

**COLINGTON POINTE
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this the _____ day of _____, 2006, by **COLINGTON POINTE, LLC**, a North Carolina limited liability corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property set forth and described in Exhibit A to this Declaration, which property is located in Atlantic Township, Dare County, and which property the Declarant intends to develop as a residential community of town homes and single family residences to be named "Colington Pointe"; and

WHEREAS, the Declarant desires to ensure the attractiveness of the development and to prevent any future impairment thereof, to prevent nuisances, to preserve, to protect and enhance the values and amenities of all the properties within the development and to provide for the maintenance and upkeep of the exterior of all residential Units and the Subdivision Common Areas, as herein-after defined. To this end, Declarant desires to subject the real property shown on the plat referenced in the attached description shown in Exhibit A of this Declaration, together with such additions that may hereinafter be made thereto to the real property, covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, the Declarant has deemed it desirable to create an organization to which will be delegated and assigned the power of owning, maintaining, and administering the Common Area; administering and enforcing the covenants and restrictions, conditions, easements, changes and liens; and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Declarant has caused to be incorporated under North Carolina Law, Colington Pointe Home Owners Association, Inc., a non-profit corporation, for the purpose of exercising and performing the aforesaid functions and powers;

NOW, THEREFORE, the Declarant, by this Declaration of Covenants, Conditions and Restrictions, does declare that all of the property shown on the description of property contained in Exhibit A to this Declaration, and all future additions to said property and/or development, if any, are and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration which shall run with the real property and be binding upon all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

1. **"Homeowners' Association"** or **"Association"** shall mean and refer to Colington Pointe Home Owners Association, Inc., a North Carolina non-profit corporation, its successors or assigns.

2. **"Owner"** of a **Colington Pointe Single-Family Unit**, (a) if said Unit is improved, shall mean and refer to the record owner, whether one or more persons or entities, of (i) the fee simple title to a Single-Family Building, including the deck, stoop, porch, railings, pad for a central air conditioning unit, and any other appurtenance shown on any Single-Family Unit building plan approved by the Declarant, as well as the Footprint and a five-foot wide portion of the Yard immediately adjacent to said Footprint on all Footprint sides, and (ii) a proportionate undivided interest in the elements of the Limited Common Area and Exclusive Limited Common Area which are contiguous or affixed to said Building, all of which are part of the Properties, including contract sellers, but excluding contract purchasers and those having such interest merely as security for the performance of an obligation.; or (b) if said Unit is unimproved, shall mean and refer to the record owner, whether one or more persons or entities, of (i) the fee simple title to that portion of a Building Site that can be improved by a Single-Family Building according to any building plan approved by the Declarant and the Footprint, as well as a five-foot wide portion of the Yard immediately adjacent to said Footprint on all Footprint sides, and (ii) a proportionate undivided interest in the remainder of the Yard, all of which are part of the Properties, including contract sellers, but excluding contract purchasers and those having such interest merely as security for the performance of an obligation.

3. **"Owner"** of a **Colington Pointe Multi-Family or Waterfront Unit**, shall mean and refer to the record owner, whether one or more persons or entities, of (a) the fee simple title to a Dwelling contained in, and the Dwelling's Footprint beneath, a Multi-Family or Waterfront Building; (b) a proportionate undivided interest in the elements of the Limited Common Area of the Building containing said Multi-Family or Waterfront Dwelling; and (c) a proportionate undivided interest in the elements of the Exclusive Limited Common Area which are contiguous, affixed or assigned to the portion of said Building containing said Dwelling, all of which are part of the Properties, including contract sellers, but excluding contract purchasers and those having such interest merely as security for the performance of an obligation.

4. **"Properties"** shall mean and refer to the property set forth in Exhibit A, and any other property added pursuant to Article II, Section 2 herein. Same shall further include plats thereof as filed for record in the Office of the Dare County Register of Deeds.

5. **"Dwelling"** shall mean the interior space of a Multi-Family Unit, or Waterfront Unit which is a part of the Properties.

6. **"Building"** shall mean a structure containing one or more Units.

7. **"Building Site"** shall mean the land that is dedicated to the use of single Unit, a portion of which is owned in fee by the Unit Owner and other portions (denominated Limited

Common Area or Exclusive Limited Common Area) in which the Unit Owner has a proportionate, undivided interest in common with other Unit Owners. all of which is delineated by boundaries appearing on any recorded map or maps of the Properties, with the exception of the Common Area.

11. 8. **“Single Family Unit”** shall mean, (a) if improved, (i) the fee simple title to a Single-Family Building, including the deck, stoop, porch, railings, pad for a central air conditioning unit and any other appurtenance shown on any Single-Family Unit building plan approved by the Declarant, as well as the Footprint and a five-foot wide portion of the Yard immediately adjacent to said Footprint on all Footprint sides, and (ii) a proportionate undivided interest in the elements of the Limited Common Area and Exclusive Limited Common Area which are contiguous or affixed to said Building; or (b) if unimproved, (i) the fee simple title to that portion of a Building Site that can be improved by a Single-Family Building according to any building plan approved by the Declarant, and the Footprint, as well as a five-foot wide portion of the Yard immediately adjacent to said Footprint on all Footprint sides, and (ii) a proportionate undivided interest in the remainder of the Yard. An unimproved Single Family Unit is subject to the restrictions set forth below in Paragraphs 2 and 3 of Article X. Prior to any initial sale of a "Single-Family Unit", Declarant reserves the right to move and realign same so long as the physical dimensions of same remain the same and the setbacks hereinafter stated are observed.
9. **“Multi-Family Unit” or “Waterfront Unit”** shall mean the fee simple title to a Dwelling contained in, and the Dwelling's Footprint beneath, a Multi-Family or Waterfront Building; (b) a proportionate undivided interest in all elements of said Building's Limited Common Area; and (c)) a proportionate undivided interest in all elements of the Exclusive Limited Common Area which are contiguous, affixed or assigned to the portion of said Building that contains said Multi-Family or Waterfront Dwelling, Prior to any initial sale of a "Multi-Family Unit" or a "Waterfront Unit," Declarant reserves the right to move and realign same so long as the physical dimensions of same remain the same and the setbacks hereinafter stated are observed.
10. **“Footprint”** of a **Multi-Family or Waterfront Unit** shall mean the area of a Building Site that lies underneath a Dwelling.
12. **Footprint”** of a **Single-Family Unit** shall mean the area of a Building Site that lies underneath a Single-Family Building, including underneath the deck, stoop, porch, railings, pad for a central air conditioning unit and any other appurtenance shown on any Single-Family Unit building plan approved by the Declarant.
12. **“Yard”** shall mean the area of a Building Site other than the Footprint.

“Common Area, Common Elements, Limited Common Area, and Exclusive Limited Common Areas”

12.1 Except for that portion of the Common Area hereinafter defined as Limited Common Area or Exclusive Limited Common Area, **“Common Area”** and **“Common Elements”** shall mean all the real property, fixtures, equipment and appurtenances designated for the common use and enjoyment of the Owners, including but not limited to open space, recreational facilities, clubhouse, pool, street lights, streets, entrances, bridges and the wastewater collection system for the Development with all pumps, wastewater treatment works and/or disposal facilities, hereinafter

referred to as "Disposal System." Maintenance, repair and other costs of the Common Areas shall be assessed to all in the Development. Common Areas are common to all Owners to include the Colington Pointe Multi-Family Units, Colington Pointe Waterfront Units, and Colington Point Single Family Units.

12.2 "**Limited Common Areas**" for the **Colington Pointe Multi-Family Units and Waterfront Units** shall mean that area of the exterior of a Multi-Family or Waterfront Building, to include the siding, gutters, shutters, foundation, and roof of each Multi-Family or Waterfront Building. For example, an owner of a Unit in a four-Unit Building shall have a one-fourth (1/4) undivided interest in the exterior of the entire Building, and Multi-Family or Waterfront Unit Owners shall be assessed maintenance, upkeep and repairs accordingly. The Association shall, pursuant to paragraph 1(h) of Article VI, provide the Multi-Family Unit and Waterfront Unit Owners with their exclusive right of possession, use, benefit and enjoyment of the Limited Common Area comprising the exterior of the Multi-Family or Waterfront Building that contains their Dwellings.

12.3 "**Limited Common Areas**" for the **Colington Pointe Single-Family Units** shall mean the front, back and side Yards contiguous to a Single-Family Building, except for the five-foot wide area of the Yard that lies immediately adjacent to said Building's Footprint, on all Footprint sides. The Owner of a Single-Family Unit shall have a one-twenty-first (1/21) undivided interest in the Limited Common Areas contiguous to all Single-Family Units, and Single Family Unit Owners shall be assessed maintenance, upkeep and repairs by the Homeowners Association accordingly. The Association shall, pursuant to paragraph 1(h) of Article VI, provide each Single-Family Unit Owner with his exclusive right of possession, use, benefit and enjoyment of the Limited Common Area contiguous to his Single-Family Building.

12.3 "**Exclusive Limited Common Area**" for the **Colington Pointe Multi-Family Units** shall mean the driveway, front and back Yards, decks, steps, railings and windows that are contiguous or affixed to the portion of the Building containing an individual Dwelling. Maintenance, upkeep and repairs to the elements of each Exclusive Limited Common Area shall be the responsibility of the Unit Owner exclusively benefited thereby, with the exception of lawn and garden care which shall be the responsibility of the Homeowners' Association and assessed to all Owners of Multi-Family Units. The Association shall, pursuant to paragraph 1(i) of Article VI, provide each Multi-Family Unit Owner with his exclusive right of possession, use, benefit and enjoyment of the Exclusive Limited Common Area which is contiguous or affixed to the portion of the Building containing his Dwelling.

12.4 "**Exclusive Limited Common Area**" for the **Colington Pointe Waterfront Units** shall mean the driveway, front and back Yards, decks, steps, railings and windows that are contiguous or affixed to the portion of the Building containing an individual Dwelling, as well as the boat slip assigned to said Dwelling. Maintenance, upkeep and repairs to the Exclusive Limited Common Areas shall be the responsibility of the Owner of the Dwelling exclusively benefited thereby, with the exception of lawn and garden care which shall be the responsibility of the Homeowners' Association and assessed to all Owners of the Colington Pointe Waterfront Units. The Association shall, pursuant to paragraph 1(i) of Article VI, provide each Waterfront Unit Owner with his exclusive right of possession, use, benefit and enjoyment of the Exclusive Limited Common Area which is contiguous to, affixed, or assigned to to the portion of the Building containing his Dwelling.

12.5 "**Exclusive Limited Common Area**" for the **Colington Pointe Single-Family Units** shall mean the driveway contiguous to a Single-Family Unit. Maintenance, upkeep and repairs to the Exclusive Limited Common Areas shall be the responsibility of the Owner of the Single-Family Building exclusively benefited thereby. The Association shall, pursuant to paragraph

1(i) of Article VI, provide each Single-Family Unit Owner with his exclusive right of possession, use, benefit and enjoyment of the Exclusive Limited Common Area which is contiguous to his Single-Family Building.

13. **Maintenance Regulations.** Any Common Area, Common Elements, including expressly the Disposal System, and Limited Common Areas shall be maintained and operated in conformity with the law and the provisions of any applicable permit for construction, operation, repair and maintenance of the system or facilities constituting all or a portion of the Common Area, Common Elements and Limited Common Area.

14. **Common Area Easement.** It is specifically understood that certain Common Areas and Common Elements (excluding the Exclusive Limited Common Areas and Limited Common Areas) are subject to easements in common with other parties as defined in this Declaration and the rights of other parties set forth and described in this Declaration to the joint and mutual use of such properties.

15. **Streets and driveways** included in the Common Area shall be private.

16. **"Declarant"** shall mean and refer to Colington Pointe, LLC, its successors and assigns.

17. **"Member"** shall mean and refer to every person who, or entity that, holds membership in the Homeowners' Association.

18. **"Development"** shall mean and refer to the Colington Pointe lands and properties.

19. **"Bylaws"** shall mean the bylaws of the Homeowners' Association.

20. **"Executive Board"** or **"Board"** shall mean the Board of Directors of the Homeowners' Association.

21. **"Architectural and/or Aesthetic Review Committees"** shall mean and refer to the committees appointed by the Colington Pointe Homeowners' Association to oversee and maintain the compliance of Owners with the design of, and the conformity of Owners to, the Planned Community of Colington Pointe.

22.. **"Colington Pointe Multi-Family Units"** shall mean the Units within the Buildings that contain two (2) to five (5) individual Units and are designated as Buildings number 101 through 106 and 201 through 206.

23. **"Colington Pointe Waterfront Units"** shall mean the Units contained within the two northern multi-family Buildings on the waterfront designated as Buildings number 301 and 302.

24. **"Colington Pointe Single Family Units"** shall mean the twenty-one Building Sites (whether or not improved) located at the southeast section of the Development and designated Building Sites 1 through 21. The Owners of unimproved Single Family Units shall refer to Paragraphs 2 and 3 of Article X for further restrictions on the improvements to said Building Site.

25. **"Planned Community"** means real estate with respect to which any person, by virtue of

that person's ownership of a Unit, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve or benefit other Units or other real estate described in the declaration.

26. **"Special Declarant Rights"** means rights reserved for the benefit of a Declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the Planned Community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the Planned Community or within real estate which may be added to the Planned Community; (v) to make the Planned Community part of a larger planned community or group of planned communities; (vi) to make the Planned Community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of Declarant control.

27. **"Purchaser"** means any person, other than a Declarant or a person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Unit, other than (i) leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

28. **"Reasonable Attorneys' Fees"** means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed.

**ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF
COLINGTON POINTE, LLC**

1. **Existing Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Atlantic Township, Dare County, North Carolina, and described fully in an attachment to this Declaration labeled "Exhibit A".

2. **Addition of Properties.** Additional and contiguous lands may become subject to, but not limited to, this Declaration by the filing of a Supplementary Declaration with respect to the additional property which shall extend the operation of this Declaration and all terms and provisions hereof to the additional property. The Declarant reserves the right to burden the Common Area wastewater collection system, pumps, wastewater treatment works and/or disposal facilities with additional uses to the extent excess capacity permits.

3. **Eminent domain.**

(a) If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the Unit owner for his Unit and its interest in the common elements, whether or not any common elements are acquired. Unless the condemner acquires the right to use the Unit's interest in common elements, that Unit's allocated interests are automatically reallocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking exclusive of the Unit taken, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a Unit is acquired by eminent domain, the award must compensate the Unit owner for the reduction in value of the Unit and of its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit, or on any other basis specified in the declaration, and (2) the portion of the allocated interests divested from the partially acquired Unit is automatically reallocated to that Unit and the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain, the portion of the award not payable to Unit owners under subsection (a) must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be apportioned among the owners of the Units to which that limited common element was allocated at the time of acquisition.

ARTICLE III DESCRIPTION OF PROPERTIES

1. **“Colington Pointe Multi-Family Units”** are the Units within Buildings that contain two (2) to five (5) individual Units and are designated as Buildings number 101 through 106 and 201 through 206. Owners of these Units own exclusively the Dwelling and Footprint of their Unit. Owners of these Units also own a 1/2, 1/4 or 1/5 undivided interest (depending on the Building in which their Unit is contained) in their individual Building’s Limited Common Area to include the siding, gutters, shutters, roof and foundation. Owners of these Units also own a 1/2, 1/4 or 1/5 undivided interest (depending on the Building in which their Unit is contained) in the Exclusive Limited Common Area by which their Dwelling is exclusively benefited, to include the front and back Yards, driveway, decks, railings, steps and windows/glass. Further, these Unit owners have an undivided interest in all common areas (Pool, clubhouse, roads, wastewater treatment facility, boardwalk, etc.) as depicted on the plat of the Development.

2. **“Colington Pointe Waterfront Units”** are the Units in the two northern multi-family Buildings on the waterfront designated as Buildings 301 and 302. Owners of these Units own exclusively the Dwelling and Footprint of their Unit. Owners of these Units also own a 1/4 or 1/5 undivided interest (depending on the Building in which their Unit is contained) in their Building’s Limited Common Area to include the siding, gutters, shutters, roof and foundation. Owners of these Units also own a 1/4 or 1/5 undivided interest (depending on the Building in which their Unit is contained) in the Exclusive Limited Common Area by which their Dwelling is exclusively benefited, include the boat slips, front and back Yards, driveways, decks, railings, steps and windows/glass. Further, these Unit owners have an undivided interest in all common areas (Pool, clubhouse, roads, wastewater treatment facility, boardwalk, etc.) as depicted on the plat of the development.

3. **“Colington Pointe Single Family Units”** are the twenty-one single family Building Sites located at the southeast section of the development (whether improved or unimproved) and are Building Sites 1 through 21. These Unit owners shall own (a) if improved, (i) the fee simple title to a Single-Family Building, including the deck, stoop, porch, railings, pad for a central air conditioning unit, and any other appurtenance shown on any Single-Family Unit building plan approved by the Declarant, as well as the Footprint and a five-foot wide portion of the Yard immediately adjacent to said Footprint on all Footprint sides, and (ii) a proportionate undivided interest in the elements of the Limited Common Area and Exclusive Limited Common Area which are contiguous or affixed to said Building; or (b) if unimproved, (i)

the fee simple title to that portion of a Building Site that can be improved by a Single-Family Building according to any Single-Family Unit building plan approved by the Declarant, and the Footprint, as well as a five-foot wide portion of the Yard immediately adjacent to said Footprint on all Footprint sides, and (ii) a proportionate undivided interest in the remainder of the Yard, . Further, these Unit owners have an undivided interest in all common areas (Pool, clubhouse, roads, wastewater treatment facility, boardwalk, etc.) as depicted on the plat of the development. Unimproved Single Family Unit owners shall refer to Paragraphs 2 and 3 of Article X for further restrictions on the improvements to said property.

4. **“Common Areas and Common Elements”** includes all property and structures not exclusively owned by a Unit Owner and which are situated in neither a Limited Common Area nor an Exclusive Limited Common Area, to include, but not limited to, open space, recreational facilities, clubhouse, pool, street lights, streets, entrances, bridges and the Disposal System. All Unit Owners shall have an equal, undivided interest in the Common Area and Common Elements of the Development. These Areas shall be controlled and maintained by the Homeowners’ Association and the cost of the same shall be assessed to all Unit owners within the Development.

5. **“Party Walls.”** Each wall separating Dwellings, which is built as a part of the original construction of the Buildings shall constitute a party wall and, to the extent not inconsistent with these declarations, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply thereto.

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of said wall in proportion to such use.

If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if other Owners make use of the wall, they shall contribute to the cost of restoration in proportion to such use.

Notwithstanding any other provision of this declaration, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

The right of any Owner to contribution from any other Owner under this declaration shall be appurtenant to the land and shall pass to such Owner’s successors in title.

In the event of any dispute arising concerning a party wall, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IV COLINGTON POINTE HOMEOWNERS’ ASSOCIATION

The operations of the Development shall be by the Colington Pointe Homeowners’ Association, herein called the Association, a non-profit corporation under the laws of North Carolina, which shall be organized and shall fulfill its functions pursuant to the following provisions:

1. The members of the Association shall be the Unit Owners.

2 The Association is incorporated under the Articles of Incorporation attached hereto but the Articles may be amended as prescribed by law.

3 The By-Laws of the Association is attached hereto but also may be amended as prescribed by law.

4 The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to such member's Unit.

5 Upon the initial creation of the Association, the Developer/Declarant shall have control of and the right to appoint the Board of Directors thereof or any officer or officers until the control of the Common Areas has been transferred to the Association.

6 Thereafter, the Developer/Declarant shall be entitled to a vote as a member in the same manner to the extent of any interest it may own in a completed and unsold Multi-Family or Waterfront Unit or an unimproved or improved Single-Family Unit.

7. Subject to the foregoing, the Board of Directors of the Association shall consist of such number and be elected in the manner as established in the By-Laws of the Association.

ARTICLE V MEMBERSHIP AND VOTING RIGHTS

1. Each owner of a Unit shall be a member of the Colington Pointe Homeowners' Association. As a member of the Association, the member shall have all of the rights, privileges, duties, and obligations as expressed in these covenants. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Unit.

2. Each vote shall be expressed by the owner, in person or by proxy, who would cast the vote for each Unit.. When any Unit is owned as a tenancy in common, or as a tenancy by the entirety, or any other form of multiple ownership, said tenants or owners shall determine between or among themselves how the vote to which they are entitled shall be cast. If said multiple owners cannot so agree, their vote shall be a nullity. In no event shall more than one vote be cast with respect to any single Unit. Cumulative voting shall not be permitted.

3. **Until the Declarant has sold all of the Units in the development,** neither the Association, nor any of the individual owners, nor their respective uses of the Common Area, shall interfere with the completion of contemplated improvements and the sale of other Units. The Declarant may make use of the unsold Units and Common Area as may facilitate completion of the construction thereon and sale, including, but not limited to, maintaining a sales office, maintaining model dwellings, showing the property, and displaying advertising signs. Any action or vote of the Association which attempts to restrict or inhibit the rights of the Declarant as stated herein shall be void and of no effect.

ARTICLE VI PROPERTY RIGHTS

1. **Owner's Right of Enjoyment.** Every Owner shall have a right of enjoyment in and to the Common Area which right shall be appurtenant to and pass with the title to every Unit, subject to the following rights of the Association to:

- a. Suspend an owner's right to vote and right to use of the recreational facilities, for

any period during which any assessment against his Unit remains unpaid, and for a period not to exceed sixty days for any infraction of the Association's published rules and regulations.

b. Dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless a majority of the Members entitled to vote agree to such dedication or transfer and signify their agreement by a signed and recorded written instrument. However, this subsection shall not preclude the Executive Board of the Association from granting easements to public authorities or others for the installation and maintenance of sewerage, utilities, drainage facilities, conservation, television, and other communication services, upon, over, under and across the Common Area without the assent of the membership when, in the sole opinion of such Board, such easements do not interfere with the use and enjoyment of the Properties and are necessary for the convenient use and enjoyment of the Properties.

c. Mortgage, pledge, deed in trust, or hypothecate any or all of the Association's real or personal property as security for money borrowed or debts incurred by the Association, with the written assent of a majority of the Members entitled to vote. The Association's right to borrow money shall exist for the purpose of improving the Common Area, but the rights of the mortgagee in and to the Association's properties shall be subordinate to the rights of the owners as set out in these covenants.

d. Take such steps as are reasonably necessary to protect the Common area against foreclosure.

e. Charge reasonable admission fees, guest fees, and other fees for special uses that might be made of certain parts of the Common Area by members of the Association or persons outside the Development.

f. Limit the number of guests of owners using the Common Area and recreational facilities.

g. Grant and reserve easements and rights of way through, under, over, and across the Common Area for the installation, maintenance, and inspection of the lines and appurtenances for public or private water, sewer, drainage, electricity, telephone, cable television, communications, security devices, and other utilities and services.

h. Provide each Owner of a Multi-Family or Waterfront Unit with the exclusive right of possession, use, benefit and enjoyment of the Limited Common Area which comprises the exterior of each Multi-Family or Waterfront Building.

i. Provide each Owner of a Multi-Family, Waterfront or Single-Family Unit with the exclusive right of possession, use, benefit and enjoyment of the Exclusive Limited Common Area that exclusively benefits his Unit.

2. **Conveyance of Common Areas.** (a) The Declarant may retain the legal title to the Common Areas until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association shall be able to maintain the same. Notwithstanding any provision herein, the Declarant hereby covenants for itself, its successors, and assigns, that it shall convey the Common Area to the Association, free and clear of all encumbrances and liens, except those created by or made pursuant to this declaration, when Declarant has sold Units representing 85% of total number of Units available or December 31, 2010, whichever occurs first. However, Declarant may, in its sole discretion, convey the

common Area or any portion thereof at any time prior to the above times. Declarant shall have the rights reserved in Section 1 above until transfer to the Association.

(b) Notwithstanding the above, Declarant shall not convey, assign or transfer ownership of the Disposal System to the Homeowners' Association, or any successor to Declarant, until same has been completed, inspected, approved for operation and the permit to operate reissued to the Homeowners' Association, or successor to Declarant.

(c) Notwithstanding the above, the Declarant may convey, assign or transfer control over and/or responsibility for operation of the Disposal System at any time prior to conveyance of ownership of same to the Homeowners' Association, on such terms as the Declarant, in its sole business judgment, shall determine.

If at any time during Declarant's, its successor's, or Association's ownership and/or control of the Disposal System a city, town, village, county or water/sewer authorities wastewater collection system and wastewater treatment and/or disposal facility becomes available to serve Colington Pointe, Declarant, its successor or Association shall take such action as is necessary to cause the existing and future wastewater of Colington Pointe to be accepted and discharged into said governmental system; and shall convey or transfer as much of the Disposal System, and such necessary easements as the government unit may require as a condition of accepting Colington Pointe wastewater.

3. **Delegation of Use.** The rights of others in the Common Area are set out as follows:

- a. **Family.** The right of enjoyment granted to every Owner may be exercised by members of the owner's family.
- b. **Tenants or Contract Purchasers.** The right of enjoyment granted to every Owner may be delegated by the Owner to his tenants or contract purchasers who occupy the property during the terms of their lease or contract.
- c. **Guests.** Recreational facilities situated on the Properties may be utilized by guests of Owners, tenants, or contract purchasers subject to the rules and regulations of the Association, as may be established by its Board of Directors, governing said use. "Guests" shall include licensees and invitees of the Owners, tenants, or contract purchasers.

4. **Parking Rights.**

- a. **Parking Areas.** Each Unit owner shall be entitled to the exclusive use of the driveway to his Unit for parking purposes. The Association shall be entitled to make reasonable rules and regulations as it may elect with respect to the parking of vehicles at the common parking areas of the development.
- b. **Recreational Vehicles.** No campers, trailers, boat trailers, motorcycles, off-road vehicles, recreational vehicles (e.g., Winnebagos), or similar vehicles may be parked, stored or kept on an owner's Unit except as may be provided by such reasonable rules and regulations of the Association. No trucks shall be permitted except for standard pickups or small sized trucks.
- c. **Watercraft Mooring.** All mooring of boats or other watercraft utilizing common areas so designated shall be limited to a 24-hour period, unless prior permission is received from the Association.

**ARTICLE VII
UPKEEP OF PLANNED COMMUNITY; RESPONSIBILITY
AND ASSESSMENTS FOR DAMAGES**

1. Except as otherwise provided in the declaration, G.S. 47F-3-113(h) or subsection (b) of this section, the Association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the Unit owners as necessary to recover the costs of such maintenance, repair, or replacement except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in G.S. 47F-3-115(c)(1). Except as otherwise provided in the declaration, each Unit owner is responsible for the maintenance and repair of his Unit and any improvements thereon. Each Unit owner shall afford to the Association and when necessary to another Unit owner access through the Unit owner's Unit reasonably necessary for any such maintenance, repair, or replacement activity.

2. If a Unit owner is legally responsible for damage inflicted on any common element, the Association may direct such Unit owner to repair such damage, or the Association may itself cause the repairs to be made, and the cost of doing so shall be added to and become a part of the assessment to which such Unit is subject.

3. If damage is inflicted on any Unit by an agent of the Association in the scope of the agent's activities as such agent, the Association is liable to repair such damage or to reimburse the Unit owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Unit owner.

4. When the claim under subsection (b) or (c) of this section is less than or equal to the jurisdictional amount established for small claims by G.S. 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the executive board to determine if a Unit owner is responsible for damages to any common element or the Association is responsible for damages to any Unit. If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess liability for each damage incident against each Unit owner charged or against the Association not in excess of the jurisdictional amount established for small claims by G.S. 7A-210. When the claim under subsection (b) or (c) of this section exceeds the jurisdictional amount established for small claims by G.S. 7A-210, liability of any Unit owner charged or the association shall be determined as otherwise provided by law. Liabilities of Unit owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under G.S. 47F-3-116. Liabilities of the association determined by adjudicatory hearing or as otherwise provided by law may be offset by the Unit owner against sums owing to the association and if so offset, shall reduce the amount of any lien of the association against the Unit at issue.

5. The association shall not be liable for maintenance, repair, and all other expenses in connection with any real estate which has not been incorporated into the Planned Community.

**ARTICLE VIII
PROCEDURES FOR FINES AND SUSPENSION OF
PLANNED COMMUNITY PRIVILEGES OR SERVICES**

A hearing shall be held before an adjudicatory panel appointed by the executive board to determine if any Unit owner should be fined or if Planned Community privileges or services should be suspended pursuant to the powers granted to the Association in G.S. 47F-3-102(11) and (12). If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board. The Unit owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of Planned Community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

**ARTICLE IX
COVENANT FOR MAINTENANCE ASSESSMENTS**

1. **Creation of the Lien and Personal Obligations of Assessments.** Except for the Declarant, each Owner of any Unit by acceptance of a deed therefore, or acceptance of title by devise, descent or otherwise, whether or not it shall be so expressed in such deed or other instrument, is deemed to covenant and agree to pay to the Association the following: (1) annual assessments or charges and (2) special assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorney's fees shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

2. **Purpose of Assessment.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and for the acquisition, improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including, but not limited to, the cost of repair, replacement additions thereto, the cost of labor, equipment, materials, management, and supervision thereof. The Association shall also use the assessments to maintain the private streets and driveways in the subdivision, to landscape and maintain the other Common Area, and to erect and maintain any signs approved by the Association to be located in the Common Area. The assessments shall also be used for the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise, including but not limited to maintenance and operation of the Disposal System.

3. **Annual Assessment.** The Annual Assessments, as established by the Association, shall commence as to each Unit on the date of the closing and purchase of the Unit by an owner and shall be paid at closing from that date to the end of the fiscal year in which closing occurs. Thereafter, assessments shall be due and payable on a fiscal year basis and shall be due beginning the first day of each fiscal year. Each purchaser of a Unit from the Declarant is required to pay to the Association at the time of closing the pro rata share of the Assessment owing for the rest of the fiscal year in which closing occurs. The Executive Board of the Association shall fix the amount of the annual assessment against each Unit, and at least fifteen (15) days before June 1 of each year, shall send written notice of each assessment

subject thereto. Annual assessments shall be due on July 1 of each year in advance for the entire year or in such installments and upon such dates as the Executive Board may decide from time to time. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by the Association or its designee setting forth whether the assessment, if any, specified has been paid.

The annual assessment and fund provided thereby shall be expended in the following priority: First, for federal, state and local taxes; Second, for insurance; Third, for the operation, maintenance and repair of the Disposal System; and Fourth, any other expenses associated with the purposes for which assessments are levied. Further, a portion of the annual assessment on each Unit shall be set aside annually into a separate fund maintained by the Association for the express purpose of creating and maintaining a reserve adequate to cover anticipated costs of construction, replacement or repair of the Disposal System, roadways, bridges or other common elements beyond the routine and annual operation and maintenance expenses associated therewith. Allocations of the annual assessment to this reserve fund shall be included in the Association's yearly budget.

4. **Special Assessments.** In addition to the annual assessments authorized above, the Association may at any time levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including Common Elements, fixtures and personal property related thereto, including but not limited to the cost of construction, repair and maintenance of the Disposal System, roadways, bridges or other common elements, or to make up deficits in the annual assessments. The due dates for the payment of any special assessments shall be established by the Executive Board.

5. **Notice and Quorum for any Action Authorized Pursuant to this Article.** Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than ten (10) days and no more than fifty (50) days in advance of the meeting. At such meeting, the presence of members or of proxies entitled to vote twenty percent (20%) or more of the vote of the membership of the Association shall constitute a Quorum. If the required quorum is not present, the meeting shall be adjourned until a proper Quorum can be achieved.

6. **Effect of Nonpayment of Assessments - Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate set by the Executive Board of the Association, but said rate is to be no more than the maximum interest rate permitted to be charged under the laws of the State of North Carolina at the time of such delinquency. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Executive Board of the Association to defray the costs of collecting such late payment. Said assessment, interest, late fees and costs of collection become a charge and continuing lien on the Owner's land and all improvements thereon. The Association may bring a legal action against the Owner personally obligated to pay the same, or foreclose the charge and lien so arising hereunder and sell the owner's land and improvements to pay same, interest, late payment fees, costs and reasonable attorney fees for such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit. These rights and remedies are in addition to other rights and remedies to collect unpaid assessments, including termination of the Owner's right to use and enjoy any Common Area.

7. **Subordination of the Lien to Mortgages.** The liens provided herein shall be subordinate to the lien of any first mortgage, mortgages, first deed of trust or deeds of trust on a Unit. Sale or transfer of any Unit shall not affect any assessment lien except as provided in Section 1 herein. However, the sale or transfer of any Unit which is subject to any proceeding for the foreclosure thereof, shall extinguish the

lien of such assessments against the Unit which became due prior to such sale or transfer, but the personal obligation of the owner of the Unit when the assessment became due shall not be extinguished by such proceeding, sale, or transfer. No such sale or transfer shall relieve the new Unit from liability for any assessment thereafter becoming due or from the Owner lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust or deeds of trust.

8. **Property Owned by Declarant.** There shall be no assessment against any Units owned by the Declarant. However, the Declarant shall bear the expense of the upkeep and maintenance of said unsold Units and the Association shall have no responsibility with regard to such unsold Units until such time as any such Unit is sold or conveyed to a purchaser or owner. Further, Declarant shall bear the expense of supplementing the income of the Association until the Common Area is so conveyed to the Association to preserve and maintain same as herein provided.

ARTICLE X ARCHITECTURAL CONTROL

1. **Architectural Review Committee.** Upon transfer of the Common Area to the Association, the Architectural Committee of the Association shall consist of the Executive Board of the Association. Prior to such transfer, Declarant shall serve as the Architectural Committee.

2. **Architectural Control.** No building, fence, wall, or other structure shall be commenced, erected (including pre-fabricated plastic, metal or wood storage sheds), or maintained upon the Properties or any Unit in the Planned Community until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee. No exterior addition, exterior alteration, exterior color, any exterior color change, or any other exterior material or change shall be made to the Buildings or any other structure in the Properties unless approved by the Architectural Review Committee. No exterior change on any Unit in the subdivision, including the erection of antennas, aerials, awnings, or the placement of reflective or other material in the windows of a Building shall be made, until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee as to harmony of external design and location in relation to surrounding structures and topography. The Declarant reserves all rights through The Architectural Review Committee to approve all exterior paint colors, masonry colors and designs, and all roofing material selections, recommending earth tone colors on all exterior structures or improvements. The Architectural Review Committee shall determine the adequacy of any and all screening requirements contained in this Declaration. In the event said Architectural Review Committee fails to approve or disapprove submitted plans and specifications for the builder or contractor within sixty (60) days after said plans and specifications of builder have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

3. **Architectural Control of Unimproved Building Sites.**

(a) The sale of unimproved Building Sites shall be permitted within the southeast section of Colington Pointe defined as "Colington Point Single Family Units." No builder or contractor shall be permitted to construct any building, fence, wall or other structure upon the Properties or any Single Family Building Site unless first approved in writing by the Architectural Review Committee. The unimproved Building Sites within that section of Colington Pointe dedicated for Single Family Units shall be subject to a restriction for the construction of Buildings in conformance with one of three architectural plans provided by the Declarant.

(b) The Owner of a Single Family Building Site must commence construction (“commence construction” shall mean construction of all permanent footings) no later than 18 (eighteen) months from the day title to the Building Site passes to said Owner, and must complete construction (“complete construction” shall mean issuance of a certificate of occupancy by a competent authority) no later than 9 (nine) months following commencement of construction. Said period to build shall not be extended by virtue of a transfer (by conveyance or otherwise) of all or part of the original Owner’s interest in the Building Site to a successor-in-interest. One extension of this period to build may be granted in the Architectural Review Committee’s sole discretion upon written application to the Committee, tendered no later than 60 (sixty) days prior to expiration of either the 18-month or 9-month deadline. The Committee in its sole discretion may, but is not required to, predicate an extension of either the 18-month or 9-month deadline on a demand for Abatement., as defined below in paragraph 3(c) of this Article X.

(c) During the entire period between conveyance of title to an unimproved Single-Family Building Site and the completion of construction, as defined above in paragraph 3(b) of this Article X, a Single-Family Unit Owner must (i) maintain a performance bond in the amount of five thousand dollars (\$5,000.00) to protect the Association against the destruction of, or damage to, Common Area elements or infrastructure caused by construction, or as the result of other conditions arising, on his Building Site, which recognizes and protects the insurable interest of the Association, and the Owner shall furnish evidence of the bond as well as the payment of the premium to the Association within ten (10) days of the title transfer date.; and (ii) construct or otherwise implement such reasonable measures required by the Committee to protect other Units, or the Common Area, against unsightly conditions or nuisances (for example, cleanup and landscaping of the Building Site, or improvements to contain surface runoff). (said measures referred to herein as “Abatement”). Violation of a demand for Abatement shall give the Declarant an irrevocable option to purchase the Building Site at then fair market value, which option may be exercised, sold or assigned in the Declarant’s sole discretion.

ARTICLE XI MAINTENANCE AND REPAIRS

1, In order to enable the Association to enforce the provisions of this Declaration, there is hereby reserved to the Association the right to unobstructed access over, under, and upon each Unit at all reasonable times to perform exterior maintenance as provided in this Article to the extent any Unit owner defaults under said obligation. In the event that the need for maintenance, repair, or replacement is caused through the willful or negligent act or failure to act of or by the Owner, his family guests, licensees, or invitees, the cost of such maintenance, replacement, or repairs incurred by the Association shall be added to and become a part of the assessment to which such Unit is subject. This right to enter in order to maintain and/or repair extends to all Single-Family Building Sites, whether improved or unimproved.

2. Colington Pointe Multi-Family Units and Waterfront Units: Owners of these Units are responsible for all maintenance and repairs of their Dwellings and Footprints of their Units to include, but not limited to, heating and air, plumbing, fixtures, walls, floors, ceilings, appliances, windows, doors, etc.

2-a. The Homeowners’ Association will be responsible for the maintenance and repairs to the exterior of the Multi-Family and Waterfront Buildings to include the siding, gutters, shutters, roofing and structure of the building and Owners of these Units will be assessed for these maintenance and repairs according to the percentage they own in the exterior common area of their Building.

2-b. The Homeowners' Association will further be responsible for the maintenance and upkeep of the lawns and landscaping for the Multi-Family and Waterfront Buildings and the Owners will be assessed accordingly.

2-c. Additionally, the Owners of the Waterfront Units will be responsible for the assessment for maintenance, repairs and upkeep of the individual boat dock and/or slip that is an amenity of their Unit. Repairs, upkeep and maintenance of the common areas of those docks will be the responsibility of the nine (9) owners of the Waterfront Units.

3. Colington Pointe Single-Family Units: Owners of these Units are responsible for all maintenance and repairs to the interior and exterior of their Units, including without limitation lawn and garden care and the driveways; at all times, subject to oversight review by the Association's Architectural and Aesthetic Committees.

4. Common Areas and Structures: The common areas and structures of the community will be maintained and repaired by the Homeowners' Association and all costs will be assessed to the Owners of all Units in the development.

ARTICLE XII USE RESTRICTIONS

1. **Land Use.** All Units shall be used for residential purposes only. Except to the extent that Declarant may maintain sales offices, models, and construction offices, on one or more Units until all Units in the properties have been sold.

2. **Offensive Activity or Fires.** No noxious or offensive activity shall be conducted on any Units or in any dwelling, and nothing shall be done thereof or therein which may be or may become an annoyance or nuisance to the neighborhood or any other owner or guest thereof. Fires on properties are prohibited.

3. **Animals.** No animals, livestock, or poultry of any kind shall be kept or maintained on any Unit or in any dwelling except that inside dogs, cats or other household pets, not to exceed 55 pounds, may be kept or maintained provided they are not kept or maintained for commercial purposes and provided that no such pet is allowed to run at large or kept outside of the dwelling (either in outdoor kennels, on outdoor runs, tied up or tethered). Owner shall be responsible to clean up waste of pet and to dispose of the same.

4. **Temporary Structures.** Except for construction trailers, associated dumpsters and port-a-john facilities used by Declarant during construction, no structure of a temporary nature shall be erected or allowed to remain on any Unit unless and until permission for the same has been granted by the Association, or by its designated agent or representative. This provision shall likewise be deemed to prevent sleeping or otherwise living in any vehicle upon a Unit.

5. **Use of the Common Area.** Common Area shall not be used in any manner except as shall be approved or specifically permitted by the Association.

6. **Access to Unit.** The Association, its agents or employees shall have access to all Units from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Area, or facilities situated upon such Unit which serve another Owner's Unit. The Association or its agent shall also have

access to each Unit at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another Unit.

7. **Clothes drying.** No drying or airing of any clothing or bedding or other items shall be permitted on the grounds or outside of any Unit (including porches or decks).

8. **Garbage disposal.** All garbage shall be stored within the residence of each Owner or in the screened storage facilities on the owner's Unit. Any such screened storage facilities must not be generally visible from any road in the subdivision. However, if the public health authorities, or other public agency, shall require a specific method of garbage disposal, nothing contained herein shall prevent the compliance by Owners with obligatory public rules and regulations. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of Colington Pointe, except as is temporary and incidental to the bona fide improvement of any portion of Colington Pointe.

9. **Antennas and Fences.** No masts, towers, poles or antennas, included, but not limited to, antennas used for amateur radios, radio reception on any wavelength, and over-the-air or satellite television, shall be erected or maintained upon the properties except such antennas as are approved by the Architectural Committee. Further excepted are such community and antenna systems which are built and installed by the Declarant or the Association. No fences, hedges, or walls shall be erected or maintained on the owner's Units unless approved by the Architectural Committee.

10. **Signs.** There shall be no signs mounted on posts, poles or otherwise in the owner's yard without the prior written consent of the Architectural Committee, except for "For Sale" signs which do not exceed two square feet in area.

11. **Windows.** All window coverings must appear white or off-white from the exterior, unless the Architectural Committee gives prior written consent to a variation.

12. **Construction.** During any construction care shall be taken to prevent any disturbance to trees and vegetation off the actual Unit site. Construction materials shall be placed in the driveway or on the Unit site only. All trash and debris during construction shall be gathered and collected daily and hauled away on a weekly basis.

13. **Miscellaneous Restrictions.**

- a. With respect to exteriors, there shall not be any metal or plastic buildings, structures, fences, mailboxes, or newspaper boxes on any owner's Unit but the same may be established in the common area.
- b. No yard sales or similar types of outdoor sales shall be allowed.
- c. Any fuel tanks or similar storage receptacles, air conditioning or hearing Units shall be screened and must not be visible from any street in the subdivision.
- d. Any outside lights erected on a dwelling shall not be directed toward any other dwelling Unit so said lights will not shine on any adjoining property. This shall not apply to street lights included in the Common Area.
- e. No mailboxes other than those provided by the Association shall be permitted.
- f. No satellite dishes shall be permitted, unless authorized by the Association.

14. **Regulations.** Reasonable regulations governing the use of the Common Area and

external appearance of the owners' dwellings may be made and amended from time to time by the Executive Board of the Association. Copies of such regulations and amendments thereto shall be furnished to each Member by the Association upon request. Specifically, and without limiting the power to make reasonable regulations, the Executive Board of the Association shall have authority to do the following:

- a. Regulate the use of the Common Area:
- b. Regulate the placement and use of personal property outside of the dwellings;
- c. Require Owners to make repairs to and maintain all decks associated with each Owner's dwelling, including the power to require replacement of a deck if the same becomes unsafe, deteriorated or not reasonably repairable;
- d. Require the use of and regulate the type and color of window blinds and window treatments;
- e. Require the cleaning and maintenance of outside glass surfaces associated with the dwellings; and
- f. Establish maximum occupancy of the Units.

15. **Remedies Upon Breach or Violation of Restrictions. Rules or Regulations.** In the event of a violation or breach of any of the restrictions contained herein by any Owner, or agent of such Owner, the Owners of other Units or any one of them, jointly or severally, shall have the right to proceed in a legal action to compel compliance with the terms of these restrictions and any reasonable Rules and Regulations made pursuant to these Restrictions. In addition to the foregoing, the Declarant or the Association, or both, shall have the right to proceed in a legal action to compel compliance with the terms hereof or to prevent the violation or breach of these Restrictions or the Rules and Regulations made pursuant thereto. In addition, the Declarant or the Association, or both, shall have the right, whenever there exists a condition in violation of these Restrictions and the Rules and Regulations adopted pursuant thereto, to enter upon such property where the violation exists and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation the Owner has not corrected said violation. Any person entitled to file a legal action for the violation of these Restrictions and the Rules and Regulations adopted pursuant thereto shall be entitled to recover reasonable attorney's fees as permitted by law as a part of such action. Any entry and abatement or removal of a violating condition shall not be deemed a trespass or other tort. The failure to enforce any rights, reservations, or Restrictions contained in this Declaration or in the Rules and Regulations adopted pursuant thereto, however long continued, shall not be deemed a waiver of the right to enforce these covenants or abate a violating condition.

16. **Firearms.** Firearms, including guns that propel projectiles by compressed air such as BB guns and pellet guns, shall not be discharged at any time in Colington Pointe. Hunting and trapping of wild animals, fowl and game, and the discharge of firearms and/or the firing of bows and arrows within Colington Pointe is prohibited.

ARTICLE XIII

EASEMENTS

1. **Perpetual Non-Exclusive Easement in Common Area.** The Common Elements and Area shall be, and they are hereby declared to be subject to a perpetual non-exclusive easement created hereby in favor of all of the Owners for their use and for the use of their families, guests, invitees, and licensees, and for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended. In addition, this easement shall run in favor of the Declarant and the Association. This easement may be used for ingress and egress for the providing of electric power, telephone, television, sewer, security, water, lighting and other utility services and facilities. Said easement may be used for construction, operation and maintenance of all utility lines, pipes, treatment and other facilities associated therewith. The Declarant, for itself, its successors and assigns, and the Association herein described reserves the right to impose upon the Common Area henceforth and from time to time such easements and cross-easements for any of the foregoing purposes as it deems to be in the best interest of, and necessary and proper for, the Owners.

2. **Perpetual Exclusive Easement in Limited Common Area.** There is hereby created a perpetual exclusive easement in the Multi-Family and Waterfront Unit Limited Common Area contiguous with and surrounding the Building that contains each Owner's Unit in favor of that Unit Owner for the use of the Owner's family, guests, invitees, and licensees, for all proper and normal purposes.

3. **Perpetual Easement in Common Area and Limited Common Area.** The Common Elements and Common Area shall be, and they are hereby, declared to be subject to a perpetual easement created hereby in favor of the Declarant, their successors and assigns for the furnishing of services and facilities reasonably required to carry out these covenants. This easement may be used for ingress and egress for the providing of electric power, telephone, television, sewer, security, water, lighting and other utility services and facilities. Said easement may be used for construction, operation and maintenance of all utility lines, pipes, treatment and other facilities associated therewith. The Declarant, for itself, its successors and assigns, reserves the right to impose upon the Common Area and Limited Common Areas henceforth and from time to time such easement and cross-easements for any of the foregoing purposes as it deems to be in the best interest of, and necessary and proper for, the Owners.

4. **Encroachment Easement.** The entire Properties, including Common Area and individual Units, shall be subject to easements of encroachments which now exist or hereinafter may exist, caused by the settlement or movement of the building, or caused by minor inaccuracies in construction or reconstruction, which encroachments shall be permitted to remain undisturbed and which said easement shall run in favor of each individual Owner, the Association, and the Declarant. Each Owner understands that an as-built survey of his Unit may differ from any pre-built drawing or sketch representing the Unit within the limits of this encroachment easement.

ARTICLE XIV INSURANCE

1. **General.** Upon taking title to a Unit in the Colington Pointe subdivision, the Owner shall have in effect a fully paid fire and extended coverage insurance policy or homeowner's insurance policy, upon any Unit thereon, which recognizes and protects the insurable interest of the Association as an additional insured, and the Owner shall furnish evidence of the insurance as well as the payment of the premium to the Association within ten (10) days of the title transfer date. Said insurance shall be in the amount of the highest percent of the insurable replacement cost of the Unit which can be reasonably obtained. Thereinafter, each Owner shall obtain and maintain in force such an insurance coverage on his dwelling as the Executive Board of the Association may determine or require but not in any amounts

which are greater than the replacement costs. Each owner of a Unit shall furnish to the Executive Board of the Association such evidence of insurance coverage as the Board may require. In the event an Owner fails to maintain such coverage or furnish evidence thereof, the Association may obtain policies providing such coverage and pay the premiums therefore, those premiums shall be chargeable against the Owner of the Unit failing to maintain such coverage or to furnish evidence thereof. The premium shall constitute and continue as a lien on the Unit and also shall be a personal obligation of the Owner and enforced as provided in Article V of this Declaration. In the event a Unit is partially or totally destroyed, the Owner covenants and agrees to rebuild, repair or restore the dwelling to essentially the same condition and appearance, including using the same or similar building materials, as existed prior to the partial or total destruction within (12) months. No replacement Unit shall have a footprint and foundation in excess of the original footprint and foundation.

2. **Homeowner's Association Insurance.** The Homeowner's Association shall maintain insurance policies in such amounts and with such coverages as follows:

- a. All buildings and improvements in the Common Area and all personal property included in the Common Elements shall be insured in an amount equal to the highest percentage of the insurable replacement value which can be reasonably obtained, as determined annually by the Executive Board of the Association. In the event such insurance is not available, the Association shall obtain insurance in the amount of the highest percent of insurable value which can reasonably be obtained. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, including flood insurance and such other risks as are customarily covered with respect to buildings similar to the buildings on the land, such as vandalism and malicious mischief. The premiums on insurance policies purchased by the Association shall be paid by the Association as a common expense.
- b. Public liability insurance in such amounts and with such coverage as shall be required by the Executive Board of the Association, and with a cross liability endorsement to cover liabilities of the Owners as a group to any Owner.
- c. Workmen's compensation as required by law.
- d. Error and omission insurance for the Executive Board and such other insurance as the Executive Board of the Association may determine from time to time to be desirable.

3. **Insurance Prohibition.** The Association will not purchase or obtain insurance to cover the personal property of an Owner, and the Association will not purchase or obtain insurance to cover the individual liability of an Owner for injuries and damages suffered by anyone or anything within a Unit if said injuries or damages are not a liability of the Association.

ARTICLE XV FINANCING PROVISIONS

1. **Approval of Owners and Holders of First Deeds of Trust.** Unless a majority of the Owners and holders of notes secured by first deeds of trust on Units located within the Properties have given their prior written approval, the Association shall not:

- a. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon if owned, directly or indirectly, by the

Association. The granting of easements for utilities or other purposes as provided herein shall not be deemed a transfer within the meaning of this clause.

- b. Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner.
- c. By act or omission change, waive, or abandon any plan of regulation, or enforcement thereof pertaining to the architectural design or the exterior appearance of residences located on Units, or the maintenance of Common Area.
- d. Fail to maintain fire and extended coverage insurance on insurable improvements in the Common Area on the most favorable replacement cost basis in the amount of the highest percent of the insurable value which can be reasonably obtained.
- e. Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than repair, replacement, or reconstruction of the damaged improvements.

2. **Books and Records.** Any Owner and holder of a note secured by a first deed of trust on any Unit will have the right to examine the books and records of the Association during reasonable business hours.

3. **Payment of Taxes and Insurance Premiums.** The Owners and holders of notes secured by first deeds of trust on Units may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association. The persons, firms, or corporations making such payments shall be owed immediate reimbursement therefore by the Association.

ARTICLE XVI TERMINATION OF PLANNED COMMUNITY

(a) Except in the case of taking of all the Units by eminent domain (G.S. 47F-1-107), a Planned Community may be terminated only by agreement of Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the Units in the Planned Community are restricted exclusively to nonresidential uses.

(b) An agreement to terminate shall be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of Unit Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in every county in which a portion of the Planned Community is situated and is effective only upon recordation.

(c) A termination agreement may provide for sale of the common elements, but may not require that the Units be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the Unit Owners consent to the sale. If, pursuant to the agreement, any real estate in the planned community is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

(d) The Association, on behalf of the Unit owners, may contract for the sale of real estate in

the Planned Community, but the contract is not binding until approved pursuant to subsections (a) and (b) of this section. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Building Site owners and lien holders as their interests may appear, as provided in the termination agreement.

(e) If the real estate constituting the Planned Community is not to be sold following termination, title to the common elements vests in the Unit owners upon termination as tenants in common in proportion to their respective interests as provided in the termination agreement.

(f) Following termination of the Planned Community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for Unit owners and holders of liens on the Units as their interests may appear. All other creditors of the association are to be treated as if they had perfected liens on the common elements immediately before termination.

(g) If the termination agreement does not provide for the distribution of sales proceeds pursuant to subsection (d) of this section or the vesting of title pursuant to subsection (e) of this section, sales proceeds shall be distributed and title shall vest in accordance with each Unit owner's allocated share of common expense liability.

(h) Except as provided in subsection (i) of this section, foreclosure or enforcement of a lien or encumbrance against the common elements does not of itself terminate the Planned Community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common elements other than withdrawable real estate does not withdraw that portion from the Planned Community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the Planned Community, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the Planned Community.

(i) If a lien or encumbrance against a portion of the real estate comprising the Planned Community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the Planned Community.

ARTICLE XVII GENERAL PROVISIONS

1. **Enforcement.** The Association, Declarant, or any Owner, shall have the right to enforce, by an legal proceeding, all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by the Association, Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

3. **Amendment of Declaration.**

a. Except in cases of amendments that may be executed by a declarant under the terms of the declaration or by certain Unit owners under G.S. 47F-2-118(b), the declaration may be amended only by affirmative vote or written agreement signed

by Unit owners of Units to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies or by the declarant if necessary for the exercise of any development right. The declaration may specify a smaller number only if all of the Units are restricted exclusively to nonresidential use.

- b. No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than one year after the amendment is recorded.
- c. Every amendment to the declaration shall be recorded in every county in which any portion of the planned community is located and is effective only upon recordation. An amendment shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the amendment.
- d. Amendments to the declaration required by this Chapter to be recorded by the association shall be prepared, executed, recorded, and certified in accordance with G.S. 47-41.

IN WITNESS WHEREOF, the undersigned Colington Pointe, LLC, Declarant by virtue of the provisions of Article I, Section 6, of this Declaration of Covenants, Conditions and Restrictions, has caused this instrument to be executed by the signature of its President, attested by its Secretary and its corporate seal to be hereunto affixed, the day and year first above written.