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REGISTER OF DEEDS
NEW HANOVER CO. NC

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STATE OF NORTH CAROLINA

DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
OF

COUNTY OF NEW HANOVER

EMERALD COVE TOWNHOUSES, PHASE 2

000009

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS,
made this the 8th day of January, 1997, by SANCO OF WILMINGTON
SERVICE CORPORATION, herein referred to as "Developer";

000144

WITNESSETH:

Whereas, Developer is the developer and owner of certain
property located in Harnett Township, New Hanover County, North
Carolina, as hereinafter described in Exhibit A hereto attached and
incorporated herein by reference.

Now, therefore, Developer hereby declares that all of the
property hereinafter described and any other property which shall
be specifically made subject to this Declaration shall be held,
sold, and conveyed subject to the following easements,
restrictions, covenants, and conditions, which are for the purpose
of protecting the value and desirability of, and which shall run
with the real property and be binding on all parties having any
right, title, or interest in the described Properties or any part
thereof, their heirs, successors and assigns, and shall inure to
the benefit of each owner thereof.

1. **SCOPE OF DECLARATION** This Declaration of Covenants,
Conditions, and Restrictions shall apply to all lots in **EMERALD
COVE TOWNHOUSES, PHASE 2**, as shown upon a map recorded in Map Book
36 at Page 241 of the New Hanover County Registry.

2. **LOT USE** No lot located within the subdivision shall ever be
used for business, manufacturing, commercial, or professional
purposes, it being intended that all lots shall be used for
residential purposes only; provided, however, that the Developer
may convert any lots or any other property subject to these
restrictions to use as a roadway. Developer reserves the right to
construct apartments, duplexes, triplexes, or any other type of
multi-family residential development as allowed by law.

3. **SETBACK REQUIREMENTS** Since the establishment of standard
inflexible building setback lines for the location of units on lots
tends to force construction of units directly to the side of other
units with detrimental effects on privacy, views, preservation of

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important trees and other vegetation, ecological, and related considerations, no specific setback lines are established by these restrictions. In order to assure, however, that the foregoing considerations are given maximum effect, the Developer reserves the right to control and approve absolutely the site and location of any structure upon any lot.

4. **TEMPORARY STRUCTURES AND OTHER STRUCTURES** Except as herein provided, no structure of a temporary character, trailer, basement, tent, shack, garage apartment, barn, or other outbuilding shall be erected on any lot or used as a residence thereon. This restriction shall not be applicable to a temporary construction trailer used by a builder while a residence is being built on the lot, so long as such trailer is not used as a residence or living quarters.

A storage building, not to exceed eight feet by ten feet in size, and one story in height, may be constructed directly behind the main residence on any lot, and an easement is herein granted over and upon the common areas adjacent to such residence for the placement of such storage building. Such storage building must be of the same design, materials, and color as the main residence adjacent to the building, and the design, construction materials, and color of such building must first be approved by the Developer or the Emerald Cove Homeowners' Association, or their authorized agent. No part of such storage building may be placed in any side yard or front yard, and may not be visible from the front of the main residence.

5. **BUILDING DESIGN** The design of all buildings erected or moved onto any lot shall be subject to the approval of the Developer, or of some person or persons designated by the Developer to pass upon said designs. Upon written request of a lot owner for approval of plans, the Developer or its duly authorized agent shall have ten days within which to approve or disapprove such plans. In the event of failure to approve or disapprove such plans within ten days, such approval will not be required; but the design of the proposed building must be in harmony with the existing structures in this subdivision.

6. **BUILDING CONSTRUCTION** All dwellings must be of brick veneer and/or of vinyl siding. No exterior colors may be changed without the written permission of the Developers, or of such person or entity as shall be authorized by the Developers to approve a change of the exterior colors. It is the expressed intention of the Developers to maintain a uniform plan of development with respect to design, size, type, cost, and general appearance of all structures upon the lots in the subdivision.

7. (a) **MAINTENANCE OF LOT, NUISANCES** It shall be the duty of each homeowner to keep his or her property in a neat and tidy condition, well maintained, with no unsightly debris or litter or the like in view. No homeowner shall place on his lot, or cause or allow to be placed on his lot, any kind of statue, sculpture, "object d'art", yard decoration, artificial wildlife, or any other similar type of object. No noxious or offensive trade or activity shall be carried on or maintained on any lot, nor on any street within the subdivision, nor shall any activity be conducted on any lot or on any street within the subdivision which constitutes an annoyance or nuisance to the neighborhood.

(b) **PARKING** No more than three motor vehicles shall be parked on any lot within the subdivision nor on the street in front of the lot. No motor vehicles may be parked on any lawns or other common areas other than in parking spaces specifically set aside within the subdivision, and no motor vehicle may be parked in such a manner as to block any street or other roadway.

(c) **INOPERABLE CARS/TRACTOR TRAILERS/MAINTENANCE WORK** Junk cars, blocked-up cars, inoperative cars or other inoperative vehicles or machinery, and similar eyesores shall not be placed on or be permitted to remain on any lot, street, or other common area, and no tractor-trailers will be permitted on any lot, street, or common area within the subdivision. No mechanical or maintenance work shall be performed on cars, trucks, or other vehicles, machinery or equipment in the front or side yards of any home, or in the street in front of any home, or on any other common area within the subdivision.

(d) **OIL AND CHEMICAL SPILLS** Any oil or chemical spill or drip onto driveways, parking areas, or common areas must be removed or cleaned up by the owner of the motor vehicle causing such spill or drip, or by such lot owner or tenant who caused the spill or drip, or by such lot owner or tenant of whom such a vehicle owner was a guest or invitee. In the event that such spill or drip is not removed by the lot owner or the tenant of such owner, the Declarant or the Association shall cause such spill or drip to be cleaned up and the cost of such cleanup shall be assessed against the lot owned by the person or leased by the tenant causing such spill or drip.

(e) **LAWN FURNITURE, TRASH CANS, TOYS** All lawn furniture, toys, sports equipment, and similar equipment, furnishings, and personal property shall not be stored or be allowed to remain in the yard areas, common areas, limited common areas, and streets. All such property, except when in use, must be stored inside the fenced areas provided on each lot.

(f) **TRASH CONTAINERS** All trash cans and containers shall be stored inside the fenced areas provided on each lot except on trash pickup days.

(g) **BOATS** No boats shall be placed or stored on any lot, common area, limited common area, or street within the subdivision except in bona fide emergencies such as hurricanes, storms, or other disasters, and then only for a three-day period. No lot owner or occupant may stack such three-day storage periods together by removing such stored boat for a short period of time followed by another three-day storage period. During such three-day storage period, no maintenance, repair, or other work may be conducted on such boat.

8. **ANIMALS** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot in the subdivision, except that dogs, cats, or other household pets may be kept for the purpose of providing companionship for the private family. Animals are not to be raised, bred, or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of any lot so that no person shall quarter on said lots cows, horses, bees, hogs, sheep, goats, guinea fowls, chicks, geese, rabbits, chickens, turkeys, skunks, snakes, or any other animal that may interfere with the quietude, health, or safety of the community. No more than four (4) household pets will be permitted on any lot. Pets must be restrained or confined inside a fenced area or within the house. It is the pet owner's responsibility to keep their lot clean and free of pet debris. All animals must be properly tagged for identification, and further, must be kept on a leash unless such animal is confined within a fenced area. When such animals are not confined within a fenced area of the owner's yard, it is the pet owner's responsibility to remove any pet debris left by their pet upon any of the lots or common areas within the subdivision. Any costs incurred by the other lot owners or the Association as hereinafter set out, for the removal of pet debris left by the pet of a lot owner upon any lot or upon any part of the common areas shall be a charge against the pet owner's lot and shall be assessed against that individual lot owner as a special assessment and subject to the regulations regarding liens and assessments as hereinafter set forth.

9. **FENCED AREAS AND LIMITED COMMON AREAS** Developer may construct a fenced area adjacent to some of the houses or units for the use of the owner of that house or unit. Depending on the final architectural layout of the houses and/or units as constructed, some of these fenced areas may be located within the boundaries of the lot conveyed to the adjacent house or unit owner, while some of the fenced areas may be located on common areas owned by the Association as hereinafter described. In the event that such fenced areas shall be constructed on common areas, such areas shall become

"Limited Common Areas" which shall mean such common areas, although owned by the Association, shall be reserved solely for the use of the owner of the adjacent unit or house, to the exclusion of the owners of the other units or houses within the subdivision. The fences surrounding these areas shall be maintained by the Association as hereinafter described, however, maintenance of the areas within the fences shall be the responsibility of the owner of the adjacent unit or house.

10. **OTHER FENCING** Developer may construct additional fencing on the lots subject hereto, or on any of the common areas, and such fencing shall be maintained by the Owners' Association.

11. **UTILITY EASEMENTS** The Developer reserves for itself, its successors, and assigns, an easement in and right at any time in the future to grant a right of way under, over, and along the side, rear, and front property lines of each and every lot in the Subdivision, for the installation and maintenance of poles, lines, conduits, pipes, and other equipment necessary to or useful for furnishing electric, power, gas, telephone service, cable television, or other utilities including water and sewer service. Also, easements for drainage and utilities are reserved as shown on the recorded plat of the Subdivision. Developer reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing improvements.

12. **LOT GRADING** The general grading, slope, and drainage plan of a lot may not be altered without the express written approval of the New Hanover County authorities and Developer, and other appropriate agencies having authority to grant such approval.

13. **EXTERIOR MAINTENANCE** Each lot owner shall maintain the exterior of all buildings, walls, and other improvements on his lot in good condition and repair, and shall replace worn and rotten parts and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, or other exterior portions of the improvements to deteriorate in an unattractive manner. The maintenance referenced herein shall be supervised and regulated by the EMERALD COVE OWNERS ASSOCIATION, INC. In the event that the lot owner shall fail to comply with these maintenance requirements, the Association is hereby expressly authorized, and the lot owner hereby expressly agrees, that said maintenance and/or repair may be effected by the said Association with the expenses incurred for the same to be assessed against the individual lot owner as a special assessment and subject to the regulations regarding liens and assessments as herein set forth.

The owners of each house or unit shall be responsible for the repair and replacement of the roof on that owners' house or unit, and the Association shall not be required to provide such repair or replacement. In the event that there are two or more units served by a single roof structure, the owners of the units served by such single roof structure shall be jointly responsible for such roof repair or replacement. If the areas of the roof serving two or more units are not equal in size for each unit thereby served, then the costs of the roof repair or replacement shall be divided pro rata based on the actual roof area serving each unit in relation to the roof area of the entire structure.

14. LANDSCAPING MAINTENANCE All front, side, and backyard areas not otherwise fenced in shall be maintained by the EMERALD COVE OWNERS ASSOCIATION, INC. No landscaping other than that provided by the Developer and/or the Association shall be allowed.

15. DIRECTIONAL SIGNS, "FOR SALE SIGNS", "FOR RENT SIGNS", OTHER SIGNS The Developer reserves for itself, its successors and assigns, a temporary easement to place directional signs upon any of the lots in said Subdivision, in order to assist prospective purchasers in locating other lots or houses which are for sale in the Subdivision, or in other future subdivisions coming out of adjoining lands. The right to place and maintain such signs shall terminate five (5) years from the date of this instrument.

Except for signs placed by the Developer, or with the express written permission of the Developer or the Association (after control of the Association is turned over to the owners pursuant to this Declaration), no "For Sale" or "For Rent" signs, or any other sign shall be allowed on any lots, or in or on any houses, or on any of the common areas or limited common areas within the subdivision.

16. STREET LIGHTING The Developer reserves the right to subject the real property in this Subdivision to a contract with Carolina Power & Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power & Light Company by the owner of each lot.

17. MAILBOXES AND NEWSPAPER BOXES Each lot in the Subdivision shall have one (1) mailbox and one (1) newspaper box, and these boxes shall be maintained in a cluster box arrangement, which will be provided by the Developer. The maintenance of such boxes shall be the responsibility of the Owners' Association as hereinafter provided.

18. **WINDOW COVERINGS** To insure consistency and attractiveness within the Subdivision, white mini-blinds must be installed in all of the windows of all homes within ten (10) days of occupancy, such that the total view of all windows from the outside of the house is white mini-blinds. Window treatments inside of the house and not visible from the outside of the house or unit are in the discretion of the homeowner.

19. **EXTERIOR ANTENNAS, SATELLITE DISHES, ETC.** Television antennas, television or radio satellite dishes, and radio antennas may be erected on each lot in the subdivision only with specific, prior written approval of the Developer. Developer must approve the location, design, and specifications of such apparatus, and such approval may be revoked in the event that the location, design, or specifications are changed after such approval by the Developer. Developer may transfer such approval rights and duties to **EMERALD COVE OWNERS ASSOCIATION, INC.**

20. **CLOTHESLINES** The outdoor drying or airing of clothes and the erection of outdoor clotheslines or similar devices on any lot in the Subdivision shall be subject to the approval of the Developer, and then only when thoroughly concealed or screened from public view within a fenced yard area.

21. **FUEL TANKS AND STORAGE RECEPTACLES** No fuel tanks or similar storage receptacles located on any lot may be exposed to public view. Any such receptacles must be installed only within a fenced area adjacent to the house or unit within the Subdivision.

22. WATER, SEWAGE AND IRRIGATION SYSTEMS

(a) Water service shall be provided by wells located within the development and such wells are to be designated as "Common Areas". The operation and maintenance of the wells shall be the responsibility of the Owners' Association as hereinafter provided.

(b) Sewage disposal systems shall be only into the New Hanover Hanover County sewage collection system.

(c) The Developer shall install lawn irrigation systems within the development, the maintenance of which shall be a responsibility of the Owners' Association as hereinafter provided.

23. ACCESS, MAINTENANCE, AND CONSTRUCTION EASEMENTS

(a) The Association, acting through its officers, agents, servants, and/or employees shall have the right of unobstructed

access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance provided for by this Declaration.

(b) Easements are reserved over those portions of the Common Areas and Limited Common Areas and facilities that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the Common Areas or Limited Common Areas, or the air and light space above such Common Areas.

(c) Each lot or unit and all Common Areas and facilities and Limited Common Areas are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation, or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage, or other Common Areas and facilities, whether or not the cause of any or all of those activities originates on the lot or unit in which the work must be performed.

(d) Each lot or unit, and the property included in the Common Area shall be subject to an easement for encroachments created during construction, by settling, and by overhangs for all buildings, structures, and improvements constructed by Developer, including, but not limited to, sidewalks, walks, paths, patios, decks, fences, parking areas and parking pads, driveways, outbuildings, and other similar appurtenances. A valid easement for such encroachments and for the maintenance of same, so long as such encroachments stand, shall and does exist. In the event that any structure containing two or more townhouses is partially or totally destroyed and then rebuilt, the owners of the townhouses so affected and other adjacent units agree that minor encroachments of or on parts of the adjacent townhouse units or Common Areas due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

(e) In the event that ingress or egress to any lot or unit is through or across any common areas, such common areas are hereby subjected to an access easement for such owners' ingress, egress, and regress to and from such lot or unit.

(f) All easements and rights described herein are easements appurtenant, running with the land, and shall be binding on the Developer, its successors and assigns, and any owner, purchaser, mortgagee, and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

24. OWNERS ASSOCIATION

(a) To provide for the maintenance, repair, upkeep and replacement of the subdivision streets, subdivision sign, water and irrigation systems, mail and paper boxes, street signs, walkways, parking areas, stormwater facilities, other amenities, common areas, and, except as herein provided, the yard areas of the lots in the Subdivision, the Developer has formed the **EMERALD COVE OWNERS ASSOCIATION, INC.**, a non-profit corporation organized pursuant to Chapter 55A of the General Statutes of North Carolina. The Association shall also be responsible for providing any necessary liability insurance. The Articles of Incorporation for said corporation are recorded in Book _____, at Page _____ of the New Hanover County Registry. The By-Laws for said corporation are attached hereto as Exhibit "B", and are incorporated herein by reference.

(b) Every owner of a fee simple title to a lot within the Subdivision shall be deemed to own, possess and have accepted:

(1) A Class "A" membership(s) in the **EMERALD COVE OWNERS ASSOCIATION, INC.**, (Association), appurtenant to his lot(s);

(2) An undivided equal interest with all other owners, for each membership in the Association owned, in the Association and all of its assets;

(3) A right and easement of access and enjoyment, equal to that of all other owners, in, to, over and across the streets, common areas and amenities, which is appurtenant to the title to each lot, subject to the right of the Association to dedicate or transfer all or any part of the common areas and amenities, for such purposes and subject to such conditions as the Association may determine, acting by and pursuant to the provisions of its duly enacted By-Laws.

(4) The duty of complying with and abiding by all of the provisions of these Articles, the By-Laws of the Association and the Rules and Regulations of the Association, including the payment of dues and assessments as provided elsewhere herein.

(c) The Association shall have two classes of voting membership:

(1) Class "A". Class A members shall be all lot and unit owners with the exception of the Developer and shall be entitled to one vote for each lot or unit owned. When more than one person holds an interest in any lot or unit, all such persons shall be members. The vote for such lot or unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot or unit.

(2) Class "B". The Class B member shall be the Developer, and Developer shall be entitled to three (3) votes for each lot or unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- A. When 75% of the units are deeded to the homeowners, or
- B. On December 31, 2006.

25. LIENS AND ASSESSMENTS The Association has heretofore been given the authority to administer the operation and management of the common areas and the amenities of the property, it being recognized that the delegation of such duties to one entity is in the best interests of the owners of all lots subject hereto to properly administer the operation and management of the common areas and amenities. The Association will incur, for the mutual benefit of all the owners of such lots, costs and expenses sometimes herein referred to as "common expenses". To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make, levy and collect assessments against the members of the Association and their lots. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation of, the management of, and for capital improvements to the common areas, which for the purposes of these By-Laws shall be deemed to include, but not be limited to, the common areas, limited common areas, streets, and amenities, and all other improvements, the following shall be operative and binding upon the owners of all lots:

(a) The owner of any lot subject hereto, with the exception of the Developer, by acceptance of a Deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(1) annual assessments or charges; and

(2) special assessments for capital improvements or special assessments as established by the Board of Directors of the Association, such assessments to be established and collected as hereinafter provided.

(b) The annual and special assessments, together with the interest, costs, and reasonable attorney's fees, if any, shall be a charge on the lots and shall be a continual lien upon each lot against which they are levied. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person or entity who is the owner of

such lot at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to any successor in title unless expressly assumed by him.

(c) The Developer shall not be required to pay regular annual assessments on any lot owned by it prior to its sale.

(d) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement, maintenance, and repair of all streets, easements, utilities, stormwater facilities, including ponds, wells and water systems, irrigation systems, subdivision signs, mail and paper boxes, yard areas, parking areas, walkways, and the other common areas, as herein provided. The funds arising from said assessments or charges may be used for any or all of the following purposes: Maintenance, repair, and improvement of the common areas, wells and water systems, irrigation systems, drainage and utility easements, stormwater facilities (including ponds), and rights of ways; maintenance of the streets, parking areas, walkways, and yard areas as herein provided, enforcing these restrictions, and, in addition, doing any other things necessary, proper, or desirable in the opinion of the Association to keep the property in neat and good order and to provide for the health, welfare and safety of the owners and residents of the subdivision.

(e) The annual assessments for each calendar year shall be established by the Board of Directors, and may be increased by the Board of Directors for any calendar year without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year. The maximum annual assessment for any calendar year may be increased without limit by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting called for this purpose.

(f) In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement located throughout the common areas, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed to the uniform rate for all lots and may be collected on a monthly basis.

(g) Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 21(e) or Paragraph 21(f) set forth above shall be sent to all members not less than ten (10) days nor more than (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of the

membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(h) The annual assessments provided for herein shall be collected on a quarterly basis and shall commence as to all lots in the subdivision on the first day of the month following recordation of the Declaration of Restrictions for the subdivision. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Upon the closing of a lot subject hereto, there shall be an assessment due for the remainder of the quarter in which the closing occurs, plus the amount of the assessment due for the following quarter.

(i) At the time title is conveyed to an Owner, each Owner shall contribute to the Association a working capital reserve amount at least equal to a two months' estimated common area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies, and the common areas and facilities furnishings and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

(j) Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of fourteen percent (14%) per annum from the date due until paid. The Association may bring an action at law against the other owner personally obligated to pay the same or foreclose the lien against the lot and interest, costs, and reasonable attorney's fee of such action or foreclosure shall be added to the amount of such assessment.

(k) The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the public records of New Hanover County, North Carolina, which claim shall state the description of the lot encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, and attorney's fees thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien provided for herein

shall be subordinated to the lien of any first mortgage or Deed of Trust and any person, firm, corporation or other entity acquiring title to any lot by virtue of any foreclosure, deed in lieu of foreclosure or judicial sale, shall be liable and obligated only for assessments as shall accrue and become due and payable subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a lot by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all owners of all lots as part of the common expenses, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

(l) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any lot or unit shall not affect the assessment lien. However, the sale or transfer of any unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot or unit from liability for any assessments thereafter becoming due or from the lien thereof.

(m) Mortgagees are not required to collect assessments, and the failure of the owner to pay assessments shall not constitute a default under a mortgage.

(n) Upon the sale of seventy-five percent (75%) of all of lots in all sections of the Subdivision, the Developer will turn over control of the Owner's Association to the Board of Directors to be elected by the membership in accordance with the By-Laws of the Association. Until such time, however, the Developer shall elect the Board of Directors of the Association.

26. **CONVEYANCE OF COMMON AREAS TO ASSOCIATION** Prior to HUD insuring the first mortgage in each phase of the subdivision, the Developer shall convey to the Association, free and clear of all encumbrances, the common areas and limited common areas as shown on the plat of that phase as recorded in the New Hanover County Register of Deeds.

27. **CONVEYANCE, MORTGAGE, AND DEDICATION OF COMMON AREAS** The common areas and limited common areas may not be conveyed, mortgaged, or dedicated without the consent of at least two-thirds of the lot owners (excluding the Developer).

28. **RIGHTS OF ELIGIBLE MORTGAGE HOLDERS** To the extent permitted by law, an Eligible Mortgage Holder, that is, a holder of a first mortgage or lien on a lot or unit who has requested notice of certain matters from the Association, upon written request to the Association, identifying the name and address of the owner and holder, will be entitled to timely written notice of:

(a) Any condemnation, loss, or casualty loss which affects a material portion of the project or any units on which there is a mortgage held by such Eligible Mortgage Holder.

(b) Any delinquency in payment of assessments or charges owed by an owner of the unit subject to a first mortgage held by such Eligible Mortgage Holder which remains uncured for a period of sixty days.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

(e) In addition to the foregoing rights, the Eligible Mortgage Holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina General Statutes as they now exist or as they may be amended from time to time.

(1) Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of at least 51% of the votes of the owners of the units or lots subject to Eligible Mortgage Holders.

(2) Unless otherwise provided in the Declaration or Bylaws, no reallocation of interest in the common areas resulting from a partial condemnation or partial destruction of the project may be affected without the prior approval of Eligible Mortgage Holders holding mortgages on all remaining units or lots whether existing whole or in part, and which have at least 51% of the votes of such remaining lots or units subject to Eligible Mortgage Holders.

29. **INSURANCE** It shall be the individual responsibility of each lot owner to maintain casualty and liability insurance on his lot or unit, including the exterior. It shall be the duty of the Association to maintain in effect casualty and liability insurance on all common areas as follows:

(a) Amount and Scope of Insurance: All insurance policies upon the common areas shall be secured by the Board of Directors or its

designee on behalf of the Association with full authority, which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, for projects similar in construction. However, such liability coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the common areas and legal liability arising out of lawsuits relating to employment contracts of the Association. The foregoing shall not preclude the Board from obtaining insurance coverage on all or a portion of the limited common areas and facilities.

(b) Insurance Provisions. The Board of Directors shall make diligent effort to ensure that said insurance policies provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent, or employee of the Association, the lot owners, and their employees, agents, tenants, and invitees.

(2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.

(3) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured.

(4) Coverage will not be prejudiced by act or neglect of the lot owners when said act or neglect is not within the control of the Association.

(5) The policy on the common areas cannot be canceled, invalidated, or suspended on account of the conduct of any one or more individual lot owners.

(6) The policy on the common areas cannot be canceled, invalidated, or suspended on account of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association.

(c) Premiums. All insurance premiums on the common areas for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the owners equally, as an additional annual assessment, herein called "Insurance Assessment" which shall be in addition to

the amounts provided for herein, an amount sufficient to pay the annual cost of all such insurance premiums.

(d) Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds shall be payable to the Board as insurance trustee or to such attorney at law or institution with trust powers as may be approved by the Board of Directors.

(e) Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "A" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the lot owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the owners at least ten (10) days prior to the expiration date with respect to the then current policies.

(f) Distribution of Insurance Proceeds. Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

- (1) Expenses of Trust. All reasonable expenses of the insurance trustee shall be first paid or provisions made therefor.
- (2) Reconstruction or Repair. The remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

30. FIDELITY BONDS

(a) The Association shall maintain blanket fidelity bonds for all officers, directors, employees, and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees, and agents handling or responsible for funds of or administered on behalf of the Association.

(b) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds.

(c) Other Requirements. Fidelity bonds required herein must meet the following requirements:

(1) Fidelity bonds shall name the Association as an obligee.

(2) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definitions of "Employees", or similar terms or expressions.

(3) The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees, and agents) shall be paid by the Association as a common expense.

(4) The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association, to any insurance trustee, and each Eligible Mortgage Holder.

31. DEVELOPER'S RIGHTS

(a) The Developer hereby reserves the right to annex additional land within the area described in Exhibit "A" attached hereto, and any other additional land located adjacent thereto which may be hereafter acquired by the Declarant, without the consent of the Class A members within ten (10) years of the date of this instrument provided that HUD, the FHA, or VA determines that the annexation is in accord with the general plan hereto approved by them. Any property annexed for such purpose will be subject to and under the jurisdiction of the Association and shall be designated as consecutively numbered phases or such other similar designations for any additional phase added.

(b) The rights reserved by the Developer also include the power to amend this Declaration of Restrictions to subject any property described above to the jurisdiction of the Association and to the rights and obligations of this Declaration of Restrictions without the consent of Class A members, subject, however, to approval by the Department of HUD or the Veterans Administration.

32. **VA/HUD APPROVAL** So long as there is a Class B Membership, annexation of additional properties, dedication of common areas, and the amendment of this Declaration of Covenants, Conditions, and Restrictions, shall require the approval of the Veterans Administration or the Department of Housing and Urban Development.

33. **STORMWATER MAINTENANCE PLAN** It shall be the responsibility of the Association to provide the following inspections and maintenance of the stormwater system:

(a) **Periodic Inspections:** Periodic Inspections shall be provided as follows:

(1) The Association shall provide the services of a person competent to inspect the stormwater system on a periodic basis for catch basin and pipe blockage and detention pond operation.

(2) The inspector shall remove any trash or debris which has collected in the catch basins, pipes, or detention ponds, and report any more serious defects to the Association.

(3) Periodically, the ponds shall be inspected to see that the pond level is at or below the permanent design pond level.

(b) **Semiannual Inspections:** Semiannual Inspections shall be provided as follows:

(1) At least once every six months, an inspection shall be made of the detention ponds to determine if excessive sedimentation or plant growth has occurred.

(2) If sedimentation has occurred to the point that the general elevation of the bottom of the pond is more than one foot above the original pond bottom elevation, the sedimentation shall be removed at least to the original pond bottom elevation.

(3) If plant growth has progressed to the point that it interferes with the effectiveness of the ponds, it shall be removed. This can be accomplished by hand or mechanical means.

(4) This inspection shall also include an inspection of the orifice which controls the pond level after a rain.

(5) When construction has been completed, certification by a Registered Professional Engineer will be required stating that construction was completed in accordance with the approved plans.

(c) The net effect of the above inspection and repairs where necessary, shall be to keep the stormwater system in good repair and to see that the pollutant control effectiveness is not diminished.

(d) Any sloughing, erosion, or vegetation washout of the stormwater system shall be immediately repaired to obtain the design depth, slopes, and specifications.

(e) The State of North Carolina is hereby made a beneficiary to the extent necessary to enforce its stormwater regulations as the same may be amended from time to time.

34. **AMENDMENT** Except as otherwise provided herein, these restrictions may be altered, modified, canceled, or changed at any time as to said subdivision as a whole or as to any subdivided lot or part thereof by a written document, recorded in the New Hanover County Registry, executed by the owners (not including mortgagees, trustees, or other lienholders) of not less than two-thirds (2/3) of the subdivided lots to which these restrictions apply. Developer's power to amend this Declaration as provided herein shall not require the consent of the Class A members and shall be valid when signed by the Developer and recorded in the New Hanover County Register of Deeds.

35. **VIOLATIONS** If the parties hereto, or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for the Association or any other person or persons owning any real property situated in said subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate such covenants and either prevent him or them from so doing or recover damages or other dues for such violations.

36. **INVALIDATION** Invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other covenants herein, which shall remain in full force and effect.

37. **TERM** All covenants, restrictions, and affirmative obligations set forth in these Restrictions shall run with the land and shall be binding on all parties claiming under them to specifically include, but not be limited to the successors and assigns, if any, of Developer, for a period of twenty (20) years from the date hereof after which time all said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the owners of a majority of the lots (not including mortgagees or trustees under deeds of trust)

substantially affected by such changes in covenants, has been recorded, agreeing to change said covenants in whole or in part.

38. LOTS AND UNITS SUBJECT TO DECLARATION All present and future owners, tenants, and occupants of lots and units and their guests and invitees shall be subject to and shall comply with the provisions of this Declaration, as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering of a lease or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant, or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the owner of any lot or unit, their respective legal representative heirs, successors, and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any lot as though such provisions were made a part of each and every deed of conveyance or lease.

IN TESTIMONY WHEREOF, the Developer has caused this instrument to be executed in its corporate name by its President, attested by its Secretary, and its corporate seal to be hereunto affixed, all by order of its Board of Directors first duly given, the day and year first above written.



SANCO OF WILMINGTON SERVICE CORPORATION

B. Sanders secretary (Corporate Seal)

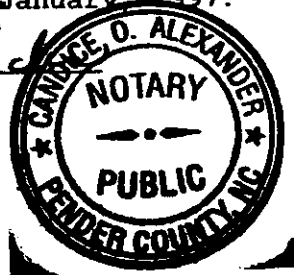
By: Nathan S. Sanders, President

STATE OF NORTH CAROLINA COUNTY OF ~~NEW HANOVER~~ Pender

I, a Notary Public of the County and State aforesaid, certify that Judia B. Sanders personally came before me this day and acknowledged that she is Secretary of SANCO OF WILMINGTON SERVICE CORPORATION, a North Carolina Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary. Witness my hand and notarial stamp or seal, this 8th day of January, 1997.

My Commission Expires: 11-26-2000

Candice D. Alexander Notary Public



STATE OF NORTH CAROLINA New Hanover County The foregoing/ Annexed Certificate(s) of

Candice D. Alexander

Notary (Notaries) Public is/ are certified to be correct.

This the 21 day of Jan. 1997

Mary Sue Oots, Register of Deeds by [Signature] Deputy/Assistant

EXHIBIT A

TRACT 1:

Beginning at an old iron pipe at the southernmost corner of Lot 12, Bradley Heights Subdivision as shown on a map recorded in Map book 5 at Page 5 of the New Hanover County Registry. Said beginning pipe being in the westerly line of Peiffer Avenue (30 foot right-of-way). Said beginning pipe being located South 26 degrees 43 minutes 30 seconds West 1917.60 feet as measured along said westerly right-of-way line of Oleander Drive (100 foot right-of-way). Running thence from said beginning pipe:

1. South 26 degrees 43 minutes 30 seconds West 659.01 feet with the southerly extension of the westerly right-of-way line of said Peiffer Avenue, passing through an old iron pipe at 588.20 feet to an old iron pipe in the northerly line of tract deeded to Schupp by deed recorded in Book 623 at Page 270 of said Registry; thence
2. North 56 degrees 13 minutes 43 seconds West 378.00 feet to an old iron pipe; thence
3. South 28 degrees 49 minutes 36 seconds West 87.60 feet to an old iron pipe at a northerly corner of said Schupp tract; thence
4. South 28 degrees 48 minutes 51 seconds West 317.43 feet to an old stone marked "S.P.C."; thence
5. North 56 degrees 44 minutes 11 seconds West 200.12 feet to an old iron pin; thence
6. North 28 degrees 47 minutes 49 seconds East 634.75 feet to an old iron pipe at the westernmost corner of a tract deeded to Burkert by deed recorded in Book 1228 at Page 992 of said Registry; thence
7. South 62 degrees 55 minutes 39 seconds East 226.41 feet to an old iron pipe at the southernmost corner of said Burkert tract; thence
8. North 29 degrees 13 minutes 50 seconds East 377.30 feet to an old iron pipe in the southerly line of said Lot 12. Last said pipe being located South 60 degrees 09 minutes 30 seconds East 29.11 feet from an old stone marked "S.P.C."; thence
9. South 60 degrees 33 minutes 54 seconds East 323.27 feet with the southerly line of said Lot 12 to the point of beginning.

The above described tract contains 8.10 acres. The same being a portion of the Second Parcel and the Third Parcel described in a deed to Michael D. Shepard and Linda A. Shepard by deed recorded in Book 1138 at Page 798 of the New Hanover County Registry.

Together with the perpetual right and easement for use as a roadway in, to, through, and over the following described tract or parcel of land:

Being a tract 30 feet in width, an extension of Peiffer Avenue (if said avenue were extended southwardly), which tract runs along the eastern line of the above described property from its easternmost corner southwardly to its southeastern corner, and being that easement described in that deed recorded in Book 1138 at Page 798 of the New Hanover County Registry.

TRACT 2:

Beginning at an old iron pipe in the southerly extension of the westerly right-of-way line of Peiffer Avenue. Said beginning pipe being located south 26 degrees 43 minutes 30 seconds West 659.01 feet as measured along said southerly extension from an old iron pipe at the southernmost corner of Lot 12, Bradley Heights Subdivision as shown on a map recorded in Map Book 5 at Page 5 of the New Hanover County Registry. Said beginning pipe being in the westerly line of said Peiffer Avenue (30 foot right-of-way) shown on said map, if extended in a southerly direction. Said beginning pipe being in the northerly line of a tract deeded to Schupp by deed recorded in Book 623 at Page 270 of said Registry. Said beginning pipe also being a southeasterly corner of a tract deeded to Michael D. Shepard and Linda A. Shepard by deed recorded in Book 1138 at Page 798 of said Registry. Running thence from said beginning pipe:

1. North 69 degrees 29 minutes 11 seconds West 380.59 feet with a northerly line of said Schupp tract to an old iron pipe; thence
2. North 28 degrees 49 minutes 36 seconds East 87.60 feet to an old iron pipe; thence
3. South 56 degrees 13 minutes 43 seconds East 378.00 feet to the point of beginning.

The above described tract contains 0.38 acres.

Exhibit B**BY-LAWS
OF
EMERALD COVE OWNERS ASSOCIATION, INC.****ARTICLE I
General Provisions**

SECTION 1. - IDENTITY: These are the By-Laws of **EMERALD COVE OWNERS ASSOCIATION, INC.**, a nonprofit corporation organized pursuant to the laws of the State of North Carolina; the Articles of Incorporation for which have been recorded in Book _____, at Page _____, in the Office of the Register of Deeds of New Hanover County, North Carolina.

SECTION 2. - INCORPORATION: The provisions of these By-Laws supplement and are enacted pursuant to the provisions of the above referenced Articles of Incorporation and are applicable to the record owners of lots located upon or within that certain development of real property known as **EMERALD COVE TOWNHOUSES, PHASE 2**, as shown upon a map thereof recorded in Map Book _____, at Page _____, of the New Hanover County Registry, and any additional phases of **EMERALD COVE TOWNHOUSES** which may be brought within the jurisdiction of the Association as shown upon such maps to be recorded in the New Hanover Registry.

SECTION 3. - APPLICATION: These By-laws shall, in conjunction with the above referenced Articles of Incorporation govern the affairs, rights, privileges, duties and obligations of the Association, all owners, the Developer, all mortgagees, beneficiaries under Deeds of Trust, Lessees and occupants of all lots subject hereto, their employees and all others who may use or enjoy any of the property subjected hereto, and the acceptance of a Deed for or conveyance of, or the succeeding of title to, or the entering into a lease for, or the actual occupancy of, or use of a lot, the common areas, street, and amenities, or any of the improvements thereon by any of the above shall constitute an acceptance by the same of the provisions of these By-Laws, the Rules and Regulations enacted pursuant hereto and the provisions of the herein above referenced Articles, and an agreement to comply with and abide by the same.

SECTION 4. - PRINCIPAL OFFICE: The principal office of the Association and of the Board of Directors shall be located at 110 Hinton Avenue, Wilmington, North Carolina 28403, or as from time to time may be designated by the Board of Directors of the Association.

ARTICLE II
Membership

SECTION 1. - IDENTIFICATION: The Association shall have two classes of voting memberships:

Class A. Class A members shall be those Owners, with exception of the Developer until its Class B membership has converted to Class A membership, who own lots within **EMERALD COVE TOWNHOUSES, PHASE 2**. Each Class A member shall be entitled to one vote for each such lot so owned.

Class B. The Class B member shall be the Developer, and it shall be entitled to three (3) votes for each lot owned by it. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier: (a) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or (b) on December 31, 2006.

SECTION 2. - RECORDS: The Secretary of the Association shall maintain at the principal office of the Association a register of all the current owners of memberships in the Association and the mailing address of each owner and of all mortgagees or beneficiaries under Deeds of Trust of all such lots.

SECTION 3. - VOTING RIGHTS: If a membership is owned by one (1) person his right to vote shall be established by the record title to his lot. If a membership is owned by more than one (1) person, or is under lease, the person entitled to cast the vote for such membership shall be designated by a certificate signed by all of the record owners of such membership and filed with the Secretary of the Association. If a membership is owned by a corporation, the person entitled to cast the vote for that membership shall be designated by a certificate signed by the President or Vice President and attested by the Secretary or the Assistant Secretary of such corporation and filed with the Secretary of the Association. If a membership is owned by a partnership, whether general or limited, or a joint venture, the certificate designating the voting member shall be signed by all partners or joint venturers, as the case may be. Such certificates shall be valid until revoked or superseded by a subsequent certificate or until a change occurs in the ownership of the membership concerned. A certificate designating the person entitled to cast the vote of a membership may be revoked by any owner of such membership. If such a certificate is not on file, the vote of such membership shall not be considered in determining the requirements for a quorum nor for any other purpose under these By-Laws.

SECTION 4. - MORTGAGEES AND TRUSTEES UNDER DEEDS OF TRUST: In

the event that any such lot is conveyed by mortgage or by Deed of Trust, then the rights, duties, obligations, powers and privileges appurtenant to the membership appurtenant to such lot shall be exercised by the owner of the equity in the lot, and not by the mortgagee under any mortgage or the trustee or beneficiary under any Deed of Trust against such lot.

SECTION 5. - ANNUAL MEETINGS: Subject to the provisions of Article VI of these By-Laws, the annual meetings of the Association shall be held on the first Saturday in June of each year unless such date shall occur on a legal holiday, in which event, the meeting shall be held on the next succeeding business day. The purpose of the annual meeting shall be for the election of the Directors of the Association for the succeeding year and for the transaction of any and all business of the Association as may properly come before the meeting.

SECTION 6. - SPECIAL MEETINGS: It shall be the duty of the President to call a special meeting of the membership if so directed by resolution of the Board of Directors or upon a petition calling for a special meeting presented to the Secretary of the Association and signed by at least twenty-five percent (25%) of the owners of memberships in the Association. The notice of any special meeting shall state the time, place, and purpose of the meeting. No business shall be transacted at a special meeting except as stated in the notice.

SECTION 7. - NOTICE OF MEETINGS: The Secretary shall mail to each owner of a membership in the Association notice of each annual or special meeting of the membership at least ten (10) days but not more than sixty (60) days prior to such meeting stating the purpose thereof as well as the time and place where it is to be held. Said notice shall be mailed to the address which the owner of each membership has designated to the Secretary and maintained by the Secretary on his current register of owners. The mailing of a notice of a meeting in the manner provided in this section shall be considered service of notice.

SECTION 8. - ADJOURNMENT OF MEETINGS: If any meeting of the membership cannot be held because a quorum has not attended, a majority of the membership who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not more than forty-eight (48) hours from the time the original meeting was called.

SECTION 9. - QUORUM: A quorum at all membership meetings shall consist of persons representing and entitled to cast the vote appurtenant to at least fifty-one percent (51%) of the memberships in the Association. The acts approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the membership, except when approval by a greater number of members is required by the Declaration, these By-laws or

by law; but those present at any meeting, though less than a quorum, may adjourn said meeting to a future time.

SECTION 10. - PROXIES: The vote appurtenant to each membership may be cast by the person designated as entitled to cast such vote by proxy. The designation of any such proxy shall be made in writing to the Secretary, and shall be revocable at any time by written notice to the Secretary by the owner of the membership to which said vote is appurtenant. Such proxy shall be valid only for the particular meeting designated in the proxy and must be filed with the Secretary before the appointed time of the meeting or any adjournment of such meeting.

SECTION 11. - PLACE OF MEETING: Meetings of the Association's membership shall be held at the principal office of the Association or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

SECTION 12. - ORDER OF BUSINESS: The order of business at all meetings of the Association shall be as follows: (a) roll call; (b) proof of notice of meeting; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of Board of Directors; (f) reports of committees; (g) election of members of the Board of Directors, if necessary; (h) unfinished business; and (i) new business.

ARTICLE III Board of Directors

The property, affairs and business of the Association shall be managed by the Board of Directors; provided, however, that the provisions of this Article are subject to the provisions of Article VI of these By-Laws.

SECTION 1. - NUMBER, TERM OF OFFICE AND QUALIFICATIONS: The number constituting the Board of Directors shall be three (3). Each Director shall continue in office until the annual meeting of the membership held next after his election and until his successor shall have been elected and qualified or until his death or until he shall resign or shall have become disqualified or removed from office. Directors need not be residents of the State of North Carolina, nor year-round residents of **EMERALD COVE TOWNHOUSES**; provided, however, that each Director shall be an owner or spouse of an owner of one of the lots in one of the sections of **EMERALD COVE TOWNHOUSES** subject hereto, and in the case of partnership owners, shall be a member or employee of such partnership, and in the case of corporate owners, shall be an officer, shareholder, or employee of such corporation, and in the case of fiduciary owners, shall be the fiduciary, or an officer or employee of such fiduciary.

SECTION 2. - ELECTION OF DIRECTORS: Except for the first Board of Directors, which is appointed in the Articles of Incorporation, and subject to the provisions of Article VII hereof, the election of the Board of Directors shall be conducted in the following manner: (a) election of Directors shall be held at the annual meeting of the membership; (b) nominations for Directorships shall be made from the floor by the membership or by the Board of Directors; (c) the election shall be by written ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast, each person representing a membership entitled to vote being entitled to cast one (1) vote for each of as many nominees as there are Directorships to be filled. There shall be no cumulative voting.

SECTION 3. - REMOVAL OF DIRECTORS: Except for the first Board of Directors, which is appointed in the Articles of Incorporation, and subject to the provisions of Article VII hereof, any Director may be removed by concurrence of two-thirds (2/3) of the votes of the membership of the Association present at a special meeting of the membership called for the consideration of such removal. The vacancy in the Board of Directors so created shall be filled by a vote of the members of the Association at the same meeting.

SECTION 4. - ORGANIZATION MEETING: The organizational meeting of a newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary.

SECTION 5. - REGULAR MEETINGS: Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of the regular meeting of the Board of Directors shall be given to each member of the Board of Directors, by personal delivery, mail or telegraph, at least five (5) business days prior to the day named for such meetings.

SECTION 6. - SPECIAL MEETINGS: Special meetings of the Board of Directors may be called by the President of the Association on five (5) business days notice to each member of the Board of Directors, given by mail or telegraph, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notices on the written request of any member of the Board of Directors.

SECTION 7. - WAIVER OF NOTICE: Any member of the Board of Directors may at any time waive notice of any meeting of the Board of Directors, in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board shall constitute

a waiver of notice by him of the time and place thereof. If all of the members of the Board of Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

SECTION 8. - QUORUM: At all meetings of the Board of Directors a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at such a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At the next meeting, following such adjourned meeting, at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

SECTION 9. - COMPENSATION: No member of the Board of Directors shall receive any compensation from the Association for acting as such.

SECTION 10. - JOINDER IN MEETING BY APPROVAL OF MINUTES: The joinder of a Director in the action of a meeting by signing and concurring with the minutes of that meeting shall constitute the presence of such Director at such meeting for the purpose of determining a quorum.

SECTION 11. - PRESIDING OFFICER AT DIRECTORS' MEETINGS: The presiding officer of a Directors' meeting shall be the President of the Association. In the absence of the President, the Vice-President shall serve as presiding officer. In the absence of the presiding officer, the Directors present shall designate one (1) of their number to preside.

SECTION 12. - ORDER OF BUSINESS AT DIRECTORS' MEETINGS: The order of business at Directors' meetings shall be: (a) the calling of the roll; (b) the proof of due notice of the meeting; (c) reading and disposal of any unapproved minutes; (d) the reports of officers and committees; (e) the election of officers; (f) unfinished business; (g) new business; and (h) adjournment.

SECTION 13. - POWERS AND DUTIES: The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association except such powers and duties as by law or by these By-Laws may not be delegated to the Board of Directors by the membership of the Association. The powers and duties to be exercised and performed by the Board of Directors shall include, but shall not be limited to the following:

- a. the operation, care, upkeep and maintenance of the streets, driveways, parking areas, other access easements, stormwater drainage system (including

retention ponds), improvements, landscaping, wells, irrigation systems, equipment, and facilities, sidewalks, walkways, fencing, refuse facilities, street and parking lot lighting, other area lights and lighting equipment, and amenities located throughout the common areas, and the exterior surfaces of the townhouses as provided in the Declaration of Covenants, Conditions, and Restrictions of **EMERALD COVE TOWNHOUSES, PHASE 2**, as it may be amended from time to time, as recorded in the New Hanover County Registry;

- b. the determination of the amount of funds required for the operation, care, upkeep and maintenance of the streets, driveways, parking areas, other access easements, stormwater drainage system (including retention ponds), improvements, common areas, wells and irrigation systems, lighting equipment, landscaping, amenities located throughout the common areas, and the townhouses as herein provided, and the amounts required for the general operation of the Association;
- c. the levying and collection of the assessments from the membership owners, including foreclosure of the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the owner personally obligated to pay the same.
- d. the employment and dismissal of personnel as necessary for the efficient maintenance of the development and operation of the Association;
- e. the implementation, management, and maintenance of the stormwater maintenance plan as required by the regulatory authorities of New Hanover County and the State of North Carolina.
- f. the opening and maintenance of bank accounts on behalf of the Association and designating the signatures required therefor;
- g. the purchasing, leasing, or otherwise acquiring in the name of the Association or its designee, corporate or otherwise, on behalf of all members of the Association, lots offered for sale or lease;
- h. the purchasing of lots at foreclosure or other judicial sales in the name of the Association, or its designee, corporate or otherwise, on behalf of the membership;

- i. the selling, conveying, leasing, mortgaging of, voting the votes appurtenant to (other than for the election of members of the Board of Directors), or otherwise dealing with the lots acquired by, and subleasing lots by the Board of Directors on behalf of the membership of the Association;
- j. the organizing of the corporation to act as designee of the Board of Directors in acquiring title to or leasing lots by the Board of Directors on behalf of the membership of the Association;
- k. the purchasing and maintaining of insurance for the recreational facilities, stormwater drainage system, improvements, and amenities located in the common areas, pursuant to the provisions of these By-Laws;
- l. the making of repairs, additions and improvements to, or alterations of, the property, and repairs to and restoration of any property belonging to the Association, in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;
- m. the adoption of a seal for the Association;
- n. the enforcing of the obligations of the members of the Association, allocating income and expenses of the Association and doing anything and everything else necessary and proper for the sound management of the Association;
- o. the establishment of reasonable rules and regulations for the use of the common areas and amenities by the members, their guests, and their invitees, the levying of fines, penalties or expenses against the members of the Association for infringement of such rules and regulations, or for damage to such amenities and facilities, and allocating income and expenses of the Association;
- p. adjusting and settling claims under insurance policies obtained pursuant to the By-laws and executing and delivering releases on settlements of such claims on behalf of all lot owners, all holders of mortgages, Deeds of Trust or other liens on the lots and all owners of any other interest in the property.
- q. employing or engaging a manager, an independent contractor, attorney or accountant or such other

employees and agents as they deem necessary, and to prescribe their duties. Provided, however, any such person so hired shall serve only at the pleasure of the Board of Directors hiring him, and no Board of Directors shall have the authority to bind any succeeding Board of Directors to any such contract.

SECTION 14. - LIABILITY OF THE BOARD OF DIRECTORS: The members of the Board of Directors shall not be liable to the Association or any of its members for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The members of the Association shall indemnify and hold harmless each member of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Articles of Incorporation, or these By-Laws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. It is also intended that the liability of any member of the Association arising out of any contract made by the Board of Directors or out of the indemnity in favor of the members of the Board of Directors shall be limited to such proportions of the total liability thereunder as his interest in the Association bears to the interest of all members of the Association in the Association. Every agreement made by the Board of Directors on behalf of the Association shall provide that the members of the Board of Directors are acting only as agents for the Association and shall have no personal liability thereunder (except as members of the Association), and that each member of the Association's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the Association bears to the interest of all members in the Association.

SECTION 15. - FIDELITY BONDS: The Board of Directors shall obtain adequate fidelity bonds for all officers and employees of the Association. The premiums on such bonds shall constitute an expense of operating the affairs of the Association.

ARTICLE IV Officers

SECTION 1. - DESIGNATION: The principal officers of the Association shall be the President, the Vice President, the Secretary, and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer and Assistant Secretaries, and such other officers as in its judgment may be necessary. The President and Vice President must be members of the Board of Directors. All other officers need not be members of the Board of Directors.

SECTION 2 - ELECTION OF OFFICERS: Officers shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors and until their successors are elected.

SECTION 3. - REMOVAL OF OFFICERS: Upon the affirmative vote of a majority of the members of the Association or members of the Board of Directors, any officer may be removed, either with or without cause; and his successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose.

SECTION 4. - PRESIDENT: The President shall be the chief executive officer of the Association. He shall preside at all meetings of the membership and at all meetings of the Board of Directors. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the Business Corporation Laws of the State of North Carolina, including, but not limited to, the power to appoint from among the membership any committee which he deems appropriate to assist in the conduct of the affairs of the Association.

SECTION 5. - VICE PRESIDENT: The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President or Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

SECTION 6. - SECRETARY: The Secretary shall keep the minutes of all meetings of the membership and the Board of Directors; he shall have charge of all books, papers, accounts, and records of the Board of Directors as the Board of Directors may direct; and he shall, in general, perform all of the duties incident to the office of Secretary of a corporation organized under the Business Corporation laws of the State of North Carolina.

SECTION 7. - TREASURER: The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of accounts showing all receipts and disbursements, and for the preparation of all required financial statements. He shall be responsible for the deposit of all monies and other valuable effects in the name of the Board of Directors, in such depositories as may from time to time be designated by the Board of Directors, and he shall, in general, perform all of the duties incident to the office of Treasurer of a corporation organized under the Business Corporation Laws of the State of North Carolina.

SECTION 8. - COMPENSATION: No officer shall receive any compensation from the Association for acting as such. However, the Board of Directors may appoint a manager to handle the day to day affairs of the Association, and may establish a rate of compensation and salary for such manager.

SECTION 9. - EXECUTION OF INSTRUMENTS: All instruments, including, but not limited to, agreements, contracts, Deeds or Leases of the Association shall be executed in the name of the Association by the President, Vice President, or Assistant Vice-President and attested to by the Secretary or Assistant Secretary of the Association. All checks of the Association are to be executed by such person or persons as may be designated by the Board of Directors.

ARTICLE V

Operation of the Association

SECTION 1. - RULE MAKING: The Board of Directors shall promulgate and establish, pursuant to the provisions set out hereinbelow, for the overall safety of the members, their guests and invitees, reasonable rules and regulations governing the use, enjoyment, maintenance, repair of and additions or alterations to the streets, common areas, yards, stormwater management facilities, amenities, and the improvements thereon.

Subsection 1.1 - PROCEDURES: The Board of Directors, or a rule making committee specifically appointed by the President, shall formulate reasonable rules and regulations, including fines and penalties for infringement of such rules and regulations, or amendments or modifications thereto, to be proposed to the membership of the Association. Such proposals may be considered by the membership of the Association for adoption either at the annual meeting of the membership or at a special meeting of the membership called by the President specifically for the consideration of the adoption of such proposals. All such proposals shall be stated in writing and sent to the owners of the memberships in the Association in any notice of the special meeting called for the consideration thereof, or at least fifteen (15) days prior to the annual meeting of the membership of the Association at which they will be considered. At such meeting such proposed rules and regulations shall be considered new business of the Association. In order to be adopted as rules and regulations, amendments or modifications thereof, of the Association, such proposed rules and regulations must receive assent from two-thirds (2/3) of the votes of the membership of the Association present in person or by proxy at such meeting.

Subsection 1.2 - AMENDMENT, MODIFICATION, ADDITIONS OR REPEAL: In addition to the above, any member of the Association may propose a modification, amendment, addition to, or repeal of

any and all rules and regulations of the Association by stating the same in writing to the Board of Directors. If any such member shall have obtained on such proposal the signatures of at least twenty-five percent (25%) of the membership owners in the Association, then the Board of Directors shall submit such proposal to the Association at the next annual meeting of the Association called pursuant to the Board of Directors. Adoption of any such proposal shall be as stated in Subsection 1.1 hereinabove.

Subsection 1.3 - PROHIBITIONS: No rule or regulation, nor amendment, modification, addition to, or repeal of any or all of the rules and regulations of the Association shall discriminate against any lot owner or against any lot or group of lots unless the owners thereof so affected shall consent in writing; nor shall any of the above change any lot nor the common areas and amenities, nor shall any of the above increase any owner's share in the common expenses of the Association nor change the voting rights of any member unless the owner of the membership appurtenant to the lot so affected and all record owners of liens thereon shall join in the execution of such rule, regulation, amendment, modification, addition to or repeal of the same.

Subsection 1.4 - RECORDING: A copy of all rules and regulations or amendments, additions, modifications to or repeals of rules and regulations of the Association shall be certified by the President and Secretary of the Association as having been duly adopted by the Association and shall be effective from the date the same is recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

SECTION 2. - INSURANCE: The Board of Directors shall be required to obtain and maintain, to the extent deemed necessary by the Board, the following insurance:

Subsection 2.1 - FIRE INSURANCE: Fire Insurance with extended coverage, vandalism and malicious mischief endorsements, insuring all improvements upon the streets, common areas, stormwater facilities, and the amenities, and covering the interests of the Association, the Board of Directors, and all owners and their mortgagees or beneficiaries under Deeds of Trust, as their respective interests may appear, in an amount at least equal to the full replacement value of all structures insured, without deduction for depreciation; each of said policies shall contain a North Carolina standard mortgage clause in favor of each mortgagee or beneficiary under a Deed of Trust of a lot which shall provide that the loss thereunder shall be payable to such mortgagee or beneficiary under the Deed of Trust as its interest may appear; subject, however, to the loss payment provisions in favor of the Board of Directors hereinafter set forth.

Subsection 2.2 - PUBLIC LIABILITY INSURANCE: Public liability insurance in such limits as the Board of Directors may,

from time to time, determine covering each member of the Board of Directors, each officer of the Association, the Association and each owner of a lot; such public liability coverage shall also cover cross-liability claims of one insured against another.

Subsection 2.3 - OTHER INSURANCE: Such other insurance as the Board of Directors may determine is necessary for the protection of the development, the Association, its Directors, officers, and members.

Subsection 2.4 - PREMIUMS: The premiums for all such insurance shall be an annual expense of the Association, and as such, shall constitute a portion of the annual assessment to be levied against each member of the Association pursuant to the provisions of these By-Laws.

Subsection 2.5 - ADJUSTMENT FOR LOSS: All such insurance policies shall provide that adjustment of loss shall be made by the Board of Directors and that the net proceeds thereof shall be payable to the Board of Directors.

Subsection 2.6 - WAIVERS, CANCELLATIONS, MODIFICATIONS, RENEWALS: All policies of physical damage insurance shall contain waivers of subrogation and waivers of any defense based on coinsurance or other insurance or of invalidity arising from any acts of the insured and of prorata reduction of liability, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all insureds, including all mortgagees and beneficiaries under Deeds of Trust. Duplicate originals of all policies of physical damage insurance and all renewals thereof, together with proof of payment of premiums, shall be delivered to all mortgagees or beneficiaries under Deeds of Trust at least ten (10) days prior to expiration of the then current policies. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the common areas, the amenities, and all improvements thereon, without deductions for depreciation, for the purpose of determining the amount of fire insurance to be effected pursuant hereto.

Subsection 2.7 - OWNERS' INSURANCE: The owners of each of the lots subject hereto shall carry other insurance policies for their own benefit, covering their individual units.

Subsection 2.8 - INITIAL MINIMUM AMOUNTS: Until the first regular meeting of the Board of Directors following the first annual meeting of the membership of the Association, the Board of Directors shall obtain and maintain all such insurance in the following amounts:

a. Fire insurance in an amount of not less than \$100,000.00 for the streets, common areas, the amenities, and the improvements thereon (including the stormwater management facilities);

b. Public liability insurance in an amount of not less than \$1,000,000.00 covering all claims for personal injury arising out of one occurrence, and not less than \$100,000.00 covering all claims for property damage arising out of one occurrence.

Subsection 2.9 - REPAIR OR RECONSTRUCTION AFTER CASUALTY:
In the event of damage to or destruction of any or all of the common areas and amenities, stormwater management facilities, and/or improvements to the common areas as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of all damaged improvements. The Board of Directors shall disburse the proceeds of all insurance policies to contractors engaged in such repair and restoration in appropriate progress payments. Any cost of such repair and restoration in excess of the net insurance proceeds received by or payable to the Board of Directors shall constitute a common expense of the Association.

In the event of a repair or restoration of the improvements to the property and in the event that the net proceeds of insurance received by or payable to the Board of Directors shall exceed the cost of such repair or restoration, then such excess shall be held by the Association in its Capital Improvement Account.

Whenever in this Subsection the words "promptly repair" or "prompt repair" are used, it shall mean repairs are to begin not more than sixty (60) days from the date of receipt by the Board of Directors of proceeds of insurance on account of such damage or destruction, whether or not sufficient to pay the estimated costs of such work. Wherever the words "promptly resolve" are used hereinabove, it shall mean not more than sixty (60) days from the date the Board of Directors notifies the interested members of the Association that it holds proceeds of insurance on account of such damage or destruction and that such proceeds are not sufficient to pay the estimated costs of such work, as the case may be.

SECTION 3. - MAINTENANCE: The Board of Directors shall provide for the upkeep, care, preservation, protection and maintenance of the common areas, improvements (including fences constructed by developer), stormwater management facilities, wells and irrigation systems, and amenities located through the common areas, and the exterior surfaces of the townhouses as provided in the Declaration of Covenants, Conditions and Restrictions of **EMERALD COVE TOWNHOUSES, PHASE 2**, as it may be amended from time to

time, and as recorded in the New Hanover County Registry, as follows:

a. repair and repave, when necessary, all pavements existing throughout the common areas other than publicly dedicated right of ways;

b. upkeep, maintain and preserve all grasses, lawn, trees, shrubs, gardens and other vegetation maintained upon the common areas and limited common areas; and

c. repair, reconstruct, repaint, and maintain any and all other improvements, of whatever nature, made to the common areas and amenities.

d. maintain, inspect, and repair the stormwater management facilities, including but not limited to, swales, drains, pipes, and retention ponds, as required by the stormwater maintenance plan adopted by the Association as set forth in the Declaration of Covenants, Conditions, and Restrictions of **EMERALD COVE TOWNHOUSES, PHASE 2**, recorded in the New Hanover County Registry.

Subsection 3.1 - RIGHT OF ACCESS: For the purpose solely of performing all of the above described maintenance, inspections, repairs, etc., the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any and all owners concerned, to enter upon any lot, at any reasonable hour of any day.

Subsection 3.2 - OWNERS' REPAIRS: Any maintenance, inspection, repair, replacement, etc., to any of the streets, common areas, amenities, stormwater management facilities, or any of the improvements thereon, caused by the negligence, misuse, neglect or willful act of any owner, his or her family, tenants, guests or invitees shall be performed by the Association at the sole cost and expense of said owner, said cost and expense therefor to be added to said owner's annual assessment.

Subsection 3.3 - EXPENSE: All maintenance, inspection, repair, reconstruction, replacement, etc., as outlined hereinabove, is to be performed by or through the Board of Directors and the cost and expense thereof shall, except as provided in Subsection 3.2, be an annual expense of the Association.

SECTION 4 - FISCAL MANAGEMENT: The Board of Directors shall, from time to time, and at least annually, prepare a budget for the Association, determining the projected annual costs to the Association of performing all of the duties of and fulfilling all of the obligations of the Association. These costs shall include all of the costs incurred by the Association in the performance of those duties and obligations outlined in the Articles of

Incorporation, applicable to the development, and Article III, Section 13, and Article V of these By-Laws, as well as the costs necessary for the efficient management of the Association (including amounts for an operations reserve and a capital improvements reserve, if deemed necessary by the Board of Directors). The budget, so prepared, shall be submitted to the membership of the Association for approval at the annual meeting of the membership. The proposed budget must be approved by a vote of at least fifty-one percent (51%) of the votes of the membership of the Association represented in person or by proxy at such meeting.

Subsection 4.1 - ANNUAL ASSESSMENTS: After approval of the proposed budget of the Association, the Board of Directors shall assess each lot within the development subject hereto an equal amount of the projected annual costs to the Association as described hereinabove, subject to the provisions of Article VI (6) hereof, hereinafter set forth. The Board of Directors shall cause the Secretary of the Association to provide each member of the Association a statement of the annual assessment against his lot in writing, stating the date payment thereof is due at least thirty (30) days prior to the due date. All assessments shall be due and payable on such date and in such installments, if allowed, as the Board of Directors may determine.

Subsection 4.2 - NATURE AND ENFORCEMENT OF ASSESSMENTS: The nature and enforcement of the collection of assessments is set forth in the Declaration of Covenants, Conditions, and Restrictions of **EMERALD COVE TOWNHOUSES, PHASE 2**, which are recorded in the New Hanover County Registry.

Subsection 4.3 - SUBORDINATION: The lien for unpaid assessments provided for hereinabove shall be subordinate to the lien of any first mortgage or first Deed of Trust against any lot.

SECTION 5. - RECORDS AND AUDITS: The Board of Directors shall keep detailed records of the action of the Board of Directors, minutes of the meetings of the Board of Directors, minutes of the meeting of the membership of the Association and financial records and books of accounts of the Association, including a chronological listing of receipts and expenditures, as well as a separate account for each lot which, among other things, shall contain the amount of each annual assessment, and other assessments, against each lot, the date when due, the amount paid thereon, and the balance remaining unpaid. A written report summarizing all receipts and expenses of the Association shall be rendered by the Board of Directors to all members of the Association at least semi-annually. In addition, an annual report of the receipts and disbursements of the Association shall be rendered by the Board of Directors to all members of the Association who have requested the same, promptly but after the end of each fiscal year. Each member of the Association shall be permitted to examine all of the books and

accounts of the Association at reasonable times on business days, but not more than once a month.

SECTION 6. - CONDEMNATION: In the event of a taking in condemnation or by eminent domain of part or all of the property, the award made for such taking shall be payable to the Board of Directors, and the Board of Directors shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of the damage, as provided in these By-Laws.

**ARTICLE VI
Parliamentary Rules**

Robert's Rules of Order (latest edition) shall govern the conduct of all Association meetings, not in conflict with the Articles of Incorporation, the Amended Declaration of Restrictions, and these By-Laws.

**ARTICLE VII
Amendments**

SECTION 1. - AMENDMENT BY CLASS A MEMBERS: Except as hereinafter provided, these By-laws may be amended in the following manner: (a) any member of the Association may propose any amendment or modification to these By-Laws by submitting the same in writing to the President of the Association, (b) in order to qualify for consideration by the Association, any such amendment or modification must be signed by at least twenty-five percent (25%) of the owners of the memberships in the Association; (c) upon receipt of such proposed amendment or modification, the President of the Association shall immediately follow the procedures outlined hereinabove under Article II, Section 6, entitled SPECIAL MEETINGS; (d) any such proposed amendment or modification in order to become a part of these By-Laws must be approved by a majority of the votes of the membership of the Association present in person or by proxy at such meeting; provided, however, that no amendment or modification shall discriminate against any owner, any lot class or group of owners, or lots unless all of the owners so affected so consent; and further, no amendment or modification shall change any lot, the common areas, nor increase any owner's assessments, nor change the voting rights of any members unless the owner or owners of the memberships or lots so affected and all holders of liens against such owner's or owners' lots shall approve in writing such amendment or modification.

SECTION 2. - AMENDMENT BY CLASS B MEMBER: As long as there remains a Class B member, the Class B member shall have the authority to amend these By-laws as necessary, in his sole discretion. However, as long as there remains a Class B member, the

Department of Housing and Urban Development and/or the Veterans Administration has the authority to veto any amendments.

ARTICLE VII
Miscellaneous

SECTION 1. - NOTICES: All notices to the Board of Directors shall be sent by registered mail, return receipt requested, to the principal office of the Board of Directors. All notices to owners shall be sent by registered mail, return receipt requested, to such addresses as may have been designated by such owners in writing to the Secretary of the Association. All notices to mortgagees of or beneficiaries under Deeds of Trust against lots shall be sent by registered mail, return receipt requested, to their respective addresses designated by them in writing to the Secretary of the Association. All notices, if received, as proven by the return receipt, shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

SECTION 2. - WAIVER OF NOTICE: Whenever any notice which is required to be given to any member, Director, or officer of the Association by the provisions of the North Carolina Nonprofit Corporation Act, the provisions of the Articles of Incorporation, or these By-Laws, is waived in writing, signed by the person or entities entitled to such notice, whether before or after the time stated therein, such shall be equivalent to the giving of such notice.

SECTION 3. - INVALIDITY: The invalidation of any provision of these By-Laws by any court, agency, or legislature shall in no way affect the validity of any other provision of these By-Laws, and the same shall remain in full force and effect.

SECTION 4. - CAPTIONS: The captions herein used are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

SECTION 5. - GENDER: The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the neuter gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

SECTION 6. - WAIVER: No restriction, condition, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

SECTION 7. - FISCAL YEAR: The fiscal year of the Association shall be the calendar year.

SECTION 8. - SEAL: The seal of the Association shall be in such form as shall be approved from time to time by the Board of Directors of the Association.

IN WITNESS WHEREOF, the President of the Association and the Secretary thereof do hereby certify that this is a true copy of the duly enacted By-Laws of EMERALD COVE OWNERS ASSOCIATION, INC., this day of _____, 1997.

EMERALD COVE OWNERS ASSOCIATION, INC.

ATTEST:

By: _____
Nathan S. Sanders, President

Judia B. Sanders, Secretary
(CORPORATE SEAL)

STATE OF NORTH CAROLINA
COUNTY OF NEW HAMOVER

I, a Notary Public of said County and State, do hereby certify that Judia B. Sanders personally appeared before me this day and acknowledged that she is the Secretary of EMERALD COVE OWNERS ASSOCIATION, INC., a North Carolina Nonprofit Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary. Witness my hand and notarial stamp or seal, this the _____ day of January, 1997.

My Commission Expires: _____

Notary Public

EXPLANATION STATEMENT TO CORRECT OBVIOUS MINOR ERROR(S) MADE IN AN INSTRUMENT AS ORIGINALLY RECORDED

RE: BOOK 2129 PAGE 0814

RECORDED IN THE NEW HANOVER COUNTY REGISTRY

NAMES OF ALL PARTIES TO THE ORIGINAL INSTRUMENT:

Declarant: SANCO OF WILMINGTON SERVICE CORPORATION

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, the undersigned, hereby certify that the following corrections are made in the above named recorded instrument in accordance with the provisions of G.S. 47-36.1 ratified June 30, 1986.

DESCRIPTION OF CORRECTION(S): This Declaration is being re-recorded to add Exhibit B not recorded at the time of the original recording of the instrument.

This the 28th day of January, 1997.

Daniel D. Mann

Daniel D. Mann, Original Draftsman (SEAL)

This explanation statement, together with the attached instrument was duly re-recorded at 8:57 o'clock AM, this the 28th day of January, 1997, in the Book and Page shown on the first page hereof.

Mary Sue Oots
Register of Deeds

By: *Jacqueline Nelson*
Deputy/Assistant Register of Deeds

ADMITTED TO RECORD
28 DAY OF Jan 1997
AT 8:57 A. M
MARY SUE OOTS
REGISTER OF DEEDS
NEW HANOVER COUNTY