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DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

FOR

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CHIEF OF POLICE

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OCEAN HARBOUR ESTATES

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STATE OF NORTH CAROLINA	)	DECLARATION OF RESTRICTIONS
	)	AND
	)	PROTECTIVE COVENANTS
	)	FOR
COUNTY OF BRUNSWICK	)	OCEAN HARBOUR ESTATES
	)	SUBDIVISION

THIS DECLARATION is made this 8th day of March, 1994, by OCEAN HARBOUR ESTATES, INC., a North Carolina corporation, hereinafter called "Declarant".

RECITALS:

The Declarant is the owner of certain real property located in Brunswick County, North Carolina, which is more particularly described in Exhibit "A" attached hereto and made a part hereof by reference.

The Declarant proposes to create on such property a subdivision ("the Properties"), containing Lots for single family detached houses, villa homes, condominiums, townhouses, recreational and/or club facilities.

The Declarant wishes to accomplish the following objectives for its benefit and the benefit of Owners of property in the Properties by the imposition of the covenants, restrictions and easements set forth herein:

(a) To maintain the value and the residential character and integrity of the residential portions of the Properties,

(b) To insure the attractiveness of the Properties and to prevent any impairment thereof,

(c) To preserve, protect and enhance the quality and value of the natural amenities of the Properties,

(d) To minimize or eliminate the possibility of any nuisances or disruptions of the peace and tranquility of the residential environment of the Properties,

(e) To provide for the maintenance and upkeep of the property in the Properties,

(f) To prevent the abuse or unwarranted alteration of the trees, vegetation, streams, marshes and other bodies of water and natural character of the land in the Properties,

(g) To prevent any property Owner or any other persons from building or carrying on any other activity in the Properties to the detriment of any Owners of property in the Properties, and

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(h) To keep property values in the Properties high, stable and in a state of reasonable appreciation.

The Declarant wishes to maintain design and location criteria, construction specifications, and other controls to assure attainment of the foregoing objectives, and has established an architectural review board to which all plans and drawings for proposed construction within the Properties must be submitted and from which written approval must be received for such plans and drawings prior to the start of any construction within the Properties, as is more fully set forth hereinbelow.

The Declarant has deemed it desirable for the efficient preservation of the value and amenities in the Properties to create an association to which should be delegated and assigned the powers of owning, maintaining, and administering the community properties and facilities, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents.

The Declarant has incorporated under the laws of the State of North Carolina a nonprofit corporation known as Ocean Harbour Estates Association, Inc. ("the Association") for the purpose of exercising the aforesaid functions, among others.

#### DECLARATION:

NOW, THEREFORE, the Declarant hereby declares that all of the Property described in Exhibit "A" shall be held, mortgaged, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants and conditions which are hereby imposed for the purpose of protecting the value and desirability of these lands and which restrictions, easements, conditions, and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described lands or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Declaration.

#### ARTICLE I. - DEFINITIONS

The following words and terms when used in this Declarations or any supplemental Declarations (unless the context shall clearly indicate otherwise) shall have the following meanings:

Section 1. "Annual Assessment" shall mean an equal assessment established by the Board of Directors of Ocean Harbour Estates Association, Inc., for the common expenses as provided for herein or for the purpose of promoting the recreation, common benefit, and enjoyment of the Owners and occupants of all Lots.

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Section 2. "Association" shall mean and refer to Ocean Harbour Estates Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Section 3. "Common Area" shall mean the real property owned by the Association for the common use and enjoyment of the Owners. The Common Area owned by the Association shall include (but shall not necessarily be limited to) the roadways, road right-of-ways, pedestrian pathways/walkways and certain open areas as conveyed by the Declarant.

Section 4. "Declarant" shall mean and refer to Ocean Harbour Estates, Inc., its successors and assigns.

Section 5. "Designated Builder" shall mean any person, firm, corporation, partnership, or other legal entity that is so designated by the Developer in any written instrument of record that (1) concerns property that is now or hereafter a part of the Properties and (b) makes reference to this Declaration.

Section 6. "Eligible Mortgagee" refers to an institutional lender holding a mortgage or deed of trust ("Mortgage") encumbering a Lot that has notified the Association in writing of its status, stating both its name and address and the address of the Lot its Mortgage encumbers, and requesting all rights under the Association's governing documents and this Declaration. When any right is to be given to an Eligible Mortgagee, such right shall also be given to any public or private secondary mortgage market entity participating in purchasing, insuring, or guaranteeing Mortgages within the Properties if the Association has notice of such participation.

Section 7. "Living Space" shall mean and refer to enclosed and covered areas within a residence on a Lot, exclusive of garages, rooms over garages, unenclosed porches, porte-cocheres, carports, breezeways, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

Section 8. "Lot" shall mean and refer to any plot of land regardless of size appearing on a recorded subdivision map of the Properties which has been approved by Declarant as required by this Declaration (with the exception of any Common Area). Each Lot shall be undeveloped or shall contain one Residence. In the event any Lot is increased or decrease by resubdivision, the same shall nevertheless be and remain a Lot for the purposes of this Declaration. This definition shall not imply, however, that a Lot may be subdivided if prohibited elsewhere in this Declaration. In the event that an Owner desires to combine two (2) or more adjoining Lots for the purpose of constructing and maintaining a single Residence thereon, the resulting combined Lots shall from that date forward be deemed one Lot for the purposes of this Declaration.

Section 9. "Member" shall mean and refer to every person or entity who holds membership in the Association, as provided by this Declaration and in the Bylaws.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the

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Properties, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 11. "Properties" shall mean and refer to the real property as described in Article II, Section 1 hereof, and any additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Association under the provisions of Article II hereof.

Section 12. "Residence" shall mean and refer to the improvements to a lot in the form of a single family dwelling. Residence may, for the purposes of this Declaration, be referred as building, structure, or home being constructed on any Lot within the Properties.

Section 13. "Setback" or "Building Setback" shall mean and refer to an area along the boundary of a Lot where no building or other structure, or part thereof, shall be permitted without the express written permission of the Association.

Section 14. "Special Assessment" shall mean and refer to any assessment levied by the Association in addition to the "Annual Assessment" as provided for herein.

Section 15. "Subsequent Amendment" shall mean an amendment to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of this Declaration.

#### ARTICLE II. - PROPERTY SUBJECT TO THIS DECLARATION AND JURISDICTION OF OCEAN HARBOUR ESTATES ASSOCIATION, INC.

Section 1. Property. The real property which is and shall be held, transferred, sold, conveyed, and/or occupied subject to this Declaration, and within the jurisdiction of the Association is located in Brunswick County, North Carolina, and more particularly described in the attached Exhibit "A" together with any additional property which may be annexed by virtue of the provisions of Article III of this Declaration.

Section 2. Merger or Consolidation. Upon consolidation or merger of the Association as provided in its Articles of Incorporation, or by other applicable law, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of any association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Properties.

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### ARTICLE III. - ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation by Declarant. As the owner thereof, Declarant, its successors and assigns, shall have the unilateral right, privilege, and option to subject to the provisions of this Declaration and the jurisdiction of the Association any property that it now, or in the future, owns adjacent to that shown on Exhibit "A" or by way of previous annexation any property adjacent to property adjacent to Exhibit "A", attached hereto and by reference made a part hereof, whether in fee simple or leasehold, by filing in the office of the Register of Deeds in Brunswick County, North Carolina, and amendment annexing such Properties.

Such annexation shall be for any purpose designated by the Declarant, its successors and assigns, including but not limited to connection of roadways through previously platted/planned lots owned by the Declarant. Such Subsequent Amendment to this Declaration shall not require the vote of the Association members. Any such annexation shall be effective upon the filing for record of such Subsequent Amendment unless otherwise provided therein. The Declarant shall notify the Association of the Amendment within thirty (30) days of its recording of any amendment annexing real property. Declarant's notification shall include a complete written description and location of annexed property and a survey of said property as prepared by a Registered Land Surveyor.

Section 2. Annexation by Association. Upon the affirmative vote of the majority of the members of the Board of Directors of the Association or voting alternates at a Special Meeting duly called for such purpose the Association may annex real property. Provided however, Declarant must approve such annexation so long as the Declarant owns any property subject to this Declaration.

Any property may be submitted to the provisions of this Declaration and the jurisdiction of the Association by the Association filing of record in the Public Records of Brunswick County, North Carolina, a Subsequent Amendment in respect to the Properties annexed after the affirmative vote of the Association as outlined within this section 2. Such Subsequent Amendment shall be signed by the President and the Secretary of the Association and the owner of the properties being annexed, and such annexation shall be effective upon filing unless otherwise provided for herein. The relevant provisions of the Association's By-Laws dealing with a Board of Directors Special Meeting shall apply to determine the time required for and proper form of notice of any meeting duly called for the purpose of considering annexation and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional Common Area. Declarant may convey to the Association additional real property, improved or unimproved, located within the properties which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its members.

Section 4. Amendment. This article shall not be amended without the written consent of the Declarant as long as the Declarant owns property within or adjacent to the subdivision.

#### 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. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The voting rights of the membership shall appurtenant to the ownership of the Lots. There shall be two classes of Members with respect to voting rights:

(a) Class I Members. Class I Members shall be all owners, except the Class II Member as the same is hereinafter defined. Each Class I Member shall be entitled to one (1) vote for each Lot owned. In no event shall more than one vote be cast per lot owned by any Class I Member.

(b) Class II Member. The sole Class II Member shall be the Declarant. The Declarant shall be entitled to five (5) votes for each lot owned by it. The Class II Membership shall cease to exist and be converted to Class I Membership when eighty percent (80%) of the Lots within the Properties, including any property subjected to these restrictions via subsequent amendment, have been conveyed to Class I Owners by Declarant, or at such earlier time when the Declarant, its successors or assigns, notifies the Association in writing that the Declarant has elected to cease being the Class II Member.

#### ARTICLE V. - PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Members Easements. Each Member and each Member's tenant, agent, and/or invitee shall have a permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the roadways from time to time laid out on the Common Areas, for use in common with all other such Members, their tenants, agents, and invitees. The portions of the Common Areas not used from time to time for roadways shall be for the common use and enjoyment of the Members of the Association, and each member shall have a permanent and perpetual easement for pedestrian traffic across all such portions of such tracts as may be regulated by the Association. Further, each Member, tenant, agent and invitee of each such Member shall have a nonexclusive permanent and perpetual easement for ingress and egress over and across the entrance road.

Section 2. Easements Appurtenant. The easements provided in Section 1 shall be appurtenant to and shall pass with the title to each Lot, regardless of whether such easements are expressly described in any instrument of conveyance.

Section 3. Public Easements. Fire, police, health, sanitation, and other public service personnel and vehicles shall have a permanent and perpetual nonexclusive easement for ingress and egress over and across the Common Areas.

**Section 4. Declarant's Easements.** Declarant reserves unto itself and its successors and assigns the right of ingress and egress over all roads and/or Common Areas within the Properties whether existing or constructed in the future for access to any areas which adjoin or are a part of the properties to areas adjacent to the properties which may not be part of the properties for the purposes of maintenance, construction, sales, development, and/or enjoyment. The easement herein reserved shall be in addition to, and not in lieu of, any other easements to which Declarant, its successors and assigns, may be entitled. This easement shall exist so long as Declarant retains any ownership in the Properties or any interest in lands adjacent to the Properties.

**Section 5. Maintenance.** The Association shall at all times maintain in good repair, and shall repair or replace as often as necessary, the paving, drainage structures, street lighting and fixtures, landscaping, and amenities (except utilities) situated on the Common Areas. The Board of Directors of the Association acting by a majority vote shall order all work to be done and shall pay for all expenses including but not limited to all common utilities on all Common Areas. All work pursuant to this Section 5 and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with Article VIII. Paving and maintenance of individual driveways and the portion of the Common Areas between each Lot and the roadway shall be maintained by each Lot owner. The Association may delegate or transfer its maintenance obligations to a governmental authority under such terms and conditions as the Board of Directors may deem in the best interest of the Association.

**Section 6. Utility Easements.** Use of the Common Areas for utility easements shall be in accordance with the applicable provisions of this Declaration.

**Section 7. Delegation of Use.**

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article V may be exercised by members of the Owners' family who occupy the residence of the Owner within the Properties.

(b) Tenants. The right of easement of enjoyment granted to every Owner in Section 1 of this Article V may be delegated by the Owner to his tenants who occupy a residence within the Properties.

(c) Guests. Recreational facilities, if any, situated upon the Properties may be utilized by guests of Owners or tenants subject to the rules and regulations of the Association as established by the Board of Directors.

**Section 8. Ownership.** The Common Areas shall be conveyed to the Association upon the cessation of the Class II Member or earlier, at the discretion of the Declarant. The Association shall immediately accept such conveyance. The Association, prior to conveyance, shall, at the request of the Declarant, perform all work as outlined in Section 5 of this Article on any property that the Declarant intends to be conveyed as Common Area and absorb the expense for the same in accordance with Section 5. Prior to conveyance of the Common Areas, the Association shall request of the Declarant, and



be provided, a list of areas to be maintained by the Association that are intended to be conveyed. Upon conveyance, it is intended that all real estate taxes against the Common Areas shall be assessed against and payable by the Association, as shall any personal property taxes on any personal property owned by the Association. Declarant shall have the right from time to time to enter upon the Common Areas and adjoining properties during periods of construction for the purpose of construction of any facilities on the Common Areas which the Declarant elects to build. The Owner of a Lot shall have no personal liability for any damage for which the Association is legally liable or arising out of or connected with the existence or use of any Common Areas or any other property required to be maintained by the Association.

#### ARTICLE VI. - RESTRICTIONS AFFECTING GOLF RESIDENTIAL AREAS

Section 1. Golf Residential Areas Defined. "Golf Residential Areas" are defined as all those residential lots, tracts of land, or Common Area within the Properties located adjacent to any golf course.

Section 2. Landscape Requirements. That portion of any Golf Residential Area within twenty (20) feet of the line bordering the golf course shall be in general conformity with the overall landscaping pattern for the golf course area as established by the golf course. As with any lot improvements, all individual lot landscaping plans must be approved by the Architectural Review Board prior to implementation.

Section 3. Golf Course Maintenance Easement Area. There is reserved by the Declarant, its successors and assigns, a "Golf Course Maintenance Easement Area" on each Golf Residential Area of twenty (20) feet from the property line bordering the Golf Residential Area. This reserved easement area shall permit the Declarant or the Association, their successors or assigns, to go onto any Golf Course Maintenance Easement Area for the purpose of landscaping or maintaining said area. Such maintenance and landscaping may include, but is not limited to, regular removal of underbrush, trees less than five (5) inches in diameter, stumps, trash or debris, planting of grass, watering, application of fertilizer, and mowing the Easement area. Provided however, that the described maintenance and landscaping rights shall apply to an entire residential lot until there has been filed with the Association a landscaping plan for such lot by the Owner thereof, or alternatively, a residence constructed thereon. The Declarant reserves the right to waive the easement herein reserved in whole or in part in its sole discretion.

Section 4. Permissive Easement Prior to and After Residence. Until such time as a residence is constructed on a Lot, the Declarant, its successors and assigns, and the Association reserve an easement to permit and authorize registered golf course players and their caddies to enter upon a Lot to recover a ball or play a ball, subject to the official rules of the course, without such entering and playing being deemed a trespass. After a residence is constructed, the use of such easement shall be limited to the recovery and removal of balls only. No play shall be permitted in the Easement area or lot during or after the construction of a residence. Golfers or caddies shall not be entitled to enter any such lot with a golf cart or other vehicle (motorized or otherwise), nor spend more than five (5) minutes time on such Lot, or in any other way commit a nuisance or damage such

Lot. On a Golf Residential Area Lot, "Out of Bounds" markers may be placed by the Declarant, the Association, their successors and assigns.

Section 5. Distracting Activity Prohibited. Owners and occupants of Golf Residential Areas shall refrain from any actions, including but not limited to landscaping, which would detract from the playing qualities of the golf course or the development. Such prohibited actions shall include the maintenance of uncontrolled pets or persons or any other activity in the discretion of the Declarant, the Association, their successors or assigns may be deemed a nuisance due to noise or activity. Examples of this type of activity include but are not limited to loud dog barking, pickup of golf balls during hours the course is open, running on the fairways, or other like interference with golf play. No fences shall be allowed on Golf Course Maintenance Easement Areas except as required by governmental authorities.

#### ARTICLE VII. - RESTRICTIONS AFFECTING WATERFRONT RESIDENTIAL AREAS

Section 1. Waterfront Residential Area Defined. "Waterfront Residential Areas" or "Waterfront Property" shall be defined as all those residential lots, common area, tracts, or blocks of land intended for residential development located, or to be located by Subsequent Amendment, within the Properties having a boundary line which borders the Intracoastal Waterway, the Calabash River, any lake or pond within the properties whether natural or man made. This definition also applies to any residential lot, common area, tracts, or blocks of land intended for development which border marshlands or wetlands.

Section 2. Governmental Authority. Should this Article VII conflict with the ordinances, regulations, laws, and/or restrictions imposed by any local, county, state, or national governmental authority then those regulations shall take precedence, provided however, that this Article VII, if more restrictive, shall be followed.

Section 3. Landscape Requirements. All Waterfront lots shall be maintained in an extremely neat, finished, and attractive manner upon completion of a residence or other improvements, judgement of which shall be in the sole discretion of the Association, its successors and assigns. Prior to completion of residence or completion or other improvements upon any Waterfront Property no change may be made to the natural appearance (ground topography or otherwise) without the approval of the Association, its successors or assigns.

Section 4. No Owner shall be permitted to use the water from any of the areas listed in the above Section 1 of this Article VII for the purposes of irrigation or otherwise without the permission of the Declarant, its successors and assigns. Provided however, that this provision shall not prohibit any Owner from digging a well and using the water found directly beneath such Owner's property for the sole purpose of lot or lawn irrigation.

#### ARTICLE VIII. - COVENANT FOR MAINTENANCE AND ASSESSMENTS

Section 1. Creation of Lien and Personal Recreation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements or other matters as herein provided, and (3) special assessments established hereinafter providing for fines imposed upon offenders or violators of the rules and regulations of the Association, in the sole and uncontrolled discretion of the Association.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used to promote the comfort and livability of the residents of the Properties and for the acquisition, improvement and maintenance of properties, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Area, including but not limited to, the cost of repair, replacement and additions to the Common Areas, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance, the employment of attorneys to represent the Association when necessary, the employment of Accountants and other professionals when necessary, the establishment and maintenance of reasonable reserves for maintenance and improvement, and such other needs as may arise. The Owner shall maintain the structures and/or grounds on each Lot at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Association may, at its option after giving the Owner ten (10) days written notice sent to the owner's last known address, or to the address of the subject premises, have the grass, weeds, shrubs, and vegetation cut when and as often as the same is necessary in the sole and uncontrolled discretion of the Association. The Owner, by virtue of deed acceptance, agrees that all such expenses for such work and materials plus the maximum allowable interest rate by law shall be a lien and charge against the current Owner of such Lot. Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Association may, at its sole and uncontrolled discretion, after giving the Owner thirty (30) days written notice sent to his last known address or the address of the subject premises, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an assessment against the Lot as herein provided. The Association's right to maintain the exterior of a structure or a Lot shall not be construed as its obligation. Any entry upon the property for maintenance purposes shall not be deemed a trespass.

Section 3. Capital Improvements. Funds necessary for capital improvements and other designated purposes relating to the Common Areas under the ownership of the Association may be levied by such Association as special assessments, upon the approval of a majority of the Board of Directors of the Association. The Board may levy a special assessment of Ten Thousand and 00/100 (\$10,000.00) Dollars or Ten (10%) percent of the annual budget, whichever is greater, without the approval of the membership. The due date of any special assessment shall be fixed by the Board.

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Section 4. Capital Contribution. Each Owner of a Lot shall be assessed an amount of \$200.00 for start-up costs which shall be designated a Capital Contribution to the Association. If any adjoining Lots are combined at the time of closing as provided in Article X, Section 1, the Owner of such Lot shall be assessed one (1) Capital Contribution. The Capital Contribution shall be collected and transferred to the Association only once for each Lot, at the time of the closing of the initial sale of each Lot by the Declarant. The Capital Contributions so collected shall be maintained in a separate account for the use and benefit of the Association and shall be used to pay expenditures (including but not limited to funding the Association's maintenance obligations), funding reserves, or to acquire additional property, equipment or services deemed necessary or desirable by the Board of Directors. All sums paid as Capital Contributions are in addition to and not in lieu of regular assessments for common expenses.

Section 5. Annual Assessments. The Annual Assessments provided for in this Article VIII shall commence upon the closing of each Lot. The Assessments shall be payable in advance in annual installments unless approved otherwise, in writing, by the Board of Directors. The annual assessment amount may be changed at any time by said Board from any other assessment that is adopted. The annual assessment shall be for the calendar year and shall be due at such time as prescribed by the Board. Any proration of the Annual Assessment due to the transfer of a Lot shall be due at closing and shall be equivalent to a proration of the number of full months remaining in the year.

Section 6. Duties of the Board of Directors. The Board of Directors of the Association shall fix the due date of commencement and the amount of the assessment against the Lots subject to the Association's jurisdiction for each assessment period at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Any increase in the Annual Assessment applicable to the Lots which is less than an increase of thirty (30%) percent over the immediately preceding year's assessment may be made by the Board of Directors without the consent or approval of the Members and any such increase that exceeds thirty (30%) percent, excluding insurance, reserves, utilities and Acts of God, shall be effective only if approved by not less than sixty seven (67%) percent of the Voting Members representing votes appurtenant to each Class of Membership (Class I and Class II). Written notice of assessment shall be sent to every Owner subject thereto. The Association shall, upon demand made by the Owner at any time, furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid. The Association shall, through the action of its Board of Directors, have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms, or corporations for the management services of the Association. The Association shall have all other powers provided in its Articles of Incorporation and its By Laws.

Section 7. Effect of Nonpayment of Assessments; the Personal Obligation of the Owner, the Lien, Remedies of the Association. If any assessments are not paid when

due (being the date specified in Section 5 hereof), then such assessment shall become delinquent and shall, together with the maximum allowable interest by law and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors, and assigns. Every Purchaser of a Lot shall be required to determine the status of the Lot Assessment at the time of purchase and hereby agrees to have assumed any and all outstanding assessment(s) not paid by the Seller at the time of closing. Any assessment not paid when due shall be delinquent and said assessment shall bear interest from the date which due at the maximum allowable rate of interest and the Association may bring an action at law against the Owner personally obligated to pay the same and/or may record a claim of lien against the property on which the assessment is unpaid, or may pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such assessment such attorneys fees and costs of preparing and filing the claim of lien and the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court together with the costs of the action, and the Association shall be entitled to attorneys' fees in connection with any appeal of any such action. The Board may, in its sole discretion, waive the imposition of interest as to any delinquent assessment. The Board may bring an action at law against the Owner personally obligated to pay any assessments and interest or foreclose the lien created herein in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of deeds of trust. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then the Association shall be further empowered to execute on that judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any mortgage or deed of trust representing a first lien on such Lot in favor of any bank, savings and loan association, insurance company or similar financial institution for the financing of construction or acquisition of improvements upon such Lot or for the refinancing of such Improvements now or hereafter placed upon any Lot, provided that such first mortgage or deed of trust was recorded before the delinquent assessment was due. Sale or transfer of any Lot shall not affect the assessment lien, provided, however, that the sale or transfer of any Lot pursuant to a decree of foreclosure on a deed of trust or mortgage thereon or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or liens arising from assessments thereafter becoming due. Any portion of the Common Areas or Properties dedicated to, and accepted by, a local public authority may be exempt from the assessments created herein in the sole discretion of the Board; provided, however, no land or improvements restricted to use as a Lot shall be exempt from such assessments except as otherwise provided for herein.

In addition to the rights of collection of assessments stated in this Section 7, the Owner and all persons acquiring the title to or an interest in a Lot as to which the assessment is delinquent, including, without limitation, persons acquiring title by operation

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of law and by judicial sales, shall not be entitled to the enjoyment and use of recreational facilities, if any, or to vote upon Association matters until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid and the account of the purchasing Owner are similarly satisfied. It shall be the duty, obligation, and responsibility of the Association to enforce payment of all assessments hereunder in a timely fashion.

**Section 8. Access During Reasonable Hours.** For the purpose solely of performing the maintenance authorized by this Article, including without limitation all of the maintenance and work permitted under Section 2 of this Article, the Association alone or through its duly authorized agents or employees or independent contractors, shall have the right, to enter upon any Lot at reasonable hours or at any time in case of emergency. Such entry shall not be deemed a trespass.

**Section 9. Effect on Declarant.** Notwithstanding any provision that may be contained to the contrary in the instrument, for as long as the Declarant is the Owner of any Lot in the Properties, including those Lots acquired by Subsequent Amendment, the Declarant shall not be liable for any assessments against such Lot, provided that the Declarant funds any deficit in the annual operating expenses of the Association. Declarant may at any time and its sole discretion commence paying such assessments as to Lots that it owns and thereby automatically terminate its obligation to fund any and all deficits of the Association and be due a refund for any payment in excess of its per lot election. The Declarant shall have the right to select its method of payment on an annual basis after being provided an annual budget by the Association. Such budget shall be prepared by the Association assuming the Declarant will pay on a per lot basis although it is not obligated to do so under the terms of this Section 9.

**Section 10. Exempt Property.** The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from each and every assessment, charge and lien created herein:

(a) The grantee(s) in conveyances made for the purposes of granting road, access, ingress, drainage, water, sewer, utility, cable television or security system easements, or other easements for common purposes.

(b) The Declarant as to any unsubdivided land and/or Units owned by the Declarant.

Section 4 of Article VIII of this Declaration shall not apply to conveyances from the Declarant to any Designated Builder nor to conveyances from any Designated Builder to the Declarant, neither of which conveyances shall be deemed to be a "sale" within the meaning of Section 4 of Article VIII of this Declaration. Any reconveyance from a Designated Builder to another party (other than the Declarant) shall be deemed to be a "sale" within the meaning of Section 4 of Article VIII of this Declaration.

#### ARTICLE IX. - ARCHITECTURAL REVIEW

Except for any improvements or construction made by the Declarant on any Lot or upon any other area of the Properties, which shall be exempt from the provisions of this Article IX, no building, wall, fence, ornamentation, structure, or improvements of any nature shall be erected, placed, or altered on any Lot until plans and specifications showing the same together with the location and landscaping improvements and/or changes as may be required by the Architectural Review Board have been approved in writing by the Architectural Review Board. Each of the above referenced items may only be placed and/or changed in accordance with the plans as approved by the Architectural Review Board. Refusal of approval may be based on any grounds, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Review Board seem sufficient. Any change in the appearance of any building, wall, fence, or other structure or improvements and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Review Board shall, subject only to any provisions of this Declaration to the contrary, hereby be deemed to have the power to establish such rules and regulations at it deems necessary to carry out the provisions and intent of this paragraph. Provided however that any rules, regulations, and/or fees established by the Architectural Review Board may not take effect until approved by the Board of Directors of the Association. The Architectural Review Board shall be annually appointed by the Declarant for as long as the Class II membership exists. At such time as the Class II membership expires, the Architectural Review Board shall be annually appointed by the Board of Directors of the Association with the Chairman of the Architectural Review Board being appointed by the President of the Association. A majority of the Architectural Review Board may take any action said Board is empowered to take, may designate a representative to act for the Architectural Review Board, and may employ personnel and consultants to act for it in whole or in part. In the event of a vacancy on the Architectural Review Board by death, disability, resignation by any member the remaining members shall have full authority to designate a successor. The members of the Architectural Review Board shall be entitled to reimbursement for expenses incurred by any of them for services rendered subject to the approval of the Chairman of the Architectural Review Board and the Board of Directors of the Association. The members of the Architectural Review Board shall not be entitled to any compensation for service provided outside of reimbursement of actual expenses incurred, subject to the approval of the Board of Directors of the Association. The Architectural Review Board shall act (in writing) on any and all submissions to it within thirty (30) days after receipt of the same and receipt of any required fees as herein provided or else the submission shall be considered approved. Provided however, that no submissions of any nature, whatsoever, shall be considered approved should there exist any delinquency of assessments on the part of the Owner of the Lot on which the plans are submitted. All requests and submissions shall be in such form and contain such information as the Architectural Review Board may require prior to its being required to act. The Architectural Review Board may establish a fee to cover the expense of reviewing the plans and related information at the time the plans are submitted for review in order to compensate any consulting professionals, including but not limited to, architects, landscape architects, urban designers, and/or attorneys. The Architectural Review Board may adopt guidelines for the review of residence plans and specifications, subject to confirmation by the Board of Directors of the

Association. Those guidelines, if reduced to writing, shall not in any way constitute the sole guidelines for the construction of a residence. An Owner ruled upon has the right to appeal the decision of the Architectural Review Board to the Board of Directors of the Association provided that all parties involved comply with the decision of the Architectural Review Board until such the decision of such appeal had been made by the Board of Directors of the Association. Appeals must be legibly written, state the grounds for the appeal and be submitted to the Association or its designee within ten (10) days of the date of the notification of the Architectural Review Board. The Board of Directors shall act upon the appeal by amending, reversing, or confirming the decision of the Architectural Review Board within thirty (30) days of receipt of appeal petition. The Board of Directors decision shall be by majority vote and any Owner must exhaust this avenue of appeal prior to resorting to a court of law or equity for relief. No Owner, tenant, guest, invitee, or other person shall occupy a residence within the Properties until the residence has passed the final inspection of the Architectural Review Board or the owner has gained written permission of the Architectural Review Board that permission to occupy has been granted in advance of, but not in lieu of, their final inspection. A grant of occupancy prior to final inspection may be made by the Architectural Review Board when, in its sole discretion, the aesthetic nature of the property per the plans and specifications previously approved has been substantially complied with. Such grant of occupancy shall carry the signature of the Chairman of the Architectural Review Board and shall contain a date of final compliance with the plans and specifications. The owner of the lot shall sign the grant of occupancy and the same shall be considered an agreement between the Association and the Lot Owner that the Owner will complete the improvements to the lot on or before the compliance date so specified. This provision shall apply to the initial construction of a residence and not the remodeling thereof. The Architectural Review Board, subject to confirmation by the Board of Directors of the Association, shall have the right to establish and collect from the Owner and/or Contractor of a residence performance bond(s) to insure the completion of a residence in a timely, efficient, and workmanlike manner. Those performance bonds shall be held in trust pending the completion of the residence by the Treasurer of the Association and shall not be released until all of the requirements of construction, per the plans and specifications previously approved, have been completed and a final inspection letter or certificate issued to the Owner by the Architectural Review Board. In the event that an Owner or Contractor does not complete the residence improvements or fails to do so within the established time frame allowed by the Architectural Review Board, said bond(s) may be partially or wholly seized and used to offset the cost of any damage done to adjacent lots or to the common area, penalties, and/or to complete the lot improvements, subject to the confirmation by the Board of Directors of the Property Owners Association. Any and all interest accruing on performance bond(s) shall belong to the Association. The paint, stain, coating, and any other exterior colors and materials shall be maintained on all buildings by the owner thereof as that originally approved by the Architectural Review Board without the subsequent approval of the Architectural Review Board. Any change in exterior color or materials shall be deemed a change requiring approval.

#### ARTICLE X - USE RESTRICTIONS

Section 1. Land Use. Except for areas designated by the Declarant for commercial use, all Lots shall be used for residential purposes only. Declarant may



maintain sales offices, information centers, models, property management offices, design center offices, and construction offices upon any Lot owned by it and/or upon the Common Area until all Lots to be located on the Properties and any additions thereto have been sold. No Lot may be subdivided or its boundaries changed where the result would be a decrease in the size of any Lot without the prior written consent of the Declarant. In the event that an Owner combines two (2) or more adjoining Lots for the purpose of constructing a single residence thereon, from that date forward, the resulting Lot shall not be subdivided or its boundaries changed so as to result in a decrease in the size of the combined Lot without the written permission of the Declarant.

Section 2. Nuisance. No noxious, illegal, or offensive activities shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood. The determination of noxious, offensive, annoyance, and/or nuisance shall be in the sole and uncontrolled discretion of the Board of Directors, its agents, or assigns. This section, however, shall not be construed as to grant permission for the Association to enter upon any lot or into any dwelling without the permission of the owner except in the case of emergency or as otherwise provided for in this Declaration.

Section 3. Pets. Owners may keep as pets only companion pets such as birds, domesticated cats, fish, dogs, and other small mammals. No Owner shall keep exotic cats, nonhuman primates, insects, horses or other farm livestock or zoo type animals on the Property. Pets must be on a leash or otherwise restrained when on Common Property. Pets are not allowed on Golf Course Property. It shall be the Owner's obligation to safely dispose of waste material from pets. The Board of Directors of the Association and/or the Declarant shall have the right to order the removal of any pet which, in either of their discretion, is considered a nuisance, and the same shall be done without compensation to the Owner. In such event, the Board shall give written notice to the pet owner, and the pet shall immediately thereafter be permanently removed from the Property. An unrestrained pet on Common Property or on a lot of another Owner shall be considered a nuisance. Failure to clean the waste material from a pet shall be deemed a nuisance.

Section 4. Gardens. No fruit or vegetable gardens or combination thereof may be planted or the ground prepared for planting without the express written consent of the Architectural Review Board.

Section 5. Temporary Structures. No structure of a temporary nature shall be erected, placed, or allowed to remain on any lot unless and until written permission for the same has been granted by the Architectural Review Board, or its designated agent or representative.

Section 6. Use of Common Area. The Common Area shall not be used in a any manner except as shall be approved or specifically permitted by the Association.

Section 7. Access to Lot. In addition to easements granted elsewhere, the Association, its agents or employees shall have access to all Lots from time to time during reasonable working hours, upon oral or written notice to the owner, as may be necessary

for the maintenance, repair or replacement of any portion of the Common Area, or facilities situate upon such Lot which serve another Owner's Lot. The Association or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Area, that Lot, or another Lot.

**Section 8. Recreational Vehicles, Boats, Trailers, Commercial Vehicles.** No campers, recreational vehicles, trailers, boats, motorbikes, motor cycles, tractors, or other vehicles designated or designed as commercial type vehicles either by signs thereon or licensing may be parked or kept within the properties unless parked within an enclosed garage or in an area specifically designated by the Association for such use and subject to the rules of the Association. Neither the Association nor Declarant is obligated to provide such area(s). If a question arises regarding the applicability of this Section 8 to a particular vehicle, the determination of whether that vehicle is subject to this provision shall be that of the Board of Directors of the Association.

**Section 9. Signs.** No signs or other advertising devices shall be displayed upon any Lot, Common Area, or any structure thereon without the prior written permission of the Association. Declarant, however, may post "For Sale" or other marketing related signs on the Properties until such time as all Lots owned by Declarant have been sold. Except for signs placed by the Declarant, any sign placed with the permission of the Association must be in a form and contain wording or verbiage as approved by the Association or its designee. Any sign or advertising device placed upon a Lot or the Common Areas without the prior written permission of the Association shall be subject to removal by the Association without prior notification to the Owner thereof. Any expense incurred by the Association for removal shall be that of the Owner and shall, if not paid, constitute a lien against the Owner thereof.

**Section 10. Mailboxes.** No mailbox may be placed upon any Lot or any of the Common Area until it has been approved by the Architectural Review Board. Any mailbox or any structure placed upon the Common Areas or Lot without the prior written permission of the Architectural Review Board shall be subject to removal by the Association without prior notification to the Owner thereof. Any expense incurred by the Association for removal shall be that of the Owner and shall, if not paid, constitute a lien against the Owner thereof. The Board of Directors of the Association may, in its sole and uncontrolled discretion, adopt a common mailbox area for the properties or any section or neighborhood thereof. Any owner with an individual mailbox shall remove his/her mailbox once notified by the Association of the establishment of a common mailbox area that includes his delivery area.

**Section 11. Garbage Disposal.** At the time of the construction of a residence all garbage and debris from a Lot or residence thereon shall be safely stored within the garage of each residence until properly disposed. No trash, ashes, garbage, or other refuse shall be accumulated, dumped, stored, or allowed to remain on any lot either prior to or after the construction of a residence. No burning of garbage shall be allowed on the Properties except minor burning of construction debris during the construction of a residence. No noxious or offensive odors shall be allowed exit from any garage area where garbage is stored. If the public health authorities, other public agency, or the Association

shall require a specific method of garbage disposal, nothing herein contained shall prevent the compliance by Owners with such rules and regulations.

Section 12. Antennae and Satellite Dishes. No exterior television antennae, radio antennae, or receptacle devices, including but not limited to "satellite dishes," shall be permitted upon any Lot without the express written consent of the Architectural Review Board. The Declarant, its successors and assigns, may locate such facilities upon the Common Areas.

Section 13. Regulations. Reasonable regulations governing the use of the Common Areas shall be promulgated by the Declarant and may be amended from time-to-time by the Board of Directors of the Association. The Association shall maintain a "Book of Regulations" containing any rules, regulations, or resolutions duly approved by the Board for the governance of the Association which are not contained in these restrictions, the Bylaws, or any amendments thereof. Copies of such regulations shall be furnished to each Owner by the Association upon request at the expense of the Owner.

Section 14. Fences. No chain link fences shall be permitted on any Lot or any part thereof. No fence, wall, or similar structure of any kind shall be located upon any lot or any part thereof without the prior written permission of the Architectural Review Board. Except as otherwise provided for herein the Architectural Review Board and/or the Association shall not prohibit the location of a fence if the same is required by governmental authorities although they may exercise reasonable authority in the design work of the same. As stated in Article VI, Section 5, no fences are permitted on any Golf Course Maintenance Easement Area except as may be required by governmental authorities.

Section 15. Vehicle Storage. No inoperative vehicle or vehicle in a state of noticeable disrepair (stripped, partially wrecked, junked, etc.) shall be kept or stored upon any Lot or Common Area nor may any repair work be done to any motor vehicle, boat, trailer, or likewise upon any Lot or Common Area except for very minor repair work or cleaning.

Section 16. Parking. Each Owner shall provide paved space for off-street parking. There shall be no parking upon any unpaved area. No parking shall be allowed upon the Common Areas except as may be provided by the Association.

Section 17. Water and Sewer Systems. No individual water system may be installed upon any Lot with the exception of lawn irrigation systems. No individual sewerage or septic system may be installed upon any Lot without the permission of the Architectural Review Board and any applicable governmental authority. Provided however, that permission for an individual sewerage system (septic type) shall be herein granted if access to a public system has not been provided by the Declarant, its successors and assigns, or by the Association. Water for Lot irrigation may only be taken from wells or public lines and may not be diverted or taken from ponds, lakes, or any other source without the prior written permission of the Association. Nothing contained herein, however, shall preclude the Declarant or Association from using such areas for the purpose of irrigation of the Common Areas.

**Section 18. Drilling or Mining Operations.** No drilling of oil, oil development operations, oil refining, or similar drilling, or mining operations of any kind shall be permitted under or upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for boring shall be permitted to be erected or maintained upon any Lot. Provided however, nothing in this section 18 shall prohibit an Owner from drilling a well for the purpose of Lot irrigation as provided for in Section 17 of this Article X. Storage tanks for water and/or tanks for fuel for residence comfort shall be allowed provided they are buried in the ground or located within the residence or its garage. This allowance shall not be construed as to permit the storage of any substance not intended for the comfort of the occupants of a residence.

**Section 19. Lighting.** No mercury vapor or similar lighting of the kind used by public authorities for street type lighting shall be permitted on any lot without the prior written consent of the Architectural Review Board, which may decline permission in its sole discretion and may, but shall not be obligated to, consider the feelings of any adjoining lot owners.

**Section 20. Trees.** Except as approved by the Architectural Review Board in writing, no tree greater than five (5") inches in diameter shall be cut, removed, or intentionally damaged unless such tree interferes with the construction of improvements, is dead or diseased, or presents a hazard to persons and/or property.

**Section 21. Erosion Control.** Each Owner shall be responsible for protecting such Owner's lot against soil erosion and/or sediment run off onto other lots, Common Areas, any waterway, or any roadway. Each Lot Owner shall take actions as necessary to prevent erosion during construction including, but not limited to, silt fencing or similar device. Erosion control devices must be in a form and manner approved by the Architectural Review Board. Any erosion control devices installed upon any lot shall be removed prior to occupancy of said residence. Therefore, landscaping plans for each lot shall take into account that erosion control devices are temporary in nature and plan accordingly landscaping that will not contribute to lot erosion of that lot or adjacent areas.

**Section 22. Tenants, Lessees, Renters, Boarders.** No residence shall be rented to or leased by any person except those residences rented by an Owner. No residence may be rented or leased for a period of less than twelve (12) consecutive months. It is the intention of this Section 22 to prohibit subletting of rooms within a residence or the occupancy of less than the entire residence by boarders or tenants that occupy via monetary compensation to the Owner, any portion of a residence less than the entire residence, including any garage or storage areas. Any Owner leasing his residence shall submit a signed statement to the Association certifying the name(s) of the lessee, the mailing address of the lessee, and the beginning and ending dates of the lease within thirty (30) days of occupancy of the lessee or within thirty (30) days of execution of the lease, whichever shall come first. No renting or leasing of a Lot on which there is no residence shall be permitted. It shall be the responsibility of each Owner leasing a residence to provide the lessee therein a copy of all rules and regulations of the Association as well as a copy of this Declaration of Restrictions and Protective Covenants and any amendments

thereto. Upon such Owner's failure to do so the Association, at its sole option upon providing fifteen (15) days written notice to the Owner at such Owner's last known address, may provide a copy of said materials to the lessee and may charge the owner for the preparation and delivery thereof. Fines levied against a tenant for violations of this Declaration or rules or regulations of the Association shall be due and payable from the Owner and shall be a lien on the Owner's Lot if not paid to the Association in a timely manner.

**Section 23. Minimum Living Area Requirements.** The Living Space of the main structure of any Unit shall not be less than the minimums established by the Declarant on Exhibit "B" attached hereto or by separate supplement to this Declaration.

**Section 24. Outdoor Elements.** No clothes lines, clothes poles, or similar equipment shall be allowed on any Lot. Any outdoor recreational equipment shall be approved by the Architectural Review Board prior to placement. Any pumps, storage tanks, or similar devices shall be located within the garage of the residence or underground. All utility services shall be contained underground.

**Section 25. Access.** There shall be no access allowed to any Lot within the Properties except that access provided by designated roadways within the Properties, and no Lot shall be accessible to Ocean Harbour Drive except by other roadways.

**Section 26. Stormwater Runoff.** No more than 5,300 square feet of any lot shall be directly covered with an impervious surface. This covenant is intended to insure continued compliance with stormwater runoff rules as adopted by the State of North Carolina and therefore the benefits of this Section 26 may be enforced by the State of North Carolina, a duly appointed agency thereof, the Declarant, or the Association.

**Section 27. Prohibition Against "Time Sharing" Use.** No Lot or structure shall be "time shared", nor shall any Lot or structure be owned, used or operated in violation of the North Carolina Time Share Act, N.C.G.S. §§93A-39 et seq. as the same may be amended from time to time, nor shall any Lot or structure be owned, used or operated so as to constitute such Lot or structure as a "time sharing unit" required to be registered within the meaning of such statutory provisions.

#### ARTICLE XI. - EASEMENTS AND SETBACKS

**Section 1. Easements for the installation and maintenance of driveway, walkway, parking area, water line, gas line, telephone, cable television, electric power line, sanitary and/or storm sewer drainage facilities, surface water drainage, and for other utility installations are reserved as outlined on the recorded plat and/or may be granted by the Declarant, its successors and assigns over any property owned by either of them, and the Association may reserve and grant additional easements for the installation and maintenance of the aforementioned utilities, or other necessary purposes, over and across any Common Area. Within any such easements above provided for, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation of said utilities or which may change the direction of flow or drainage**

channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition the Association shall have the continuing right (but not obligation) and easement to maintain all sewer and water lines located on any Lot as well as to direct the flow of surface water drainage along easement areas.

Section 2. Declarant further reserves unto itself, the Association, their respective successors and assigns, a perpetual, alienable and releasable easement and right on, over, and under the ground upon any Lot to erect and/or maintain, in any manner, all items as outlined by section 1 above. Said easements shall be ten (10) feet along either side of all Lot lines. Any entry upon a Lot or use of these easement areas, within these granted easement areas, by the Declarant or the Association, their successors, duly appointed representatives, and/or assigns, shall not be deemed a trespass.

Section 3. Building Setbacks. Building Setback areas, over which no residence or other building or above-ground structure may be erected, shall be established by the Declarant for each Lot. Such setbacks shall be evidenced on a plat which is duly recorded in the appropriate governmental office in Brunswick County, North Carolina. Until such time as the first Lot within a phase or section is sold the Declarant shall have the right and privilege to modify any and/or all of the building setbacks on any and/or all of the lots within that phase or section subject to the jurisdiction of the appropriate governmental authorities. Each Residence or other structure which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback requirements of any applicable zoning ordinances.

#### ARTICLE XII. - INSURANCE AND CASUALTY LOSSES

Section 1. The Association's Board of Directors ("the Board"), or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements to or on the Common Area. If blanket all-risk insurance coverage is not available then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance, if practical, shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard within the Common Areas.

The Board shall also obtain a public liability policy covering the Common Area, the Association and its members for all damage or injury caused by the negligence of the Association or any of its Members or agents. If reasonably available, at the discretion of the Board, the public liability policy shall have at least a One Million (\$1,000,000.00) Dollar single person limit with respect to bodily injury and property damage, a Three Million (\$3,000,000.00) Dollar limit per occurrence, and a One Million (\$1,000,000.00) Dollar minimum property damage limit.

The Board shall also obtain a policy protecting its officers and directors from liability and every director and officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him/her in connection with any proceeding to which he/she

may be a party, or in which he may become involved, by reason of his being or having been a director or officer of the Association, whether or not he/she is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of any and all other rights to which such director or officer may be entitled.

In addition to the other insurance required by this section, the Board shall have the full authority to obtain, as a common expense, worker's compensation insurance, and should it deem necessary, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The appropriate amount of fidelity coverage shall be determined in the directors best judgement. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association. The Board shall have the authority to obtain additional insurance, as a common expense, as it deems necessary, toward protecting the Association, its officers and/or its directors from liability. Premiums for all insurance purchased by the Association shall be paid for by and included in the Assessment, as described in Article VIII, Section 2. All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in North Carolina holding a Best's rating of A or better and assigned a financial size category of XI or larger as established by the A.M. Best Company, Inc. If such a rating becomes unavailable the most nearly equivalent rating shall be used.

(b) All policies on the Common Area shall be for the benefit of Owners and their Mortgagees as their interests may appear.

(c) Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement process, if any, related thereto.

(d) In no event shall the insurance obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

(e) All casualty insurance policies shall have an inflationguard endorsement, if reasonably available.

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(f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair, and reconstruct, instead of paying cash;

(iii) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owner;

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

(v) that no policy may be canceled or substantially modified without at least thirty (30) days prior written notice to the Association.

Section 2. Individual Insurance; Obligation to Repair or Reconstruct. By virtue of taking title to a Lot subject to the terms of this Declaration, each owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk property and casualty insurance on his property and any structures contained thereon. Each owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of the structures upon his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure(s) in a manner consistent with the original construction as approved by the Architectural Review Board unless otherwise approved by the Architectural Review Board. In the event that the structure is totally destroyed and the Owner determines not to repair or to reconstruct, the Owner shall clear the Lot of any and all debris and return it to the natural state in which it existed prior to the beginning of construction within ninety (90) days of the date of the destruction.

Section 3. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s), if any, shall be retained by and for the benefit of the Association and



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placed in a capital improvement account. This is a covenant for the benefit of the mortgagee of a structure and may be enforced by such mortgagee.

(b) If it is determined, as provided for in Section 4 of this article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Section 3(a) of this Article XII.

#### Section 4. Damage and Destruction.

(a) Immediately after the damage or destruction by any casualty to all or any part of the Properties covered by insurance in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damage or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the casualty.

(b) In the event that it shall be determined by the Board of Directors that the damage or destruction shall not be repaired or replaced and no alternative improvements are authorized, then in that event the affected portion of the Properties shall be restored to its natural state and maintained by the Association in a neat and attractive manner. In no event shall a mortgagee have the right to participate in the determination of whether the Common Area or any structure thereon damaged or destroyed shall be repaired or reconstructed.

Section 5. Repair and Reconstruction. If the insurance proceeds paid are not sufficient to repair or reconstruct the damage or destruction then the Board of Directors shall have the authority, without the approval of the membership, to levy a special assessment against all owners equally for the purpose of making up the difference in the insurance proceeds and the amount necessary to repair or reconstruct the damage or destruction. If, however, the damage or destruction shall not be repaired or replaced then no such assessment shall be allowed without approval of at least fifty one (51%) percent of the members of the Association, in person or by proxy, at a meeting duly called for such purpose.

#### **ARTICLE XIII. - NO PARTITION**

Except as permitted in this Declaration or any amendment hereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the properties or any part thereof seek any such judicial partition, unless the Properties have been removed from the provisions of this Declaration. This article shall not be construed to prohibit the Board of Directors from acquiring and/or disposing of tangible personal property not from acquiring title to real property which may or may not be subject to this Declaration.

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#### ARTICLE XIV. - RULES AND REGULATIONS

Section 1. Compliance by Owners. By virtue of taking title to a Lot subject to these restrictions and covenants, every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Association.

Section 2. Enforcement. Failure of an Owner to comply with such restrictions, covenants, and/or rules and regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or an combination thereof. Failure of the Association to enforce any restriction, covenant, and/or rules and regulations at any point in time shall not be deemed a waiver of the right of the Association to do so thereafter.

Section 3. Fines. In addition to any and all other penalties or remedies available to the Association, the Board of Directors of the Association in its sole discretion, shall have the right to impose a fine or fines upon an Owner for failure of an Owner, his family member, guest, invitee, tenant, or employee(s) to comply with any covenant, restriction, rule or regulation, provided the following procedures are adhered to on the part of the Association:

(a) Notice: The Association shall notify the Owner of the infraction. Included in the notice the Association shall list: 1) the infraction, 2) a copy of this Article XIV, 3) the proposed fine for the infraction, and 4) the date and time of the next meeting of the Board of Directors. The notice shall also state that the Lot Owner(s) shall have the right to appear before the board at the meeting stipulated in the notice to offer any reason(s) the board should not impose the fine. Said notice shall be mailed or delivered personally by the Board to the Owner's last known address at least fourteen (14) days before the meeting date stipulated in the notice.

(b) Hearing: At the meeting stipulated by the Notice as provided for in section (a) above, there shall be read a copy of the Notice to the Owner along with the date the notice was mailed. The Board shall then give the Owner the opportunity to present such Owner's reasons why the fine stipulated in the Notice should not be imposed. The Board shall have the right, but not the obligation, to ask reasonable and pertinent questions of the Owner or other interested parties towards determining truth and fairness. The Owner or other interested parties shall have the right to refrain from answering such questions and such refrain shall not be taken by the Board or any other party as any inference of guilt or innocence. The Owner shall have the right, but not obligation, to ask reasonable questions of any party offering information to the Board that pertain to the issue at hand, as determined by the Chairperson of the Board hearing. Should the Owner fail to appear at the hearing the Board shall use the information at its disposal in determining whether or not a penalty should be imposed in accordance with the Notice. No inference of guilt or innocence shall be presumed by the Board should an Owner fail to appear at the hearing. The chairperson of the Board meeting shall make the determination as to when to close the hearing. When closed, the Board shall immediately enter into private or executive session to determine whether or not the fines stated by the

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Notice should be imposed. The Board shall notify the Owner within fourteen (14) days of the hearing date in the same manner as outlined in section (a) above of the decision of the hearing. The Board shall not be obliged to render any reasoning for its decision to the Owner or any other person. While the board may reduce or eliminate the penalty as provided for by the Notice the decision of the Board shall not impose a greater penalty than that stipulated in the Notice.

(c) Fines: The Board of Directors may levy the fines hereinafter described, in the form of special assessments, against any Lot Owner found by the Board to have committed an infraction of the restrictions, covenants, and/or rules and regulations of the Association. Should the infraction involve the family, guest, tenant, or other invitee of an Owner, the fine shall be levied against the Owner.

(1) First noncompliance or violation: a fine not to exceed one hundred (\$100.00) dollars.

(2) Second noncompliance or violation: a fine not to exceed five hundred (\$500.00) dollars.

(3) Third noncompliance or violation: a fine not to exceed one thousand (\$1,000.00) dollars.

(d) Payment of Fines: Fines shall be paid no later than thirty (30) days after the date of a notice mailed to the violator stating the result of the hearing and imposition of the fine.

(e) Collection of Fines: Fines shall be treated as special assessments subject to the provisions for the collection of assessments as set forth in Article VIII. Each level (first through third) of fines shall be cumulative and shall be treated as a separate special assessment against the Lot Owner.

(f) Application of Fines: Monies received from fines shall be allocated in a manner prescribed by the Board of Directors.

(g) Distinction: Each issue considered by the Board as an infraction shall be treated separate and apart from each other issue. A Lot Owner shall be entitled to separate Notice for each issue. The Board retains the right to hear multiple issues on any given hearing date provided the Lot Owner has been given separate and proper Notice of each issue to be heard.

(h) Deferment: A Lot Owner may ask the Chairperson of Board to Delay the date for such Owner's hearing by no more than sixty (60) days. The Chairperson, in his/her sole and uncontrolled discretion, may grant such deferment if he/she feels the same is warranted. A deferment request must be in writing and delivered to the Chairperson of the Board at least seven (7) days prior to the hearing date.

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(i) **Nonexclusive Remedy:** Fines shall not be construed as to be the Association's exclusive remedy against violators. Fines shall be construed to exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from an Owner.

#### **ARTICLE XV. - MORTGAGEE AND FINANCING PROVISIONS**

**Section 1.** Approval of Owners and First Mortgagees. Unless at least sixty seven (67%) of the Owners and those entities holding first mortgages, as evidenced by public record, grant their approval in person or proxy at a meeting duly called, the Association shall not have the authority to:

(a) Change the method of determining obligations, assessments, dues, or other charges which may be levied against a Lot Owner or the voting rights of the Owners.

(b) Change the responsibility for maintenance and repairs as may be otherwise set out herein.

(c) Impose any restriction upon an Owner's right to sell such Owner's Lot with the exception of duly placing liens upon an Owner's Lot in accordance with this Declaration.

**Section 2.** Books and Records. Any Owner, holder, insurer, or guarantor of a first mortgage on any Lot shall have the right to examine the books and records of the Association, copies of the Declaration and any amendments thereto, By-Laws of the Association, and any other Rules and/or Regulations of the Association during reasonable business hours of the Association and upon written request. Any holder of a first mortgage shall be entitled, upon written request, to a copy of the Association's financial statement for the previous year.

**Section 3.** Payment of Taxes or Insurance Premiums. Any Owner or holder of a first mortgage may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any Common Area of the Association. Overdue insurance premiums for hazard insurance or premiums for new hazard insurance for the Association may be similarly paid. Persons, firms, or other entities making such payments shall be owed immediate reimbursement therefore from the Association.

#### **ARTICLE XVI. - LENDER'S NOTICES**

Upon written request to the Association from any bona fide lender, holder, guarantor, or insurer of any Lot within the Properties the Association shall provide a timely written notice of any and/or all of the following:

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(a) Any condemnation or casualty loss that affects either a material portion of the project or the lot securing its mortgage or similar instrument.

(b) Any sixty (60) day delinquency in the payment of any assessments or charges owed by the owner of any lot on which it holds the mortgage.

(c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owner's association.

(d) Any proposed action that requires the consent of a specified percentage of the mortgage (or similar instrument) holders. The Association may, in its sole uncontrolled discretion, charge a fee for the preparation and mailing of the above materials or any other materials required by any entity under this article with such charge being an obligation of the requesting party.

#### ARTICLE XVII. - DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Office of the Register of Deeds of Brunswick County, North Carolina.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as the sale of Lots shall continue by the Declarant or the Declarant's assigns, it shall be expressly permissible for the Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned (or leased) by the Declarant, if any, and any which may be owned by the Association.

As long as the Declarant continues to have rights under this Article XVII, no person or entity shall record any declaration of restrictions and protective covenants or similar instruments affecting any portion of the Properties without the Declarant's review and written consent thereto, and any attempted recordation without such compliance herewith shall result in such declaration or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article XVII shall not be amended nor deleted by amendment to these restrictions and protective covenants except by the Declarant; provided, however, the rights contained in this Article shall terminate upon the expiration of the initial period of this Declaration.

#### ARTICLE XVIII. - GENERAL PROVISIONS

Section 1. Severability. Invalidation of any one of these covenants or restrictions, or any section thereof, or any rule or regulation of the Association by judgment or a court or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 2. Term. The covenants and restrictions of this Declaration shall run with and bind the land for an initial term of thirty (30) years from the date of this Declaration after which time they shall automatically be extended for successive periods of ten (10) years.

Section 3. Amendment. This Declaration may be amended by an instrument signed by the Owners of not less than fifty one (51%) percent of the Lots, or as otherwise provided for in this Section 3.

The Declarant, without the consent or approval of another, shall have the exclusive right and privilege to amend this Declaration to conform to the requirements of law or governmental agency having legal jurisdiction over the Property or to qualify the property or any Lots and/or improvements thereon for mortgage or similar loans from any source whatsoever. A letter from an official of any such governmental or lending agency requiring an amendment as condition of approval, or suggesting an amendment, shall be sufficient evidence of the approval of such amendment of such corporation of agency and shall permit the Declarant to amend in accord with such letter.

No amendment shall take effect until it is duly recorded in the office of the Register of Deeds for Brunswick County or similar governmental office of public records.

Section 4. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by not less than sixty seven (67%) percent of the members of the Board of Directors at a regular meeting or at a special meeting duly called therefor. This section, however, shall not apply to (a) actions brought by the Board to enforce the provisions of this Declaration, including, without limitation, the foreclosure of liens, (b) the imposition and collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) defenses, counterclaims or third-party claims brought by the Association in proceedings instituted against the Association.

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IN WITNESS WHEREOF, Declarant has caused this instrument to be executed by its president and attested by its secretary the day and year first above written.

OCEAN HARBOUR ESTATES, INC.  
A North Carolina corporation

By: B. Darius Stanaland  
B. Darius Stanaland, President

Attest: Vertilee S. Bennett  
Vertilee S. Bennett, Secretary

STATE OF NORTH CAROLINA )

)  
) ACKNOWLEDGEMENT  
)

COUNTY OF BRUNSWICK )

I, Marlene W. Cigrand, a Notary Public, do hereby certify that B. Darius Stanaland, the President of Ocean Harbour Estates, Inc., a North Carolina corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of such corporation. Witness my hand and notarial seal this the 8<sup>th</sup> day of March, 1994.

Notary Public for North Carolina

My commission expires: Oct. 13, 1998

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of Marlene W. Cigrand

Notary(ies) Public (is/are) Certified to be Correct.

This Instrument was filed for Registration on the Day and Hour in the Book and Page shown on the First Page hereof.

Robert J. Robison  
ROBERT J. ROBISON, Register of Deeds

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**EXHIBIT "A"**  
**Description of Property Submitted to**  
**the Declaration, Constituting Ocean Harbour**  
**Estates Subdivision at the Time of**  
**Filing the Declaration of Restrictions**  
**and Protective Covenants**

**LOTS**

All those certain pieces, parcels or lots of land, situate, lying and being in Shallotte Township, Town of Calabash, Brunswick County, North Carolina, being shown and designated as Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-eight (28), Twenty-nine (29), and Thirty (30) on Plat of Survey for Section One, Ocean Harbour Estates prepared by Thomas W. Morgan, R.L.S. dated October 20, 1993, recorded in the office of the Register of Deeds for Brunswick County in Plat Book 207 at page 207, which Plat is incorporated herein and made a part hereof by reference.

**STREETS AND ROADS**

Those certain streets shown and described on the plat described above as "Harbour Gate North", "Harbour Gate South" and "Harbour Watch"; together with an alienable, nonexclusive easement and right to use the road shown as "Ocean Harbour Drive" for access, ingress and egress to and from the property described above.

TOGETHER WITH a perpetual, non-exclusive easement of access, egress and ingress over and across that certain parcel of land lying and being in Shallotte Township, Brunswick County, North Carolina, and more particularly described in Deed Book 972 at Page 176, Brunswick County Registry.

**OTHER COMMON AREAS**

All those certain pieces, parcels or tracts of land situate lying and being in Shallotte Township, Town of Calabash, Brunswick County, North Carolina, being shown and designated as Tract B (0.79 acres) and Tract C (7.23 acres) on Plat of survey for the W. M. Stanaland Estate by Thomas W. Morgan, R.L.S. dated June 1, 1993, last revised January 27, 1994, recorded in the office of the Register of Deeds for Brunswick County in Plat Book Y at page 172, which Plat is incorporated herein and made a part hereof by reference.

ALSO, a perpetual, non-exclusive easement for pedestrian access to and from Tracts B and C described above and the road known as Harbour Watch, being ten (10') feet in width and being shown and designated as "10' Easement" on the Plat of Section One, Ocean Harbour Estates described above.

**UTILITY AREAS**  
**(None)**



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**EXHIBIT "B"**

**Supplemental Restrictions Applicable  
Only to Lots Described on Exhibit "A"**

Every residence shall contain a minimum of two thousand two hundred (2,200) square feet of fully enclosed heated and cooled floor area devoted to living purposes. This area shall be exclusive of roofed or unroofed porches, terraces, decks, and/or garages. In all residences more than one story in height the first story shall contain a minimum of one thousand five hundred (1,500) square feet of heated and cooled floor area devoted to living purposes. In addition to the aforementioned minimum area requirements each residence shall contain an enclosed garage sufficient to contain at least two large automobiles in their entirety. The Architectural Review Board shall have the authority to determine minimum and/or maximum garage dimensions, should the same become necessary, in its sole discretion. No garage shall have an opening for cars that faces the front roadway side of the Lot unless the Architectural Review Board determines that the same is necessary due to the size and/or shape of the Lot.