the minimum regular and supplemental assessment exceed the applicable maximum regular assessment for the year.

The regular annual assessment minimum and maximum amounts shall be the sums calculated in accordance with the following schedule as may be increased in each instance by an adjustment for inflation as set forth below.

Assessments	Minimum Regular Annual Assessments	Maximum Regular Annual
Per The Landing Dwelling Unit	\$1,560.00	\$2,400.00

Commencing with the calendar year beginning January 1, 2003, on the first day of each year the minimum and maximum regular annual assessments shall automatically be increased unless The Landing Association Board of Directors, by unanimous decision shall determine otherwise, by five percent (5%) per annum, compounded annually. In the alternative, The Landing Association Board of Directors, by unanimous decision, may determine that the amount of the automatic five percent (5%) increase is inadequate and that the amount of the annual increase should be determined by multiplying the fee paid during the last year just ended by a fraction, the numerator of which shall be the Consumer Price Index for All Urban Consumers, All Items - All Cities (1982-84=100), thereafter called the "CPI-U", as determined by the United States Department of Labor for the first month of the last year just ended. In the event that the CPI-U shall be discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living. The Landing Association Board of Directors may by unanimous decision, after consideration of current costs and future needs of The Landing Association, fix the regular annual assessment for any year at an amount less than the applicable minimum regular annual assessment, but such action shall not constitute a waiver by The Landing Association of its right to revert to the full minimum regular annual assessment in subsequent years.

Section 5. Special Assessments. In addition to the regular annual assessments authorized by Section 4 of this Article Seven, The Landing Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of

defraying, in whole or in part, the cost of professional or consulting fees, any construction or reconstruction, unexpected repairs or replacement of any capital improvement (including, without limiting the generality thereof, any lake, waterway, or pond) located upon The Landing Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the consent of two thirds (2/3) of the votes of the Members who are voting in person or by proxy at a Special Meeting duly called for this purpose, written notice of which shall have been sent to all Members in accordance with the provisions of the Bylaws for Special Meetings.

Section 6. Change in Minimum and Maximum Amount of Annual Assessments. Subject to the limitations of Section 4 of this Article Seven and for the periods therein specified, The Landing Association may change the Maximum amount and the minimum amount of the regular annual assessments fixed by Section 4 of this Article Seven prospectively for any such period provided that any such change shall have the consent of two thirds (2/3) of the votes of The Landing Members who are voting in person or by proxy at a Special Meeting duly called for this purpose, written notice of which shall have been sent to all Landing Members in accordance with provisions of the Bylaws for Special Meetings; provided further, that the limitations of Section 4 of this Article Seven shall not apply to any change in the maximum amount and the minimum amount of the assessments undertaken as an incident to a merger or consolidation in which Landing Association is authorized by law to participate or as an incident to any (a) additions to real estate under Article One, Section 2 or (b) submission pursuant to Article One, Section 2 of this Declaration.

Section 7. Quorum for Action Authorized Under Sections 5 and 6. The quorum required for any action authorized by Sections 5 and 6 of this Article Seven shall be as follows:

At the first meeting called, as provided for in Sections 5 and 6 of this Article Seven, the presence at the meeting of the Landing Members, or of proxies, entitled to cast a simple majority of all the votes of the Landing Members shall constitute a quorum. If the required quorum is not forthcoming at such meeting, another meeting may be called, subject to the notice requirement set forth in Section 5 and 6 of this Article Seven, and the required quorum at any such subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than fifty (50) days following the preceding scheduled meeting.

Section 8. Date of Commencement of Annual Assessments Due Dates. The regular annual assessments provided for herein shall be paid (as determined by The Landing Association Landing Board of Directors) by The Landing Members in quarterly, semiannual, or annual installments. At least thirty (30) days in advance of each annual assessment period, the Landing Board shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. Within thirty (30) days of the adoption of any proposed budget, the Landing Board shall provide to all of the Landing Owners a summary of the budget and a notice of this meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Landing Board shall set a date for a meeting of the Landing Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting the Landing Owners of a majority of the Dwelling Units reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Landing Owners shall be continued until such time as the Landing Owners ratify a subsequent budget proposed by the Landing Board.

The due dates shall be established by The Landing Association Board of Directors. The Landing Association, upon any qualified demand (as determined by The Landing Association Board of Directors) at any time, shall furnish a certificate in writing signed





by an officer of The Landing Association setting forth whether any specific assessment has been paid. Such properly executed certificate of The Landing Association as to the status of the assessment is binding upon The Landing Association as the date of its issuance.

The first assessments levied against any additions to The Landing Properties not now subject to assessment at a time other than the beginning of any assessment period, shall be an amount which bears the same relationship to the regular annual assessment provided for in Section 4 of the Article Seven as the remaining number of months in that year bear to twelve.

The due date of any special assessment under Section 5 of this Article Seven or any other assessments permitted by the Declaration shall be fixed in the resolution or resolutions authorizing such assessment.

Section 9. Duties of The Landing Association Board of Directors. The Board of Directors of The Landing Association shall fix the date of commencement, and the amount of the assessment or assessments against each Landing Member, for each assessment period, at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of Landing Members and assessments applicable thereto which shall be kept in the office of The Landing Association, or at any other place designated by The Landing Association Board of Directors upon notice to the Landing Members, and which shall be open to inspection by any Landing Member. Written notice of the assessment or assessments thereupon shall be sent to every Landing Member subject thereto.

Section 10. Effect of Non-Payment of the Landing Owner's Assessment: The Lien Obligation of a Landing Owner. The Lien. Remedies of The Landing Association. If the assessments of a Landing Owner are not paid within ten (10) days following the date due (being the dates referred to in Section 8 of this Article Eight), then such assessments shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on The Landing Dwelling Unit(s), which shall bind such Landing Dwelling Unit(s), in the hands of the then-Landing Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then-Landing Owner to pay such assessment shall remain his personal obligation for the statutory period; and, in addition, shall pass to his successors in title as an encumbrance or lien against the Landing Lot or the Landing Dwelling Unit, unless expressly waived by The Landing Association Board of Directors.

If the assessment(s) is not paid within thirty (30) days after the delinquency date, the assessment(s) shall bear interest from the date of delinquency at the rate of one and one-half (1 1/2) percent per month and The Landing Association Board of Directors, acting on behalf of The Landing Association may authorize its officers to bring appropriate civil action against The Landing Owner personally obligated to pay the same or to foreclose the lien against any such Landing Dwelling Unit(s), and there shall be added to the amount of such assessment, the costs of such action and reasonable attorneys' fees or other costs incurred by the officers of The Landing Association pursuant to authority of The Landing Association Board of Directors. In the event a judgment is obtained against any Landing Owner for such assessments, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action.

Section 11. Subordination of the Lien on a Landing Owner's Property to Mortgages or Deeds of Trust. The lien on any Landing Owner's property for the assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Landing Dwelling Unit(s) subject to assessment. The subordination shall not relieve any Landing Dwelling Unit Owner from liability for any assessments now or hereafter due and payable, but the lien thereby

created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage, irrespective of when such first mortgage or deed of trust was executed and recorded:

Section 12. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

(a) All Landing Common Properties as defined in Article Two of this Declaration; and

(b) All properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption. (Homestead exemptions shall not be considered an exemption).

Notwithstanding any provisions of this Section 12, no Landing Dwelling Unit shall be exempt from said assessments, charges or liens.

Section 13. Declarant's Obligations for Assessments. Prior to January 1, 2010, the Declarant's obligation for assessments on unsold Landing Dwelling Units or completed Dwelling Units subject to this Declaration will be limited to the difference between the actual operating costs of The Landing Association, excluding reserves on The Landing Common Properties, and the assessments levied on the existing Landing Members other than the Declarant. In no event, however, will the Declarant be required to make a deficiency contribution in any amount greater than it would otherwise be liable for if it were paying assessments on unsold pads and The Landing Dwelling Unit(s) owned by Declarant. After December 31, 2009, Declarant shall pay assessments as would any other Landing Owner for each Landing pad or Dwelling Unit owned by the Declarant.

#### ARTICLE NINE: EXTERIOR MAINTENANCE AND INSURANCE

Section 1. Conformity Required. Any repairs, painting and other maintenance to the exterior of The Landing Dwelling Units shall utilize the same exterior colors, shingles and other materials, in order that the exteriors of said homes remain in conformity with one another, unless a change of the exteriors of all of said Landing Dwelling Units agreed upon by vote of not less than two-thirds (2/3) of the Owners of said Dwelling Units.

Section 2. The Association Responsible for Care and Maintenance of Yards and Building Exteriors. The Landing Association shall be responsible for the upkeep, painting, care, maintenance, repairs and replacements of the roofs and exterior finishes and surfaces of the buildings and the rear, front and side yard landscaped areas of each Landing Dwelling Unit.

Section 3. Special Maintenance. After thirty (30) days written notice to a Landing Owner specifying any required special maintenance required to bring any Landing Dwelling Unit into conformance with this declaration, The Landing Association shall have the right but not the obligation to provide such maintenance upon any Landing Dwelling Unit which is subject to assessment under Article Seven hereof. Such maintenance includes (but is not limited to) removal of signs in violation of this Declaration and abatement of any visual pollution on any Landing Dwelling Unit. Such maintenance may include such items as the mowing of grass and weeds, the trimming of shrubs, or the removal of trash and litter.

Section 4. Assessment of Cost of Special Maintenance. The cost of any such special maintenance called for subject to Section 3 of this Article Nine shall be assessed against The Landing Dwelling Unit, upon which such maintenance is done and shall be added to and become part of the regular annual assessment or charge to which such Landing Dwelling Unit is subject and, as part of such regular annual assessment or charge, it shall be a lien against any such Landing Dwelling Unit as heretofore defined



and limited, and a personal obligation of The Landing Owner and shall become due and payable in all respects as provided herein.

**Section 5. Insurance of The Landing Dwelling Units.** Each Landing Owner of a Landing Dwelling Unit, by acceptance of a deed therefore, whether or not it shall be expressed in said deed or by exercise of any act of The Landing Ownership, is deemed to covenant:

(a) To keep each Landing Dwelling Unit insured against loss by fire or other casualty, with extended coverage insurance, in an amount equal to at least ninety percent (90) of the replacement cost of such Landing Dwelling Unit;

(b) To name The Landing Association as an additional insured "as its interest may appear," so that The Landing Association shall be entitled to receive notice of cancellation of such insurance policy;

(c) To build or restore such Landing Dwelling Unit in the event of damage thereof and to apply the full amount, to the extent necessary, of any insurance proceeds to the full restoration or repair of such Landing Dwelling Unit;

(d) To keep The Landing Dwelling Unit in good repair as required by this Declaration or by the Bylaws.

(e) To maintain public liability coverage of at least Two Hundred Thousand Dollars (\$200,000.00) on each Landing Dwelling Unit.

In the event of non-payment of any premium for insurance required under this Article Eight, The Landing Association is authorized, but not obligated or required, to pay such premium and the sum so paid shall become a lien upon The Landing Dwelling Unit enforceable in the same manner and to the same extent as provided for the enforcement of liens or assessments hereunder.

#### ARTICLE TEN: AMENDMENT TO DECLARATION

**Section 1. The Landing Owner/Member Initiated.** An amendment to this Declaration may be proposed upon a vote of a majority of The Landing Owners whether meeting as The Landing Owners or by Instrument in writing signed by them. Any proposed amendment to this Declaration shall be transmitted in writing to all current Landing Owners, and there shall be called a Special Meeting of The Landing Owners for a date not sooner than ten (10) days nor later than fifty (50) days from the date of notice. It shall be required that each Landing Owner be given written notice of such Special Meeting, stating the time and place, and reciting the proposed amendment in reasonably detailed form, which notice, if mailed, shall be mailed not less than ten (10) days nor more than fifty (50) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail, certified with return receipt requested, addressed to each Landing Owner at his address as it appears on the current records of The Landing Association, the postage thereon prepaid. Any Landing Owner may, by written waiver of notice signed by such Landing Owner, waive such notice, and such waiver, when filed in the records of The Landing Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such Landing Owner. At the meeting, the amendment proposed must be approved by an affirmative vote of sixty-six percent (66%) of the votes (with the votes being calculated as provided in Article Five, Section 2) of the Landing Owners (including the Declarant) entitled to vote in order for such amendment to become effective. At any meeting held to consider such amendment, the written vote of any Landing Owner shall be recognized and counted even if such Landing Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of The Landing Association prior to or at such meeting. In order for such amendment to be binding upon all the holders of



mortgages or Deeds of Trust against any Landing Dwelling Unit, written consent must be obtained from the then-existing (as of the date of the meeting of The Landing Owners which approved such amendment) holders of First Lien Mortgages or Deeds of Trust encumbering fifty-one (51) percent of The Landing Dwelling Units in The Landing Subdivision encumbered by First Lien Mortgages or Deeds of Trust.

If such consent is so obtained, the amendment shall be binding on all the holders of First Lien Mortgages or Deeds of Trust encumbering The Landing Dwelling Units in the Properties. If so approved, such amendment of this Declaration shall be properly transcribed and certified by two (2) officers of The Landing Association as having been duly adopted and approved by the requisite percentages of The Landing Owners and lenders. The original or an executed copy of such amendment, properly executed with the same formalities as a deed shall be recorded in the Office of the Register of Deeds of Dare County, and no such amendment to this Declaration shall be effective until so recorded. If any amendment to the declaration creates an inconsistency with the Bylaws, to the extent such inconsistency exists, the Declaration shall control.

There shall not be allowed any Owner/Member-initiated amendments to this Declaration for a period of five years from the effective date hereof. The above limitation shall in no way limit or diminish Declarant's right to make amendments to any part of the Declaration under the powers reserved in Section 2. below.

Section 2. Declarant Initiated. For a term of five (5) years from the effective date hereto, Declarant, or its successor or assigns, shall be allowed to make any amendments to this Declaration, notwithstanding any other provision contained herein, and without joinder of any other party, which, in the sole opinion of the Declarant are in the best interests of the Landing Properties and the Landing Owners. This right may be exercised, and shall be effective only upon the recordation of an "Amended Declaration" in the Office of the Register of Deeds of Dare County, which "Amended Declaration" shall specifically reference this document, and the provision(s) impacted.

#### ARTICLE ELEVEN: CAPTIONS, INTRODUCTIONS AND GENDER

The captions and introductory material herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and neuter genders, the use of the singular shall be deemed to refer to the plural and the use of the plural shall be deemed to include the singular, whenever the context so requires.

#### ARTICLE TWELVE: SEVERABILITY AND GOVERNING LAW

If any provision of this Declaration is ruled to be invalid by any court of valid jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all covenants as contained herein shall be deemed to be severable each from the other without qualification. This Declaration and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to principals of conflict of laws.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed under seal as of the day and year below acknowledged.

BODDIE-NOELL ENTERPRISES, INC.

D/B/A KITTY HAWK LAND COMPANY

By:

  
Charles J. Hayes, Jr.  
Attorney-in-Fact

SOUTHERN COASTAL ASSOCIATES  
OF DARE COUNTY, INC.

By:

  
Neal Blinken, President.



EXHIBIT A

ALL DWELLING UNITS ON LANDING LOTS 1 THROUGH 36 AS SHOWN ON THAT PLAT OF SOUTHERN SHORES LANDING PLANNED UNIT DEVELOPMENT PREPARED BY COASTAL ENGINEERING AND SURVEYING, INC. DATED AUGUST 15, 2002, LAST REVISED AUGUST 28, 2002 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF DARE COUNTY, NORTH CAROLINA IN PLAT CABINET E-1 AT SLIDES 710-713.



STATE OF NORTH CAROLINA  
DARE COUNTY

I, DIANA B. WISE, a Notary Public of the County and State aforesaid, certify that Neal Blinken personally came before me this day and acknowledged that he is President of Southern Coastal Associates of Dare County, 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 26th day of November, 2002.

My commission expires MAY 17, 2007



Diana B. Wise  
Notary Public

NORTH CAROLINA  
DARE COUNTY

I, DIANA B. WISE, a Notary Public for said County and State, do hereby certify that CHARLES J. HAYES, JR., personally appeared before me this day, and acknowledged that he is Attorney in Fact for BODDIE-NOELL ENTERPRISES, INC., a North Carolina corporation, and that by authority duly given, he executed the foregoing and annexed instrument, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Dare, State of North Carolina, on the 19<sup>th</sup> day of July, 1993, in Book 874, Page 612 and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said CHARLES J. HAYES, JR. acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and on behalf of the said BODDIE-NOELL ENTERPRISES, INC.

Witness my hand and official seal, this 26th day of November, 2002.

Diana B. Wise  
Notary Public

My Commission expires: MAY 17, 2007

NORTH CAROLINA  
DARE COUNTY



The foregoing certificate of DIANA B. WISE is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Register of Deeds

By: \_\_\_\_\_  
Deputy/Asst. Register of Deeds