

Prepared by and return to:  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CARLYLE –ON-THE-SOUND**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS for Carlyle-on-the-Sound, (the “Declaration”) is made this 9<sup>th</sup> day of January, 2006, by Carlyle-on-the-Sound, LLC, a North Carolina limited liability company of 821 Ocean Trail, Suite 4, Corolla, NC 27927, and Shingle Landing of Colington Corp., a North Carolina corporation of P.O. Box 785 Niwot, CO 80544, (collectively the “Declarant”).

**RECITALS**

[STATEMENT OF PURPOSE]

A. Declarant is the owner of all of that property situated on Big Colington Island, Dare County, North Carolina, which consists of that property owned by Carlyle-on-the-Sound, LLC as more particularly described on Exhibit “A” and that property owned by Shingle Landing of Colington Corp. as more particularly described on Exhibit “B”. The properties described on Exhibit “A” and Exhibit “B” shall be collectively referred to within this Declaration as the “Property” or “Carlyle-on-the Sound”.

B. Declarant’s present intention is stated here for information of present interest only with

respect to that Property made subject to this Declaration as hereinafter provided in Section 2.01, not as a warranty or representation of future fact that Declarant intends for Carlyle-on-the-Sound to be a community consisting of 73 single family residential lots.

C. In order to provide for the preservation and value of Carlyle-on-the-Sound and in order to preserve the natural setting and beauty of Carlyle-on-the-Sound, and to maintain the unique environment of dune topography, wetlands, vegetation and animal life, and to preserve a harmonious and an aesthetically pleasing design pursuant to standards promulgated by the Association, and to provide for the preservation of value of all the properties within Carlyle-on-the-Sound, the Declarant has made provisions for an Architectural Standards Committee (the "ASC") which shall be responsible for administering the Architectural Guidelines and any improvements to be constructed on the Property. Prior to any lot disturbance or construction of any type or for any purpose, including alterations or additions to existing structures, plans and specifications, detailing the nature, kind, shape, material and location, must be submitted for approval in writing to the ASC to the harmony of external design and location of the surrounding structures and topography.

D. To accomplish the objectives as referenced within these recitals, it is in the interest of Carlyle-on-the-Sound for the Declarant to maintain a significant role in the implementation of improvements to be built within Carlyle-on-the-Sound and, therefore, Declarant has retained numerous rights and will exercise control over the property throughout the developmental period.

NOW, THEREFORE, Declarant by this Declaration, declares that all that property as more particularly described in Section 2.01 shall be held, sold, hypothecated, or encumbered, leased, rented, used, occupied and improved subject to the following covenants, restrictions, easements, liens and charges, all of which are declared and agreed to be in furtherance of enhancing and projecting the architectural styles and designs promulgated within the Architectural Guidelines, and to enhance the value of properties which covenants, easements, and restrictions, shall run with the real property subjected to this Declaration as may be reasonably modified and amended from time to time in furtherance of the Statement of Purpose recited herein, all of which shall be binding on all parties, their respective heirs, personal representatives, successors, transferees and assigns, as well as occupants, guests and invitees having or acquiring any right, title or interest in Carlyle-on-the-Sound.

## Article I Definitions

Section 1.01. Definitions. When using this Declaration, unless the content shall prohibit or otherwise require, the following words set forth within this Article I shall have all of the following meanings and all definitions applicable to the singular and plural forms of such terms.

Section 1.02. Act. "Act" shall mean and refer to the North Carolina Planned Community Act as codified in Chapter 47F of the North Carolina General Statutes.

Section 1.03. Affiliates. “Affiliates” shall mean and refer to the principals of Declarant including: Raju Uppalapati, Eric Avery, Arthur Tom Bramble, Barbara Janet Bramble and Willard Charles Bramble.

Section 1.04. Approved Architect, Approved Engineer and Approved General Contractor. “Approved Architect”, “Approved Engineer” and “Approved General Contractor” shall mean and refer to an architect who is licensed by the North Carolina Board of Architecture, an engineer who is licensed by the North Carolina Board of Examiners for Engineers and Surveyors and a General Contractor who is licensed by the North Carolina Licensing Board for General Contractors. These definitions apply to the licensing requirements in Section 6.04 of the Declaration.

Section 1.05. Architectural Guidelines. “Architectural Guidelines” shall mean and refer to the architectural, design and construction guidelines and review procedures adopted pursuant to Article VI as they may be amended.

Section 1.06. Architectural Standards Committee. “Architectural Standards Committee” (“ASC”) shall mean and refer to that committee responsible for administering Carlyle-on-the-Sound and setting and approving all structural improvements, additions, modifications and changes within Carlyle-on-the-Sound.

Section 1.07. Articles of Incorporation. “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of Carlyle-on-the-Sound Homeowners’ Association, Inc. as filed with the Secretary of State of North Carolina.

Section 1.08. Assessments. “Assessments” shall mean and refer to all annual assessments, special assessments, individual assessments, and other fees and charges levied by the Association in accordance with the Governing Documents.

Section 1.09. Association. “Association” shall mean and refer to Carlyle-on-the-Sound Homeowners’ Association, Inc., a North Carolina non-profit corporation.

Section 1.10. Bramble. “Bramble” shall mean and refer to Arthur Tom Bramble, Willard Charles Bramble and Barbara Janet Bramble, their heirs and assigns.

Section 1.11. Bramble Family Tract. “Bramble Family Tract” shall mean and refer to that certain property described on the attached Exhibit “B” as the Bramble Family Tract, which is owned on the date of this Declaration by Arthur Tom Bramble, Willard Charles Bramble and Barbara Janet Bramble.

Section 1.12. Board. “Board” shall mean and refer to the Board of Directors of the Association established by the Articles of Incorporation and the Bylaws as the governing body of the Association.

Section 1.13. Bylaws. “Bylaws” shall mean and refer to the Bylaws of the Association as they may now or hereafter exist.

Section 1.14. Common Elements. “Common Elements” shall mean and include (a) all of the real property, other than Lots but including the interior roads and streets, owned, leased or occupied by the Association or otherwise available to the Association for the benefit, use and enjoyment of the Owners; provided, however, that real estate within the Property is not Common Elements solely because it is burdened by an easement for utilities or dedicated for common use by Owners of Lots within the Property, (b) all personal property and equipment held and maintained by the Association for the joint use and enjoyment of all Owners, (c) all permits for the construction, maintenance and operation of the Common Elements assigned by the Declarant to the Association or otherwise procured or required by the Association, and (d) the Permit or Permits for the Stormwater Management Facilities assigned by Declarant to the Association or otherwise procured or required by the Association.

Portions of the Common Elements which the Association has the right to utilize and/or maintain for the benefit of the Owners may be located within a Lot. Any portion of the Property designated as Common Elements on any recorded plat of the Property shall be Common Elements available to the Association for the benefit, use and enjoyment of the Owners.

Section 1.15. Common Expenses. “Common Expenses” shall mean and refer to (i) expenses of administration, maintenance, improvement, repair or replacement of the Common Elements and/or rights of way, (ii) expenses declared to be or described as Common Expenses by the provisions of this Declaration, (iii) premiums for hazard, liability or other insurance as may be obtained by the Association, (iv) all other expenses incurred by the Association in carrying out its functions and duties under the Declaration, and (v) charges for utility services used in connection with the Common Elements and Improvements thereof.

Section 1.16. Declarant. “Declarant” shall mean and refer collectively to Carlyle-on-the-Sound, LLC, a North Carolina limited liability company, and Shingle Landing of Colington Corp., a North Carolina corporation, and any successors or assigns designated as the “Declarant” in a written instrument filed in the Public Registry of Dare County, North Carolina executed by the preceding Declarant.

Section 1.17. Declarant Control Period. “Declarant Control Period” shall mean and refer to any and all privileges, powers, easements, exemptions, rights and duties reserved to the Declarant by

the Governing Documents, and any reasonable amendments thereto related to the development of Carlyle-on-the-Sound including the pursuit and furtherance of the recitals set forth within the Statement of Purpose. The Declarant Control Period shall extend until September 15, 2015. The Declarant may voluntarily elect an earlier termination of the Declarant Control Period by giving written notice to the Association. During the Declarant Control Period, the Declarant shall have all those Special Declarant's Rights defined by the Act and in addition those rights which shall include at a minimum: the right to make all appointments to the ASC, the right to appoint a majority of the Members to the Board of the Association and the right to approve any amendments to the Governing Documents.

Section 1.18. Declaration. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Carlyle-on-the-Sound including any amendments.

Section 1.19. Dune Management Plan. "Dune Management Plan" shall mean and refer to that plan adopted by the Declarant and administered by the ASC which recognizes the natural and unique topography as determined by the ASC; provisions must be made for dune stabilization prior to any disturbance, a copy of which is attached hereto as Exhibit "C".

Section 1.20. Dwelling Unit. "Dwelling Unit" shall mean and refer to a portion of the Property, whether developed or undeveloped, intended for development, use and occupancy as a detached dwelling for single-family residential use. By way of illustration, but not limitation, each single-family, detached house on a Lot shall constitute a separate Dwelling Unit.

Section 1.21. Entrance Monument Easements. "Entrance Monument Easements" shall mean and refer to the easements reserved by Declarant and granted to the Association in Article X, Section 10.05 hereof, over, under and across certain areas of the Property, for the installation and maintenance of entrance monuments and related improvements for the Property.

Section 1.22. Governing Documents. "Governing Documents" shall mean and refer to this Declaration, the Architectural Guidelines, the Articles of Incorporation and Bylaws of the Association.

Section 1.23. Improvements. "Improvements" shall mean and refer to all buildings, storage sheds or areas, roofed structures, decks, patios, parking areas, exterior recreational areas, recreational equipment and facilities, mailboxes, exterior antennae, dishes or other apparatus to receive or transmit television or radio or microwave or other signals, loading areas, trackage, fences, wall hedges, mass plantings, poles, driveways, ponds, lakes, changes in grade or slope of a Lot or Dwelling Unit, silt preparation of a Lot or Dwelling Unit, landscaping, exterior clotheslines, swimming pools, tennis courts, signs, exterior illumination, changes in any exterior color or shape and any other exterior construction or exterior structure or other exterior improvement which may not be included in any of the foregoing. The definition of Improvements includes both original Improvements of all Lots and Dwelling Units and all later changes and additions to Improvements. All Improvements shall comply

with the provisions of this Declaration, the Architectural Guidelines and the Dune Management Plan.

Section 1.24. Individual Assessment. “Individual Assessment” shall mean and refer to an assessment that may be levied against an Owner to reimburse the Association for cost incurred in bringing the Owner’s property into compliance.

Section 1.25. Landscaped Rights-of-Way. “Landscaped Rights-of-Way shall mean and refer to the medians and other areas within public or private street rights-of-way within or adjoining the Property which are designated as Common Elements or Landscaped Rights-of-Way on any plat recorded in the Public Registry of Dare County, North Carolina by Declarant which shall be maintained by the Association as a Common Expense.

Section 1.26. Lot. “Lot” shall mean and refer to any numbered plot of land which is part of the Property, and which is part of the Property other than the Common Elements, and which is shown on any plat in the Public Registry of Dare County, North Carolina and includes any Improvements now or hereinafter appurtenant to that real estate.

Section 1.27. Maintain, Maintenance. “Maintain”, “Maintenance” or any substantially similar term used in this Declaration, when applied to a power or duty of the Association, shall mean and include, without limitation, the right to maintain, repair, replace, reconstruct, improve, clean, landscape, operate, and use the improvement, property or other item which is the subject thereof.

Section 1.28. Majority Vote. “Majority Vote” shall mean a simple majority (more than fifty percent (50%)) of the votes actually cast in person or by proxy at a duly held meeting of the members of the Association at which a quorum is present or at a duly held meeting of the Board at which a quorum is present.

Section 1.29. Member. “Member” shall mean and refer to each Owner of a Lot or Dwelling Unit who is a member of the Association as provided in this Declaration.

Section 1.30. Mortgagee. “Mortgagee” shall mean and refer to an institutional lender (commercial or savings banks, saving and loan associations, trust companies, credit unions, industrial loan associations, insurance companies and any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such lenders) holding a first mortgage or first deed of trust (“Mortgage”) encumbering a Lot or Dwelling Unit.

Section 1.31. Owner. “Owner” shall mean and refer to the fee simple title to any Lot situated within Carlyle-on-the-Sound. Notwithstanding any applicable theory of any lien or mortgage law, Owner shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any legal proceeding in lieu of foreclosure.

Section 1.32. Plans. “Plans” shall mean and refer to the plans and other information required to be submitted by an Owner pursuant to Article VI.

Section 1.33. Property. “Property” shall mean and refer to the community of Carlyle-on-the-Sound, and any additions thereto as are made subject to this Declaration.

Section 1.34. Sign. “Sign” shall mean and refer to any writing, pictorial representation, emblem, flag, or any other figure of similar character which is (i) a structure or part thereof, or is attached to, painted on or in any other manner represented on a Dwelling Unit or any other structure (ii) used to announce, direct attention to, or advertise and (iii) visible from outside an Improvement.

Section 1.35. Special Assessment. “Special Assessment” shall mean and refer to assessments levied in accordance with Article VIII Section 8.01(2) of this Declaration.

Section 1.36. Stormwater Management Facility. “Stormwater Management Facility” shall mean and refer to all areas consisting of ditches, swales, retention ponds and other facilities upon the Common Elements within the Property constructed pursuant to and regulated by any Stormwater Permit.

Section 1.37. Subdivision Plat. “Subdivision Plat” shall mean and refer to that plat of Carlyle-on-the-Sound captioned “Final Plat on Carlyle-on-the-Sound 73 Lot Subdivision on Colington” dated March 14, 2006 and recorded in the Public Registry of Dare County, North Carolina.

## Article II Property

Section 2.01. Property Made Subject to this Declaration. The real property which shall be owned, held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration shall consist of 73 single-family residential lots in Carlyle-on-the-Sound as more particularly described on Exhibit “A” and Exhibit “B”.

Section 2.02. Addition of Bramble Family Tract. Pursuant to the provisions of Section 5.06, the Declarant has reserved the right to add all or a portion of that property described in Exhibit B to this Declaration upon filing and recording an amendment to the Declaration in the Public Registry of Dare County, North Carolina.

## Article III Membership and Voting Rights

Section 3.01. Membership. Each and every Owner of a Lot or Dwelling Unit within Carlyle-on-the-Sound shall automatically become and be a Member of the Association.

Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling Unit, and the Board may make reasonable rules relating to the proof of ownership of a Lot or Dwelling Unit.

Section 3.02. Classes of Voting Members. Subject to the rights of Declarant reserved in this Section 3.02, the Association shall have two classes of voting membership as follows:

Class A. Class A Members shall be all Owners of Lots, with the exception of Declarant until such time as Declarant's Class B Membership is converted to Class A Membership as provided in this Article. A Class A Member shall be entitled to one (1) vote for each Lot or Dwelling Unit owned by such Class A Member at the time notice is given of the particular meeting at which Class A membership votes are eligible to be cast. Provided, when two (2) or more persons own or hold interests in any Lot or Dwelling Unit, all such Persons shall be Class A Members, and the one (1) vote for such Lot or Dwelling Unit shall be exercised as they, among themselves, determine, but fractional voting shall be prohibited and in connection with any particular vote no more than one Class A Membership (1) vote shall be cast with respect to each Lot or Dwelling Unit.

Class B. The Class B Members shall be the Declarant. The Class B Members shall be entitled to two (2) votes for each Lot or Dwelling Unit owned by the Class B Members at the time notice is given of the particular meeting at which the Class B votes are eligible to be cast and, in addition, the Declarant shall be entitled to appoint a majority of the members of the board of the Association during the Declarant Control Period. The Class B Members shall have a veto over all actions of the Board during the Declarant Control Period.

The Class B Membership shall terminate and be converted to Class A Membership upon the happening of the first to occur of the following:

- (a) when the total votes outstanding in Class A Membership equal the total votes outstanding in Class B Membership; or
- (b) voluntary termination by Declarant; or
- (c) September 15, 2020.

Section 3.03. Voting, Quorum and Notice Requirements. Except as may be otherwise specifically set forth in this Declaration, the Articles or the Bylaws, the vote of the majority of the aggregate votes entitled to be cast by all classes of the Members present, or represented by legitimate proxy, at a legally constituted (duly called) meeting of the Association at which a quorum is present, shall be the act of the Members with respect to the matter that is the subject of such vote. The number of votes required to constitute a quorum shall be as set forth herein or in

the Bylaws. Notice requirements for all action to be taken by the Members of the Association shall be as set forth herein or in the Bylaws.

Section 3.04. Termination of Membership. A Person's membership in the Association shall terminate automatically whenever such Person ceases to be an Owner, but such termination shall not release or relieve any such Person from any liability or obligation incurred under or in any way connected with the Association of this Declaration during the period of such Person's ownership of a Lot or Dwelling Unit, or impair any rights or remedies which the Association or any other Member has with regard to such former member.

Section 3.05. Board Authority to Act. Unless otherwise specifically provided in the Association Documents and the North Carolina Nonprofit Corporation Act, all rights, powers, easements, obligations and duties of the Association may be performed by the Board on behalf of the Association.

Article IV  
PROPERTY RIGHTS IN THE COMMON ELEMENTS

Section 4.01. Easement of Enjoyment. Subject to the provisions of this Declaration (and subject to the provisions of any Supplemental Declaration or Additional Declaration which may be applicable and not inconsistent herewith), every Owner shall have a right and easement of use and enjoyment in and to the Common Elements, and every Owner of a Lot or Dwelling Unit in a phase or section of the Development which has Limited Common Elements shall have a right and easement of use and enjoyment in and to such Limited Common Elements, which rights and easements shall be appurtenant to and shall pass with the title to every Lot or Dwelling Unit; provided however, such easement shall not give such person the right to make alterations, additions or improvements to any part of the Common Elements or Limited Common Elements. Subject to the terms of the Governing Documents, any Owner may delegate such Owner's right of use and enjoyment in and to the Common Elements or Limited Common Elements to the members of such Owner's family, such Owner's tenant or contract purchasers who reside on the Owner's Lot or Dwelling Unit.

Section 4.02. Extent of Owners' Easement. The rights and easements of enjoyment created in Section 4.01 of this Article IV shall be subject to the following:

- (a) all provisions of this Declaration affecting such rights and easements, including without limitation those contained in this Article IV.
- (b) the right of the Association to prescribe and enforce regulations governing the use, operation and maintenance of the Common Elements (including limiting the number of guests of Members who may use the Common Elements).

(c) the right of the Association to borrow money for the purpose of improving, repairing, replacing and maintaining the Common Elements and facilities and/or the Landscaped Rights-of-Way and in connection with such borrowing to mortgage the Common Elements, provided the rights of such mortgagee in the Common Elements shall be subordinate to the rights of the Association and the Owners hereunder

(d) the right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure;

(e) the right of the Association to suspend the voting rights and the right to use recreational facilities of the Common Elements if any, by an Owner (including his tenants) for any period during which any assessment against such Owner's Lot or Dwelling Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations;

(f) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities that may be placed within the Common Elements.

Section 4.03. Changes in Boundaries; Additions to Common Elements. Declarant expressly reserves for itself and its successors and assigns the right to reasonably change and realign the boundaries of the Common Elements and the Limited Common Elements and any Lots, including the realignment of boundaries between adjacent Lots or Dwelling Units owned by Declarant, provided that any such change or realignment of boundaries shall not materially decrease the acreage of the Common Elements and shall be evidenced by a revision of and/or addition to those plats of Carlyle-on-the-Sound which shall be recorded in the Public Registry of Dare County, North Carolina. Except as provided herein, Lots may not be subdivided or separated into smaller Lots or any portion of a Lot separately conveyed.

Section 4.04. Damage or Destruction of Common Elements by Owner. If any Owner or any of their guests, tenants, licensees, agents, employees of Owner or his family damages any of the Common Elements as a result of negligence or misuse, the Owner hereby authorizes the Association to repair the damage. The cost of repair shall be the responsibility of that Owner and shall become an Individual Lot Assessment payable by the responsible Owner. In the event an Owner disputes either responsibility or the amount of damage claimed, then the Owner may request a hearing pursuant to the revisions of Section 7.13 (b) and any liability determined shall be an assessment secured by lien as allowed by the Act.

Section 4.05. Sand Dune Management Provisions. Any proposed alteration of existing dunes within the Common Elements shall be subject to prior review and written approval by the ASC which measures shall be in compliance with Section 22-58.1 Sand Dune Provisions of the Dare County Zoning Ordinance.

Section 4.06. Ingress and Egress. Notwithstanding anything to the contrary appearing in this Declaration, if ingress and egress to any Lot or Dwelling Unit is through any part of the Common Elements, any conveyance or encumbrance of such part of the Common Elements shall be subject to an easement for ingress and egress for such Lot or Dwelling Unit over and upon such portion of the Common Elements as is designated for ingress and egress (by a public or private street or right of way) and shown on a recorded plat of such Common Elements, Lot or Dwelling Unit affected thereby or created or reserved by Declarant in an instrument recorded in the Public Registry of Dare County, North Carolina.

Section 4.07. Title to Common Elements. The Declarant shall retain the legal title to the Common Elements until such time as it has completed improvements, if any, thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision to the contrary herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the Common Elements to the Association at its option anytime prior to the expiration of the Declarant Control Period.

Section 4.08. Stormwater Management Improvements. The Association will be responsible for maintenance of any stormwater management swales, channels and check dam repairs. Each Association shall be responsible to insure that each Owner within each neighborhood maintains his driveway. Such maintenance is to include removal of sediment within the swales and channels, restabilization of the swales and channels as needed, check dam repairs and upkeep of the vegetation cover on a periodic, as required basis. As a condition to the North Carolina Stormwater Management Permit No. SW7050108 issued by the Division of Water Quality for Carlyle-on-the-Sound, the following covenants may not be changed or deleted without the consent of the North Carolina Division of Environmental Management Water Quality Section:

(a) The allowable build-upon area per lot shall not exceed that square footage designated on Exhibit "D" attached hereto and incorporated herein by reference, inclusive of that portion of the right-of-way between front Lot line and the edge of the pavement, structures, walkways of brick, stone, slate, not including wood decking.

(b) Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with any development except for average driveway crossings, is strictly prohibited by any persons.

Section 4.09. Sales and Construction Offices. Notwithstanding any provisions of restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns during the Declarant Control Period, the alienable and transferable right and easement in and to Carlyle-on-the-Sound for the maintenance of signs, sales offices, construction offices, business offices and model Dwelling Units, together with such other facilities as may be reasonably required, convenient, or incidental to the completion and

improvement of Common Elements, and/or sale of Lots, for so long as Declarant owns any Lot or Dwelling Unit primarily for the purpose of sale. During the Declarant Control Period the only signs which will be authorized for sale or rental properties within Carlyle-on-the-Sound shall be those displayed by BD&A Realty & Construction, Inc. and Shingle Landing of Colington Corp., and no other signs for other sales or rentals shall be permitted unless said signage is "For Sale by Owner" or "For Rent by Owner".

Section 4.10. Model Homes. During the Declarant Control Period, the only Dwelling Units which may be used as "sales offices" or "model homes" shall be those which have been specifically approved in writing by the Declarant. Presently, the only permitted use of sales offices or model homes shall be those sales offices or model homes operated by BD&A Realty & Construction, Inc. and Shingle Landing of Colington Corp.

Section 4.11. Conservation Easements. Portions of the Common Elements are subject to conservation easements that have been granted to the state of North Carolina which conservation easements are subject to all rules and regulations promulgated by the state of North Carolina.

Section 4.12. Regulation of Common Elements. The Association shall have the right to regulate the use of the Common Elements pursuant to any rules and regulations adopted by the Board.

Section 4.13. Rights of Association. There shall be a general easement to the Association, its Directors, Officers, contractors, agency and employees (including but not limited to any manager employed by the Association) to enter upon the Property or any portion thereof and to enter or take access through the Lots and Common Elements as may be reasonably necessary for the installation, maintenance, repair and replacement thereof, for making emergency repairs and for other work for the proper maintenance and for the performance of their respective duties. Each Owner shall afford to other Owners and to the Association, their respective contractors, agents, representative and employees, such access through such Owner's Lot as may be reasonably necessary to enable them to perform such work and to exercise and discharge their respective powers and responsibilities. Except in the event of emergencies, however, such easements are to be exercised only during normal business hours and upon advance notice to and with the permission of the owner or Occupant of a Dwelling Unit directly affected thereby. The Association shall have the power to grant and accept permits, licenses and easements on, over, across and through the Common Elements for the installation, maintenance, repair and replacement of utilities, roads and any bulkheads that are the responsibility of the Association to repair and maintain, and for other purposes reasonably necessary or useful for the proper maintenance or operation of the Common Elements. The bulkheads for which the Association is responsible for maintenance and repair are shown on that plat attached hereto as Exhibit "E".

Article V  
SPECIAL DECLARANT RIGHTS

Section 5.01. Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of the Declarant as provided for in the Governing Documents, said right being more specifically set forth within this Article V. The Special Declarant Rights shall extend until September 15, 2020. The Declarant, however, may elect to voluntarily terminate all or any portion of the Special Declarant Rights by expressing such election in writing to the Association. The termination of the Special Declarant Rights shall require the consent of all parties who are a Declarant.

Section 5.02. Right to Complete the Development, Marketing and Sale of Properties. The Declarant shall have the right to conduct all lawful activities required or related to the completion of Carlyle-on-the-Sound as such may be reasonably amended from time to time and as approved under the Ordinances of Dare County, North Carolina, including the right to maintain models, management offices, construction offices, sales offices, and signs advertising the property.

Section 5.03. Governing Documents. During the Declarant Control Period, the Association shall make no amendments to the Governing Documents or take any other action that may adversely affect the Declarant's interest without the Declarant's prior written consent.

Section 5.04. Easements. The Association shall take no action seeking to alter easements established in the Governing Documents by the Declarant, nor to prevent establishment of easements necessary to complete Carlyle-on-the-Sound. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, which easements shall exist as long as reasonably necessary for such purpose.

Section 5.05. The Declarant's Representation on the Board and Votes Within the Association. Declarant shall have the right to exercise the rights and votes of the Class B Members of the Association. Declarant shall further have the right to veto all actions of the Board during the Declarant Control Period. During the Declarant Control Period, the Declarant shall have the right to appoint all members serving on the Board of the Association which right of appointments may earlier be terminated as provided in Section 5.01 herein. The number of members of the Board and composition may not be changed during the Declarant Control Period without the Declarant's written consent.

Section 5.06. Right to Transfer or Assign Special Declarant Rights. Any or all of the Special Declarant Rights created in this Declaration or the Bylaws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and records in the

office of the Public Registry of Dare County, North Carolina. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

Section 5.07. Bramble Family Tract. Declarants, as a reserved development right, hereby grant to Bramble the option and right to add all or any portion of the Bramble Family Tract to Carlyle-on-the-Sound provided said right is exercised no later than September 15, 2020. If Bramble exercises this option and right, Bramble shall add such lots to Carlyle-on-the-Sound as a Declarant (by recorded amendment to this Declaration) of Carlyle-on-the-Sound. In such event, the lot owners within the Bramble Family Tract shall become members of the Association, and shall pay such dues and assessments as are assessed by the Association, under the same formula and with the same percentages as are applicable to other lots within Carlyle-on-the-Sound. Such owners of lots that came from the Bramble Family Tract shall also become mandatory members of the Association. Such addition of lots to Carlyle-on-the-Sound by Bramble by recorded Amendment to this Declaration shall not require the consent of the Association, other lot owners, or the Declarants. If Bramble elects to add to Carlyle-on-the-Sound any Lots, Common Elements, or structures created from the Bramble Family Tract as provided herein, the bulkheads surrounding the parcel added to Carlyle-on-the-Sound from the Bramble Family Tract shall be defined in the recorded Amendment to the Declaration as being part of the Common Elements for Carlyle-on-the-Sound, and shall become a general obligation of the Association for maintenance and replacement as necessary or required.

Section 5.08. Amendment or Transfer of Declarant Rights. Any modification or amendment of Declarant Rights shall require the unanimous written consent of all parties designated as Declarant in Section 1.16 of this Declaration. Each party that is a Declarant ("Party Declarant") may transfer all of its rights as Declarant to the other Party Declarant, but neither Party Declarant may transfer or assign its right as a Declarant to a third party without the prior written consent of the other Party Declarant.

## Article VI Architectural Standards

Section 6.01. Purpose. Declarant desires to provide for the preservation of the values of Carlyle-on-the-Sound with respect to any Dwelling Unit to be constructed on any portion of the Property. To that end, Declarant will establish an Architectural Standards Committee (the "ASC:"). The purpose of the appointed ASC is to maintain standards as to appearance, shape, dimension, construction material, and color, among other things, in order to establish a desirable consistency and harmony, among adjacent and surrounding structures and relative to location and topography, and to ensure compliance with the Dune Management Plan.

Section 6.02. Advance Approval Required. All Improvements (which term shall include within its definition: staking, clearing, excavation, grading and other site work) or modification (except interior alterations not affecting the external structure or appearance of any building) including plantings or removal of plants, trees or shrubs shall not take place except in strict compliance with this Article, until the requirements below have been fully met and written approval of the ASC has been obtained pursuant to Section 6.03 below. Unless approved in accordance with this Article, no structure, including, but not limited to: fences, porches, patios, decks, privacy walls, gates, pools, whirlpools or other pools, and awnings, shall be placed, erected or installed upon any Lot and/or Dwelling Unit.

Unless otherwise approved by the ASC, all improvements constructed on any portion of Carlyle-on-the-Sound shall be designed by and built in accordance with the plans and specifications of an approved licensed architect and an approved licensed general contractor as defined in Section 1.04 who has made application and has been approved by the ASC. The requirements and procedure for becoming an approved architect or general contractor shall be determined by the ASC.

This Article shall not apply to the activities of the Declarant, nor to construction of improvements or modifications to the Common Elements by or on behalf of the Association

This Article may not be amended during the Declarant Control Period without the Declarant's prior written consent.

Section 6.03. Architectural Standards Committee. During the Declarant Control Period, the Declarant retains the right to determine the composition and appointment of all members of the ASC which during the Declarant Control Period will include Eric Avery and Arthur Tom Bramble. Subsequent to the expiration of the Declarant Control Period, all appointments shall be made by the Board.

Responsibility for administration of the Architectural Guidelines and review of all applications for construction and modifications under this Article VI shall be handled by the ASC. The members of the ASC need not be Owners within Carlyle-on-the-Sound and may but not need include: architects, engineers or similar professionals, whose compensation, if any, shall be established and remitted from time to time by the Declarant. The Declarant may establish reasonable fees to be charged by the ASC for review of applications hereinafter and may require such fees to be paid in full prior to review of any application.

Section 6.04. Guidelines and Procedures. The Declarant shall prepare the initial design and development guidelines and applications and review procedures (the "Architectural Guidelines") which shall be applicable to all construction activities within Carlyle-on-the-Sound.

**Prior to submission of any plans, an Owner must first obtain a copy of the Architectural Guidelines and review those Guidelines and complete the application with the**

**Architectural Guidelines as the ASC will not review any application other than the uniform application prepared by the ASC.**

The ASC shall adopt the Architectural Guidelines and thereafter shall have sole and full authority to reasonably amend the Architectural Guidelines from time to time without the consent of the Association, provided said amendments are consistent with the Statement of Purpose set forth within this Declaration; however, any amendments during the Declarant Control Period must have the prior written consent of the Declarant. Subsequent to the Declarant Control Period, any amendments to the Architectural Guidelines may be either proposed by the ASC to the Association or may be proposed initially by the Association and any adoption thereafter must be by a majority vote of the Board.

The ASC shall make the Architectural Guidelines available to Owners and approved Architects and General Contractors who seek to engage in any development and construction in Carlyle-on-the-Sound and all such persons shall conduct their activities in strict accordance with the Architectural Guidelines. A written document acknowledging receipt of the Architectural Guidelines shall be signed by the appropriate General Contractor prior to commencement of any construction activity. All Owners, Architects, General Contractors, sub-contractors, materialmen and their agents shall conduct their activities strictly in accordance with the Architectural Guidelines.

Any amendments to the Architectural Guidelines as may be reasonably adopted from time to time by the ASC in accordance with this Section 6.04 shall apply to construction and modifications commenced after the date of such amendment only, and shall not require modifications or removal of structures previously approved by the ASC once the approved construction or modification has commenced.

The ASC may promulgate from time to time detailed standards and procedures governing its area of responsibility and practice. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed construction and any modification, addition or alteration to any prior approvals shall be submitted to the ASC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, and as to location in relation to surrounding structures, topography and finishing grade elevation.

The plans to be submitted must include site plans which depict all access streets and walkways, pathways, and other exterior improvements, grading drainage plan, fill plan, if any, indicating runoff, foundation plan, exterior and lighting plan. The submitted plan shall also include a plan that shows any proposed clearing to be done on the Lot prior to any construction. The architectural drawings submitted must include total enclosed heated/air conditioned square footage, the floor plans, including an exact computation of the square footage of each floor and

drawn to the scale of one quarter inch equals one foot, elevation drawings for all sides which shall indicate existing grade, fill and finished floor elevation, detailed drawings of typical wall sections and any other extra features, and a complete identification of colors and materials, including shingles, siding and color.

At time of submission, three sets of plans shall be submitted with the completed ASC application form along with an application fee of \$500.00 and a security deposit of \$2,000.00. Construction of all improvements must be completed within one year from the date the ASC grants an applicant approval. The security deposit will be returned after completion of construction and compliance with the approved plans, provided there has been compliance and no damage resulting from the building, including compliance by the Owner's General Contractor.

Section 6.05. Non-Precedential Nature of Approvals. Each applicant acknowledges that the composition of the ASC will change from time to time and that decisions regarding aesthetic matters and interpretation and application of the Architectural Guidelines may reasonably vary from time to time. In addition, each applicant acknowledges that it may not always be possible to identify objectionable features of proposed Improvements until the Improvements are completed, in which case it may be unreasonable to require changes to the Improvements previously approved, but the ASC may refuse to approve similar Improvements in the future. Approval of Improvements for any particular applicant or Dwelling Unit shall not be deemed a waiver of the right to withhold approval as to any similar Improvements subsequently submitted for approval.

Section 6.06. No Waiver of Future Approvals. The approval of the ASC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ASC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 6.07. Basis for Decision and Variance. The ASC shall approve or disapprove any application in its reasonable discretion, based primarily on adherence with the Architectural Guidelines and compliance with the Dune Management Plan; however, the ASC reserves the right to grant variances based on architectural merit and on existing landscape conditions. The ASC may also consider the nature, kind, shape, height of materials and location of the proposed improvements, harmony with surrounding structures and topography, and other factors including purely aesthetic considerations, which in the sole opinion of the ASC will affect the desirability or suitability of the construction.

Section 6.08. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the ASC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or for ensuring compliance with building codes and other governmental

requirements. Neither the Declarant, the ASC or the Association, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Dwelling Unit.

Section 6.09. Enforcement. Any construction, alteration or other work done in violation of this Article or in a manner inconsistent with the application approved by the ASC shall be deemed to be nonconforming. Upon written request from the ASC (“Notice of Nonconformity”), an Owner shall, at his own cost and expense, promptly remove the nonconformity and restore the property to substantially the same condition as existed prior to the creation of the nonconformity. In the event an Owner is in disagreement as to the Notice of Nonconformity, then the Owner has the right to request a hearing before the ASC provided the Owner delivers written notice for request of hearing to the Secretary of the Association no later than ten (10) days from the date the Owner received the Notice of Nonconformity. Upon receipt of any request for hearing, the Secretary of the Association shall thereafter calendar a hearing not less than seven (7) days nor more than fifteen (15) days before the ASC. At its election, the ASC may designate its members to serve on the panel or in the alternative it may make appointments to the panel. Subject to procedures as may be established by the ASC, any Owner may appeal the ASC’s decision to the Board. The Board at its election may either calendar a further hearing or uphold, modify or reverse the decision of the three member panel of the ASC and said decision by the Board shall be final. Upon issuance of the Notice of Nonconformity, all construction shall be stayed pending compliance by the Owner or resolution by the ASC or review and final decision by the Board. In accord, a stop-work order may be posted on the Owner’s property by the ASC. Should an Owner fail to remove and restore any nonconformity as required hereunder, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. All costs, together with the interest at the maximum rate then allowed by law, including reasonable attorney’s fees allowed by the Act, may be assessed against the nonconforming Lot or Dwelling Unit and collected as an Individual Assessment pursuant to Section 8.04.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and Carlyle-on-the-Sound may be excluded by the Declarant (during the period of the Declarant Control Period) from Carlyle-on-the-Sound, subject to the notice and hearing procedures established by the ASC. In such event, neither the Association, its officers nor directors shall be held liable to any person for exercising the rights granted by this Section.

In addition to the foregoing, the ASC shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ASC.

Section 6.10. Statement of Reasons for Disapproval. In any case where the ASC shall disapprove any Plans submitted hereunder or shall approve the same only as modified or upon

specified conditions, notice of such disapproval or qualified approval shall be given to the Owner submitting such Plans within thirty (30) days after the ASC declares the submission complete by written notice to the Owner, and such notice of disapproval or qualified approval shall be accompanied by a statement of the specific reasons therefore.

Section 6.11. Time of Approval. The ASC shall not be required to review any Plans unless and until the submitted Plans contain all the items required by this Article VI, and such 30-day review period shall not commence until the ASC declares the submission complete by written notice to the Owner. If the ASC fails to approve, disapprove, or request any additions or supplemental information relating to any preliminary or final Plans within forty-five (45) days after the ASC declares the submission complete by written notice to the Owner, then such Plans shall be deemed to have been approved, but only to the extent that such Plans comply with the Architectural Guidelines.

Section 6.12. Expiration of Approval. If work is not commenced within twelve months from the date the ASC approves the Plans for such work, then such approval shall be deemed revoked by the ASC unless the ASC, in its sole discretion, extends the time for commencing work. All work covered by such approval shall be completed within one year after the commencement thereof, except for such period of time as such completion is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner or Occupant, unless the ASC, in its sole discretion, extends the time for completion. For the purposes of this Declaration, work on an Improvement shall be deemed to have "commenced" when the Improvement site has been graded and, in the case of Buildings, footings or foundations have been poured or otherwise installed.

Section 6.13. Liability for Violation. Any person violating any provisions of this Article shall be liable for all costs incurred by the Declarant or the ASC or any other person who seeks to enjoin or otherwise remedy such violations, including, but not limited to, reimbursement for reasonable attorney fees and expenses incurred in connection with said enforcement.

Section 6.14. Landscape Plan Minimum Standards. In keeping with the preservation of the Maritime Forest and Wetlands, each Lot shall remain as natural as possible with a minimum area cleared of vegetation for the proposed Dwelling Unit and driveway. Outside of the footprint of the Dwelling Unit, all vegetation shall remain undisturbed, unless the Owner landscapes all or a portion of the remainder of the Lot. After the ASC approves an Owner's landscape plan, the Owner may commence land-disturbing activities in accordance with the approved landscape plan. The landscape plan shall include a plan for restabilization of any areas of the Lot disturbed by the owner. Owner shall restabilize any disturbed areas of the Lot within thirty (30) days of such disturbance. Each Owner is responsible for erosion control on his or her Lot at all times.

Section 6.15 Trees, Vegetation and Dunes. No Owner shall remove, reduce, cut down or otherwise change or cause to be removed, reduced, cut down or change the elevation of any sand dunes, ridges, or both in the development, or trees more than five (5) inches in diameter at a point two

(2) feet above the ground, or any flowering trees or shrubs above five (5) feet in height, without the advance and express written consent of the ASC in each instance. The Owner's landscape plan submitted by owner to the ASC for approval shall describe in detail any plans to remove any tree or shrub removal covered by this provision, and any other land disturbing activities covered by this Article VI.

Section 6.16 Minimum Lot Size. The Dwelling Units must have a minimum heated/air conditioned square footage of not less than 2,000 square feet.

## Article VII USE RESTRICTIONS

Section 7.01. Purpose. In order to preserve the natural setting and beauty of Carlyle-on-the-Sound, and in order to preserve the natural setting and beauty of Carlyle-on-the-Sound, and to maintain the unique environment of dune topography, wetlands, vegetation and animal life, and to preserve a harmonious and an aesthetically pleasing design pursuant to standards promulgated by the Association, and to provide for the preservation of value of all the properties within Carlyle-on-the-Sound, each Lot and Dwelling Unit located within Carlyle-on-the-Sound shall be subject to the restrictions set forth in this Article VII. Every grantee of any interest in Carlyle-on-the-Sound (unless specifically exempted) by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article VII.

Section 7.02. General Provisions. All Properties within Carlyle-on-the-Sound shall be used for only single family, non-transient residential purposes consistent with this Declaration and any reasonable amendments. The Association, acting through its Board, shall have authority to make and to enforce standards and restrictions governing the use of Carlyle-on-the-Sound. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees and licensees. The Use Restrictions provided herein are not intended to interfere with the interior confines of Dwelling Units, except that the Association with approval of the Board may reasonably restrict or prohibit the following:

- (1) activities not normally associated with residential or home office. Except as otherwise provided herein, no business activity or trade of any kind (other than activities related to development of the Carlyle-on-the-Sound by Declarant, installation and maintenance work by utility providers and persons responsible for street maintenance or replacement of a single-family residence or improvement or maintenance of a Lot or Dwelling Unit) shall be conducted on any Lot or within any Dwelling Unit, except that an Owner residing in a Dwelling Unit on a Lot may conduct business activities within the Dwelling Unit as long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve

persons coming onto the Property who do not reside in the Property or door to door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The terms “business” and “trade” as used in this Section, shall be construed to have the ordinary, generally accepted meanings, and shall include without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provisions of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part time, such activity is intended or does generate a profit; or a license is required therefor;

- (2) activities that create a danger to the health or safety of the occupants of other Dwelling Units;
- (3) activities that generate excessive noise or traffic; and
- (4) activities that create unsightly conditions visible outside the Dwelling Unit.

Section 7.03. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any portion of the Property or in any Dwelling Unit except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes, that they do not create a nuisance (in the judgment of the Board), such as, but without limitation, by number, noise, odor, damage or destruction of property, or refuse and further provided that they are kept and maintained in compliance with (i) all laws and ordinances of the State of North Carolina, Dare County, or other applicable governmental entity relating thereto; and (ii) such rules and regulations pertaining thereto as the Board may adopt from time to time. In no event shall more than three dogs and/or three cats be regularly kept on any Lot or in any Dwelling Unit, except for newborn offspring of household pets which are under nine (9) months of age. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit or require the removal of any dog or animal, which after consideration of factors such as size, breed, disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots, and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard. Every person owning or having possession, charge, care, custody, or control of any dog shall keep such dog exclusively upon his own Lot; provided, however, that such dog may be allowed off the Lot if it is under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

Section 7.04. Antennae. No exterior antennae, earth satellite station, microwave dish or other similar improvements may be constructed, placed, maintained or allowed to remain on any

Lot or Dwelling Unit (or on any Improvement) other than a “Reception Device”. As used herein, a Reception Device shall refer to a satellite dish or other device designed to receive video programming or antenna designed to receive over-the-air broadcast signals from local television stations. The use of a Reception Device is allowed, but will be limited as follows: (i) a Reception Device thirty-nine (39) inches or smaller in diameter is allowed, and Reception Devices larger than one meter are prohibited; (ii) Reception Devices must be installed on the Dwelling Unit in an inconspicuous location (so long as the quality of reception is not impaired); (iii) for safety purposes, no Reception Device may be installed that would extend higher than twelve (12) feet above the roofline of the Dwelling Unit without approval from the Architectural Standards Committee; (iv) for safety purposes, Reception Devices shall not be installed closer to an adjacent Dwelling Unit than the total height of the Reception Device; (v) the Owner of the Dwelling Unit upon which the Reception Device is located shall be solely responsible for the maintenance, repair, upkeep and all other costs associated with the Reception Device, including any medical expenses incurred by any person injured by the use of such Reception Device,; and (vi) the Reception Device should be painted an appropriate color to match the surrounding environment if it would not unreasonably increase the cost of the Reception Device. If any provision of this Section 7.04 is found to be invalid, the remainder of these provisions shall remain in full force and effect.

Section 7.05. Attachments. No permanent attachments of any kind or character whatsoever shall be made to the roof or exterior walls of any Dwelling Unit unless such attachments shall have been first submitted to and approved by the Architectural Standards Committee; provided, however, “Reception Devices” (as defined in Article 7.04 herein) may be attached to the roof or exterior wall of a Dwelling Unit without approval by the ASC. No outdoor clotheslines shall be allowed on any Dwelling Unit or Lot. Window air-conditioning units are not allowed. All components of HVAC systems located outside a Dwelling Unit must be screened by lattice and planted vegetation, which vegetation must be maintained.

Section 7.06. Nuisances, Unlawful Use and Quiet Enjoyment. No nuisance or immoral, improper, offensive or unlawful use shall be permitted to exist on any property within Carlyle-on-the-Sound. All laws, building codes, orders, rules, regulations or requirements of any governmental agency having jurisdiction shall be complied with. No portion of Carlyle-on-the-Sound shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. Exterior loud speakers are prohibited on individual lots, except in pool areas and exterior decks.

Section 7.07. Pest-Control. Each owner of a Dwelling Unit must be a party to a current agreement for a periodic pest-control. All pest-control measures must be environmentally friendly with the lowest chemicals allowed and any measures which can be performed by organic means shall be performed using such organic methods of treatment. Further, organic pest control

measures (if available) must be performed on the soil of a Lot prior to commencement of any construction.

Section 7.08. Rental of Dwelling Units. The individual renting of Dwelling Units for a term not less than thirty (30) days within Carlyle-on-the-Sound is allowed.

Section 7.09. Rules of the Association. All Owners and occupants of Lots or Dwelling Units shall abide by all rules and regulations adopted by the Association from time to time. The Board and the Declarant for so long as there remains a Class B Membership shall have all the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or the Declarant for all damages and costs, including reasonable attorney fees.

Section 7.10. Signage. During the Declarant Control Period, permitted signage for builders and contractors shall only include that signage designated by BD&A Realty & Construction, Inc and Shingle Landing of Colington Corp. Subsequent to the Declarant Control Period, no signage of any kind, including "For Sale" and "For Rent" shall be erected within Carlyle-on-the-Sound without the written consent of the ASC, except entry signs, directional signs and signs showing the name of a Dwelling Unit or other signs as erected by Declarant during the Declarant Control Period. Signage of "For Sale by Owner or "For Rent by Owner shall be deemed permitted signage provided it conforms to the uniformed signage approved by the ASC. Any permitted signage shall conform to uniform signage approved by the ASC which signage shall not contain the logo or name of any real estate agency or real estate agent other than the exclusive agent appointed by Declarant during the Declarant Control Period which shall be BD&A Realty & Construction, Inc. Each Owner shall display an exterior sign on the Dwelling Unit as approved by the ASC which includes the name and street address of the Dwelling Unit. Prohibitive signage shall also include flags of any kind that are not to be displayed on any Lot or family Dwelling Unit unless the owners receive written approval from the ASC.

Section 7.11. Site Line Limitations. No fence, wall hedge or shrub planting which obstructs sight lines at elevations between two and six feet above roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree line is maintained at sufficient height to prevent obstruction of sight lines.

Section 7.12. Time Sharing. No time-share ownership of property is permitted in Carlyle-on-the-Sound. For purposes of this section, the term "Time-Share Ownership" shall mean a method of ownership of an interest in a property under which the exclusive right of use, possession or occupancy of the property circulates among the various Owners on a periodically

reoccurring basis over a scheduled period of time.

Section 7.13. Compliance Provisions.

(a) Owner's Responsibility. Each Owner and Owner's family members, guests and tenants shall conform and abide by the Covenants contained in this Declaration and any Rules and Regulations which may be adopted from time to time by the Association. Each Owner shall be responsible for assuring such compliance, and any violation by family members, guests or tenants may be considered to be a violation by the Owner.

(b) Notice, Hearing and Fines. Unless otherwise provided (as in Articles VI and Article IX), any Owner who is believed to be in violation of this Declaration or any Rules and Regulations adopted by the Board, shall be sent a "Notice of Violation" setting forth the violation, any requested corrective action, and if applicable, notice of any proposed suspension of privileges within Carlyle-on-the-Sound and any fines which may be assessed. Upon receipt of a Notice of Violation, the Owner may either take the corrective action set forth within the Notice of Violation or in the event an Owner is not in agreement with the terms of the Notice of Violation, then prior to any proposed suspension or assessment of any fines, the Owner has the right to a hearing before the Board provided the Owner delivers written notice for request of hearing to the Secretary of the Association no later than ten (10) days from the date the Owner received the violation. Upon receipt of any request for hearing, the Secretary of the Association shall thereafter calendar a hearing before the Board to be held not less than seven (7) days nor more than thirty (30) days from the date of the request. If it is determined that the Owner is in violation and a fine shall be imposed, a single fine not to exceed \$100.00 per day may be imposed for the violation up to the time of the hearing and without further hearing, for each day after the decision by the Board that a violation has occurred. In the event it is determined that privileges are to be suspended, the suspension may continue without further hearing until the violation or delinquency is cured. All costs, together with interest at the maximum rate permitted by law, including reasonable attorney fees as allowed by the Act may be assessed against the Owner's property and collected as an Individual Assessment pursuant to Section 8.04. Notwithstanding the enforcement provisions provided herein, the primary goal is not to punish but to conciliate and resolve problems. The Board may suggest or approve agreements and withhold the agreement of paying a fine if the agreement is honored. Any fines levied shall be charged against the Owner's property as an Individual Assessment pursuant to Section 8.04. The provisions provided herein for notice and hearing only apply to those matters which could result in an individual assessment being levied and do not apply to any other type of assessments.

(c) Additional Remedies. All remedies listed in this section are non-exclusive and may be applied cumulatively.

VIII  
Assessments

Section 8.01. Creation of Assessments, Personal Obligations and Liens. Each owner, other than the Declarant of any Lot or Dwelling Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to all the covenants, easements and restrictions of this Declaration and to pay to the Association:

- (1) annual assessments or charges;
- (2) special assessments for capital improvements (such annual and special assessments to be fixed, established and collected from time to time as herein or in the Bylaws provided); and
- (3) individual assessments levied against an Owner to reimburse the Association for extra costs for maintenance and/or repairs caused by the failure of such Owner to maintain such Owner's individual Lot or Dwelling Unit and Improvements thereon, or for damage to or destruction of Common Elements by the Owner or the Owner's guests, tenants, licensees, agents, or family members, all of such assessments and charges to be fixed, established and collected as hereinafter provided; together with the costs, fees and expenses including reasonable attorney's fees (the "costs of collection") incurred by the Association incidental to the enforcement of any Rules and Regulations, collection of assessments or collection of damages or charges arising under the Governing Documents. All assessments, together with interest and late payment fees, and any costs of collection shall be a charge on the land and shall be a continuing lien upon the Lot or Dwelling Unit against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be a personal and continuing obligation of the person or persons jointly and severally, who is (are) the Owner(s) of such Lot or Dwelling Unit at the time when the assessment fell due.

An Owner's personal obligation for payment of such assessments shall not pass to such Owner's successors in title unless expressly assumed by them, but the lien against such Owner's Lot or Dwelling Unit as established in this Declaration shall continue in effect (unless terminated as otherwise provided herein). No Owner shall be exempt from liability for any assessment provided for herein by reason of non-use of such Owner's Lot or Dwelling Unit or the Common Elements.

Section 8.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, security, safety and welfare of the residents of Carlyle-on-the-Sound and in particular for:

(a) The improvement, maintenance and replacement of the Common Elements (including, without limitation, the landscaped rights-of-way);

(b) Establishment of capital replacement reserves;

(c) The acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of the Common Elements, including but not limited to, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Elements, the procurement and maintenance of insurance related to the Common Elements, its facilities and use in accordance with the Governing Documents, the employment of counsel to represent the Association if necessary, and such other requirements as may be necessary to perform all of the aforesaid functions and purposes;

(d) Carrying out the purposes and duties of the Association as stated in its Articles and Bylaws and as stated in this Declaration.

Without limiting the generality of the above-described purposes, the assessments levied by the Association may be used for the acquisition, construction, improvement (including landscaping and planting) and maintenance of any common facilities located or to be located in the Common Elements and landscaped rights-of-way, and any landscaping easement areas or Entrance Monument easement areas as shall be indicated on the recorded plats of Carlyle-on-the-Sound.

Section 8.03. Initial Maximum Annual Assessment and Preparation and Approval of Budget. The initial maximum annual assessment for the calendar year 2006 shall be as follows:

<u>Owner Members</u>	<u>Annual Assessment</u>
Per vacant Lot	\$500.00
Per Dwelling Unit	\$1,000.00

The Maximum Annual Assessment for each successive calendar year thereafter shall be established by the Board subject to Article VIII. Within thirty (30) days after adoption of the yearly budget, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. A quorum need not be present at such meeting, and the budget is ratified unless at that meeting the Owners entitled to exercise a majority of the votes in the Association reject the budget. In no event may the Board or

membership of the Association decrease the amount of the annual assessment for any calendar year from the amount of the annual assessment for the previous calendar year.

Section 8.04. Individual Assessment. An Individual Assessment may be levied against any Owner to reimburse the Association for costs incurred in bringing the Owner and/or such Owner's Lot or Dwelling Unit into compliance with the Governing Documents, provided such Individual Assessment may only be levied on the affirmative vote of the Board, after notice of an opportunity for hearing has been provided to the Owner pursuant to the applicable provisions of either Section 6.09, Section 7.13 or Section 9.03.

Section 8.05. Emergency Assessments. In addition to the annual assessments, special assessments, and individual assessments authorized herein, in the event of an "Emergency" (as hereinafter defined), the Board, on behalf of the Association, in the Board's sole discretion, may levy an emergency assessment for the purpose of taking preventative, protective, stabilizing, or remedial actions to protect the Common Elements or any Improvements located thereon, and to further reconstruct, repair or replace any portion of the Property or Improvements following such Emergency. An "Emergency" for purposes of this Section 8.05 includes, but is not limited to, floods, hurricanes, tornadoes, fires, acts of God or other naturally occurring phenomena. An emergency assessment shall be due and payable as established by the Board.

Section 8.06. Rate of Assessments.

(a) Except as otherwise set forth herein, assessments other than individual assessments must be fixed at a uniform rate for all Lots and Dwelling Units. Annual Assessments other than individual or special assessments may be collected on a monthly, quarterly, annual or other basis, as determined by the Board, and may be collected in advance. The Board shall have the power at any time and from time to time, in its sole discretion and upon such terms and conditions as the Board deems appropriate, to allow percentage discounts to Owners who pay assessments earlier than would otherwise be required for such payments; provided, however, all such discounts shall be made available to and applied uniformly to the Owners of all Lots and Dwelling Units that are subject to the assessment to which the discount applies.

(b) Notwithstanding anything to the contrary that may appear in this Declaration, all Lots and Dwelling Units owned by Declarant shall be exempt from annual, special, and individual assessments, until the initial sale of such Lot or Dwelling Unit to a third party.

Section 8.07. Commencement of Assessments; Establishing the Amount; Due Dates. The annual assessment shall commence with respect to the Dwelling Units and Lots in any Phase on the first day of the month immediately following the month in which the first Lot or Dwelling Unit in such phase or section of Carlyle-on-the-Sound conveyed to the Owner by Declarant, and the amount of the first annual assessment applicable to the Lot or Dwelling Unit shall be prorated

in accordance with the number of months remaining in the calendar year on and after it becomes applicable to the Lot or Dwelling Unit. A special assessment and/or individual assessment shall be applicable to each Lot or Dwelling Unit subject to this Declaration at the time such assessment is established. The Board shall establish the amount of the annual assessment for the ensuing calendar year at least thirty (30) days in advance of the beginning of such year, and, if the amount of the annual assessment changes from the amount for the current year, the Board shall cause written notice of the new annual assessment to be sent to at least one of the Owners of each Lot or Dwelling Unit subject to the assessment. Subject to any limitations contained in the Governing Documents and applicable laws, the Board is empowered at any time and from time to time to establish the due dates and penalties for late payment of annual and special assessments. The failure of the Board to establish the amount of any annual assessment as required herein shall not be a waiver or modification in any respect of the provisions of this Declaration, or a waiver of the Board's right to establish the annual assessment at any time during the calendar year to which it is applicable, or a release of any Owner from the obligation to pay the assessment or any installment thereof for that or any subsequent year, and the annual assessment established for the immediately preceding calendar year shall continue in effect until the Board has established the new annual assessment.

Section 8.08. Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date due (being the dates referred to in Section 8.07 of this Article), 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 Lot or Dwelling Unit. The personal obligation of the Owner to pay such assessment shall remain his personal obligation for the statutory period and shall be binding on any successor in interest.

If the assessment or assessments are not paid within thirty (30) days after the delinquency date, the assessment or assessments 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 acting on behalf of the Association may authorize its officers to bring appropriate civil action against the Owner personally obligated to pay the same or to foreclose the lien against any such Lot or Dwelling Unit and there shall be added to the amount of such assessment, the costs of such action and reasonable attorney fees as allowed by the Act or other cost incurred by the Association. In the event a judgment is obtained against any Owner for such assessments, such judgment shall include interest on the assessment at the maximum rate permitted by law and a reasonable attorney fee as allowed by the Act together with the costs of the action.

Section 8.09. Subordination of the Lien to Mortgages or Deeds of Trust. The lien of the assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot or Dwelling Unit, subject to assessment. The subordination shall not relieve any Lot or Dwelling Unit from liability for any assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any

first mortgage or deed of trust as if said lien were a second mortgage or deed of trust, irrespective of when such first mortgage or deed of trust was executed and recorded.

Section 8.10. Exempt Property. All Common Elements, any real property owned by governmental entities, and all Lots, Dwelling Units, and other portions of the Property owned by Declarant, shall be exempt from the assessments and liens for same created herein during the Declarant Control Period. Provided, however, no real property or improvements subject to this Declaration and occupied and used for residential dwelling purposes shall be exempt from such assessments and liens, other than Lots and Dwelling Units owned by Declarant and any affiliates of Declarant which property and which dwelling units shall be exempt from assessments during the Declarant Control Period.

Section 8.11. Declarant's Obligations for Assessments. The Declarant's obligation for assessments on unsold Lots or Dwelling Units subject to this Declaration will be limited to the difference between the actual operating costs of the Association, excluding reserves on the Common Elements, and the assessments levied on Owners who have closed title on their Lots or Dwelling Units. In no event, however, will the Declarant be required to make a deficiency contribution in any amount greater than it would otherwise be liable for if it were paying assessments on unsold Lots or Dwelling Units. After the Declarant Control Period, Declarant shall pay assessments as would any other Owner for each Lot or Dwelling Unit owned by the Declarant.

Section 8.12. Enforcement. The lien for assessments may be enforced and foreclosed in any manner permitted by the laws of North Carolina for foreclosure of mortgages or deeds of trust containing a power of sale or by an action in the name of the Executive Board, or the managing agent, acting on behalf of the Association. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the laws of North Carolina. The Association shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire hold, lease, mortgage, convey or otherwise deal with such Lot. In accord with Section 47F-3-116 of the Act, the Association as the prevailing party in any action brought to recover assessments shall be entitled to reimbursement for all costs and reasonable attorney fees incurred in connection with the collection of the delinquent assessments.

Section 8.13 Remedies Cumulative. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 8.14 Statement of Common Expenses. In accord with Section 47F-3-118 of the Act, the Board or managing agent shall provide any member, Owner, contract purchaser or Mortgagee, within ten (10) days after a written request therefore, with a written statement of all unpaid assessments for Common Expenses due with respect to a specific Lot (or a statement that

the amount of unpaid assessments is zero). No contract purchaser, Mortgagee, or purchaser from a Mortgagee requesting such a statement shall be liable for, nor shall the Lot conveyed to such Person relying on such statement be subject to, a lien for any unpaid assessments due prior to the date of such statement in excess of the amount set forth on such statement; provided, however, that this section shall not be interpreted to release any Owner from personal liability for such assessments levied while such Person owned the Lot. The Board may impose a reasonable charge for the preparation of such statement to cover the cost of preparation.

## Article IX Maintenance

Section 9.01. Responsibilities of Owners. Each Lot or Dwelling Unit Owner shall be responsible for all maintenance and repair of his Lot and/or Dwelling Unit together with all other improvements thereon or therein and all landscaping of grounds on and within the Lot. Each owner shall be responsible for maintaining his Lot in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all improvements and other structures and all trees, shrubs, hedges, walkways, driveways and other landscaping consistent with the site plan and landscape plan approved by the ASC, unless said maintenance repair and replacement has been specifically delegated by the Association as provided in Section 9.02 herein.

### Section 9.02. Responsibilities of the Association.

(a) The Association shall maintain and keep in good repair the Common Elements, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, all interior roads and streets until same are accepted by a public authority all landscaping and other flora, structures, any private streets, pedestrian pathways, access walkways, all stormwater management facilities (including without limitation, ponds, basins, storm drainage pipes, or oil grit separators, drainage areas and underground facilities, if any) and bulkheads installed by the Declarant or by the Association on Lots, and any recreational facilities which become available for use as determined by the Declarant whether or not title to such facilities has been conveyed to the Association. All costs associated with maintenance, repair and replacement of the Common Elements shall be a Common Expense to be allocated among all Owners as part of the Common Assessment. The maintenance and replacement of any fencing and landscaping erected on either side of Tower Lane shall be the responsibility of the Association.

Section 9.03. Compliance. The Association shall have the right but not the obligation to cure any maintenance deficiencies of an Owner (including but not limited to external care of windows, siding and roofing) in which event the Association shall give a "Notice of Maintenance" to the Owner setting forth those matters in need of repair and requesting the same be addressed and said repairs completed within thirty (30) days from the date of said notice. Upon timely written request by an Owner to the Secretary of the Association, the ASC shall give

consideration to any reasonable request by the Owner for an extension to complete said repairs beyond thirty (30) days. In the event an Owner is in disagreement as to the need for repairs or corrections requested within the Notice of Maintenance, then the Owner has the right to request a hearing before a panel of three Members designated by the ASC provided the Owner delivers written notice for request of hearing to the Secretary of the Association no later than ten (10) days from the date the Owner received the Notice of Maintenance. Upon receipt of any request for hearing, the Secretary of the Association shall thereafter calendar a hearing before the ASC to be held not less than seven (7) days and no more than thirty (30) days from the date of said request. Subject to procedures that may be established by the Association, any Owner may appeal the ASC's decision to the Board. The Board in its election may either calendar a further hearing or uphold, modify or reverse the decision of the three member panel of the ASC and said decision by the Board shall be final. Should an Owner fail to make those repairs as set forth within the Notice of Maintenance, then the Association or its delegate agent shall have the authority to enter upon the Owner's property to repair and restore the Lot and/or Dwelling Unit and if necessary, make exterior repairs. All costs together with interest at the maximum rate permitted by law, including reasonable attorney fees as allowed by the Act may be assessed against the Owner's property and collected as an Individual Assessment pursuant to Section 8.04.

## Article X EASEMENTS

Section 10.01. Easement Reserved by Declarant. Declarant, for so long as there is a Class B Membership, and then the Association, for itself, its successors and assigns, and its agents, contractors, and employees reserves a perpetual, alienable, and releasable easement on, over and under the Property (and including all Dwelling Units, Lots and Common Property) for installation, Maintenance, repair, replacement, use, operation and removal of utilities (including, without limitation, electric, natural gas, telephone and cable television) and related appurtenances and equipment (including without limitation, wires, poles, pipes, transformer boxes and conduits), stormwater and drainage facilities and soil and water impoundments. Provided, however, no easement hereby reserved shall be applicable to any portion of a Lot or Common Elements used as building site or approved use as building site by the Architectural Standards Committee. Full right of ingress and egress shall be had by Declarant at all times over the Lots and Dwelling Units or Common Elements (other than the portions thereof used or approved as building sites) for the installation, use, operation, Maintenance, repair, replacement or removal of any such utility, drainage facility or impoundment, together with the right to remove any obstruction that may be placed in any easement that would constitute interference with the use of such easement, or with the use, installation, Maintenance, repair, replacement, removal or operation of same. Assignees to whom Declarant reserves the right to assign and convey, in whole or in part, the easements reserved by it hereunder shall include, without limitation, the Association and one or more governmental entities or public utility companies. Provided, however, neither the foregoing reservations of easement rights nor any similar reservation of easement rights contained in this Declaration shall create or impose any obligation upon Declarant, or its successors and assigns, to

provide or maintain any such utility, drainage facility or impoundment, which, if not otherwise maintained, shall be maintained by the Association.

Section 10.02. Easement Reserved for The Association.

(a) Full rights of ingress and egress shall be had by the Association at all times over and upon each Lot or Dwelling Unit for the Maintenance and repair of each Lot or Dwelling Unit in accordance with the provisions hereof and for the carrying out by the Association of its rights, powers, duties, and obligations hereunder; provided that any such entry by the Association upon any Lot or Dwelling Unit shall be made with a minimum inconvenience to the Owner as reasonably practicable, and any damage caused as a result of the negligence of the Association's employees or agents shall be repaired by the Association at the expense of the Association.

(b) In addition to the foregoing, and in order to implement effective and adequate erosion control, the Association, and its contractors, employees and agents, shall have the right to enter upon any portion of any Lot or Dwelling Unit before and after Improvements have been constructed thereon for the purpose of performing any grading or landscaping work or constructing, repairing, replacing, using and maintaining erosion control devices; provided however, no such activities shall interfere with any permanent Improvements constructed on any such Lot or Dwelling Unit (which Improvements have been approved by the ASC). If the need for erosion control results from the construction of Improvements on any portion of an Lot or Dwelling Unit or any excavation, grading, removal, reduction, addition or clearing of any Lot or Dwelling Unit or portion thereof, the cost of any such work performed by the Association for the purpose of implementing effective and adequate erosion control shall be assessed against the Owners of Lot or Dwelling Unit on which such corrective action is necessary on a Lot or Dwelling Unit, prior to exercising its right to enter upon such Lot or Dwelling Unit and performing any grading or landscaping work or constructing or maintaining erosion prevention devices, the Association shall give the Owner of such Lot or Dwelling Unit written notice of and the opportunity to take the corrective action specified in the notice, the Association may then exercise its right to enter upon the Lot or Dwelling Unit and take or complete the necessary corrective action.

Section 10.03. Easement Reserved for Governmental Entities and Public Utilities. An easement is hereby established for applicable governmental entities and municipal, state or public utilities serving the Development and their agents and employees, over all Lots, Dwelling Units, Common Elements hereby or hereafter established (and approved if required), for the purpose of setting, removing, repairing, maintaining and reading utility meters, maintaining, repairing and replacing streets, utilities, utility or drainage connections, and acting for other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection, garbage collection, and mail delivery, the rights granted by such easements to be exercised in a reasonable manner and at reasonable times (except in the case of an emergency).

Section 10.04. Easements Shown on Recorded Maps. Declarant, for itself, its successors and assigns (including, without limitation, governmental entities and the Association), and in addition to those easements reserved in this Declaration, hereby reserves easements in the locations and for the purposes shown and indicated on all maps of Lots or Dwelling Units subject to this Declaration that are recorded in the Public Registry of Dare County, North Carolina, and for the purpose of exercising and implementing such easement rights, Declarant and the Association shall have the right of ingress, egress and regress over and upon those easement areas. The rights reserved by this Section 10.04 include, without limitation, the right to construct, alter, place, maintain, repair replace and use in the easement areas identified on such maps, all Improvements deemed necessary, in the reasonable discretion of the Declarant or the Association, for the full exercise of such easement.

Section 10.05. Entrance Monuments. Declarant has the right but not the obligation to install an entrance monument and related improvements ("Entrance Monument") on any Lot which is specified as a Lot upon which an Entrance Monument may be established in any Supplemental Declaration which is filed in the Dare County Public Registry. Declarant hereby reserves for the benefit of Declarant and grants to the Association an easement over, under and across such Lot(s) for the installation and maintenance of such Entrance Monument.

Section 10.06. Encroachment Easements for Improvements Constructed by Declarant. Declarant does hereby grant, declare, and establish easements over all Lots for the encroachment of improvements now or hereafter constructed by the Declarant on adjacent Lots, Common Elements or rights-of-way to the extent that such improvements actually encroach, including, but not limited to, such items as bulkheads, provided such encroachment does not interfere with the reasonable use of the Lots so encroached upon. The Declarant and the Association shall have the right to maintain, reconstruct and replace such improvements, including but not limited to bulkheads.

Section 10.07. Easement Appurtenant to the Bramble Family Trust. Declarants hereby grant and convey to Bramble the non-exclusive and perpetual right to cross all present and future interior roads within Carlyle-on-the-Sound for purposes of access and placement of overhead and underground utilities between Colington Road and the Bramble Family Tract. Bramble shall not be responsible for any cost of repairs, replacement or maintenance to such interior roads or Common Elements within Carlyle-on-the-Sound solely by virtue of Bramble's ownership of the Bramble Family Tract. Upon Bramble receiving evidence satisfactory to Bramble that the interior roads of Carlyle-on-the-Sound have been completed and accepted by applicable local and state agencies, Bramble will agree to release any existing access easement which is appurtenant to the Bramble Family Tract, to the extent such existing access easement is contrary to the development plan for Carlyle-on-the-Sound. The intention of the Declarants is to cause the completed interior roads of Carlyle-on-the-Sound to replace the existing access easement appurtenant to the Bramble Family Tract.

Section 10.08 Cross Project Construction Easements. Prior to the completion of the construction of the interior roads of Carlyle-on-the-Sound, (1) Shingle Landing of Colington Corp. hereby grants to Carlyle-on-the-Sound, LLC a non-exclusive right, license and temporary easement to access and cross over the Shingle Landing Tract and the Bramble Family Tract for purposes of constructing agreed upon improvements to the Shingle Landing Tract and the Bramble Family Tract, relating to Carlyle-on-the-Sound, and (2) Carlyle-on-the-Sound, LLC. hereby grants to Shingle Landing of Colington Corp. a non-exclusive right, license and temporary easement to access and cross over Carlyle-on-the-Sound for purposes of constructing agreed-upon improvements to the Shingle Landing Tract and the Bramble Family Tract relating to Carlyle-on-the-Sound. Both such grants of right, license, and temporary easement shall cease and terminate automatically and without further notice or action once the interior roads for Carlyle-on-the-Sound have been completed by the Declarants and approved by applicable local or state agencies.

Section 10.09. Bramble's Right to Maintain Interior Roads. If Declarants or the Association does not maintain the interior roads of Carlyle-on-the-Sound in a reasonable state of repair, and for so long as Bramble owns any portion of the Bramble Family Tract that has not been added to Carlyle-on-the-Sound by recorded amendment pursuant to Section 5.07 of this Declaration, Bramble may, but is not required or obligated to, make such repairs, replacements, or perform such maintenance to any of the interior roads of Carlyle-on-the-Sound as Bramble reasonably determines is necessary to ensure Bramble's access to and from the Bramble Family Tract. Declarants, or the Homeowners Association as the case may be, agree to reimburse Bramble for such cost incurred by Bramble for such repair, replacement or maintenance of any portion of the interior roads.

ARTICLE XI  
INSURANCE: REPAIR AND RESTORATION

Section 11.01. Right to Purchase Insurance. The Association shall purchase, carry and maintain in force insurance covering any part or all of the Common Elements, Landscaped Rights-of-Way and any improvements thereon or appurtenant thereto and any other property of the Association, for the interest of the Association, the Board, its agents and employees. Declarant and its officers and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as the Board shall consider to be good, sound insurance coverage for similar properties. Such insurance may include, but need not be limited to:

- (a) comprehensive public liability and property damage (hazard) insurance on a broad form basis with respect to the Common Elements and/or Landscaped Rights-of-Way with coverage of at least One Million and No/100 Dollars (\$1,000,000.00) for public liability and in an amount of at least eighty percent (80%) of replacement cost coverage for hazard insurance;
- (b) coverage for the personal liability (if any) of the Declarant (and its officers, agents, employees and servants), the Board (and the individual members thereof), the officers of

the Association, the ASC and other committees appointed by the Board, the Owners, and Members;

(c) Fidelity bond for all officers and employees of the Association and other Persons having control over the receipt of disbursement of Association funds; and

(d) Worker's compensation insurance to the extent necessary to comply with all applicable laws.

Section 11.02. Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance recovered to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Elements and/or Landscaped Rights-of-Way.

Section 11.03. Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment in the manner provided for in this Declaration, to cover the deficiency.

## ARTICLE XII AMENDMENT

Section 12.01. Amendment by the Declarant. During the Declarant Control Period, the Declarant may unilaterally amend any provision of this Declaration for any purpose. After the expiration of the Declarant Control Period, the Declarant may amend any provision of this Declaration to: (1) make non-material changes; and (2) satisfy the requirements of any government, governmental agency, including, without limitation, the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, and Federal Home Loan Mortgage Corporation.

Section 12.02. Amendment by the Association.

1. Subject to Section 12.04 hereof, the Association may amend this Declaration by an affirmative vote of the members of at least sixty-seven percent (67%) of the votes entitled to be cast.

2. An amendment shall not be effective until certified by the President as to

compliance with the procedures set forth herein, executed and acknowledged by the President and attested by the Secretary or Assistant Secretary of the Association, and recorded in the office of the Register of Deeds of Dare County.

Section 12.03. Governmental Agency Approval. Notwithstanding the provisions of Section 5.01, during the Declarant Control Period, if Declarant desires that the Property be eligible for loans made, guaranteed or insured by any governmental agency or lending agency including, without limitation, the Federal Housing Administration, the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, and Federal Home Loan Mortgage Corporation, the following actions will require prior approval of such governmental or lending agency: annexation of properties other than set forth on Exhibits: A and B, mergers and consolidations, mortgaging the Common Elements, dedication of Common Elements and amendment of this Declaration.

Section 12.04. Prerequisites. Written notice of any proposed amendment under Section 12.02 shall be sent to every member and Owner at least thirty (30) days before any action is taken. No amendment shall be made to the Declaration during the Declarant Control Period without the prior written consent of the Declarant. No amendment shall increase the financial obligations of an Owner in a discriminatory manner or further restrict development permitted on a Lot. No amendment to the Declaration shall diminish or impair the rights of the Declarant, including voting or veto rights, under the Declaration without the prior written consent of the Declarant. Except as specifically provided in the Declaration, no provision of the Declaration shall be construed to grant to any Owner or to any other Person any priority over any rights of Mortgagees.

Section 12.05 Extraordinary Actions of the Association. Unless the members by an affirmative vote of at least sixty-seven percent (67%) of the votes entitled to be cast have given their prior approval, the Association shall not, by act or omission: (I) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (except for making dedications or granting easements for utilities or other public purposes consistent with the intended use of such Common Elements); (ii) change the method of determining the obligations, assessments or other charges which may be levied against an Owner or voting rights of any members; provided, however, that such provisions shall not be changed with respect to any class of members representing a specific type of Lot without a majority vote of such class of members; (iii) abandon architectural control or requirement for Upkeep of the Property; (iv) fail to maintain fire and extended coverage on insurable Common Elements on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost), in accordance with Section 10.2 hereof; (v) use hazard insurance proceeds for losses to the Common Elements for any purpose other than repair replacement or restoration of such Common Elements substantially in accordance with the Governing Documents and the original plans and specification; or (vi) add or amend any material provisions of the Association Documents, except for amendments adding Additional Property with respect to real estate being added, which establish, provide for, govern, or regulate any of the following: (1) voting procedures; (2) assessment liens or subordination of such liens; (3) reserves for maintenance, repair and reconstruction of the Common Elements; (4) insurance or fidelity bonds; (5) rights to use of the Common Elements; (6) maintenance responsibility; (7) boundaries of any Lot; (8) leasing of Lots; (9) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey such Owner's Lot; (10) expansion or contraction of the Property or

the addition, annexation or withdrawal of real estate to or from the Property; or (11) the convertibility of Lots into Common Elements or vice versa.

Any amendment to the Governing Documents shall not be considered material if only for the purpose of correcting technical errors or for clarification. The provisions of this section shall not be construed to reduce the vote that must be obtained from members where a larger vote is required by the North Carolina Nonprofit Corporation Act or other provisions of the Governing Documents.

### ARTICLE XIII TERMINATION

Section 13.01. Termination by the Association. Subject to Section 12.05 hereof, the Association may terminate this Declaration only by a vote of the members entitled to cast at least eighty percent (80%) of the total number of votes as certified by the President or with the written approval of members entitled to cast at least eighty percent (80%) of the total number of votes. In either case the termination shall not be effective until certified by the President as to compliance with the procedures set forth herein, executed and acknowledged by the President and Secretary of the Association and recorded in the office of the Public Registry of Dare County, North Carolina.

Section 13.02 Prerequisites. Written notice of the proposed termination shall be sent to every member, Owner and Mortgagee at least sixty (60) days before any action is taken. The Declaration may not be terminated during the Declarant Control Period without the prior written consent of the Declarant. Such termination shall not affect any permanent easements or other permanent rights or interest relating to the Common Elements created by or pursuant to the Governing Documents. To the extent necessary, the termination agreement shall provide for the transfer assignment of the easements, rights or interest granted to the Association herein to a successor entity which is assuming the Association's maintenance and regulatory responsibilities. Any lien which has arisen pursuant to the provisions of the Declaration shall remain in full force and effect despite termination of the Declaration until the amounts secured thereby are paid in full. Upon termination of the Declaration and the dissolution of the Association, the Association shall dispose of or distribute the real and personal property owned by the Association to such nonprofit corporation as may have been established upon termination to hold and administer the real and personal property formerly owned by the Association or public body or agency which shall perform the same functions.

### ARTICLE XIV MISCELLANEOUS

Section 14.01. Joinder of Trustee and Beneficiary. Trustee and Lender join in the execution of this Declaration to consent to the terms of the same and subordinate the lien of any deed of trust to the Trustee for the benefit of Lender encumbering the Property to the provisions of

this Declaration.

Section 14.02. Remedies. Declarant, the Association, and every Owner shall have the right to enforce the terms, covenants, conditions, restrictions, easements, charges and liens for which provision is made in this Declaration, which enforcement shall be by any proceeding at law or in equity (or otherwise, as provided in this Declaration) against any Person violating or attempting to violate any such term, covenant, condition, restriction, easement, charge or lien either to restrain violation or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association, Declarant or any Owner to enforce any such term, covenant, condition, restriction, easement, charges or lien shall in no event be deemed a waiver of the right to do so thereafter or a waiver of any other or future violation of any of same.

Section 14.03. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null, or void.

Section 14.04. Notice. Except as otherwise provided herein, whenever written notice to an Owner (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner appearing on the records of the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. It shall be the duty of each Owner to keep the Association informed of such Owner's current mailing address and telephone number. The Association may use the address of such Owner's Lot listed with the Dare County Tax Office.

Section 14.05. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or Board, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive.

Section 14.06. No Trespass. Whenever the Association, Declarant, the ASC, and their respective successors, assigns, agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve or do any other action within any portion of Carlyle-on-the-Sound, the entering thereon and the taking of such action shall not be deemed to be trespass.

Section 14.07. Successors of the Declarant. Any and all rights, reservations, easements,

interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Declarant by instrument in writing and recorded in the Public Registry of Dare County, North Carolina.

Section 14.08. No Partition. Except as is permitted in the Declaration or amendments thereto, there shall be no judicial partition of the Common Elements or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any judicial partition unless the Property or such portion thereof have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Association from acquiring and disposing of tangible personal property nor from acquiring title to real property which may nor may not be subject to this Declaration.

Section 14.09. Combination of Lots. For so long as there is a Class B Membership, no Lot shall be subdivided without the written consent of Declarant. One or more Lots may be combined into a single Lot with the written consent of Declarant and, upon such combination and consent of Declarant, the resulting Lot shall be considered as one Lot for the purposes of this Declaration. Provided, the foregoing shall not prohibit or restrict the right (which is hereby reserved) of Declarant to subdivide, combine, re-subdivide, recombine, or re-record maps relating to, any Lots subject to this Declaration.

Section 14.10. Laws of North Carolina and the United States. This Declaration shall be subject to and construed in accordance with the laws of the State of North Carolina and all applicable laws and regulations of the United States of America.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in such form as to be binding, all by authority duly given the day and year subscribed.

**DECLARANT:**

Carlyle-on-the-Sound, LLC

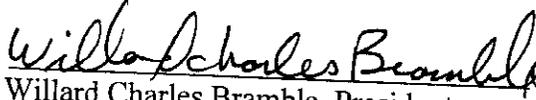
By: R & E Developments, LLC, **(Manager)**



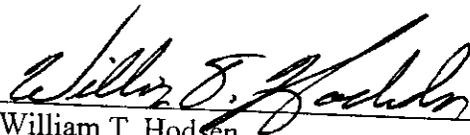
By:  (SEAL)  
Raju Uppalapati, Manager

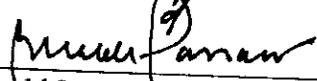
AND

Shingle Landing of Colington Corp.

By:  (SEAL)  
Willard Charles Bramble, President

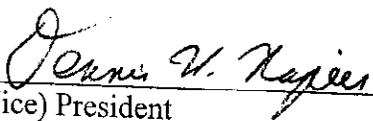
TRUSTEE

 (SEAL)  
William T. Hodgen

 (SEAL)  
Gerald L. Passaro

BENEFICIARY

TowneBank

By:  (SEAL)  
(Vice) President



STATE OF NORTH CAROLINA  
DARE COUNTY

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Raju Uppalapati, manager of R & E Developments, LLC, a North Carolina limited liability company (the "Second Company") manager of Carlyle-on-the-Sound, LLC (the "Company") and that by authority duly given and (a) as the act of the Second Company and (b) as the act of the Company, the foregoing instrument was signed in the name of the Company and in the name of the Second Company by the Second Company's manager.

Witness my hand and official stamp or seal, this 21<sup>st</sup> day of February, 2006.

Amie Yeager  
Notary Public

My commission expires: 11-29-2010



STATE OF NORTH CAROLINA  
COUNTY OF DARE

On this 21<sup>st</sup> day of February, 2006, before me Amie Yeager the undersigned officer, personally appeared Willard Charles Bramble known personally to me to be the President of the above named corporation and acknowledged that he, as an officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as an officer.

WITNESS my hand and official seal or stamp, this the 21<sup>st</sup> day of February, 2006.

Amie Yeager  
Notary Public

My commission expires: 11-29-2010



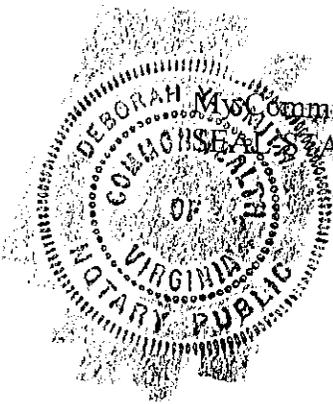
STATE OF Virginia  
COUNTY OF Suffolk  
City \_\_\_\_\_

I, Deborah Y. Smith, Notary Public, certify that William T. Hodsdon, Trustee personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal, this 23 day of February, 2006.

Deborah Y. Smith  
Notary Public

My commission Expires: 5-31-08



STATE OF Virginia  
COUNTY OF Newport News

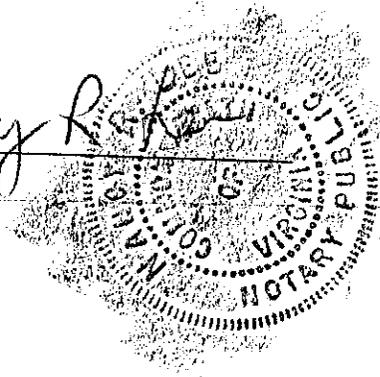
I, Nancy R. Lee, Notary Public, certify that Gerald L. Passaro, Trustee personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal, this 27 day of February, 2006.





Danny R. Lee  
Notary Public



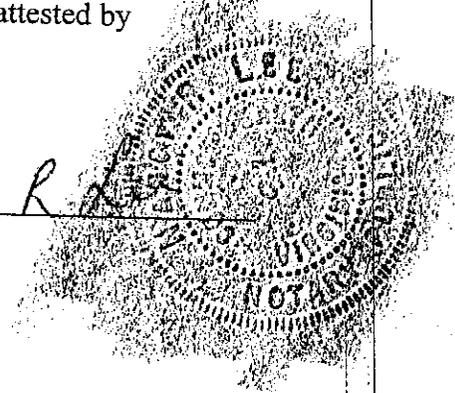
My Commission Expires: 12/31/2009  
SEAL-STAMP

STATE OF Virginia  
COUNTY OF Newport News

I, Danny R. Lee, Notary Public, certify that  
Dennis W. Napier personally came before me this day and acknowledged that he/she  
is (Vice) President of TowneBank, and as the act of the corporation, acting as agent for the Bank,  
the foregoing instrument was signed in the name by its (Vice) President, and attested by  
himself/herself as its (Vice) President.

Witness my hand and notarial seal this 27 day of February, 2006.

Danny R. Lee  
Notary Public



My Commission Expires: 12/31/2009