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NORTH CAROLINA
DARE COUNTY

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
EIGHTH AVENUE TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and entered into this 29th day of January, 2009, by First South Bank, hereinafter referred to as Developer:

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Article One of this Declaration and desires to create thereon an exclusive residential townhouse planned community known as Eighth Avenue Townhomes (the "Development") with Common Areas for the benefit of the Community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in Eighth Avenue Townhomes and for the maintenance of the Common Areas and, to this end, desires to subject the real property described in Article One to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is, and are, for the benefit of said real property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in Eighth Avenue Townhomes, to create an agency to which would be delegated and assigned the powers of maintaining and administering the Common Areas and administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has caused to be incorporated under the laws of the State of North Carolina, a non-profit corporation, Eighth Avenue Townhomes Association, Inc., for the purpose of exercising the functions aforesaid.

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

ARTICLE I **PROPERTY SUBJECT TO THIS DECLARATION**

Section 1.1. Existing Property. The entirety of that real property which may either be held, transferred, sold, conveyed and occupied subject to this Declaration ("The Property"), or otherwise retained by the Association as the Common Areas, is located in Dare County, North Carolina, and is more particularly described as the property shown on a plat entitled "EIGHTH AVENUE TOWNHOMES" which plat was prepared by Styons Surveying Services and dated 12-4-08 and recorded in Plat Cabinet H at Slide/Page 189 of the Dare County Registry.

ARTICLE II **DEFINITIONS**

Section 2.01. Definitions. The following words when used in this Declaration or any supplemental Declaration (unless the context shall require otherwise) shall have the following meanings:

- (a) "Association" shall mean and refer to the Eighth Avenue Townhomes Association, Inc.
- (b) "By-Laws" shall mean and refer to the By-Laws of the Association.
- (c) "Board" shall mean and refer to the Board of Directors of the Association.
- (d) "Common Areas" shall mean and refer to those portions of The Property and appurtenances and improvements thereon that shall be designated and established for the common use and benefit of all the Owners and not subject to conveyance to any singular Owner.
- (e) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.
- (f) "Guest" shall mean and refer to any invitee present upon The Property at the



request of an Owner or other invitee acting with the authority of an Owner. A lessee or renter of a Unit owned by an Owner shall constitute an invitee for purposes of this Declaration, and a lessee or renter shall be presumed to have the authority to act on behalf of that Owner of the Unit occupied by said lessee or renter, except that said lessee or renter shall not have the right to exercise any rights of a Member hereunder, or under the By-Laws of the Association.

"Unit" shall mean and refer to any structure or portion of a structure which is a part of The Property, designed and intended for use and occupancy as a residence by a single family and conveyed or subject to conveyance to an Owner and shall include the physical portion of the real property, or Lot, upon which the Unit is situated.

- (h) "Lot" shall mean and refer to a physical portion of the real property upon which a Unit is situated and designated for separate ownership and use by an Owner or Guest.
- (i) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article Five, Section 5.01. hereof.
- (j) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Unit situated upon The Property, but notwithstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgage or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (k) "The Property" shall mean and refer to all existing property as identified in Article One hereof and subject to this Declaration or any Supplemental Declaration.
- (l) "The Developer" shall mean and refer to First South Bank, and any person or entity who is specifically assigned the rights and interests of First South Bank.
- (m) "Common Expense" shall mean and refer to:
 - (i) Any charge or expense of administration, maintenance, repair or replacement of the Common Areas or appurtenances or improvements thereon; and/or
 - (ii) Any charge or expense declared Common Expense by the provisions of this Declaration or the By-Laws; and/or
 - (iii) Any charge or expense agreed upon as Common Expense by the Association and lawfully assessed against Owners of Units in accordance with the By-Laws; and/or

- (iv) Any valid charge against the Association or against either the Common Areas or The Property as a whole.

ARTICLE III **GENERAL PROVISIONS**

Section 3.01. Duration. All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the lands and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of the Developer for a period of fifty (50) years from the date of this Declaration, after which time, all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a three-fourths (3/4) majority of the then owners of the Units has been recorded, agreeing to change said covenants in whole or in part, provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 3.02. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, prepaid, Certified Mail - Return Receipt Requested, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Notice to any one of the Owners, if title to a Unit is held by more than one, shall constitute notice to all Owners of a Unit.

Section 3.03. Enforcement. In the event of any violation or breach of any of the restrictions contained herein by any Owner or agent of such Owner, the Developer, its successors or assigns, the Association or its agent, or the Owners of Units within the Development, or any of them, jointly or severally, shall have the right to proceed in law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach of any of the restrictions set out above, but before litigation may be instituted ten (10) days written notice of such violation shall be given to the Owner or his agent. The failure to enforce any right, reservation or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction contained in this Declaration shall in no way affect any of the other restrictions, but they and each of them shall remain in full force and effect.

Section 3.04. Planned Community. The provisions of Chapter 47F of the North Carolina General Statutes, known as The North Carolina Planned Community Act ("the Act"), shall apply to the exclusive residential townhouse planned community created herein. The provisions of the Act shall govern this planned community except where the provisions of this Declaration or the By-Laws of the Association shall differ, in which case the Declarations or By-Laws shall control the administration and operation of this planned community.

Section 3.05. Unit Boundaries and Easements for Access. For the purposes of defining and determining the boundaries of each Unit, the boundaries of each Unit shall consist

of the entirety of the exterior structure which serves the Unit, and any exterior portion, roof, structure, awning, underneath garage, parking or storage space, balcony, terrace or patio, provided it has a direct access into the Unit, shall be part of the Unit. For the interior walls and internal structures which form the boundaries between two adjacent Units, all internal wall structures, fixtures or materials which serve a Unit shall be part of that Unit. The firewall materials separating the interior walls and internal structures which form the boundaries between two adjacent Units, one-half (1/2) of such firewall lying closest to a Unit shall be part of that Unit.

Any and all shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit but located outside the unit's boundaries are limited elements allocated exclusively to that Unit.

Section 3.06. Insurance. The Owner of each Unit herein shall keep in force a policy of insurance sufficient to cover the Unit including provision for damage caused to other Units by fire and casualty due to negligent acts or omissions of a the Owner of the insured Unit or his Guest.

Section 3.07. Damage to Other Units. Any Owner, or Guest of an Owner, or an agent, contractor or other party present on The Property with authority of an Owner, who damages a unit owned by any other Member, whether during ordinary use of the Unit or during the performance of any maintenance, repairs, installation or other work or activity, shall be liable to the Owner of the damaged property for the repair or replacement of all such damage.

ARTICLE IV **RESTRICTIONS ON USE AND RIGHTS** **OF THE ASSOCIATION AND OWNERS**

Section 4.01. Permissible Uses. All Units are for residential purposes only. Each Unit shall contain a townhouse dwelling for the private use of the Owner or invitees of said Owner, which shall comply with all applicable zoning regulations. No Unit shall access to any adjoining Unit. No business or business activity may be carried on upon The Property at any time provided, however, that nothing shall preclude the Developer, its subsidiaries, affiliates, agents and employees from using all or part of The Property owned by or rented by them for the purpose of carrying on business directly related to the Development, management and/or sale of Units.

Section 4.02. Utilities and Easements. The Developer reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric and telephone systems, cable television service, and conduits for the purpose of binding public services to The Property, on, in or over the common properties or common areas shown on the plat of The Property. The Developer reserves unto itself, its successors and assigns, perpetual, alienable and releasable easements within the Development and the right on, over and under the ground to cut drain ways for surface water and make any grading of the soil whenever and wherever such action may appear to the Developer to be necessary to maintain reasonable standards of health, safety and appearance.

These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, take or add any soil, or take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance. All of these easements and related rights will automatically pass from the Developer to the Association at the date of the last conveyance of a unit owned by the Developer to a third party.

Section 4.03. Setback Requirements. Each Unit shall comply with all setback requirements imposed by applicable laws, regulations and ordinances.

Section 4.04. Temporary Structures and Limitations on Use. No structures of a temporary nature may be placed upon any portion of The Property at any time. Temporary shelters, tents, travel trailers, campers or mobile homes, whether self-propelled or otherwise, may not at any time be used as a temporary or permanent residence. The Association will have the authority to establish rules and regulations for parking upon common properties of vehicles, cars, boats, trailers, recreational vehicles and other similar items, including the complete prohibition of such. Provided, the Association will not limit the right of the owner of each Unit to park vehicles in the space beneath the unit or the space allotted for each unit on the site plan approved by the Town of Kill Devil Hills.

Section 4.05. Unit Access and Driveways. The internal public right of way shall access from Eighth Avenue, and all Units shall access from Eighth Avenue via the internal public right of way. Owners shall keep emergency accesses, if any, clear of obstruction at all times and shall not use or allow Guests to use such emergency accesses for any reason at any time except as directed by lawful authorities during time of emergency.

Section 4.06. Parking. Each Owner shall use the parking spaces designated on the site plan on record with the Town of Kill Devil Hills for such unit.

Section 4.08. Debris. No leaves, trash, garbage or other similar debris shall be burned upon any portion of The Property. No garbage, trash, construction debris or other unsightly or offensive material shall be placed upon any portion of The Property, except as is temporarily and incidental to the bona fide improvements of any of The Property.

Section 4.09. Garbage Service. Garbage service shall be provided to The Property by means of individual garbage roll-out containers for each Unit and provided by each Unit. Owners or Guests shall deposit all garbage containers for pick-up at a roadside point for the collection of garbage by the local garbage collection service. All garbage deposited in the garbage containers on The Property shall be securely contained in closed garbage bags or other lawful disposable garbage containers. Each Owner or Guest shall place all garbage within the garbage receptacle in such manner as to insure that no garbage shall overflow, spill, leak or otherwise, and shall not cause garbage to overflow the container. No Owner or Guest shall place a separate waste container upon The Property except in accordance with the standards established by the Developer and the Association.

Section 4.10. Screening. Each Unit Owner will maintain the screening systems in place for each Unit at the date of conveyance of the Unit by the Developer to a third party owner. No

fuel tank, air conditioning unit, or any other permanent equipment, fixture or thing shall be placed upon The Property without prior approval in writing by the Developer or Association.

Section 4.11. Antennas. No television antenna, radio receiver or sender, or similar device shall be attached to or installed on the exterior portion of any structure or any Unit or Common Properties within The Property in a position from which same may be viewed from the front of any Unit. Provided, the Association will have the authority to approve satellite dishes or other similar structures in different locations within The Property and on the Units if necessary to establish reception.

Section 4.12. Disposal. Each septic tank and nitrification field relating thereto shall be maintained in good condition so that its use and existence shall not constitute a nuisance to any Owner. As the septic tank system serves each of the Units upon The Property, each Owner shall be jointly responsible to maintain and keep up the septic tank system to include regulating the disposal of items not readily digested within the septic system as required by those regulations established by the Board of Directors. Each Owner shall be responsible for a proportional share of the common expense associated with the disposal, maintenance and repair of the septic tank system. The waste disposal system is subject to the provisions of the Tri-Party Agreement executed between the Association, the Developer and the Dare County Department of Environmental Health.

Section 4.13. Unsightly Conditions. Each Unit Owner within the Development shall maintain and preserve his Unit or Units in a clean, orderly and attractive appearance within the spirit of this Development. Failure on the part of a Unit Owner to adhere to such proper, clean, orderly and attractive maintenance to his property, upon ten (10) days written notice given him by the Developer, or its successors or assigns, shall subject the Unit Owner to a suit for specific performance by the Association.

Section 4.14. Nuisances. It shall be the responsibility of each Unit Owner to maintain the exterior of his residence and the surrounding grounds of his Unit in a clean, tidy and safe manner. No Unit shall be used in whole or in part for the storage of anything which might cause such Unit to appear cluttered, unclean or obnoxious to the eye, nor shall any substance, thing or material be kept at any Unit which might emit fowl or obnoxious odors, noises or other conditions that will or may disturb the serenity, safety or comfort of the occupants of any Unit or surrounding property. No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done thereon tending to create a nuisance to the neighborhood.

Section 4.15. Entry. Each Unit Owner shall keep his Unit cleared of unsightly plant materials, objects, garbage, refuse or debris and if said Unit Owner shall permit same to exist on his property and fail to remove the same within thirty (30) days after being requested to do so by the Developer, its successors or assigns, it reserves for itself and its agents the right to enter upon the Unit for the purpose of cleaning, clearing or removing same if, in the Developer's opinion, distracts from the overall beauty and natural character of the neighborhood or adversely affects the safety or health of the occupants of The Property and such entrance shall not be deemed a trespass. The expenses of entry and cleaning, clearing or removal shall be the personal debt of the Units Owner(s) and shall also constitute a lien upon the Unit until paid. The provisions of

this Section shall not be construed as an obligation of the Developer, its successors or assigns, to provide such services.

Section 4.16. Animals and Pets. Animals, livestock or poultry of any kind shall not be raised, bred or kept on any Unit except dogs, cats and other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and provided that they are under positive restraint and control of their owner at all times.

Section 4.17. Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within The Property is prohibited, unless required for public safety.

Section 4.18. Vehicles. All motorized vehicles operating within The Property must be properly muffled so as to eliminate noise which might be offensive to others. Two (2) and three (3) wheel motorized vehicles (excepting only properly muffled motorcycles intended for use as transportation on public rights of way) as well as four (4) wheeled go-cart or beach buggy type vehicles are prohibited from being used or operating on or within The Property at all times.

Section 4.19. Signs. No sign of any kind or advertising device shall be displayed to the public view on The Property except one sign of not more than six (6) square feet advertising a Unit for sale. Said sign shall be located in such area as designated by the Developer, its successors or assigns. Said sign shall not be more than three (3) feet in height, including the sign and stand. All "For Rent" signs must be affixed to the Unit for rent and cannot exceed six (6) square feet. The Developer shall not be prevented from erecting such signs as may be deemed necessary to the operation of The Property or the normal conduct of its business, provided that any sign so erected shall be within acceptable limits as defined by the Developer, its successors or assigns and in compliance with all applicable laws, regulations and/or ordinances affecting same.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION AND BOARD OF DIRECTORS

Section 5.01. Membership. Every person or entity who is a record owner of a fee simple interest in any Unit is subject by this Declaration to assessment by the Association and shall be a Member of the Association; provided, however, that any such person or entity to hold such interest merely as a security for the performance of an obligation shall not be a Member. The requirement of membership shall not apply to any mortgagee or trustee beneficiary acquiring title by foreclosure or otherwise pursuant to the mortgage or deed of trust instrument.

Section 5.02. Voting Rights. The Association shall have one class of voting membership and Members shall be entitled to one vote for each Unit in which they hold an interest required for membership by Section 5.01. of this Article. When more than one (1) person or entity holds such an interest in any Unit, all such persons shall be Members and the vote for such Unit shall be exercised as they among themselves determine and such persons shall

designate one (1) person to vote for their Unit, but in no event shall more than one vote be cast with respect to any such Unit. If only one of the multiple owners of a Unit is present at a meeting of the Association, the owner who is present is entitled to cast the vote allocated to that Unit. If more than one of the multiple owners is present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority of interest to the multiple owners. Majority agreement shall be conclusively presumed if any one of the multiple owners cast the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

Section 5.03. Control of the Association and Board of Directors. The existing Property of Eighth Avenue Townhomes contains 4 Units and the Developer does not presently contemplate adding to The Property. Prior to three (3) years from the date of the first sale of a Unit by the Developer, or the date when seventy-five (75%) percent of the total number of Units contemplated have been sold by the Developer, whichever occurs first, the voting rights of the Developer as to any matters in which Members may vote other than the election of Directors by virtue of Units owned by the Developer, shall not be less than a majority of the total votes outstanding in membership. Three-quarters (3/4) of the Board shall be composed of Directors appointed by the Developer. These matters shall be further governed by the By-Laws of the Association.

Section 5.04. Powers Vested in Board of Directors. The Board of Directors shall have the power to establish, as a line item of its budget, a reserve fund in such amount as the Board of Directors, in its discretion, shall deem appropriate for the servicing, maintenance, repair and/or replacement of the septic system, grounds, parking areas, sidewalks and/or pavement. This specific power shall not exclude other powers that shall be vested in the Board of Directors in the By-Laws or any subsequent Declaration amending or supplementing this Declaration. Nothing in this Section shall preclude or restrict the ability of the Board of Directors to delegate its powers to such Officer or agent of the Association as the Board of Directors deems necessary and appropriate to carry out the operation or administration of the Association.

ARTICLE VI

PROPERTY RIGHTS IN THE COMMON AREAS

Section 6.01. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Unit.

Section 6.02. Title to Common Areas. Upon recording of this declaration the Association will become the owner of all common areas. Common areas are those areas included within The Property and not within the boundaries of a Unit as well as any other areas designated as common elements by NCGS 47F. The Developer retains the right to access the Common Areas until such time as it has completed improvements, if any, thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same.



Section 6.03. Extent of Members' Easements.

The rights and easements of enjoyment created herein shall be subject to the right of the Association as provided in its Articles and By-Laws to suspend the enjoyment rights of any owner for any period during which an assessment remains unpaid and for any period not to exceed thirty (30) days, for any infraction of any published rules and regulations. The Association will have the right to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purpose or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast seventy-five percent (75%) of the total number of votes of all Members has been recorded agreeing to such dedications, transfer, purpose of condition or unless written notice of the proposed agreement and action there under is sent to every Member at least thirty (30) days in advance of any action taken.

ARTICLE VII **COVENANT FOR PAYMENT OF ASSESSMENTS**

Section 7.01. Creation of Lien and Personal Obligation for Assessments. Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed of other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made.

Upon filing with the Dare County Clerk of Court's Office, each such lien shall be prior to all other liens except the following: (1) Assessments, liens and charges for real estate taxes due and unpaid on the Unit; and (2) All sums unpaid on Deeds of Trust, Mortgages and other encumbrances duly of record against the Unit prior to the docketing of the aforesaid lien. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Unit at the time when the assessment fell due. Upon conveyance of Unit(s) to subsequent Owner by Developer, such Owner shall immediately be charged the full assessment for each Unit acquired, and shall pay same in accordance with Section 5.01. of this Article. The Developer covenants that upon the commencement of the annual assessments, it shall pay assessments on all Units owned or thereafter acquired by it in the same amount as any other Owner.

Section 7.02. Purpose of Assessments. The assessments levied by the Association shall be exclusively for the purpose of promoting the health, enjoyment, safety or welfare of the residents in The Property and in particular for the improvement and maintenance of The Property and facilities devoted to the purpose and relating to the use and enjoyment of the Units situated upon The Property, including maintenance of roads and septic tank systems, all of which shall be Common Expenses, as detailed in the By-Laws. Septic tank systems, as referred to herein, shall be construed to mean the entire disposal system, including all piping, mechanical parts,

structures and nitrification fields of the system beginning from the boundary of the Lot for any Unit.

Section 7.03. Annual Assessments. The annual assessment for the year 2009 shall be determined by action of the Association. Until such action occurs, no assessment will be due. The Board of Directors shall adopt a proposed budget. The Board of Directors shall provide to the Unit owners a summary of the budget and a notice of a meeting to consider the ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board of Directors shall set a date for a meeting of the Unit owners to consider ratification of the budget, such meeting to be held not less than ten (10) but no more than sixty (60) days after the mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget shall be deemed ratified unless at that meeting, a majority of all of the Unit owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit owners shall be continued until such time as the Unit owners ratify a subsequent budget proposed by the Executive Board. Any such proposed budget shall set forth the amount of the proposed annual assessment. The total assessment payable by any Owner may be divided into such installments as the Board shall deem appropriate, but until notice from the Board to the contrary is received, the Owner of each Unit shall pay his or its appropriate share as herein determined on any annual basis, in advance.

Section 7.04. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purposes of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repairs or replacement of any capital improvement located upon the Common Areas, including the necessary fixtures and personal property relating thereto, provided that any such assessment shall have the consent of fifty percent (50%) of the votes of all the Members present at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 7.05. Certification of Assessments. The Association shall, upon demand, furnish at any time to any Owner liable for said assessment, prospective purchaser, or lending institution, a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7.06. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner: The Lien: Remedies of the Association. If the assessments are not paid on the date due then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Unit, or Units, which shall bind such Unit, or Units, in the hands of the then-Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then-Owner to pay such assessment, however, shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the

assessment shall bear interest from the date of delinquency at the rate of interest set by the Board, not to exceed the maximum rate permitted by law and the Board may further charge a late payment penalty to be set by the Board and the Association may bring appropriate civil action against the Owner personally obligated to pay the same or to foreclose the lien against any such Unit or Units, and there shall be added to the amount of such assessment to be collected upon foreclosure, the costs of such action and reasonable attorney's fees to other cost incurred by the Association. In the event a judgment is obtained against any Owner for such assessment, such judgment shall include interest on the assessment as above provided and reasonable attorney's fees to be fixed by the Court, together with the costs of the action.

Section 7.07. Fines and Suspension of Privileges. The Association is expressly Authorized to assess fines and suspend privileges pursuant to the procedure set forth in North Carolina General Statute Section 47F-3-107.1, or any successor statute. Such fines or suspension of privileges may be imposed for any violation by a Unit owner of any of the provisions of this Declaration or the By-Laws other than non-payment of assessments which, shall be dealt with pursuant to the Sections above.

ARTICLE VIII **ARCHITECTURAL CONTROL**

Section 8.01. Purposes. Developer desires to insure the best use of the most appropriate development improvement of The Property to protect the Owners against such improper use of the Units as will depreciate the value of their property. To preserve, so far as practical, the natural beauty of said property, to guard against structures displaying unsuitable appearance or use of improper materials, to insure the highest and best development of The Property and Units thereon, to encourage and secure the maintenance of attractive Unites, to prevent haphazard and inharmonious improvement of The Property or the Units, to secure and maintain proper setbacks from property lines and adequate free spaces surrounding the structures, and in general, to provide adequately for a high type and quality of improvement on The Property, both enhancing the values of investments made by Owners and preserving as fully as possible the natural beauty of both the Common Areas and individual structures. To that end the Developer desires to establish an Architectural Control Committee in order to provide and maintain standards that will insure this harmony of exterior design in relation to surrounding Units and/or topography.

Section 8.02. Architectural Control Committee.

- (a) Membership: The Committee shall be composed of three (3) people appointed by the Board. The appointees need not be members of the Association appointed by the Board. A majority of The Committee may designate a representative to act for it. In the event of death, resignation or removal by the Board of any member of The Committee, the Board shall have full authority to designate the successor otherwise approved by the Association. Neither the members of The Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Covenant. The Association shall keep or cause to be kept a list of the names of the persons who form The Committee and a list of the names of any designated representative of The Committee and such list shall be available to

any Owner.

- (b) Procedure: At least thirty (30) days prior to the commencement of any improvement to the Units, which shall include but not limited to installation of windows, doors, roofing, guttering, siding, shutters, exterior paint or repairs to any exterior portion of any structure, the construction plans shall be submitted to The Committee. The Committee's approval, disapproval or waiver as required in these covenants shall be in writing and the decision of a majority of The Committee in case of any disagreement among Committee members as to the approval, disapproval or waiver by The Committee shall be controlling. In the event The Committee or its designated representatives fail to approve or disapprove within sixty (60) days after the plans have been received by it, approval of The Committee will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with. Further, in the event any construction is commenced on any Unit without submission to The Committee of the plans with respect thereto, and no action or suit is instituted against the Owner of such Unit by the Association or any Owner of any other Unit constituting a portion of The Property within ninety (90) days after the foundation of any building being constructed on any such Unit is completed, then, and in any such event, approval by The Committee will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with.
- (c) Committee: Within two (2) years from the date of the first sale of the Unit by the Developer or when seventy-five (75%) percent of the Units have been sold by the Developer, whichever occurs first, at least a majority of the Members of The Committee shall be composed of Owners other than the Developer or a representative of the Developer.

ARTICLE IX AMENDMENT OF DECLARATION

This Declaration may be amended by a majority vote of the Owners including the Developer. If any amendment to the Declaration creates an inconsistency in the By-Laws to the extent such inconsistency exists, the Declaration shall control. No amendment to this Declaration shall be effective until recorded in the Office of the Register of Deeds of Dare County, North Carolina.

ARTICLE X CAPTIONS, INTRODUCTIONS AND GENDER

The captions and introductory material herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration for the intent of any provision hereof. The use of masculine gender in this Declaration shall be deemed to refer to the feminine and neuter genders, and the use of the plural



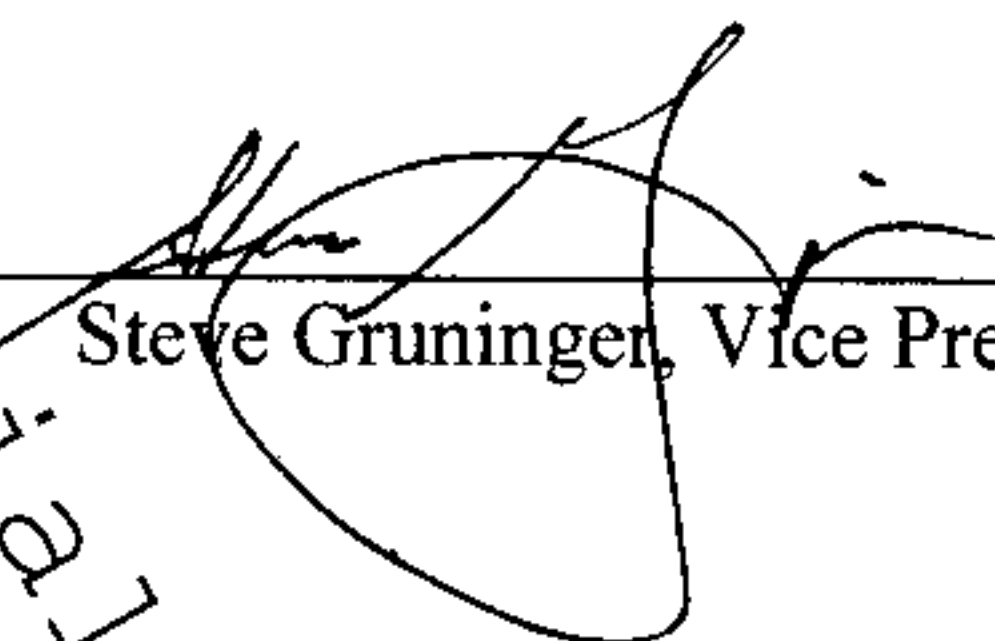
shall be deemed to include the singular, whenever the context so requires.

ARTICLE XI
VARIANCE

The Board of Directors of the Association may from time to time grant to the Owner or Owners of Units within the subdivision a waiver or variance from the provisions of the Declaration. The conditions under which such a waiver or variance may be granted shall be in the total discretion of the Board of Directors of the Association. It is understood that the existence of this power does not create a right in any Owner to such action by the Board and the decision of the Board on request for waiver or variance shall be final. The expressed purpose of the power as described in the paragraph is to enable the Board of Directors to alleviate hardships created by the terms of this Declaration under circumstances which are beyond control or fault of the parties, would create irreparable harm or unnecessary hardship without such action; or under conditions where title to the property in question is clouded, encumbered or detrimentally effected by the existence of conditions which cannot otherwise be corrected. Even when conditions as described herein exist so that waiver or variance appears appropriate, granting such waiver or variance shall remain completely within the discretion of the Board of Directors.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed in its name on the day and year first above written.

FIRST SOUTH BANK

By: 

Steve Gruninger, Vice President

NORTH CAROLINA
DARE COUNTY

I, Lisa A. Rhodes, a Notary Public, hereby certify that Steve Gruninger, Vice President of First South Bank personally came before me this day and acknowledged the execution of the foregoing instrument as his act and deed and as the act and deed of the corporation.

Witness my hand and official seal this the 30th day of January, 2009.

(SEAL/STAMP)


Notary Public

My Commission Expires: 7/2/2010

