

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

This instrument has been filed for Registration
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Robert J. Robinson, Register of Deeds

Return After Recording To:
Jennifer I. Oakes, Bell, Davis & Pitt, P.A.
P.O. Box 21029
Winston-Salem, NC 27120-1029

STATE OF NORTH CAROLINA

BRUNSWICK COUNTY

DECLARATION OF
COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR
CADES COVE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CADES COVE (as hereafter amended and supplemented from time to time, the "Declaration"), made on the date hereinafter set forth by ITAC 62, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant").

WITNESSETH THAT:

WHEREAS, Declarant is the fee simple owner of certain real property located in the City of Southport, County of Brunswick, State of North Carolina, which is more particularly described on Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to as the "Properties"); and

WHEREAS, Declarant desires to create on the Properties a planned community in accordance with the North Carolina Planned Community Act known as Cades Cove; and WHEREAS, Declarant owns additional real property which adjoins the Properties which Declarant intends to add/ annex into Cades Cove in phases; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities within Cades Cove and for the maintenance of the Properties and the improvements thereon, and to that extent, desires to subject the Properties, together with any and all such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each of which is for

the benefit of the Properties and the Owners thereof and which shall be and are, real covenants running with the land, binding upon whomsoever shall own said property; and

WHEREAS, every person or other party hereafter acquiring any of the Lots in Cades Cove, by acceptance of a deed or contract for deed or other conveyance of any interest in or to any Lot within Cades Cove, whether or not it shall be so expressed in such deed, contract for deed or other conveyance, and regardless of whether the same shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take such property interest subject to this Declaration and to the terms and conditions hereof and shall be deemed to have consented to same; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in the community to create an agency to which should be delegated and assigned the powers of owning, maintaining, and administering certain community properties and facilities, administering and enforcing the Declaration, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the Owners, residents, and tenants of Cades Cove; and

WHEREAS, Declarant has incorporated under the laws of the State of North Carolina the CADES COVE HOMEOWNERS' ASSOCIATION, INC. as a non-profit corporation for the purpose of exercising those functions, among others.

NOW, THEREFORE, Declarant for itself, its successors and assigns, and for its future grantees, their heirs, successors and assigns, hereby declares that all of the Properties described hereinafter shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with, the Properties and be binding on all parties having or acquiring any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof,

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Cades Cove Homeowners' Association, Inc. a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association as they were filed in the Office of the Secretary of State for North Carolina, and any amendments thereto.

Section 3. "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association as more particularly described in the Association's Bylaws.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time. The Bylaws are incorporated herein by reference as if fully set forth herein.

Section 5. "Cades Cove" shall mean and refer to CADES COVE, a residential development proposed to be developed on the Properties by the Declarant.

Section 6. "Common Area(s)" shall mean all real property and/or easements to be owned by the Association for the common use and enjoyment of the Owners. Common Area(s) includes any and all of those certain portions of the Properties (including the improvements thereto) labeled as Common Area(s), Park, Wetlands, and Alleyway on the recorded plat(s) and all rights of way shown thereon (except for public rights of way) and any drainage facilities located within drainage easement areas and any open space for the common use and enjoyment of the Owners. The Common Area(s) will be conveyed to the Association by the Declarant. The Declarant may identify additional Common Area(s) in the future.

Section 7. "Declarant" shall mean and refer to ITAC 62, LLC, a North Carolina limited liability company, its successors and assigns.

Section 8. "Design Guidelines" shall mean the architectural, design and construction guidelines set forth in the Cades Cove Architectural Inspiration and Guidelines dated December 1, 2005, as may be amended from time to time. The Design Guidelines are incorporated herein by reference as if fully set-forth herein.

Section 9. "Lot" shall mean and refer to any numbered plot of land with delineated boundary lines, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site as shown upon any recorded plat(s) of the Properties. Common Area and road rights-of-way which are offered for public dedication are not Lots.

Section 10. "Member" shall mean and refer to all Lot Owners and to every other person or entity who holds membership in the Association.

Section 11. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including the Declarant and contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 12. "Properties" shall mean and refer to that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference, and such additions thereto as may hereafter be brought within the jurisdiction of the Association as provided herein.

ARTICLE II

COMMON AREA PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment to the Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and the following provisions:

(a) the right of the Association to limit the use of the Common Area to Owners, their families and guests;

(b) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facilities which may constitute a portion of the Common Area;

(c) the right of the Association to suspend the voting and enjoyment rights of an Owner for any period during which any charges or assessments against his Lot remains unpaid, or for any infraction of the Association's published rules and regulations, as provided herein;

(d) the right of the Association to mortgage, to dedicate or to transfer any part of the Common Area to any public agency, authority, utility or any other entity for such purposes and subject to such conditions as may be agreed to by the Association, provided that 80% of Class A and B Members agree in writing to that action in accordance with N.C. General Statute §47F-3-112(a). The instrument effecting such dedication, transfer or conveyance shall be sufficient if it is executed by appropriate officers of the Association and contains a recital of the approval of the Members;

(e) the right of the 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 Board; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded;

(f) the right of the Association to impose and enforce rules and regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area. Sanctions may include monetary fines and suspension of the voting rights and easements of enjoyment of any Member as provided herein;

(g) the easements herein reserved by Declarant or created in favor of the Association and its Members;

(h) the right of the Association to convey to Declarant portions of the Common Area for the purpose of correcting erroneous conveyances of Common Area or eliminating unintentional encroachment of dwellings or other improvements onto portions of the Common Area or for the purpose of enhancing the utility of the Common Area to be retained by the Association; provided, however, no such conveyance 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;

(i) the right of the Declarant, in its sole discretion, to use any of the Common Area for the installation of utility lines of all types, drainage ditches or swales, lighting, to grade and pave roadways or easements of access, and to do all things and acts necessary to develop Cades Cove to its final development together with the right to grant easements to the proper utility and/or governmental authorities for such use; and

(J) the right of the Association to contract (specifically including leasing) with third parties concerning rights to and responsibilities for use, operation and maintenance of amenities within the Common Area.

Section 2. Delegation of Use. Subject to Section 1 above, any Owner may delegate, in accordance with the Bylaws, his rights of use and enjoyment in and to the Common Area to the Members of his family, his lawful tenants, or contract purchasers who reside on such Owner's Lot, and to his guests, invitees and licensees.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns that it will convey fee simple title to the Common Area shown on the aforementioned recorded plat(s) to the Association free and clear of all encumbrances and liens, except easements of record, easements provided for or reserved herein, easements to governmental authorities, and utility and drainage easements.

ARTICLE III
EASEMENTS

Section 1. General Easements and Associated Undertakings. All of the Properties, including Lots and Common Areas, shall be subject to such easements for installation and maintenance of utilities (including cable television service) and drainage facilities as shall be established prior to subjecting the Properties to this Declaration by the Declarant or its predecessors in title or as may be reserved as indicated on the recorded plat(s). Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Association shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as are necessary or desirable for the convenient use and enjoyment of the Properties.

Section 2. Temporary Construction Access and Disturbance Easement. An easement over, through and to the Common Area is hereby reserved, conveyed and established in favor of Declarant and all Lot Owners to be used for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials, the necessary disturbance of land for construction on any Lot; and installation of driveways, sidewalks, alleyways, underground drainage and utility conduits and hookups. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Owner as well as the extension of driveways, sidewalks, alleyways, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In using and taking the benefits of said easement, Declarant or its designee and Owners shall use their best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should Declarant, its designee or an Owner fail to restore the disturbed land as required above, the Association may restore the land to the required condition and Declarant, its

designee or Owner, as the case may be, shall indemnify the Association for the reasonable expense incurred in performing such restoration and the Association may treat any such unpaid expenses as a direct assessment against a Lot Owner as provided in Article V, Section 5. Where any Owner shall seek to take advantage of the easement herein conveyed, such Owner's rights of use shall be restricted to that Common Area which shall be reasonably servient and proximate to his Lot.

Section 3. Easement for Minor Encroachments. The Declarant grants reciprocal appurtenant easements of encroachments, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to the willful and knowing conduct on the part of, or with the knowledge and consent of, the party claiming the benefit of such easement.

Section 4. Utilities and Drainage. All utility lines of every type, including but not limited to, water, electricity, natural gas, telephone, sewage and television cables, running from the main trunk line or service locations must be underground. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, across, over and under the ground to erect, maintain, replace and use water, sewer, electric and telephone systems, wires, cables, and conduits for the purpose of bringing public services, including television cable service, to the Lots and Common Areas, and said easement is to be located (i) within ten (10) feet of each lot line fronting on a street and ten (10) feet along the rear line of each Lot, (ii) within the rights of way of any street, road, or alleyway shown on any recorded plat(s) of Cades Cove, and (iii) such other areas as are shown on any recorded plat(s) of Cades Cove; provided further, that the Declarant or Association may cut, at its own expense, drainways for surface water wherever and whenever such action is reasonably required in order to maintain reasonable

standards of health, safety, and appearance. In the event of any additions to Cades Cove, the easements created herein shall exist on Lots in such additions. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or to 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 5. Easements to Serve Additional Property. The Declarant reserves for itself, the Association, and their successors, assigns, mortgagees and designees, a perpetual, nonexclusive easement over any of the Common Area for the purposes of enjoyment, use, access, and development of any property brought into the Association by a Supplemental Declaration as provided in Article XI, Section 5 herein. This easement includes, but is not limited to, a right of ingress and egress over any Common Area for construction of roads and for connecting and installing any and all utilities on such additional property.

Section 6. Easement for Maintenance to Bodies of Water and Wetlands and Flood Water. The Declarant reserves for itself, the Association, and their successors, assigns and designees, the non-exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located on any of the Common Area to (i) install, operate, maintain, and replace pumps to supply irrigation water to any of the Common Area, (ii) construct, improve, maintain, and repair structures and equipment used for retaining or draining water, and (iii) maintain such Common Area in a manner consistent with this Declaration or the directives of the Board. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Lots to the extent reasonably necessary to exercise their rights under this Section.

The Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Area and the Lots (but not the dwellings thereon) adjacent to or within fifty (50) feet of bodies of water and wetlands within the Properties, in order to (i) temporarily flood and back water upon and maintain water over such portions of the Properties as is reasonably necessary, (ii) alter in any manner and generally maintain the bodies of water and wetlands with the Common Area, and (iii) maintain and landscape the slopes and banks pertaining to such areas. All parties entitled to exercise these easements shall use reasonable care in use of these easements and repair any damage resulting from the intentional exercise of the easements. Nothing herein shall be construed to make the Declarant or the Association liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

Section 7. Easement for Front Yard Maintenance. The Declarant reserves for itself, the Association, and their successors, assigns and designees, the non-exclusive right and easement, but not the obligation, to enter upon the Lots to maintain the front yards of the Lots, in a manner consistent with the directives of the Board and/or Architectural Review Board (defined below) in accordance with the Design Guidelines.

Section 8. Easements for Ingress and Egress. Easements are hereby reserved and granted across all streets and alleyways shown on the recorded plat(s) for ingress and egress of the Declarant, its successors and assigns, its licensees, public safety personnel and any authorized agents, employees or assigns of any of the foregoing for the purpose of constructing, maintaining, inspecting and repairing the streets and alleyways to be built in the Common Areas and the utilities and drainage areas described in Sections 1 and 4 of this Article.

Section 9. Easements for the Provision of Services. An easement is hereby established for the benefit of the appropriate governmental entity and any other person or firm providing services to the Properties under agreement with or at the direction of the Association over all Common Area as may be reasonably necessary for the setting, removal and reading of water meters, the delivery of mail, the maintenance and replacement of water, sewer and drainage facilities, police protection, the fighting of fires and collection of garbage.

Section 10. Utility Charges for Water, Sewer and Street Lights. As consideration for the conveyance of the Common Area and as consideration for the rights, entitlements and benefits granted to and conferred upon the Association under and by virtue of this Declaration, the Association covenants and agrees to accept the responsibility for payment of any and all fees, charges and expenses arising by virtue of the use of water and sewer provided to and used in connection with any of the Common Area and by virtue of the use and operation of the street lights installed and erected within the Common Area from and after the date of acceptance. Such cost of fees, charges and expenses paid by the Association shall be charged ratably to the Owners as an assessment according to the provisions of Article V below.

Section 11. Signs. The Association shall maintain all subdivision signs and landscaping and lighting surrounding same now or hereafter erected within the Common Area. The cost of all such maintenance, repair and replacement of such signs, landscaping and lighting shall be part of the common expenses of the Association, payable by the Owners as set out in Article V hereof. Further, Declarant and any affiliated entity shall have (i) the right to erect within the Common Area additional subdivision signs and landscaping and lighting surrounding the same to be maintained by the Association as herein provided and (ii) the right to erect within the Common Area signs advertising the sale and promotion of Lots or any portion of any additional

property brought into the Association by a Supplemental Declaration as provided in Article XI, Section 5 herein.

Section 12. Emergencies. Every Lot shall be subject to an easement for entry by the Declarant and Association for the purpose of correcting any emergency condition which arises upon any Lot that endangers any building or portion of the Common Area.

ARTICLE
IV

MEMBERSHIP AND VOTING
RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association, subject to and bound by the Articles of Incorporation, Bylaws, and rules and regulations as may be adopted by the Board from time to time. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing does not include persons or entities who hold an interest merely as security for the performance of an obligation. The Board may make reasonable rules relating to the proof of ownership of a Lot in Cades Cove. In addition, for so long as Declarant owns any part of Cades Cove, Declarant shall also be a Member of the Association.

Section 2. The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot, nor shall any fractional vote be cast.

Class B: Declarant shall be the Class B member. The Class B member shall be entitled to cast three (3) votes for each Lot owned. The Class B membership shall terminate and be immediately converted into a Class A membership upon the happening of the first of the following events to occur:

(a) When ~~75%~~ **when less than 2%** of the maximum number of residential units located on the Lots allowed for the Properties (as amended and supplemented from time to time) under the

subdivision plan have certificates of occupancy thereon and have been conveyed to residential Owners other than Declarant; or

(b) seven (7) years from the date of recordation of the Declaration; provided, however, that if the Declarant is delayed in the improvement and development of the Properties on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid seven (7) year period shall be extended by a period of time equal to the length of the delays or seven (7) years, whichever is less; or

(c) upon the surrender of the Class B membership for cancellation on the books of the Association.

Upon the lapse or surrender of the Class B membership as provided for in this Article, the Declarant shall thereafter remain a Class A Member of the Association as to each Lot in which the Declarant then holds the interest otherwise required for such Class A membership. Declarant, as a Member of the Association, or any representative of Declarant serving on the Board, shall not be required to disqualify himself from the vote upon or entrance into any contract or matter between Declarant and the Association in which Declarant may have a pecuniary or other interest.

Section 3. Voting, Quorum, and Notice Requirements for the Association. Except as may be otherwise specifically set forth in this Declaration or in the Articles of Incorporation, the voting, quorum, and notice requirements for the Association shall be set forth in the Bylaws.

Section 4. Voting Rights Suspension. The right of any Class A Member to vote may be suspended by the Board according to the terms and conditions of this Declaration, the Bylaws and the Articles of Incorporation.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS AND PROCEDURES FOR IMPOSITION OF FINES AND SUSPENSION OF THE VOTING AND COMMON AREA ENJOYMENT RIGHTS OF AN OWNER

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner and any subsequent Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association for the expenses of the Association: (1) annual assessments or charges, (2) special assessments for capital improvements and/or other purposes, and (3) direct assessments levied against such Owner to reimburse the Association for extra costs for maintenance and repairs as set out in Article V, Section 5, of this Declaration, such assessments to be established and collected as hereinafter provided. All assessments, together with interest, costs, and reasonable attorney's fees, as and to the extent permitted by law, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made and when filed for record in the Office of the Clerk of Superior Court of Brunswick County, North Carolina, shall be a lien upon the land to all who acquire an interest therein. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due and any heir or devisee shall be deemed to have consented to make such payments. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title by deed unless expressly assumed by them. No Owner may escape liability for any assessment through nonuse of the Common Area or through abandonment of his property. Notwithstanding anything in this Article V to the contrary, Declarant shall not be required to pay any charges or assessments, special or otherwise.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the landscaping and beautification of Cades Cove, which may

specifically include the payment of electric bills for street lighting, whether or not such lighting is installed in the Common Area or along or in the public or private road rights of way; the recreation, health, safety and welfare of the Owners in Cades Cove; the enforcement of this Declaration, any Supplemental Declaration, and the rules and regulations of the Association; the improvement and maintenance of the Common Area, including drainage facilities located in drainage easements; the yard and landscaping maintenance of the Common Area and for the Lots in accordance with and pursuant to the provisions of this Declaration; the establishment of adequate reserves for the replacement of capital improvements, if any, located within the Common Area; the payment of insurance premiums for contracts of hazard and liability insurance on the Common Area; the payment of assessments for public and private capital improvements made to or for the benefit of the Common Area; the payment of local ad valorem taxes, public assessments and public nuisance abatement liens, if any, on the Common Area; the cost of labor, equipment, materials, management and supervision of the Common Area; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; the employment of security personnel to provide any service which is not readily available from any governmental authority; and such other common needs as may arise.

Section 3. Annual Assessments. Each Owner shall pay to the Association the annual assessment pursuant to this Declaration. The annual assessment shall be payable in advance on a semi-annual basis **or as maybe determined by the Board of Directors** by every Owner of a Lot. In establishing the annual assessment for any year, the Board shall consider the then-current development and/or maintenance costs and the future needs of the Association, which may include a reasonable contingency fund.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, one or more special assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, including the repair or replacement of the paving or other base on any private streets and alleyways, and private easements created by the Declarant to provide access to more than one Lot. Any special assessment passed shall not apply to the Declarant.

Section 5. Direct Assessments. Each Owner shall have the obligation to maintain and keep in good repair and replace the improvements on his Lot, including the roof, gutters, windows, doors, shutters and exterior walls of the dwelling unit thereon, and any other exterior improvement such as garden walls, carports or garages and landscaping, including the routine cutting of grass, trimming of shrubs and other maintenance and replacement to present a good exterior appearance as provided in this Declaration and in the Design Guidelines. If any Owner shall fail to properly comply with the provisions of this subsection and in the opinion of the Architectural Review Board as established under Article VII of this Declaration, such failure impairs the aesthetic harmony of Cades Cove, the Association may make demand upon such Owner to comply. In the event such Owner shall, after written notice has been given, fail to take necessary steps to comply within 30 days of receipt of notice, the Association may proceed to remedy such Owners default, but does not have the obligation to do so. The Association and its authorized agents shall have an easement for the accomplishment of the foregoing. Any expense incurred by the Association for such purposes, including labor, materials and professional fees shall become a lien upon the Lot of such Owner and the personal obligation of the Owner, collectible as other assessments as provided for herein. Amounts incurred in the foregoing manner

shall be deemed "direct assessments" and shall be in addition to any other assessments herein provided for and shall be due immediately upon demand.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. Provided however, Lots owned by the Declarant shall not be subject to annual or special assessments. Provided further, annual and special assessments for all Lots owned by a builder-owner who has acquired a Lot for the purpose of constructing a dwelling unit thereon for sale shall be assessed at ~~twenty five percent (25%)~~ **fifty percent (50%)** of such assessments for other Lots. Special assessments shall be assessed against the Members in the same manner and according to the same allocation formula as the annual assessments.

Section 7. Date of Commencement of Annual Assessments; Due Dates.

On or before December 1 of each year, the Board shall establish the amount of the annual assessment for the ensuing year imposed by the Association against each Lot and in the event the Board elects not to fix such assessment rate as herein provided, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of the annual assessment for the ensuing year shall be provided to each Owner no later than ~~December 15 of each year~~ **thirty (30) days prior to the end of the fiscal year**. The annual assessment shall be due on January 1 of each year except for the first year of ownership by an Owner. The assessment shall begin to accrue as to a Lot at the time of closing and conveyance of a Lot to an Owner other than the Declarant. At the closing of the purchase of a Lot by an Owner, the Owner shall pay to the Association the Owner's pro rata share of the annual assessment for the remainder of the year.

Section 8. Effect of Nonpayment of Assessments. Remedies of the Association. Any annual assessment, special assessment, or direct assessment, not paid within thirty (30) days after its due date shall bear interest from the due date at the rate of eighteen percent (18.0%) per annum or the highest rate allowed by law and shall be subject to a late charge ~~of Twenty-~~

~~Five and 00/100 Dollars (\$25.00)~~ to be determined by the Board but not to exceed the maximum allowable by law. The Board may, in its sole discretion, waive the interest charges and/or late charges for extenuating circumstances. Any assessment levied against a Lot and not paid within thirty (30) days after the due date shall constitute a lien on that Lot when a claim of lien is filed of record in the Office of the Clerk of Superior Court of Brunswick County, North Carolina. The Association may bring an action at law against the Owner personally obligated to pay the same for such delinquent assessment, interest, late charges and reasonable attorneys' fees of any such action, or foreclose the lien created herein against the property in the same manner prescribed by the laws of the State of North Carolina for foreclosure of Deeds of Trust under power of sale or by some other foreclosure method prescribed by the laws of the State of North Carolina. For purposes of this Section, the amount of the delinquent assessment, late charge, costs, interest, and reasonable attorneys' fees as hereinabove provided shall be considered evidenced by this paragraph and therefore, evidence of indebtedness shall exist hereby. In the event of such action at law or in the event of the entry of judgment against the Owner in favor of the Association, the Association shall be further empowered to execute on such judgment in such manner and to the extent permitted by the laws of the State of North Carolina.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage deed or trust filed prior to a lien for assessment and to ad valorem taxes. The sale or transfer of any Lot which is subject to any first mortgage deed of trust pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but the personal obligation of the Owner of the Lot when the assessment fell due shall survive. No sale or transfer of any Lot which is subject to any first mortgage deed of trust pursuant to a mortgage foreclosure or any

proceeding in lieu thereof shall relieve such Lot from liability or liens arising from any assessments thereafter becoming due.

Section 10. Procedures for Imposition of Fines and Suspension of the Voting and Common Area Enjoyment Rights of an Owner. The Association shall have the right to suspend the voting and Common Area enjoyment rights of an Owner for any period during which any charges or assessments against his Lot remains unpaid, or for any infraction of the Association's published rules and regulations. Furthermore, the Association shall have the right to impose monetary fines for infraction of the Association's published rules and regulations. Before the voting and Common Area enjoyment rights of an Owner are suspended and before monetary fines are imposed, a hearing shall be held before the Board. The Lot Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the Board's decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) **per day or the maximum allowable by law** may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens as provided in this Article V, Section 8. If it is decided that the voting and enjoyment rights of an Owner shall be suspended, the suspension may be continued without further hearing until the violation or delinquency is cured.

Section 11. Working Capital Assessments. **At any time title to a Lot is conveyed, the Buyer shall pay a sum equal to two (2) months assessments to the Association as working capital to be used for operating and capital expenses of the Association. Amounts paid in to the working capital fund are not to be considered as advance payment of the Annual or any other assessment.**

ARTICLE VI

INSURANCE

Section 1. Ownership of Policies. All insurance policies upon the Common Area which shall be purchased by the Association shall be for the benefit of all the Association and the Owners and their mortgagees as their interests may appear.

Section 2. Coverage. Property insurance on the Common Area insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils shall be secured by the Association, to the extent reasonably available. The total amount of such property insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Public 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, to the extent reasonably available, shall be secured by the Association and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverages as the Association shall determine from time to time to be desirable and necessary. Such policies shall contain clauses providing that:

(a) Each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest;

(b) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;

(c) No act or omission by any Lot Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 3. Fidelity Insurance OT Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association, shall first be bonded by a fidelity insurer, if such coverage is reasonably available, to indemnify the Association for any loss or default in the performance of their duties in an amount equal to at least one-half the annual assessment plus reserves accumulated.

Section 4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to all Owners as an assessment according to the provisions of Article V above.

Section 5. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

(a) the proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.

(b) any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be retained by the Association as a part of its general operating funds to be used for the purposes as delineated in this Declaration and any Supplemental Declaration.

(c) if such insurance proceeds should be insufficient to repair or replace any casualty loss or damage to covered property, the Association may levy a special assessment as hereinabove provided to cover the deficiency.

Section 7. Owners' Property Insurance. All Lot Owners, by acceptance of a deed to a Lot, covenant and agree to maintain full coverage hazard insurance on the dwelling unit constructed on a Lot. The Owner shall be obligated to rebuild or repair the dwelling located on his/her Lot in the event of damage thereto, unless otherwise agreed by the Board. Any repairs or reconstruction of a dwelling unit on a Lot shall be substantially identical to the damaged or destroyed dwelling unit unless a change be approved by the Architectural Review Board (defined below) and shall be constructed in conformity with plans submitted to and approved by the Architectural Review Board prior to construction in accordance with the provisions of Article VII below. All repairs or reconstruction shall be performed within a reasonable time not exceeding ninety (90) days from the loss, unless otherwise agreed by the Board.

ARTICLE VII

ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. Architectural Review Board. Initially, the Architectural Review Board shall consist of one (1) or more persons designated by the Declarant. At such time as Declarant no longer owns any real property within the Properties (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), the Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Review Board, whereupon the Board shall appoint three (3) or more persons as the members of the Architectural Review Board. Declarant or the Board, as the case may be, may elect at its option to increase the number of members of the Architectural Review Board from time to time. In the event of the death or resignation of any Architectural Review Board member, the authority which appointed that member shall designate and appoint a successor to serve the remainder of the departing member's term. Members of the Architectural Review Board may be removed or replaced at any time, with or without cause and without prior notice, by the controlling authority (meaning the Declarant or Board, as appropriate). No member of the Architectural Review Board shall be liable for claims, causes of action, or damages, except where occasioned by such member's negligence or willful misconduct, arising out of services performed pursuant to this Declaration. **Should an Architectural Review Board not be appointed, the Board of Directors may act in place of that Board, but in no case may a Board of Directors Member also be appointed to an appointed Architectural Review Board.**

Section 2. Plan or Design Approval; Fees.

(a) In accordance with and pursuant to the Design Guidelines, Cades Cove will offer a selection of custom designed homes consistent with the architectural style of the area. Individual homes within Cades Cove will not be repetitive from Lot to Lot along a neighborhood street. Each home design will have designated Lots upon which

it may be situate and each Lot will have designated home design choices. A perspective resident who chooses a certain home design will have certain choices of designated Lots for that particular home style.

No site preparation or initial construction, erection, or installation of any improvements, or any changes thereto, including but not limited to, dwellings or other buildings, landscaping (including installation and removal), signs, fences, outside lighting, walls, swimming pools, screen enclosures, walks, antennas, excavations, or changes in grades shall be undertaken on any Lot until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to topography and finished ground elevation of the proposed improvements on the Lot shall have been submitted to and approved in writing by the Architectural Review Board. The Architectural Review Board shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the Architectural Review Board shall consider the suitability of the proposed building, improvements, structure or landscaping and materials of which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area, and the effect thereof on adjacent or neighboring property. The Architectural Review Board shall also confirm that all plans and applications are in keeping with the Design Guidelines promulgated by the Declarant, and shall refuse to approve any plans and specifications which are not in compliance with said Design Guidelines. The Architectural Review Board shall be allowed to charge a review fee in a reasonable amount *to* be determined by the Architectural Review Board, upon submission of the package for review.

(b) An Owner shall submit to the Architectural Review Board three (3) complete sets of the final plans and specifications for any and all proposed improvements, the erection or alteration of which is desired.

(c) The Architectural Review Board shall review the plans and take action within sixty (60) days after receipt and shall return one set of plans to the Owner marked "approved" or "disapproved" or "approved with conditions." One set of plans shall be retained in the permanent records of the Architectural Review Board.

Section 3. Right of Inspection. There is specifically reserved unto the Architectural Review Board the right of entry and inspection upon any Lot for the purpose of determination by the Architectural Review Board whether there exists any construction of any improvement which violates the terms of any approval by the Architectural Review Board or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The Architectural Review Board and the Board is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses, and reasonable attorneys' fees in connection therewith. The Association, Declarant, Architectural Review Board or any officer, employee, director or member thereof shall not be liable for damages to any persons submitting plans and specifications to the Architectural Review Board for approval by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant or Architectural Review Board to recover any such damages. The approval of any plans, specifications or other items submitted to

the Architectural Review Board shall not impose any responsibility on the Architectural Review Board or the Declarant or Association with respect to either the compliance or non-compliance of any such plans, specifications, or other items with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations from defects in or arising from such plans, specifications or other items (including, without limitation, defects relating to engineering matters, structural and design matters and the quality or suitability of materials).

ARTICLE VIII

USE RESTRICTIONS

Section 1. Restrictions. Each Lot and the Common Area shall be subject to the restrictions contained in this Declaration and any applicable Supplemental Declaration, the Design Guidelines, the Bylaws, and the Articles of Incorporation, all of which are expressly incorporated herein by reference. In addition, the Board shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Area, including, but not limited to levying fines as provided herein. In all cases the use restrictions set forth in this Article VIII shall be construed together and shall be given that interpretation or construction which will best tend towards their strict enforcement, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

All structures must be built to comply substantially with the plans and specifications as approved by the Architectural Review Board, and before any house may be occupied, it must be completely finished and a certificate of completion must have been issued by the local or state authority empowered to do so.

Construction of the dwelling on the Lot must commence within one (1) year of the closing of the purchase of the Lot, and once commenced, construction shall be diligently and continuously pursued and shall be completed within six (6) months from the date of commencement of construction. If construction has not begun within the said one (1) year period, the Declarant will have the right to purchase the Lot from the Owner at the original sales price by giving written notice to the Owner of its intention to do so. In the event that the

Declarant fails to give Owner said written notice within one (1) year of the expiration of the one (1) year period, the rights to repurchase the Lot shall automatically cease. The rights to repurchase the Lot shall also automatically cease in the event construction is commenced prior to Declarant's exercise of its right to repurchase,

Section 2. Dwelling Size and Driveways. No dwelling may be more than two (2) floors in height. Except with prior written approval of the Architectural Review Board, no single story residential structure which has a heated area of less than 1200 square feet, no one and one-half story residential structure which has a heated area of less than 1200 square feet, and no two story residential structure having a heated area of less than 1400 square feet, exclusive of open porches, breezeways, stairs, terraces, decks, roof overhangs and garages, shall be erected or placed or permitted to remain on any Lot. All driveways shall be paved (concrete, asphalt or brick pavers) from alleyway or street, as specified by the Architectural Review Board, to each house including parking area. No residence shall be erected on less than one (1) Lot as shown on the recorded plat(s).

Section 3. Setbacks/Building Location. No building shall be located on any Lot nearer to the front line than ten (10) feet or nearer to the rear line than twenty (20) feet, or nearer to the side street than ten (10) feet in the case of a corner Lot, or ten (10) feet from a side Lot line. The Architectural Review Board may for good cause waive a violation of the set back requirements provided for herein, so long as it does not violate local government zoning regulations. This waiver shall be in writing and recorded in the Brunswick County Registry. A document executed by the Architectural Review Board shall be, when recorded, conclusive evidence that the requirements of the paragraph have been complied with. Declarant reserves the right to waive in writing any minor violation of this Article, so long as it does not violate local government regulations.

Section 4. Use of Properties. No Lot shall be used except for single family residential purposes, except that nothing herein shall preclude the use of any Lot for use by Declarant or Declarant's assigns as a temporary sales office or model unit. Except as expressly allowed herein, no building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling not to exceed two stories in height and one detached private garage for not more than two (2) cars. Declarant has promulgated certain Design Guidelines which are explanatory and illustrative of Declarant's general intent for the development of Cades Cove. The Design Guidelines, which may be supplemented and amended from time to time by Declarant, the Association, and their successors and assigns, contain tables of permitted uses which are suggested by Declarant as appropriate or desirable within Cades Cove. It is understood, however, that in any instance wherein one of the permitted uses as set out in the Design Guidelines conflicts with and is contrary to applicable zoning and subdivision regulations then in effect with respect to the Properties, those regulations will control the permitted use. The following use restrictions shall apply to all of the Properties subject to this Declaration:

(a) Outside clothes lines or other exterior drying apparatus shall not be permitted upon any Lot.

(b) No "for sale" signs shall be placed or allowed to remain on any Lot. One (1) temporary sign to advertise a yard sale or other temporary activity on the Lot shall be permitted provided such temporary sign shall not be permitted to remain on any Lot for more than SEVENTY-TWO (72) consecutive hours, **without the written permission of the Board of Directors.** ~~No sign deemed by the Association, the Architectural Review Board or Declarant to be a nuisance to the Properties shall be permitted to be erected or to remain on any Lot, unless otherwise required by law. Notwithstanding the foregoing, Declarant and any affiliate shall have the right to erect and maintain signs within the Common Areas or on any Lot owned or leased by Declarant or any affiliate for the purpose of advertising and promoting the sale of such Lots~~

(c) No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot in an exposed location except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably

necessary for the construction in which same is to be used. Construction of new buildings only shall be permitted on any Lot, it being the intent of Declarant to prohibit the moving of any existing building onto any Lot. The foregoing shall not prohibit the Architectural Review Board from approving the use of certain pre-existing architectural components should it determine, at its sole discretion, that such components are in keeping with and do not impact negatively on the general development scheme and appearance of Cades Cove.

(d) No exposed above-ground tanks except for approved recreational swimming pools and outdoor grills will be permitted for the storage of fuel or water or any other substance, except that such tanks may be placed above-ground provided they are ~~kept in an inconspicuous area~~ **screened and/or not visible from any street, alley way or neighboring property** and, in the case of above-ground tanks for approved recreational swimming pools, are in a screened enclosure which must exceed in height by at least one (1) foot any such tank as may be placed therein and approval is obtained by the Architectural Review Board.

(e) Nothing shall be kept and no activity shall be carried on in any dwelling structure on a Lot or **on any vacant lot or** on the Common Area which will increase the rate of insurance for the Common Area. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, on his Lot or on the Common Area which will result in the cancellation of insurance on any portion of the Properties, or the contents thereof, or which will be in violation of any applicable law, ordinance, or regulation,

(f) The Board shall have the right to designate the trash collector authorized for Lots within Cades Cove. Garbage receptacles, containers and enclosures may not be out earlier than twelve (12) hours before pickup or twelve (12) hours after collection. All garbage receptacles, containers and enclosures shall be located at the rear of the dwelling structure on a Lot, out of view from any street abutting the Lot. No waste shall be committed on any portion of the Common Area. No dumping shall be permitted on any lot or vacant Lot.

(g) Except with the prior written consent of the Architectural Review Board, no trailer, tent, shack, barn, or other outbuilding or accessory building (including but not limited to storage buildings, dog houses, greenhouses), shall be erected or placed on any Lot covered by these covenants. No structure of a temporary character shall be used at any time as a dwelling unit.

(h) No fence, wall, hedge, or mass planting shall be permitted to extend beyond the minimum building set back line except upon approval by the Architectural Review Board. No fencing may be erected nearer the front property line than the front wall of the single-family dwelling thereon. Chain link fencing shall not be permitted. Other decorative fencing of good quality may be erected, but the quality, style, color and location of said fencing must be approved by the Architectural Review Board. Fencing must be maintained in a good state of repair.

(i) Each Owner shall keep his building site free of tall grass, undergrowth, dead trees, trash and rubbish and shall maintain his Lot so as to present a pleasing appearance. In the event an Owner does not properly maintain his building site as above provided, in the opinion of the Architectural Review Board, the Association may have the required work done and the costs thus incurred shall be paid by the Owner and treated as a direct assessment in accordance with Article V, Section 5.

(j) The erection of antennae or other structures designed for the receipt or transmission of television, radio, or other communication signals on any Lot, including but not limited to satellite dishes, ~~is specifically prohibited without the prior written approval of the Architectural Review Board~~ **must be located on a house or lot so as to not be visible from any street. Satellite dishes one (1) meter or larger in size are forbidden.**

(k) Decorative lawn ornaments ~~shall~~ **must** be approved in writing by the Architectural Review Board prior to installation on any Lot.

(l) No permanent structures shall be erected having exposed exterior walls of concrete blocks.

(m) Community mail stations/kiosks will be designed and provided by the Declarant and maintained by the Association. Individual mailboxes or mail receptacles are prohibited on the Lots, unless permitted on an individual basis by the Architectural Review Board.

(n) Trees may be removed, where necessary, for the construction of driveways and dwellings or if located within six (6) feet of the foundation of the house or garage or swimming pool. All other trees over six (6) inches in diameter (measured eighteen (18) inches from the surface of the ground) shall be retained unless their existence creates

a hazard to the property and the Architectural Review Board gives its written consent to removal. Removal of any tree covered under this section without the written approval of the Architectural Review Board may subject the owner of the lot to an immediate assessment charge of up to one thousand dollars (\$1,000.00) plus being required to replace the removed tree with like kind and size as may be determined by the Architectural Review Board.

(o) No vents or other pipes or appendages may extend from the front of any dwelling, unless screened from public view by a screening material or shrubbery approved by the Architectural Review Board. All electrical meter bases and other similar devices attached to the exterior of a building shall be painted to match the siding or trim of said building.

(p) All exterior air-conditioning or heating equipment must be screened from public view by a screening material or shrubbery approved by the Architectural Review Board. No window air-conditioning or heating equipment shall be permitted.

(q) Downspouts and gutters must be so constructed so as not to promote erosion of the soil of any Lot.

(r) Any and all outdoor lighting must be approved by the Architectural Review Board.

(s) Use or discharge of any radio, loudspeaker, horn, whistle, bell or other sound device so as to be audible to occupants of other Lots shall be prohibited, except alarm devices used exclusively for security purposes.

(t) No solar panels or solar tubes shall be visible from the front property lines of the single-family dwelling. In the case of a corner lot, no solar panels or solar tubes shall be visible from the side yard street as well.

(u) Each Lot Owner shall install adequate erosion control measures during construction to prevent the flow of mud/silt onto the adjoining properties and street rights of way.

(v) No Owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots.

(w) No outside toilet facility may be constructed or maintained on any Lot, except port o johns shall be permitted during construction of improvements on any Lot, provided that such facilities are screened from view of the immediate neighbors and street.

Section 5. Vehicular Access/Parking Rights. Lot Owners' vehicular access to their Lots shall be via rear access through private alleyways. Owners of Lots shall not be permitted to park their automobiles on the private alleyways. Owners of Lots shall not be permitted to park their automobiles on the streets (public or private) in the development. However, designated parking spaces on the streets, if any, may be used for Owners' guests. Owners of Lots shall not be permitted to park commercial vans or trucks displaying permanent or temporary identification signage, tractors, boats, trailers, campers, motorcycles, ATVs and all other similar property on the private alleyways or streets (public or private) in the development, and such property shall be parked in a garage or area screened from the street and adjoining Lot and/or Common Area view and approved by the Architectural Review Board in writing. No Owner shall park or store an inoperative or abandoned vehicle on any Lot or on the private alleyways or streets (public or private) in the development.

Section 6. Hobbies and Activities. The assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkept conditions, shall not be pursued or undertaken on any part of any Lot or Common Area. The riding of minibikes, motorcycles, ATVs or other motorized vehicles on any Lot and/or Common Area is expressly forbidden. No hunting or trapping shall be permitted except in circumstances posing an

imminent threat to the safety of persons in Cades Cove and except as expressly permitted by the Board. The discharge of any firearm, including BB guns, is expressly prohibited within Cades Cove.

Section 7. Required and Area. No single family residential Lot may be subdivided by sale, lease or otherwise so as to reduce the total area thereof below that as shown on any recorded plat(s) of the Properties without the prior written consent of (i) the Association, and (ii) the Declarant, for so long as there is Class B membership, Lot consolidation may be permitted upon the prior written consent of (i) the Association, and (ii) the Declarant, for so long as there is Class B membership. Notwithstanding the foregoing, Declarant shall have the right to subdivide and/or recombine one or more Lots which have not been conveyed by Declarant to a builder or Owner.

Section 8. Animals and Pets. No stable, dog run, poultry house or yard or other similar structure shall be constructed or allowed to remain on any Lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any Lot. However, a reasonable number of household pets, not to exceed three (3) per household, or as otherwise determined by the Board from time to time, shall be permitted, provided they are not raised for commercial or breeding purposes. Pets must be either in a confined area or on a leash at all times. The walking of any pets on streets, Common Area or Lots belonging to others for the purposes of allowing pets to relieve themselves of bodily wastes is prohibited, and each pet owner is responsible for retrieving any excrement deposited by his or her pet in the event of unintentional depositing of such waste.

Section 9. Prohibited Activities. Noxious and/or offensive activities shall not be carried on upon any Lot. Each Owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. Each Owner shall keep and maintain his Lot in a neat, orderly and well kept manner.

No industry, business, trade, occupation or profession of any kind shall be permitted on any Lot or Common Area, except that (i) Declarant may use any unsold Lots of the Properties for sales or display purposes, and (ii) a Lot Owner may use one room of the residence as a home office, provided (a) there is nothing visible from outside the residence to indicate a room is being used as an office and (b) there are no business clients or members of the

general public coming to the residence because of the business being conducted in the residence and (c) there is nothing being done in the residence which may or may become an annoyance or nuisance to the neighborhood.

Section 10. Governmental Regulations. Any and all governmental building codes, health regulations, zoning restrictions and the like applicable to the Properties shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 11. Common Area Construction or Alteration. No Owner shall undertake, cause or allow any alteration or construction in or upon any portion of the Common Area unless directed by and with the express written consent of the Association.

Section 12. Utilities. All water, gas, sewer, electrical, telephone, television, and other utility lines, and all connections between the main utility line and the unit or other structures on the Lot shall be located underground and concealed so as not to be visible.

Section 13. Recreational Facilities. No pool, tennis court, or other recreational facility shall be constructed on any Lot without the prior written approval of the Architectural Review Board.

Section 14. Wetlands; Stream Buffers. Any wetlands and/or stream buffer areas located on any Lot or Common Area shall be subject to regulations promulgated by the North Carolina Division of Water Quality and/or other applicable jurisdictional authorities. If any portion of any Lot has been determined to meet the requirements for designation as regulatory wetlands, any subsequent fill or alteration of such wetlands shall conform to the requirements of the wetlands rules adopted by the State of North Carolina and/or other applicable jurisdictional authorities in force at the time of the proposed alteration. Because the intent of such provision is to prevent additional wetland fill, no Owner should assume that any future application for fill would be approved. This covenant is intended to ensure continued compliance with wetlands rules adopted and enforceable by the State of North Carolina and/or other applicable jurisdictional authorities, and shall run with the land and be binding on the Owners, their heirs, successors, and assigns.

Section 15. Bodies of Water and Wetlands.

(a) Bodies of water and wetlands which may be shown on the recorded plat(s) of the Properties, whether or not so labeled, shall be Common Areas for the use and enjoyment of every Owner, subject to the rules and regulations of the Association. Use of said bodies of water and wetlands by the Owners shall not include the use of Lots whose Lot lines extend to the high water mark of the bodies of water and wetlands, and use of same shall be limited to the areas designated as "Common Areas" adjacent to such bodies of water and wetlands.

(b) Maintenance of the bodies of water and wetlands shall be the duty of the Association, and no Owner by virtue of owning a Lot adjacent to same shall be required to assist in the maintenance except through the payment of the regular assessment paid by all Owners to the Association.

(c) The Board shall establish rules and regulations governing the activities which are permitted in and on the bodies of water and wetlands but until said rules and regulations are enacted, there shall be no swimming, boating, use of personal flotation devices, or other active use of the bodies of water and wetlands except for fishing from the banks in designated areas.

(d) Neither the Declarant or the Association shall be responsible for any loss, damage, or injury to any persons or property arising out of the authorized or unauthorized use of the bodies of water and wetlands within Cades Cove.

Section 16. Exception for Declarant and Builders. The rules, restrictions, regulations and prohibitions provided for in this Article VIII are intended for the use and protection of future Owners of Lots in Cades Cove, and nothing herein shall be construed so as to prevent or prohibit the Declarant or any builder from developing the Properties subject to this Declaration and constructing dwellings thereon.

Section 17. Sale of Lot. At least five (5) days prior to transfer of title to a Lot, the Owner of said Lot shall notify the Association of the upcoming transfer. For purposes of this section, transfer of title shall be defined as the delivery of a deed from seller to buyer. **In the event of less than five (5) days notice, the Owner may be subject to an immediate assessment charge of up to one hundred dollars (\$100.00).**

ARTICLE IX

STORMWATER RESTRICTIONS

The following covenants are intended to ensure continued compliance with State Stormwater Management Permit Number SW8041011, as issued by the State of North Carolina, Division of Water Quality pursuant to NCAC 2H.1000, and shall run with the land and be binding on each Owner, his heirs, successors and assigns. To the extent necessary, the State of North Carolina is made a beneficiary of these covenants to maintain compliance with the Stormwater Management Permit. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

- (a) No more than 5,000 square feet of any Lot shall be covered by structures of impervious materials. Impervious materials include asphalt, gravel, concrete, brick, stone, slate or similar material, but do not include wood decking or the water surface of swimming pools.
- (b) Swales shall not be filled in, piped or altered except as necessary to provide driveway crossings.
- (c) Built-upon area in excess of the permitted amount requires a state stormwater management permit modification prior to construction.
- (d) All permitted runoff from outparcels or future development shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted.

ARTICLE X
MAINTENANCE

Section 1. Common Area Maintenance. Prior to the conveyance of the Common Area to the Association by Declarant as provided herein, Common Areas and improvements thereon shown on the recorded plat(s) of the Properties shall be maintained by the Declarant. Thereafter, the Common Areas shall be maintained by the Association.

Section 2. Lot Maintenance. The exterior maintenance of each Lot and other landscaping and improvements constructed upon each Lot, with the exception of front yard maintenance (which may be performed by the Association in accordance with directives of the Board and in accordance with the Design Guidelines), shall be the duty of the Owner of each Lot, except as specifically provided otherwise in this Declaration or any Supplemental Declaration, and shall not normally be interfered with by the Association. Landscape standards are specifically enumerated in the Design Guidelines. The Association shall have the power to levy and collect direct assessments as specified in Article V, Section 5, with respect to an Owner's maintenance of his Lot.

Section 3. Streets. The streets within Cades Cove, expressly excluding any private streets (which shall be a portion of the Common Area), and alleyways shall be dedicated for public use on each recorded plat. Declarant shall remain responsible for any maintenance or repair necessary for any streets until maintenance is formally accepted by the appropriate government entity.

Section 4. Islands and Street Shoulders Within Public Rights of Way. The Declarant contemplates entering into a maintenance agreement with the City of Southport or other applicable jurisdictional authority with respect to islands and street shoulders located within rights of way dedicated to the public. To the extent such maintenance agreement is executed, Declarant shall assign its rights and obligations thereunder to the Association.

ARTICLE XI GENERAL

PROVISIONS

Section 1. Enforcement. The Association, Declarant, any Owner, and their respective legal representatives, heirs, successors and assigns shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, Declarant or any Owner and their authorized successors and assigns to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Duration and Amendment. The real covenants, conditions and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, Association or the Owner of any Lot subject hereto, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each unless it is agreed by not less than sixty seven percent (67%) of the Members of the Association to change, amend or revoke this Declaration and the restrictions contained herein in whole or in part. Every purchaser, Owner or subsequent grantee of any interest in any Properties now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance therefore, hereby agrees that the covenants and restrictions of this Declaration may be extended as provided in this Article.

This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of (i) not less than sixty seven percent (67%) of the Members of the Association, and (ii) with the consent of Declarant, for so long as Declarant is a Class B Member of the Association. Any amendment must be recorded in the Brunswick County Registry. Provided, however, that this Declaration may be amended unilaterally at any time and

from time to time by Declarant or the Association without the consent of the Members (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination as well as any other law or regulation relating to the control of Properties, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Properties subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; (c) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Properties or individual Lots subject to this Declaration; or (e) if such amendment is necessary to correct obvious error or inconsistency in drafting, typing or reproduction; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot or property unless any such Owner shall consent thereto in writing. Further, for so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article XI, Section 5 hereof, Declarant may unilaterally amend this Declaration for any other purpose so long as said amendment promotes or makes no change to the common scheme of development; provided, however, any such amendment shall not materially adversely affect the substantive rights of any property Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

Any instrument amending these covenants, conditions, and restrictions (other than a permitted unilateral amendment by the Declarant or Association) shall be delivered, following approval by the owners, to the Board. Thereupon, the Board shall within thirty (30) days, do the following:

(a) Reasonably assure itself that the amendment has been validly approved by the requisite percentage of Members, (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to any Lot to be examined)

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed; and

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be executed by the Association's officers in the same manner that deeds are executed and recorded in the Brunswick County Registry. The amendment shall be indexed in the Grantee index in the name of CADES COVE and the CADES COVE HOMEOWNERS' ASSOCIATION and in the Grantor index in the name of each person executing the amendment.

All amendments shall be effective from the date of their recordation in the Brunswick County Registry. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board, recorded, and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots.

Section 4. Revision to Recorded Plat(s) of Cades Cove.

(a) Recorded plat(s) of Cades Cove may be revised for the same reasons and in the same manner as the Declaration may be amended as detailed in Article XI, Section 3, provided all applicable legal requirements associated with the recordation of plat(s) are satisfied.

(b) Furthermore, the Declarant may, at any time, and from time to time, on or before the lapse or surrender of the Class B membership, re-record any plat(s) of Cades Cove to adjust the boundary lines of Lots owned by the Declarant. Notwithstanding any provision of this Declaration, or of any statutory or common law, which may provide to the contrary, from and after the date of each re-recording of the plat(s) by the Declarant pursuant to this paragraph (b), the boundary lines of all Lots shall be as the same are shown and depicted on such re-recorded plat(s). No approval from any member of the Association, or from anyone else whomsoever, shall be required for the Declarant to adjust the boundary lines of the Lots owned by the Declarant pursuant to the provisions of this Section 4(b).

Section 5. Annexation of Additional Properties. At any time during the effective term of this Declaration, Declarant may propose that the Association annex additional real property which has been or will be developed as a part of the general plan of development for Cades Cove as follows:

(a) Additions by Declarant. For a period of twenty (20) years from the date of recording this Declaration and without further assent or permit, Declarant hereby reserves the right, exercisable from time to time, to subject other real property to the restrictions set forth herein, in order to extend the scheme of this Declaration to other property to be developed and thereby to bring such additional property within the jurisdiction of the Association.

The additions authorized under this and the succeeding subsection, shall be made by filing of record a Supplemental Declaration with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property and which shall extend the jurisdiction of the Association to such property and thereby subject such addition to assessment for its share of the Association's expenses. Such Supplemental Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the scheme of this Declaration.

(b) Other Additions. Annexation of additional Properties other than those described in Section 5(a) above shall require the assent of two-thirds (2/3) of the votes of each class of Members at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or of written proxies entitled

to cast sixty-six and two-thirds percent (66 2/3%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be the same. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of each class of Members are not present in person or by proxy, Members not present may give their written consent to the action taken thereat. No annexation within this subsection shall occur without the prior approval of the Owner(s) of the additional property. In addition, for so long as the Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with this Section 5, Declarant's consent shall be necessary.

Additional properties as annexed in 5(a) or 5(b) above shall become a part of the Properties as defined herein and shall be subject to the provisions of this Declaration, the Bylaws, and the Articles of Incorporation.

Section 6. Leasing. No Lot or the residential structure thereon shall be leased for transient or hotel purposes, nor may any Owner lease less than the entire residential structure on his Lot, nor shall any such lease be for a period of less than ninety ~~(90) days~~ **six (6) months or one (1) year as may be determined by the Board of Directors. Subletting is not permitted nor are corporate and similar rentals intent on rotating occupants.** Any lease must be in writing and provide that the terms of the lease and occupancy of the dwelling structure shall be subject to this Declaration and any failure by a lessee to comply with such shall be a default under the lease.

Section 7. Contract Rights of Association. As long as there is a Class B membership, any contract entered into by or on, behalf of the Association shall contain a provision giving the Association the right to terminate such contract upon the giving of not more than thirty (30) days written notice to the other party or parties.

Section 8. Underground Utilities and Street Lighting. Declarant reserves the right to subject the Properties to a contract with Brunswick Electric Membership Corporation and/or the City of Southport, their successors or assigns, for the installation of underground electric cables and the installation of street lighting, either of which or both of which may require a continuous monthly charge to the Owner of each building Lot. Upon acceptance of a deed to a Lot, each Owner agrees to pay Brunswick Electric Membership Corporation and/or the City of Southport, their successors or assigns the continuing monthly payment therefore as approved by the North Carolina Utilities Commission, or other

appropriate government authorities. Declarant reserves the right to contract on behalf of each Lot with Brunswick Electric Membership Corporation and/or the City of Southport, or its successors and assigns, for street lighting service.

Section 9. Lender's Notice. Upon written request to the Association, identifying the name and address of the mortgage holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to:

- (a) written notice of any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.
- (b) written notice any sixty (60) day delinquency in the payment of assessments owed by the Owner of the Lot on which it holds the mortgage.
- (c) written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) written notice of any proposed action that requires the consent of a specified percentage of mortgage holders.
- (e) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year.
- (f) inspect the books and records of the Association during normal business hours.

Section 10. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans' Affairs: annexation of additional Properties, dedication of Common Area, deeding in trust the Common Area, mergers and consolidations, and amendment of this Declaration. This paragraph shall apply only in the event Declarant desires FHA or VA approval for any development, phase or portion thereof, in Cades Cove.

Section 11. Conflicts/Inconsistencies. In the event of any irreconcilable conflict between the terms and provisions of this Declaration and the Bylaws of the Association, the terms and provisions of this Declaration shall control. In the event of any irreconcilable conflict between the terms and provisions of this Declaration or the Bylaws and the Articles of Incorporation of the Association, the terms and provisions of the Articles of Incorporation shall control. To the extent

there is a material inconsistency between the Declaration (expressly excluding the Design Guidelines for the purposes of this sentence) and the Design Guidelines, the Declaration shall control.

Section 12. Severability. Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

Section 13. Joinder by SunTrust Bank. SunTrust Banks, Inc., successor by merger to Central Carolina Bank, a division of National Bank of Commerce, joins in the execution of this Declaration as mortgagee and does hereby subordinate its lien recorded in Book 1947, Page 92 of the Brunswick County Registry, to the terms and conditions of this Declaration.

Section 14. Unintentional Violation of Restrictions. In the event of unintentional or minor violation of any of the foregoing restrictions with respect to any Lot, the Declarant, the Association, or their successors and assigns reserve the right (by and with the mutual written consent of the Owner or Owners of such Lot) to change, amend, or release any of the foregoing restrictions as the same may apply to that particular Lot.

Section 15. Professional Management. Declarant reserves the right to select professional management for the Association for the period during which there is Class B membership. Declarant is not required to engage professional management for the Association, but may, if Declarant so desires. Upon the lapse or surrender of the Class B membership pursuant to Article IV, the Members may vote either to engage professional management for the Association, or to self manage the Association. Any contract for professional management shall provide that the Association may terminate said contract on the giving of not less than ninety days' notice.

Section 16. Dissolution or Insolvency of the Association. In the event the Association becomes insolvent or for any reason whatsoever loses the ownership of any of the Common Areas, the Members of the Association may, at their election as determined by majority vote, form a nonprofit corporation as provided in the Articles of Incorporation and Bylaws and assign to it the duty and authority to assess on a per Lot basis all Lots having an interest in such Common Areas, whereupon such corporation shall maintain such Common Areas in the same manner than the Association is empowered to do by this instrument with the same right of lien for assessments provided for herein.

Section 17. Delegation and Assignability. Declarant shall at all times and from time to time have the right to delegate any and all functions herein reserved to Declarant. Further, notwithstanding any other provision contained herein to the contrary, Declarant shall have the right at all times and from time to time to fully transfer, convey and assign all or any part of its right, title and interest (whether real or personal) in and to Common Areas; provided, however, that any transferee, grantee or assignee shall be deemed to have assumed the same, in the event of any such sale, transfer or conveyance, subject to the terms and conditions of this Declaration. Declarant shall not, however, be liable to any person for any injury or loss resulting from failure of performance or negligent performance of Declarant's obligations under these covenants arising after such sale, transfer or conveyance.

[Signature page follows]
See hardcopy of
document provided at
closing for signatures

