

INDEXTO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
EAST SHORES

	Page
I. Definitions	3-6
II. Property Subject To This Declaration and Within the Jurisdiction of the Association	6-7
III. Property Rights	7-8
IV. The Association	8-12
V. Covenant for Annual and Special Assessments	12-15
VI. Covenant for Boatslip and Special Boatslip Assessments	15-19
VII. Covenant for Promontory and Special Promontory Assessments	19-22
VIII. General Assessment Provisions	22-23
IX. Restrictions	23-31
X. Insurance	31-33
XI. Rights of Mortgagees	34-35
XII. Condemnation	35-37
XIII. Right of First Refusal	37-39
XIV. General Provisions	39-42

Exhibit "A" - Articles of Incorporation  
for East Shores Owners' Association,  
Inc.

Exhibit "B" - Bylaws for East Shores  
Owners' Association, Inc.

Exhibit "C" - Pier and Boatslips

FILED  
LOUISE ANDERSON  
Book 771, Page 364  
90 SEP 14 P1:49  
*Louise Anderson*  
REGISTER OF DEEDS  
BURKE CO., N.C.

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
EAST SHORES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 14th day of September, 1990 by CRESCENT RESOURCES, INC. (formerly Crescent Land & Timber Corp.), a South Carolina corporation, hereinafter referred to as "Declarant".

STATEMENT OF PURPOSE

Declarant is the owner of certain property located in Burke County, North Carolina, which is more particularly described on that certain map recorded in Map Book 9, Pages 189 and 190 of the Burke County Public Registry. Declarant desires to create on the property shown on said map an exclusive residential community of single-family residences to be named EAST SHORES (the "Development").

Declarant desires to insure the attractiveness of the Development, to prevent any future impairment thereof, to prevent nuisances and enhance the value and amenities of all properties within the Development, and to provide for the maintenance and upkeep of all common areas within the Development. As part of such common areas, Declarant desires to construct and provide for the maintenance and upkeep of lighted entrance monuments to be located at the entrance to the Development and at other intersections within the Development, which entrance monuments will be for the common use and benefit of all property owners in the Development. In addition, as part of such common areas, Declarant desires to construct a pier, containing boatslips, over the waters of Lake James and adjoining a portion of the Development, which pier and boatslips will be for the common use and benefit of property owners in the Development whose property does not adjoin the waters of Lake James or as otherwise provided in this Declaration, and to provide for the maintenance and upkeep of such pier, boatslips and the portion of the Development adjoining them. Further, Declarant desires to construct a private road and entrance monument serving a portion of the Development, which private road and entrance monument will be for the common use and benefit of property owners in the Development whose property adjoins the private road, and to provide for the maintenance and upkeep of such private road. Finally, Declarant desires to provide for the maintenance and upkeep of a system of publicly dedicated roads in the Development prior to their acceptance by governmental authorities for public maintenance, which system will be for the common use and benefit of all property owners in the Development.

Declarant desires to provide for a system whereby the owners of property in the Development will pay for the maintenance and upkeep of the common areas; and, in accordance with an established budget, for the maintenance and upkeep of the public roads prior to their acceptance for public maintenance; provided, however, that maintenance and upkeep of the pier, boatslips and adjoining land will be paid for only by property owners in the Development whose property does not adjoin the waters of Lake James or as otherwise provided in this Declaration, and maintenance and upkeep of the private road and the entrance monument for the private road shall be paid for only by property owners in the Development whose property adjoins the private road. Property owners in the Development whose property adjoins the waters of Lake James will pay only for the cost of maintenance and upkeep of the entrance monuments but such property owners will not be entitled to the use and enjoyment of the pier, boatslips and adjoining land. Property owners in the Development whose property adjoins a public road will not pay the cost for maintenance and upkeep of the private road, but such property owners shall not be entitled to the use and enjoyment of the private road.

To these ends, Declarant desires to subject the real property described herein to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the common areas, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created, in order to efficiently preserve, protect and enhance the values and amenities in the Development, to insure the residents' enjoyment of the specific rights, privileges and easements in the common areas, and to provide for the maintenance and upkeep of the common areas and amenities.

To that end the Declarant has or will cause to be incorporated under North Carolina law, pursuant to the Articles of Incorporation attached hereto as Exhibit "A" and incorporated herein by reference, EAST SHORES OWNERS' ASSOCIATION, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions, said corporation to be governed by the Bylaws attached hereto as Exhibit "B" and incorporated herein by reference.

NOW, THEREFORE, Declarant, by this Declaration, does declare that all of the property described herein is and shall be held, transferred, sold, conveyed and occupied subject to

the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property described herein and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Access Easement" shall mean and refer to the easement area for pedestrian ingress and egress and drainage reserved and granted by Declarant in Article IX, Section 9 of this Declaration over portions of Lots 11, 12, 13, 14 and 16 of the Subdivision, as shown and designated as "Access Easement" on the Map, as well as signs, gazebo, lighting and other improvements located thereon. The Access Easement shall be owned by the Association for the common use, benefit, and enjoyment of the Non-Waterfront Lot Owners, to provide access to and from the Pier and Boatslips.

Section 2. "Additional Property" shall mean and refer to additional real estate lying contiguous or adjacent to the Property which may be made subject to the terms of this Declaration in accordance with the provisions of Article II, Section 2 of this Declaration.

Section 3. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association attached as Exhibit "A" hereto and incorporated herein by reference.

Section 4. "Association" shall mean and refer to EAST SHORES OWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 5. "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 6. "Boatslips" shall mean and refer to those certain twenty-nine (29) boatslips located within the Pier which is constructed over the waters of Lake James, which Boatslips are designated as Boatslips A through CC on Exhibit "C" attached hereto and incorporated herein by reference, and which Boatslips are more particularly addressed in Article VI of this Declaration.

Section 7. "Bylaws" shall mean and refer to the Bylaws for the Association attached as Exhibit "B" hereto and incorporated herein by reference.

Section 8. "Common Area" or "Common Areas" shall mean and refer to the Pier, Boatslips, Common Area A, Parking Area, Private Roads, Roadway, Access Easement, Frontage Fence, Entrance Monuments and Promontory Entrance Monument, collectively, and any other property shown and designated on the Map as "Common Area". The Common Areas shall be owned by the Association (except for the Entrance Monuments and Frontage Fence, over which Property the Association shall own an easement) for the common use, benefit and enjoyment of the Owners; provided, however, that the Owners of Non-Waterfront Lots only shall be entitled to the use, benefit and enjoyment of the Pier, Boatslips, Parking Area and Access Easement, subject to individual Non-Waterfront Lot Owners' exclusive rights to use specified Boatslips; and provided further, that only the Owners of Promontory Lots shall be entitled to the use, benefit and enjoyment of the Roadway. Following acceptance of the Public Roads for maintenance by the State of North Carolina Department of Transportation, "Common Area" shall no longer include the Public Roads.

Section 9. "Common Area A" shall mean and refer to that 1.15 acre tract of land located in the Development and more particularly shown and described as "Common Area A" on the Map, as well as all improvements located thereon.

Section 10. "Declarant" shall mean and refer to Crescent Resources, Inc., its successors and assigns.

Section 11. "Development" shall mean and refer to East Shores, a single-family residential development proposed to be developed on the Property by Declarant.

Section 12. "Entrance Monuments" shall mean and refer to the easement areas reserved and granted by Declarant in Article VIII, Section 10 of this Declaration, over portions of Lots 1, 2, 3, 15, 17, 36 and 49 of the Subdivision, as shown and designated as "Sign Easement" on the Map, and the stone monuments, entrance signs located on such monuments, lighting, landscaping and other improvements to be constructed on such areas, to be used for entryways for the Subdivision and individual streets within the Subdivision, and for the purposes set forth in said Article VIII, Section 10.

Section 13. "Frontage Fence" shall mean and refer to the easement area reserved and granted over Lots 1 and Lot 49 by Declarant in Article VIII, Section 11 of this Declaration.

Section 14. "Lot" or "Lots" shall mean and refer to the separately numbered parcels depicted on the Map, which Lots do not include the Common Area.

Section 15. "Map" shall mean and refer to the map of East Shores Subdivision recorded in Map Book 9, Pages 189 and 190 in the Burke County, North Carolina, Public Registry.

Section 16. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 17. "Mortgage" shall mean any mortgage or deed of trust constituting a first lien on a Lot.

Section 18. "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied.

Section 19. "Non-Waterfront Lots" shall mean and refer to those Lots in the Development which do not adjoin the waters of Lake James, which are Lots 1 through 7, Lots 12 through 20, Lot 36, Lot 37, and Lots 42 through 49, as shown on the Map; together with Lots 10, 11 and 21, also as shown on the Map, which adjoin the waters of Lake James but upon which certain circumstances prevent the construction of individual piers or boatslips.

Section 20. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including the Declarant if it owns any Lot, but excluding those having such interest merely as security for the performance of an obligation.

Section 21. "Parking Area" shall mean and refer to the parking lot to be constructed upon and over Common Area A for the common use, benefit and enjoyment of the Non-Waterfront Lot Owners, to provide parking for such Owners, their families, guests and invitees in connection with their use of the Pier, Boatslips and Access Lot. The Parking Area is more particularly addressed in Article IV, Section 9, of this Declaration.

Section 22. "Pier" shall mean and refer to that certain pier or piers, containing the Boatslips, constructed over the waters of Lake James, which Pier adjoins the Development at the terminus of the Access Easement and which Pier is shown on Exhibit "C" attached hereto and incorporated herein by reference and is more particularly addressed in Article IV, Section 8 of this Declaration.

Section 23. "Promontory Lots" shall mean and refer to Lots are Lots 23 through 32, as shown on the Map.

Section 24. "Promontory Entrance Monument" shall mean and refer to the easement area reserved and granted by Declarant in Article VIII, Section 10 of this Declaration over a portion of Lots 23 and 31 of the Subdivision as shown and designated on the Map as "Promontory Easement", and the stone monument,

entrance sign, lighting, landscaping, irrigation, and other improvements to be constructed thereon, to be used for an entryway for the Promontory Lots, and for the purposes set forth in Article VIII, Section 10.

Section 25. "Property" shall mean and refer to the property shown on the Map, exclusive of the public rights-of-way shown on the Map, which Property includes the Lots and the Common Area.

Section 26. "Public Roads" shall mean and refer to all roads and cul-de-sacs in the Subdivision and shown on the Map except the Roadway, all to be dedicated for public use but privately maintained by the Association until they are accepted for public maintenance as set forth in this Declaration.

Section 27. "Roadway" shall mean and refer to the twenty-foot (20') wide private road in the Subdivision serving and adjoining the Promontory Lots, all as shown on the Map, which shall be privately maintained by the Association as set forth in this Declaration.

Section 28. "Subdivision" shall mean and refer to East Shores Subdivision, as the same is shown on the Map.

Section 29. "Waterfront Lots" shall mean and refer to those Lots in the Development which adjoin the waters of Lake James, which Waterfront Lots are Lots 8 and 9, Lots 22 through 35, and Lots 38 through 41, as shown on the Map.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 1. Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and which is and shall be within the jurisdiction of the Association, is located in Burke County, North Carolina and is the Property, as more particularly described and shown on the Map.

#### Section 2. Additions to the Property.

(a) Declarant may cause Additional Property to be made subject to the terms and scheme of this Declaration by filing a Supplemental Declaration in the Burke County Public Registry, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property; provided, however, that the covenants and restrictions established herein as applied to or imposed upon

the Additional Property may be altered or modified by the Supplemental Declaration as provided in Subparagraph (b) below.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Property, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for Amendment set forth in Article XIII, Section 3 of this Declaration.

### ARTICLE III

#### PROPERTY RIGHTS

Section 1. Ownership of Common Areas. Declarant shall convey the Common Areas, except the Public Roads, to the Association. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Areas except for the Public Roads but including the Roadway, shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

Section 2. Owners' Rights to Use and Enjoy Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas which shall be appurtenant to and shall pass with the title to his Lot, subject to the following:

(a) the right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the Owners and the safety of all Owners on the Common Areas;

(b) the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use the Common Areas (except the Public Roads) by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Declarant or the Association to grant utility, drainage and other easements across the Common Areas (except the Public Roads); and



(d) the Pier, Boatslips, Access Easement, Common Area A, and Roadway may be used only by those Owners specifically entitled thereto under this Declaration;

Section 3. Promontory Lot Owners' Easements for Ingress and Egress. To the extent that the Roadway has not been dedicated to the use and enjoyment of the public sufficient to provide access to a Promontory Lot, each Promontory Lot shall be conveyed with (and each Promontory Lot Owner is hereby conveyed) a perpetual, non-exclusive right to use the Roadway which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Promontory Lot. In the event of dedication and acceptance of the Roadway, these easement rights shall terminate with respect thereto.

Section 4. Easement for Ingress and Egress for Lot 32. Declarant specifically grants and reserves an exclusive easement twelve (12) feet in width, the centerline of which is the common boundary of Lots 30 and 31, for ingress and egress to and from the Roadway adjoining Lots 30 and 31 for the benefit of the Owner of Lot 32, all as shown on the Map. This easement shall be separately maintained by the Owner of Lot 32.

Section 5. Restricted Access. Vehicular access to Lots 23 and 31 shall be exclusively over the Roadway.

Section 6. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities located thereon to the members of his family, his guests, or his tenants.

#### ARTICLE IV

#### THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Classes of Lots and Voting Rights. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves,

determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. The Declarant shall be entitled to four (4) votes for each Class B Lot owned by it.

Section 3. Relinquishment of Control. Upon the expiration of five (5) full years after the registration of this Declaration, all of the Class B Lots shall automatically convert to Class A Lots, unless Declarant, in its sole discretion, elects to convert the Class B Lots to Class A Lots at an earlier time.

Section 4. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Development as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 5. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation to be established by the Board of Directors and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days' prior written notice to the manager without payment of a termination fee.

Section 6. Maintenance. The Entrance Monuments and Common Areas, being of benefit to all Lots; the Pier, Boatslips, Parking Area and Access Easement, being of benefit to all Non-Waterfront Lots; and the Roadway and Promontory Entrance Monument, being of benefit to all Promontory Lots; shall be maintained exclusively by the Association, which maintenance shall include landscaping, lighting, irrigation and other improvements. Maintenance for the Entrance Monuments and Promontory Entrance Monument shall include repair and maintenance of the stone monuments, signage, irrigation, planters and lighting located thereon and providing and paying for electrical cost of lighting and irrigation of the stone monuments, landscaping and signage located thereon.

Maintenance for the Pier and Boatslips shall include the maintenance, repair and reconstruction, where necessary, of the Pier and Boatslips, including all lighting and other fixtures, poles, wires, gazebo, railings and other facilities located thereon and providing and paying for the electrical cost of lighting thereof. Maintenance of the Parking Area shall include repair and maintenance of pavement, of the curb, irrigation and landscaping, as necessary, including payment of the electrical costs of lighting and irrigation. Maintenance for the Access Easement shall include repair and maintenance of any structures and walkways located thereon, as well as providing, maintaining and paying for the electrical cost of lighting thereof. Maintenance for the Roadway shall include maintenance and repair to the standards set forth in Article VII, Section 3 of this Declaration. The Association shall also maintain all utilities and all storm and drainage easements located within the Common Areas, together with common amenities located within the Common Areas not maintained by public entities or utilities.

The Association shall not be responsible for the maintenance of any Lots or the improvements within the boundaries thereof. The Owners shall be responsible for same.

Section 7. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements located on all Common Areas which the Association is obligated to maintain and in order to fund unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors. Such reserve fund shall be collected and maintained out of the Annual, Boatslip and Promontory Assessments, as hereinafter defined, as set forth in Article V, Section 2(g), Article VI, Section 2(j) and Article VII, Section 2 of this Declaration.

Section 8. Pier, Boatslips and Access Easement. The Association shall own, maintain, repair and, if destroyed, replace, as a common expense of the Association, the Pier and Boatslips constructed over Lake James and attached to and adjoining the Development at the Access Easement, as well as the Access Easement. Provided, however, that the maintenance, repair and replacement costs of the Pier, Boatslips and Access Easement shall be assessed against only the Owners of Non-Waterfront Lots, as set forth in Article VI of this Declaration.

In the initial deeds of the Non-Waterfront Lots, Declarant shall designate by letter designation one Boatslip as an appurtenance to each Non-Waterfront Lot conveyed. Such deed(s) shall provide that the grantee is granted the exclusive right to use such Boatslip. Once designated in such initial deed(s), the exclusive right to use a particular Boatslip shall not be separated from ownership, but rather shall run with the title

to the Non-Waterfront Lot to which the Boatslip is designated as an appurtenance. Any deed, deed of trust, mortgage, transfer or other conveyance of such Non-Waterfront Lot shall also transfer or convey the right to use the Boatslip appurtenant thereto, even if not expressly included therein.

In the event that the Pier contains more Boatslips than there are Non-Waterfront Lots in the Subdivision, then any Boatslip which is not designated as an appurtenance to a Non-Waterfront Lot shall remain the property of the Association. Such an undesignated Boatslip shall be owned by the Association for the common use and enjoyment only of the Owners of Non-Waterfront Lots, their families, guests and invitees, for the purpose of temporarily docking boats, and may not be leased by the Association to, or used by, any other party or the public. No boat or other recreational vehicle shall be permitted to remain overnight in any undesignated Boatslip.

The use of the Pier, Boatslips and Access Easement is and shall be subject to each of the following:

- (a) Rules and regulations for use promulgated by the Association;
- (b) All laws, statutes, ordinances and regulations of all federal, state and local governmental bodies having jurisdiction thereon; and
- (c) Rules and regulations for use by Duke Power Company, its successors and assigns.

Access for the Owners to and from the Pier and Boatslips shall be over and across the Access Easement.

The Board of Directors, pursuant to the Bylaws attached hereto as Exhibit "B", shall adopt rules and regulations governing the use of the Pier, Boatslips and Access Easement and the personal conduct thereon of the Members owning Non-Waterfront Lots and their families, guests and invitees. Should Members owning Non-Waterfront Lots desire to amend such rules and regulations, then a meeting of the Members owning Non-Waterfront Lots may be called and held, in accordance with Article III of the Bylaws, for the purpose of voting to amend such rules and regulations. If such a meeting is duly called and held, the Non-Waterfront Lot Owners may direct the Board of Directors to make such amendments to the rules and regulations governing the use of the Pier, Boatslips and Access Easement, including additions to and deletions of portions of such rules and regulations, as are approved by a vote of the Members owning Non-Waterfront Lots, in accordance with Article III of the Bylaws.

The Pier and Access Easement may only be used by Owners of Non-Waterfront Lots, their families, guests and invitees. Each Boat slip may only be used by the Owner(s) of the Non-Waterfront Lot to which such Boat slip is designated, their families, guests and invitees.

Section 9. Parking Area. Declarant shall erect and the Association shall maintain, repair and, if destroyed, replace, as a common expense of the Association, the paved Parking Area on and over a portion of Common Area A. The Parking Area shall be erected and maintained in order to provide parking for the Owners of Non-Waterfront Lots, and may only be used by the Owners of Non-Waterfront Lots, their families, guests and invitees, in connection with their use of the Pier, Boat slips, and Access Easement. Accordingly, the maintenance, repair and replacement costs of the Parking Area shall be assessed against only the Owners of Non-Waterfront Lots, as set forth in Article VI of this Declaration.

Section 10. Maintenance of Public Roads. Commencing on January 1, 1991, the Public Roads shall be maintained by the Association in accordance with the standards set forth in Article V, Section 2 of this Declaration until the Public Roads are accepted for public maintenance by the State of North Carolina Department of Transportation. Prior to January 1, 1991, the Public Roads shall be maintained by Declarant. Notwithstanding the foregoing, Declarant shall have the right, but not the obligation, to maintain the Public Roads at its cost and expense prior to acceptance of the Public Roads for public maintenance by the State of North Carolina Department of Transportation. Upon such acceptance, the obligation of the Association to maintain the Public Roads shall terminate.

#### ARTICLE V

##### COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Annual and Special Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association Annual Assessments and Special Assessments, as hereinafter defined, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent

assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Annual Assessments. The assessments to be levied annually by the Association against each Lot ("Annual Assessments") shall be used as follows:

- (a) to repair and maintain the Entrance Monuments and Frontage Fence, including the erection and maintenance of signage, planters, irrigation, lighting and landscaping on the Entrance Monuments, and to provide and pay for electrical cost of irrigation and lighting of the signage located thereon;
- (b) to keep the Entrance Monuments and Frontage Fence clean and free from debris, to maintain same in a clean and orderly condition and to maintain the landscaping thereon in accordance with the highest standards for private parks, including any necessary removal and replacement of landscaping and repair of irrigation systems;
- (c) to keep all Common Areas other than the Roadway, Pier, Boatslips, Parking Area and Access Easement clean and free from debris, to maintain the same in a clean and orderly condition and to maintain the landscaping thereon in accordance with the highest standards for private parks, including any necessary removal or replacement of landscaping;
- (d) to maintain the Public Roads to ensure the quality of road facilities which would be required by the State of North Carolina Department of Transportation in order to accept such Public Roads for maintenance;
- (e) to pay all ad valorem taxes levied against the Common Areas and any other property owned by the Association (other than the Roadway, Pier, Boatslips, Parking Area and Access Easement and property owned in connection therewith);
- (f) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws, except for such insurance carried specifically in connection with the Roadway, Pier, Boatslips, Parking Area and Access Easement;
- (g) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws, except for such fees incurred specifically in connection with the Roadway, Pier, Boatslips, Parking Area and Access Easement;

- (h) to maintain a contingency reserve equal to 10% of the sum of the amounts described in subsections (a) through (f) above for the purposes set forth in Article IV, Section 7 hereof.

Section 3. Payment of Annual Assessments; Due Dates. The Annual Assessments provided for herein shall commence as to each Lot on January 1, 1991. The Annual Assessments for the calendar year 1991 shall be Three Hundred Thirty and 00/100 Dollars (\$330.00) per Lot, one-half ( $\frac{1}{2}$ ) of which amount shall be due and payable no later than January 31, 1991 and the remaining one-half ( $\frac{1}{2}$ ) of which amount shall be due and payable no later than July 31, 1991. The Annual Assessments for each and every year thereafter shall be in an amount as set by the Board of Directors, in accordance with Section 4 of this Article V, and shall be due and payable in two (2) semi-annual installments of one-half ( $\frac{1}{2}$ ) each, such installments being due and payable no later than January 31 and July 31, respectively, of each such year. The Board of Directors shall fix the amount of the Annual Assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment, as well as the amount of the first installment due, to each Owner on or before January 1 of such year. In addition, the Association shall send written notice that the second Annual Assessment installment is due and the amount of such installment to each Owner on or before July 1 of each year. Failure of the Association to send the notice described in this Section 3 shall not relieve the Owners of their liability for Annual Assessments.

Section 4. Maximum Annual Assessment.

(a) For calendar years 1991 and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members, may increase the Annual Assessments each year by a maximum amount equal to the previous year's Annual Assessments times the greater of (1) ten percent (10%), or (2) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year,

by a vote of the Board of Directors, without a vote of the Members.

(b) From and after January 1, 1991, the Annual Assessments may be increased without limitation if such increase is approved by a vote of no less than two-thirds (2/3) of all votes entitled to be cast by Members, taken at a duly held meeting of the Members in accordance with the Bylaws.

(c) The Board of Directors may fix the Annual Assessments at an amount not in excess of the maximum set forth in Subparagraph (a) above (the "Maximum Annual Assessment"). If the Board of Directors shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental Annual Assessment ("Supplemental Annual Assessment"). In no event shall the sum of the Annual and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year.

Section 5. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Entrance Monuments, including fixtures and personal property related thereto. Provided that any such assessment must be approved by a vote of no less than two-thirds (2/3) of all votes entitled to be cast by Members, taken at a duly held meeting of the Members in accordance with the Bylaws.

Section 6. Assessment Rate. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots.

## ARTICLE VI

### COVENANT FOR BOATSLIP AND SPECIAL BOATSLIP ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Boatslip and Special Boatslip Assessments. The Declarant, for each Non-Waterfront Lot owned within the Property, hereby covenants, and each Owner of any Non-Waterfront Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, in addition to the Annual and Special Assessments provided for herein, Boatslip Assessments and Special Boatslip Assessments, as hereinafter defined, for maintenance and repair costs of the Pier, Boatslips, Parking Area and Access Lot, established and collected as hereinafter provided. Any such assessment or charge, together with



interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Non-Waterfront Lot against which each such assessment or charge is made and upon the right to use the Pier, Access Easement and the Boatslip appurtenant to such Non-Waterfront Lot. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Non-Waterfront Lot effective at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Boatslip Assessments. The assessments to be levied annually by the Association against each Non-Waterfront Lot ("Boatslip Assessments") shall be used as follows:

- (a) to maintain, repair and reconstruct, when necessary, the Pier and Boatslips, including all lighting and other fixtures, poles, wires, railings and other facilities located thereon;
- (b) to maintain, repair and reconstruct, when necessary, the Parking Area;
- (c) to maintain any and all drainage pipes, inlets, basins, ditches, swales and other facilities installed upon the Pier, Boatslips, Parking Area and Access Easement;
- (d) to maintain, repair and reconstruct, when necessary, any and all structures, lighting fixtures, poles, wires, railings and other facilities, including any gazebo, located upon the Access Easement;
- (e) to provide and pay for lighting of the Pier, Boatslips, Parking Area and the Access Easement, to the extent necessary for the safety and enjoyment of the users thereof;
- (f) to keep the Pier, Boatslips, Parking Area and Access Easement clean and free from debris, to maintain same in a clean and orderly condition and to maintain the landscaping on the Access Easement in accordance with the highest standards for private parks, including any necessary removal and replacement of landscaping;
- (g) to pay all ad valorem taxes levied against the Pier, Boatslips, Parking Area and Access Easement and any other property owned by the Association in connection therewith;

- (h) to pay all lease payments, if applicable, to Duke Power Company for the lease of the land on which the Pier and Boatslips are located;
- (i) to pay the premiums on all insurance carried by the Association in connection with the Pier, Boatslips, Parking Area and Access Easement pursuant hereto or pursuant to the Bylaws;
- (j) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws in connection with the Pier, Boatslips, Parking Area and Access Easement; and
- (k) to maintain a contingency reserve equal to 10% of the sum of the amounts described in subsections (a) through (j) above for the purposes set forth in Article IV, Section 7 hereof.

Section 3. Payment of Boatslip Assessments: Due Dates.

The Boatslip Assessments provided for herein shall commence as to each Non-Waterfront Lot on January 1, 1991. The Boatslip Assessments for the calendar year 1991 shall be Three Hundred Seventy and 00/100 Dollars (\$370.00) per Non-Waterfront Lot, one-half (½) of which amount shall be due and payable no later than January 31, 1991 and the remaining one-half (½) of which amount shall be due and payable no later than July 31, 1991. The Boatslip Assessments for each and every year thereafter shall be in an amount as set by the Board of Directors, in accordance with Section 4 of this Article VI, and shall be due and payable in two (2) semi-annual installments of one-half (½) each, such installments being due and payable no later than January 31 and July 31, respectively, of each such year. The Board of Directors shall fix the amount of the Boatslip Assessment as to each Non-Waterfront Lot for any calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Association shall send written notice of the amount of the Boatslip Assessment, as well as the amount of the first installment due, to each Non-Waterfront Lot Owner on or before January 1 of such year. In addition, the Association shall send written notice that the second Boatslip Assessment installment is due and the amount of such installment to each Non-Waterfront Lot Owner on or before July 1 of each year. Failure of the Association to send the notice described in this Section 3 shall not relieve the Owners of their liability for Boatslip Assessments.

Section 4. Maximum Boatslip Assessment.

(a) For calendar years 1991 and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members, may increase the Boatslip Assessments

each year by a maximum amount equal to the previous year's Boatslip Assessments times the greater of (1) ten percent (10%), or (2) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84=100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. If the Boatslip Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Boatslip Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members

(b) From and after January 1, 1991, the Boatslip Assessments may be increased without limitation if such increase is approved by a vote of no less than two-thirds (2/3) of all votes entitled to be cast by Members owning Non-Waterfront Lots, taken at a duly held meeting of such Members in accordance with the Bylaws.

(c) The Board of Directors may fix the Boatslip Assessments at an amount not in excess of the maximum set forth in Subparagraph (a) above (the "Maximum Boatslip Assessment"). If the Board of Directors shall levy less than the Maximum Boatslip Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association as to the Pier, Boatslips and Access Lot cannot be funded by such lesser assessment, the Board may, by a vote in accordance with the Bylaws, levy a supplemental Boatslip Assessment ("Supplemental Boatslip Assessment"). In no event shall the sum of the Boatslip and Supplemental Boatslip Assessments for any year exceed the applicable Maximum Boatslip Assessment for such year.

Section 5. Special Assessments for Boatslip Improvements. In addition to the Boatslip Assessments authorized above, the Association may levy, in any assessment year, a special Boatslip Assessment ("Special Boatslip Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Pier, Boatslips, Parking Area, and any capital improvement located on the Access Lot, including lighting and other fixtures, poles, wires, gazebo, railings and other facilities located thereon and personal property related thereto. Provided that any such assessment must be approved by a vote of no less than two-thirds (2/3) of all votes entitled to be cast by Members owning Non-Waterfront Lots, taken at a

duly held meeting of such Members in accordance with the Bylaws, and further providing that any such Special Boatslip Assessment may be levied only against the Owners of Non-Waterfront Lots.

Section 6. Assessment Rate. Both Boatslip and Special Boatslip Assessments must be fixed at a uniform rate for all Non-Waterfront Lots.

## ARTICLE VII

### COVENANT FOR PROMONTORY AND SPECIAL PROMONTORY ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Promontory and Special Promontory Assessments. The Declarant, for each Promontory Lot owned within the property, hereby covenants, and each owner of any Promontory Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, in addition to the Annual and Special Assessments provided for herein, Promontory Assessments and Special Promontory Assessments, as hereinafter defined, for maintenance and repair costs of the Roadway and the Promontory Entrance Monument, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Promontory Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Promontory Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Promontory Assessments. The assessments to be levied annually by the Association against each Promontory Lot ("Promontory Assessments") shall be used as follows:

- (a) to maintain repair and reconstruct, when necessary, the Roadway to the standard of maintenance (if one is ascertainable) which would be required by the State of North Carolina before it would accept such Roadway for maintenance; provided, however, such standards shall not affect the width of the Roadway;
- (b) to maintain any and all drainage pipes, inlets, basins, ditches, swales and other facilities installed within the Roadway;

- (c) to keep the Roadway clean and free from debris, to maintain same in a clean and orderly condition and to maintain the landscaping on the Roadway with the highest standards for private parks, including any necessary removal and replacement of landscaping;
- (d) to repair and maintain the Promontory Entrance Monument, including the erection and maintenance of signage, planters, irrigation, lighting and landscaping thereon in accordance with the highest standards for private parks, including any necessary removal and replacement of landscaping and repair of irrigations systems;
- (e) to keep the Promontory Entrance Monument clean and free from debris, to maintain same in a clean and orderly condition and to maintain the landscaping thereon in accordance with the highest standards for private parts, including any necessary removal and replacement of landscaping and repair of irrigation systems;
- (f) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws in connection with the Roadway; and
- (g) to maintain a contingency reserve equal to 10% of the sum of the amounts described in subsections (a) through (f) above for the purposes set forth in Article IV, Section 7 hereof.

Section 3. Payment of Promontory Assessments: Due Dates.

The Promontory Assessments provided for herein shall commence as to each Promontory Lot on January 1, 1991. The Promontory Assessments for the calendar year 1991 shall be One Hundred Eighty-Five Dollars (\$185.00) per Promontory Lot, one-half ( $\frac{1}{2}$ ) of which amount shall be due and payable no later than January 31, 1991 and the remaining one-half ( $\frac{1}{2}$ ) of which amount shall be due and payable no later than July 31, 1991. The Promontory Assessments for each and every year thereafter shall be in an amount as set by the Board of Directors, in accordance with Section 4 of this Article VII, and shall be due and payable in two (2) semi-annual installments of one-half ( $\frac{1}{2}$ ) each, such installments being due and payable no later than January 31 and July 31, respectively, of each such year. The Board of Directors shall fix the amount of the Promontory Assessment as to each Promontory Lot for any calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Association shall send written notice of the amount of the Promontory Assessment, as well as the amount of the first installment due, to each Promontory Lot Owner on or before

January 1 of such year. In addition, the Association shall send written notice that the second Promontory Assessment installment is due and the amount of such installment to each Promontory Lot Owner on or before July 1 of each year. Failure of the Association to send the notice described in this Section 3 shall not relieve the Owners of their liability for Promontory Assessments.

Section 4. Maximum Promontory Assessment.

(a) For calendar years 1991 and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members, may increase the Promontory Assessments each year by a maximum amount equal to the previous year's Promontory Assessments times the greater of (1) ten percent (10%), or (2) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84=100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. If the Promontory Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Promontory Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members.

(b) From and after January 1, 1991, the Promontory Assessments may be increased without limitation if such increase is approved by a vote of no less than two-thirds (2/3) of all votes entitled to be cast by Members owning Promontory Lots, taken at a duly held meeting of such Members in accordance with the Bylaws.

(c) The Board of Directors may fix the Promontory Assessments at an amount not in excess of the maximum set forth in Subparagraph (a) above (the "Maximum Promontory Assessment"). If the Board of Directors shall levy less than the Maximum Promontory Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association as to the Roadway cannot be funded by such lesser assessment, the Board may, by a vote in accordance with the Bylaws, levy a supplemental Promontory Assessment ("Supplemental Promontory Assessment"). In no event shall the sum of the Promontory and Supplemental Promontory Assessments for any year exceed the applicable Maximum Promontory Assessment for such year.

Section 5. Special Assessments for Promontory Improvements. In addition to the Promontory Assessments authorized above, the Association may levy, in any assessment year, a special Promontory Assessment ("Special Promontory Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Roadway or Promontory Entrance Monument any capital improvement located on the Roadway or Promontory Entrance Monument, including lighting, irrigation and other fixtures, poles, wires, and other facilities located thereon. Provided that any such assessment must be approved by a vote of no less than two-thirds (2/3) of all votes entitled to be cast by Members owning Promontory Lots, taken at a duly held meeting of such Members in accordance with the Bylaws, and further providing that any such Special Promontory Assessment may be levied only against the Owners of Promontory Lots.

Section 6. Promontory Assessment Rate. Both Promontory and Special Promontory Assessments must be fixed at a uniform rate for all Promontory Lots.

#### ARTICLE VIII

##### GENERAL ASSESSMENT PROVISIONS

Section 1. Certificate Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 2. Special Assessments Regarding Damage to Common Property. In addition to the powers for assessments set forth herein, the Board of Directors shall have the power to levy a special assessment applicable to any particular Lot Owner responsible for damage to Common Area(s) through intentional conduct or any act or omission of himself, members of his family, his agents, guests, employees or invitees.

Section 3. Effect of Nonpayment of Assessments: Remedies of the Association. Any Annual, Boatslip or Promontory Assessment installment not paid by its due date as set forth in Article V, Section 3, Article VI, Section 3 or Article VII, Section 3 hereof, or any other assessment not paid by its due date, shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors to defray the costs arising because of late payment.

The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot and the right to use a Boat slip, if applicable, and interest, late payment charges, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Areas and/or his Boat slip, if applicable, or by abandoning his Lot.

Section 4. Subordination of the Lien to Mortgages. The lien of the assessments provided for in Articles V, VI and VII of this Declaration shall be subordinate to the lien of any first Mortgage on a Lot or any mortgage or deed of trust to the Declarant. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, however, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may in its sole discretion determine such unpaid assessments to be an Annual, Special, Boat slip, Special Boat slip, Promontory or Special Promontory Assessment, as applicable, collectable pro rata from all Owners (or from all Non-Waterfront Lot Owners if a Boat slip or Special Boat slip Assessment, or from all Promontory Lot Owners if a Promontory or Special Promontory Assessment), including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners (or all Non-Waterfront Lot Owners if a Boat slip or Special Boat slip Assessment, or from all Promontory Lot Owners if a Promontory or Special Promontory Assessment) notwithstanding the fact that such pro rata portions may cause the Annual Assessment, Boat slip Assessment or Promontory Assessment to be in excess of the Maximum Annual Assessment, Maximum Boat slip Assessment or Maximum Promontory Assessment permitted hereunder. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

#### ARTICLE IX

#### RESTRICTIONS

Section 1. Land Use and Building Type. All Lots in the Subdivision shall be known and described as residential lots and shall be used only for private residential and recreational purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single family residential dwelling, unless otherwise provided herein, and only one single-family residential dwelling not exceeding 2½ stories in height above ground shall be erected or permitted



to remain upon any Lot. No mobile home, modular home or shell home may be erected or permitted to remain on any Lot. A private garage, outbuildings and fixed piers and floating boat dock facilities incidental to the residential use of the Lot are expressly permitted upon the condition that they are not rented, leased nor otherwise used for remuneration, subject to the other covenants and restrictions contained herein. No garage or outbuildings shall at any time be used as a residence and no enclosed boat houses or two story piers are permitted. Piers, docks and boathouses shall be subject to approval by Duke Power Company and/or any governmental entity having jurisdiction at the time such improvements are made.

Section 2. Dwelling Size. The square footage requirements hereinafter set forth are enclosed heated floor area and are exclusive of the area in unfinished basements, unheated porches of any type, attached or detached garages, carports, and unheated storage areas, decks or patios.

(a) For Waterfront Lots: Any one story dwelling erected upon any Waterfront Lot shall contain not less than 1600 square feet; any 1½ story or bi-level or tri-level dwelling shall contain not less than 1800 square feet and the first floor shall contain not less than 1200 square feet in 1½ story dwellings, 1200 square feet on the main floor of bi-level dwellings, and 1200 square feet in the upper two floors of tri-level dwellings; any 2 or 2½ story dwelling shall contain not less than 1800 square feet and the first floor shall contain not less than 1000 square feet.

(b) For Non-Waterfront Lots: Any one story dwelling erected upon any Non-Waterfront Lot shall contain not less than 1400 square feet; any 1½ story or bi-level or tri-level dwelling shall contain not less than 1600 square feet and the first floor shall contain not less than 1000 square feet in 1½ story dwellings, 1000 square feet on the main floor of bi-level dwellings, and 1000 square feet in the upper two floors of tri-level dwellings; any 2 or 2½ story dwelling shall contain not less than 1600 square feet and the first floor shall contain not less than 900 square feet.

Rear walk-out dwellings shall contain not less than 1,800 square feet, and the main level shall not contain less than 1,000 square feet, rear foundation walls to be fully exposed and finished as specified in Section 3 below.

Section 3. Building Construction and Quality. All buildings and outbuildings erected upon any Lot shall be constructed of new material of good grade, quality and appearance and shall be constructed in a proper, workmanlike manner. No single-family residential dwelling costing less

than \$70,000.00 (in terms of 1990 dollar value) shall be permitted on any Lot. No building shall be erected unless it is completely underpinned with a solid brick, brick or stone-covered block, or stucco foundation. The exterior surface of any building shall not be of asbestos shingle siding, imitation brick or stoneroll siding, or exposed concrete or cement blocks. The exterior surface of any garage, outbuilding or appurtenant structure or building erected on or located on any Lot shall be aesthetically compatible with, and of material and construction comparable in cost and design to, the exterior surface of the dwelling located on said Lot. All buildings shall have roofs (except for dormers) of not less than 6 in 12 pitch and not less than 12 inch overhang, covered with slate, cedar shakes, tile or fiberglass shingles. Tin or rolled roofing material is not permitted. The exterior of all houses and other structures must be completed within one (1) year after the commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or natural calamities.

Section 4. Temporary Structures; Structure Materials. No residence or building of a temporary nature shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic or canvas structure shall be erected on any Lot or attached to any residence.

Section 5. Building Setback Lines. No building on any Lot (including any stoops, porches, or decks) shall be erected or permitted to remain within the front (street right-of-way) or side abutting right-of-way (for a corner Lot) building setback lines as noted on the Map, within twelve (12) feet of any side lot line of any Lot, or within thirty (30) feet of any rear lot line of any Non-Waterfront Lot.. Notwithstanding any rear setback restriction noted on the Map, no building, including stoops, porches or decks, shall be erected or permitted to remain nearer than fifty (50) feet to the rear (waterside) lot line of any Waterfront Lot. Boathouses, piers and dock facilities are exempt from the rear setback restrictions provided they comply with the provisions set forth in Section 1 of this Article. In the event any zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall conform to said requirements.

Section 6. Minor Setback Violations. In the event of the unintentional violation of any of the building setback covenants set forth above, in the amount of ten percent (10%) or less of the setback covenant in question, Declarant reserves the right, but is not obligated, to waive in writing such violation of the setback covenants upon agreement of the Owner

of the Lot upon which the violation occurs, provided that such change is not in violation of any zoning or subdivision ordinance or other applicable law or regulation.

Section 7. Combination or Subdivision of Lots. Should the Owner of a numbered parcel on the Map combine with portions of or all of another numbered parcel, the aggregate shall be considered as one Lot for the purpose of these covenants. No Lot shall be subdivided by sale or otherwise so as to reduce the Lot area shown on the Map. Notwithstanding the foregoing, Declarant reserves the right to change the boundaries or dimensions of any Lots still owned by Declarant as may be needed to meet septic system requirements or for any other reason.

Section 8. Utility Easements. Easements for the installation and maintenance of utilities (electricity, septic system, sewer, water, gas, telephone, cable t.v., etc.) and drainage facilities are reserved over the front and rear ten (10) feet of each Lot except the Well Lot. A drainage and utility easement five (5) feet in width is reserved along each side lot line of each Lot except the Well Lot. Additional drainage easements and utility easements are reserved as more particularly shown and delineated on the Map and in other recorded easement documents. Within said easements so reserved, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may interfere with drainage and the flow of water within the easement areas. The Owner of each Lot shall maintain that portion of said Lot lying within the easement areas as defined herein and shall maintain such improvements as may be located thereon except those improvements installed and maintained by a public authority or utility company. Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for street drainage, utility and entry signage installation purposes by the recording of appropriate instruments, and such shall not be construed to invalidate any of these covenants.

Section 9. Access Easement. Declarant reserves unto itself and its successors and assigns and grants to the Association for the common use, benefit and enjoyment of Non-Waterfront Lot Owners, a non-exclusive easement for pedestrian ingress and egress over the Access Easement. The Access Easement shall be used to provide access to the Pier and Boatslips for Non-Waterfront Lot Owners and for the construction and maintenance of signs, irrigation, landscaping, lighting and other improvements incidental thereto. Declarant also reserves over the Access Easement an easement for drainage of stormwater runoff from Lots within the Subdivision.

Section 10. Entrance Monument Easements. Non-exclusive perpetual easements for the purposes of landscaping and maintaining entryways and erecting and maintaining entrance monuments for the Subdivision and individual street entrances are hereby reserved by Declarant for itself, its successors in interest and assigns, and granted to the Association, over the following portions of Lots in the Subdivision, the locations of which easements are more particularly shown on the Map (collectively, the "Easement Tracts"):

- (a) the southeasterly corner of Lot 1;
- (b) the northeasterly corner of Lot 49;
- (c) the southwesterly corner of Lot 2;
- (d) the southeasterly corner of Lot 3;
- (e) the easterly corner of Lot 15;
- (f) the southwesterly corner of Lot 17; and
- (g) the southeasterly corner of Lot 36.

Declarant also reserves an identical easement for the same purposes over the southerly corner of Lot 23 and the easterly corner of Lot 31 (the "Promontory Easement Tracts").

Declarant and/or the Association shall have the right to landscape and maintain the Easement Tracts and the Promontory Easement Tracts as entryways to the Subdivision or the individual streets. Further, Declarant or the Association shall have the right to erect and maintain stone monuments with an entrance sign thereon (collectively, the "Entrance Signs") on the Easement Tracts and the Promontory Easement Tracts bearing the names of the Subdivision or the individual streets and Declarant, which Entrance Signs shall be built to the applicable governmental standards for signs, and to erect and maintain lighting for the Entrance Signs, planters and other improvements typically used for an entryway (the Easement Tracts, the Entrance Signs, lighting, landscaping and other improvements to be constructed on the Easement Tract are herein collectively referred to as the "Entrance Monuments," and the Promontory Easement Tracts, the Entrance Sign, lighting, landscaping and other improvements to be constructed on the Promontory Easement Tracts are collectively referred to as the "Promontory Entrance Monument"). Declarant and/or the Association shall have the right to go upon the Easement Tracts and the Promontory Easement Tracts in order to erect, repair and maintain the Entrance Monuments, including the landscaping and irrigation thereof and the erection and maintenance of the Entrance Signs, lighting and planters thereon.

Section 11. Fences and Walls; Frontage Fence Easement. No wooden fence, or brick or stone wall may be erected nearer the front lot line of a Lot than the front face of the dwelling located on such Lot. In the case of a corner Lot, no sideyard fence shall be located nearer than the side of the house facing the side street line. No wooden fences, or brick or stone walls greater than six (6) feet in height are permitted. Chain link or other metal fencing is not permitted, except that 2" x 4" metal mesh may be used with split rail fencing to contain animals or children within rear or side yards. Perimeter fencing shall not have more than fifty percent (50%) of any of its surface closed as viewed from a point on a line of sight perpendicular to the line of the fence. A wall constructed of brick or stone and used in lieu of a fence is exempt from the openness test.

Notwithstanding the foregoing, Declarant hereby reserves unto itself and its successors and assigns and grants to the Association an easement ten (10) feet in width along the easterly boundaries of Lots 1 and 49 which abut the right-of-way of Powerhouse Road (S.R. 1233), as more particularly shown on the Map, for the purpose of erecting and maintaining the Frontage Fence within said designated easement area (the "Frontage Fence Easement"). The Frontage Fence shall be maintained as Common Area in accordance with the terms of this Declaration.

Section 12. Signs. No signs of any kind shall be displayed to the public view on any Lot with the following exceptions which may not exceed five square feet in size: (a) one sign on the Lot only advertising the property for sale or rent; and (b) one sign on the Lot only used by a builder to advertise the property during the construction and sales period; and (c) temporary political signs. These restrictions shall never apply to permanent entry signs, or to temporary entry signs or advertising, or for sales signs installed by Declarant or its agents prior to the sellout of the Subdivision.

Section 13. Antennas; Satellite Dishes or Discs. No freestanding radio or television transmission or reception towers, antennas, discs or satellite dishes may be erected or maintained on any Lot. Customary roof-mounted antennas which may extend not more than ten (10) feet above the highest roof line ridge of the house are permitted.

Section 14. Lot Maintenance; Trash Disposal. Each Owner shall keep his Lot in a clean and orderly condition and shall keep the improvements thereon in a suitable state of painting and repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot other than a clothesline located directly behind and within thirty (30) feet of the residence and not within the fifty (50) foot waterfront setback. No Lot shall be used in

whole or in part for storage of trash of any character whatsoever and no trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending collection by trash collection authorities or companies.

Section 15. Offstreet Parking. Each Lot Owner shall provide a concrete or asphalt driveway (except the Owner of the Well Lot) which provides space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on the Lot. No truck or commercial vehicle in excess of one-ton load capacity or any vehicle under repair, or any wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot or the Parking Area. No trailer, mobile home, recreational vehicle, camper or boat shall be used as a residence, either temporarily or permanently, on any Lot or on the Parking Area for a period exceeding 24 hours unless it is parked off the street and not within the front or side yard setbacks of the Lot. All automobiles, trucks and other vehicles described above must have a current license plate affixed unless parked in an enclosed garage.

Section 16. Sewage Disposal. Every dwelling unit erected on any Lot shall be served by an approved septic system for the disposal of sewage, or connected to a private or public sewage disposal system. All septic systems or other private sewage disposal systems shall be approved by, and constructed and maintained in accordance with all the regulations and requirements of all governmental authorities and regulatory agencies having jurisdiction.

Section 17. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or in any residential dwelling or outbuilding, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No substance, thing or material shall be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or in any residential dwelling or outbuilding except that dogs, cats, or other household pets may be kept or maintained provided they are not kept, bred, or maintained for commercial purposes. The number of household pets kept or maintained shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months in age.

Section 18. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and

no partially completed houses or other improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The exterior of any building must be completed within one (1) year from the date of commencement of construction. No construction materials of any kind may be stored within forty-five (45) feet of the street curb. Any damage to any street, curb or sidewalk or any part of any Common Area or any utility system caused by the Owner or the Owner's builder shall be repaired by such responsible Owner. The Owner of each Lot shall at all times keep contiguous public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of improvements on such Owner's Lot. Declarant may provide for the cleaning of public and private areas due to the activities of the Owner or Owner's builder and may assess the Owner a reasonable charge not to exceed the actual cost for such cleaning. Each Owner's builder shall, consistent with standard construction practices, keep all portions of the Lot free of unsightly construction debris and shall at all times during construction either provide dumpsters for the containment of garbage, trash or other debris which is occasioned by construction of improvements on a Lot, or take other measures consistent with standard construction practices necessary to keep the Lot free of such garbage, trash, or other debris. Each Owner shall be responsible for erosion control protection during any earth-disturbing operation.

Section 19. Community Water System. Declarant shall construct a community water system in order to provide water supplies necessary to serve the Subdivision (the "Community Water System"). The well for the Community Water System shall be located on that Lot designated on the Map as the "Well Lot", which Lot shall be used for no other purpose. All water mains and pipes and other equipment necessary for the operation and maintenance of the Community Water System shall be located on the Well Lot or within the Utility Easements described in Section 8 of this Article IX, or within public or private road rights-of-way. Upon its completion Declarant shall convey the Community Water System, including the Well Lot and all mains, pipes, equipment and other personal property which is part of the Community Water System, to a private utility company duly licensed and operating under the authority granted by the North Carolina Utilities Commission. The Community Water System shall be the sole provider of water supplies to the Subdivision, and no well may be dug or constructed on any Lot other than the Well Lot. Notwithstanding anything to the contrary contained herein, the covenants and restrictions described in this Article IX shall not apply to the Well Lot, save and except the restrictions contained in Sections 14 and 17 of this Article IX.

Section 20. Tree Removal. The clear-cutting of trees shall not be permitted within the fifty (50) foot waterfront setback.

Section 21. Pier Construction on Lot 22. Any pier serving Lot 22 must be constructed within fifty (50) feet of the common boundary between Lots 22 and 23.

## ARTICLE X

### INSURANCE

Section 1. Board of Directors. The Board of Directors shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below:

(a) Fire. All improvements and all fixtures included in the Common Area, including the Pier and Boatslips, and all personal property and supplies belonging to the Association shall be insured in an amount equal to 100% of the current replacement cost up to the amount specified in the insurance policy (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board of Directors with the assistance of the insurance company providing coverage. The Board of Directors shall, at least annually, review the insurance coverage required herein and determine 100% of the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire, windstorm, vandalism and malicious damage and all perils covered by a standard "all risk" insurance policy. All such policies shall provide that adjustment of loss shall be approved by the Board of Directors and the insurance company. In addition to the provisions and endorsements set forth in Section 4 of this Article, the fire and casualty insurance described herein shall contain the following provisions:

(i) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and

(ii) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The property and public liability insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against



the Association, the Owners or the Mortgagees; (2) loss payments are contingent upon action by the carriers, directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

(b) Public Liability. The Board of Directors shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determine to be customary for projects similar in construction, location and use as the Development, covering each member of the Board of Directors, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the property or any portion thereof. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than \$1,000,000 per occurrence for claims for bodily injury and property damage.

(c) Fidelity Coverage. The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Other. Such other insurance coverages, including flood insurance and worker's compensation, as the Board of Directors shall determine from time to time desirable.

Section 2. Premium Expense. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors and charged as a common expense to be collected from the Owners pursuant to Articles V, VI and VII hereof.

Section 3. Special Endorsements. The Board of Directors shall make diligent effort to secure insurance policies that will provide for the following:

(a) recognition of any insurance trust agreement entered into by the Association;

(b) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least forty-five (45) days' prior written notice to the named insured, any Insurance Trustee and all Mortgagees; and

(c) coverage that cannot be cancelled, invalidated or suspended on account of the conduct 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, any Owner or any Mortgagee.

Section 4. General Guidelines. All insurance policies purchased by the Board of Directors shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "A-10" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 5. Owner's Personal Property. The Association or the Declarant shall not be liable in any manner for the safekeeping or conditions of any boat or other personal property belonging to or used by any Owner or his family, guests or invitees, located on or used at the Pier, Boatslips or other Common Areas. Further, the Association or the Declarant shall not be responsible or liable for any damage or loss to or of said boat, its tackle, gear, equipment or other property located thereon, or any other personal property of any Owner, his family, guests or invitees located on or used at the Pier, Boatslips or other Common Areas. Each Owner shall be solely responsible for all such boats and other personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property. Every Member of the Association is required to submit to the Association a Certificate of Insurance showing proof of boat liability insurance coverage at the time of initiating the use of the Piers and Boatslips.

ARTICLE XI  
RIGHTS OF MORTGAGEES

Section 1. Approval of Mortgagees. Unless at least seventy-five percent (75%) of the Mortgagees holding Mortgages on Lots located within the Development then subject to the full application of this Declaration, have given their prior written approval, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association (the granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) fail to maintain fire and extended coverage insurance on insurable improvements in the Common Area on a current replacement cost basis in an amount not less than 100% of the insurable value as set forth in Article X; or

(d) use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged Common Area or other common amenities.

Section 2. Additional Rights. Any Mortgagee shall have the following rights, to wit:

(a) to be furnished at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year;

(b) to be given notice by the Association of the call of any meeting of the Association's membership, and to designate a representative to attend all such meetings;

(c) to be given prompt written notice of default under the Declaration, the Bylaws or any rules and regulations promulgated by the Association by any Owner owning a Lot encumbered by a Mortgage held by the Mortgagee, such notice to be sent to the principal office of such Mortgagee or the place which it may designate in writing;

(d) to be given prompt written notice of any casualty loss or loss by eminent domain or other taking of the Common Areas or any Lot encumbered by a Mortgage held by the Mortgagee;

(e) to be given prompt written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(f) to be given prompt written notice of any eminent domain or condemnation proceeding affecting the Property; and

(g) to be given prompt written notice of any action which requires the consent of all or any portion of the Mortgagees as specified herein.

Whenever any Mortgagee desires the provisions of this Section to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by Certified Mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Lot or Lots upon which any such Mortgagee holds any Mortgage or identifying any Lot owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it and which notice shall designate the place to which notices are to be given by the Association to such Mortgagee.

Section 3. Books and Records. Any Mortgagee will have the right to examine the books and records of the Association during any reasonable business hours.

Section 4. Payment of Taxes and Insurance Premiums. The Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against the Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be owed immediate reimbursement therefor from the Association.

## ARTICLE XII

### CONDEMNATION

Section 1. Partial Taking Without Direct Effect on Lots. If part of the Property shall be taken or condemned by any authority having the power of eminent domain, such that no Lot is taken, all compensation and damages for and on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots, shall be paid to the Board of Directors in trust for all Owners and their Mortgagees according to the loss or damages to their respective interests in such Common Area; provided, however, that all compensation and damages for and on account of the taking of the Pier, Boatslips, Parking Area and Access Easement shall be held in trust by the Board of Directors for all Non-Waterfront

Lot Owners and their Mortgagees according to the loss or damages to their respective interests in the Pier, Boatslips, Parking Area and Access Lot; and provided further, that all compensation and damages for and on account of the taking of the Roadway shall be held in trust by the Board of Directors for all Promontory Lot Owners and their Mortgagees according to the loss or damages to their respective interests in the Roadway. The Association, acting through the Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Area. Such proceeds shall be used to restore the Common Area with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board of Directors, in its sole discretion. Nothing herein is to prevent Owners whose Lots are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between affected Owners and the Board of Directors, as their interests may appear, by the Board of Directors in its sole discretion.

Section 2. Partial or Total Taking Directly Affecting Lots. If part or all of the Property shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Association shall have the right to act on behalf of the Owners with respect to Common Area as provided in Section 1 of this Article and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots. All compensation and damages for and on account of the taking of any one or more of the Lots, or improvements, fixtures or personal property thereon, shall be paid to the Owners of the affected Lots and their Mortgagees, as their interests may appear. If all of the Property shall be taken such that the Association no longer has reason to exist and shall thereafter be dissolved and/or liquidated, all compensation and damages for and on account of the taking of the Common Area shall be distributed with the other assets of the Association in accordance with the Articles of Incorporation.

Section 3. Notice to Mortgagees. A notice of any eminent domain or condemnation proceeding shall be sent to all Mortgagees who have served written notice upon the Association in accordance with Article XI, Section 2 hereof.

### ARTICLE XIII

#### RIGHT OF FIRST REFUSAL

Section 1. Applicability. Except for sales and conveyances by the Declarant, no unimproved Lot may be sold by any Owner except in compliance with the provisions of this Article XIII. Notwithstanding the above, nothing in this Article XIII shall be construed to make the provisions of this Article XIII applicable with respect to the Well Lot or any portion thereof.

Section 2. Right of First Refusal. Before any unimproved Lot may be sold to any Person other than Declarant or its successors, the Owner or Owners of such Lot shall first offer in writing to sell the Lot to the Declarant or its successors at a price equal to: (1) the contract purchase price paid by such Owner for such Lot (excluding all finance charges related to the purchase) increased by the percentage increase, from the closing date of such Owner's purchase of such Lot to the date of such written offer to sell the Lot to the Declarant or its successors, in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84=100) issued by the U.S. Bureau of Labor Statistics (hereinafter the "CPI"), less (2) the costs of removing all liens and encumbrances on the Lot and customary seller's closing costs. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. For the purposes of this Article XIII, a Lot shall be considered as unimproved unless and until the good faith commencement of the construction of such improvements (i.e. at a minimum, completion of footings and foundation of the approved residence and bona fide evidence of total expenditures for improvements to the Lot of at least \$50,000.00) shall have occurred. Upon receipt by an Owner of a bona fide offer to purchase an unimproved Lot, such Owner shall send to Declarant a copy of such bona fide offer along with written notification that such Owner is offering the Lot for sale to Declarant pursuant to this right of first refusal. If the Declarant or its successor does not accept or reject in writing said offer of sale within thirty (30) days from the date of receipt of the same, then the Owners or Owners of such Lot shall have the right to sell the Lot to the third party making such bona fide offer pursuant to such bona fide offer, without any further additional obligation to offer the Lot to Declarant. Declarant shall have this right of first refusal with regard to each bona fide offer which an Owner receives for

the purchase of an unimproved Lot. Any Owner who buys an unimproved Lot from another Owner shall be governed by the provisions of this Article XIII and the waiver of the right of first refusal with respect to any sale shall not limit Declarant's rights of first refusal with respect to any subsequent sale of any unimproved Lot. Provided, however, that the right of first refusal reserved by Declarant pursuant to this Section 2 shall be valid and enforceable with respect to any unimproved Lot only for a period of seven (7) years from the date of the first conveyance of such Lot from Declarant to an Owner other than the Declarant, and upon the expiration of said seven (7) year period, the Owner or Owners of such Lot shall have the right to sell the unimproved Lot to any third party without the obligation to offer the Lot to Declarant. Further provided that this Section 2 shall not be applicable with respect to any foreclosure sale of a first lien deed of trust or first lien mortgage on an unimproved Lot or deed in lieu thereof which is made and delivered in good faith. In each instance where an offer to purchase an unimproved Lot is presented to Declarant by an Owner pursuant to the right of first refusal granted herein, Declarant shall determine in its sole discretion and on a case by case basis whether to exercise its right of first refusal, and such determination may be made on such basis and for such reason as Declarant in its sole discretion shall choose. Should an Owner fail to comply with the provisions of this Section 2 and sell an unimproved Lot without first offering said Lot to Declarant in accordance with the terms hereof, then the purchaser of such unimproved Lot shall purchase such Lot subject to the right of first refusal herein granted, and Declarant shall thereafter at any time have the right to purchase such Lot whether or not it is subsequently improved, from the purchaser thereof at the price as set forth in this Section 2, and shall also be entitled to any other rights and remedies available at law or in equity for the violation of this Section 2.

Section 3. Death of an Owner; Gift. The personal representative, heirs, successors and assigns of any Owner who dies while owning any unimproved Lot, or the donee of a gift of a Lot from an Owner, shall become an Owner subject to the terms and conditions of this Declaration and any subsequent sale, transfer and conveyance of such Lot shall be governed by the provisions of this Article XIII.

Section 4. Transfers to Declarant. In the event that Declarant exercises its right of first refusal pursuant to Section 2 of this Article XIII, the closing of the conveyance of such Lot shall occur within sixty (60) days after receipt by the Owner of written notice from Declarant or its successors that it elects to exercise its right of first refusal with respect to such Lot. At the closing, Declarant shall make payment to such Owner of the purchase price as described in Section 2 of this Article XIII, in cash or cash equivalent.

The Owner shall deliver to Declarant a general warranty deed conveying fee simple marketable title to the Lot free and clear of all exceptions except those that existed at the time of the acquisition of the Lot by such Owner, the lien of ad valorem taxes for the current year and any other exceptions which may be approved by Declarant. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as the Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of said Lot.

Section 5. No Further Documentation Required. The right of first refusal reserved by the Declarant in this Article XIII shall run with the title to each Lot in the Project and be binding upon each purchaser of a Lot from Declarant and upon any subsequent Owner of a Lot, whether such Owner purchased such Lot from Declarant or from a third party. The provisions of this Article XIII shall constitute record notice to all purchasers of Lots in the Subdivision of the right of first refusal herein reserved, and no additional language in any deed of conveyance of a Lot and no recording of any additional instrument shall be required to make all Owners of Lots in the Subdivision subject to the provisions of this Article XIII.

#### ARTICLE XIV

##### GENERAL PROVISIONS

Section 1. Enforcement. Declarant, being the developer of other subdivisions in the area of the Subdivision, wishes to maintain a high standard in the appearance and quality of the Subdivision. Though damages would be difficult to measure, the failure of the Owners and the Association to abide by the terms, covenants and restrictions contained in this Declaration would result in irreparable damage to Declarant and its reputation. Accordingly, Declarant, during the term of this Declaration as set forth in Section 4 of this Article XIV, as well as the Association or any Owner or Owners, shall have the right to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration by proceeding at law or in equity against any person or persons violating or attempting to violate any such restriction, covenant, reservation, lien or charge, either to restrain violation thereof or to recover damages therefor. Each Owner and the Declarant shall have all appropriate remedies at law or in equity to enforce the provisions of this Declaration and the Bylaws and any duly authorized rules and regulations governing the Development against the Association.



In addition, the Association hereby covenants and agrees that it shall exercise its power of enforcement hereunder in order to maintain a first class subdivision in appearance and quality, and that it shall, upon the request of Declarant, enforce any restriction, condition, covenant or reservation contained in this Declaration deemed by Declarant, in its sole discretion, to have been violated, using all remedies available to the Association at law or in equity. The Declarant hereby reserves the right and easement to go upon any portion of the Common Area at any time in order to repair and maintain such Common Area where needed, in Declarant's sole discretion, to bring such Common Area within the standards required by Declarant. Should Declarant so go upon the Common Area to perform maintenance and repairs for such purpose, the Association hereby agrees to reimburse Declarant in full for the cost of such maintenance and repairs, upon receipt of a statement for such cost from Declarant. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment. The covenants and restrictions of this Declaration may be amended at any time and from time to time by an agreement signed by Owners holding a majority of votes appurtenant to the Lots which are then subject to this Declaration; provided, however, that such amendment must be consented to by Declarant so long as Declarant is the owner of any Lot in the Development. Further provided that any amendment affecting the Non-Waterfront Lots, Pier, Boatslips, Parking Area or the Access Easement must be approved by a vote of no less than two-thirds (2/3) of all votes entitled to be cast by Members owning Non-Waterfront Lots, and any amendment affecting the Promontory Lots or the Roadway must be approved by a vote of no less than two-thirds (2/3) of all votes entitled to be cast by members owning Promontory Lots. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Notwithstanding the foregoing, the consent of the Owners holding two-thirds (2/3) of the votes in the Association and the approval of Mortgagees holding Mortgages on Lots to which at least two-thirds (2/3) of the votes of the Association are appurtenant, plus the written consent of Declarant shall be required to terminate the legal status of the Association, to contract the land in the Development, to convey any portion of the Common Area to any other party, to withdraw any portion of the Property from the requirements of this Declaration, or to restrict or revoke Declarant's right of enforcement hereunder provided for in Section 1 of this Article XIV. The consent of

the Owners having at least two-thirds (2/3) of the votes in the Association and the approval of Mortgagees holding Mortgages on Lots to which at least a majority of the votes are appurtenant shall be required to add or amend any material provision of this Declaration which establish, provide for, govern or regulate any of the following:

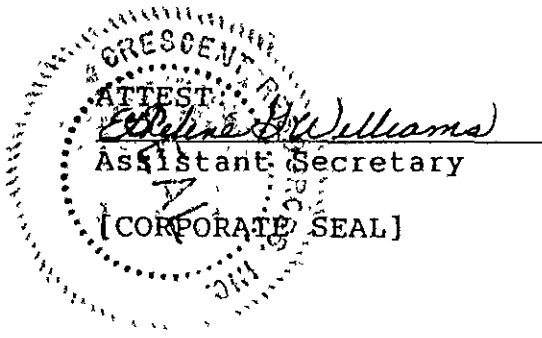
- (a) voting;
- (b) assessments, assessment liens or subordinations of such liens;
- (c) reserves for maintenance, repair and replacement of the Common Areas;
- (d) insurance or fidelity bonds;
- (e) rights to use of the Common Areas;
- (f) responsibility for maintenance and repair of the Common Areas;
- (g) boundaries of any Lot;
- (h) the interest in the Common Areas;
- (i) convertibility of Lots into Common Areas or of Common Areas into Lots;
- (j) leasing of Lots;
- (k) imposition of any right of first refusal or similar restriction on the right of any Lot Owner to sell, transfer, or otherwise convey his or her Lot;
- (l) any provisions which are for the express benefit of Mortgagees or insurers or guarantors of Mortgages.

An addition or amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. A Mortgagee who receives a request to approve non-material additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 4. Term. The covenants and restrictions of this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date this Declaration is recorded; after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by two-thirds (2/3) of the then

Owners of the Lots, plus Declarant, has been recorded, agreeing to terminate said covenants and restrictions in whole or in part. Provided, however, that the residential use restrictions set forth in Article IX, Section 1 of this Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them in perpetuity.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its officers thereunto duly authorized and its corporate seal to be hereunto affixed, all the day and year first above written.



*Edeline Williams*  
Assistant Secretary

CRESCENT RESOURCES, INC.,  
a South Carolina Corporation

By: *Robert B. Dienst*  
Vice President

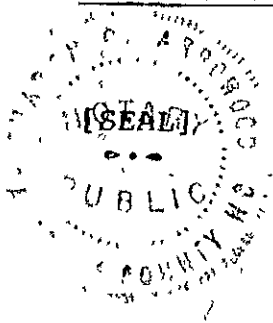
STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 2nd day of August, 1990, personally came before me Robert B. Dienst, who, being by me duly sworn, says that he is the Vice President of CRESCENT RESOURCES, INC., a South Carolina corporation, and that the seal affixed to the foregoing instrument is the official seal of the Corporation, and that said writing was signed and sealed by him, in behalf of said Corporation, by its authority duly given. And the said Robert B. Dienst acknowledged the said writing to be the act and deed of said Corporation.

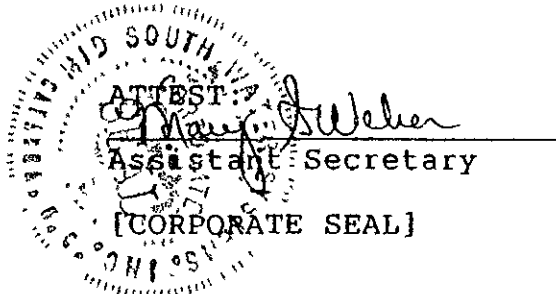
*Sharon C. Arrowood*  
NOTARY PUBLIC

My Commission Expires:  
10/13/93



MID SOUTH WATER SYSTEMS, INC., a North Carolina Corporation ("Mid South"), as owner of the Well Lot, hereby joins in the execution of this Declaration and agrees that the terms of this Declaration shall run with the title to the Well Lot be binding upon Mid South, its successors and assigns.

MID SOUTH WATER SYSTEMS, INC.,  
a North Carolina Corporation



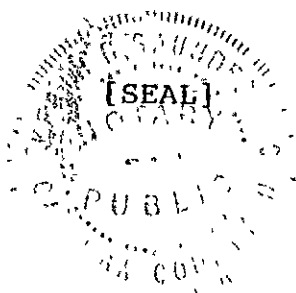
By: [Signature]  
Its: \_\_\_\_\_ President

STATE OF NORTH CAROLINA  
CATAWBA  
COUNTY OF MECKLENBURG

This 3<sup>rd</sup> day of August, 1990, personally came before me Thomas Carroll Weber, who, being by me duly sworn, says that he is the \_\_\_\_\_ President of MID SOUTH WATER SYSTEMS, INC., a North Carolina corporation, and that the seal affixed to the foregoing instrument is the official seal of the Corporation, and that said writing was signed and sealed by him, in behalf of said Corporation, by its authority duly given. And the said Secretary acknowledged the said writing to be the act and deed of said Corporation.

Kerin D. Saunders  
NOTARY PUBLIC

My Commission Expires:  
7-18-93



STATE OF NORTH CAROLINA--BURKE COUNTY

The foregoing certificate of Thomas C. Arrowood, N.P. of Cabarrus Co., N.C.  
and Kerin D. Saunders, N.P. of Catawba is adjudged

to be correct. Let the instrument with its certificates, be registered. This 14 day of Sept. 1990

Doris Anderson Register of Deeds  
By Alma Bates, Deputy

EXHIBIT "A"  
TO  
DECLARATION  
FOR  
EAST SHORES

True Copy of Articles of Incorporation for  
East Shores Owners' Association, Inc.

\* \* \* \* \*

See Rider #1 Attached

RIDER #1 TO  
EXHIBIT "A" TO  
DECLARATION

ARTICLES OF INCORPORATION  
OF  
EAST SHORES OWNERS' ASSOCIATION, INC.  
A NON-PROFIT CORPORATION

The undersigned natural person of the age of eighteen (18) years or more hereby forms a non-profit corporation under the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Non-Profit Corporation Act," and the several amendments thereto, and to that end does hereby set forth:

1. The name of the Corporation is East Shores Owners' Association, Inc. (hereinafter referred to as the "Association").

2. The period of duration of the Association shall be perpetual.

3. The purposes for which the Association is organized are:

(a) To manage, maintain, operate, care for and administer East Shores (the "Development"), including a pier or piers and boatslips located therein, property providing access to such pier or piers and entrance monuments, a parking area and a private road, and a system of public roads prior to their acceptance for public maintenance, all as shall be described in a Declaration of Covenants, Conditions and Restrictions by Crescent Resources, Inc., a South Carolina corporation ("Declarant"), which said Declaration shall be recorded in the Office of the Register of Deeds for Burke County, North Carolina (such Declaration as the same may be amended from time to time being hereinafter referred to as the "Declaration"); to enforce the covenants, restrictions, easements, charges and liens provided in the Declaration to be enforced by the Association; to fix, levy, assess, collect, enforce and disburse the charges and assessments created under the Declaration, all in the manner set forth in and subject to the provisions of the Declaration; and to exercise all power and privileges and to perform all duties and obligations of the Association under the Declaration;

(b) To do any and all other lawful things and acts that the Association from time to time, in its discretion, may deem to be for the benefit of the Development and the owners and inhabitants thereof or advisable, proper or convenient for the promotion of the peace, health, comfort,

safety and general welfare of the owners and inhabitants thereof; and

(c) To exercise all powers provided in Chapter 55A of the General Statutes of North Carolina in furtherance of the above-stated purposes.

4. The Association is not organized for pecuniary profit, nor shall it have any power to issue certificates of stock or pay dividends. No part of the net assets or earnings of the Association shall inure to the benefit of any private individual, firm or corporation.

5. Provisions relating to the members of the Association, and the election and appointment of directors, are:

(a) Members of the Association shall be every Owner as defined in the Declaration and no other person or entity shall be entitled to membership.

(b) The voting rights of the Membership shall be appurtenant to the ownership of Lots (as defined in the Declaration). There shall be two classes of Lots with respect to voting rights:

(1) Class A Lots. Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(2) Class B Lots. Class B Lots shall be Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. The Declarant shall be entitled to four (4) votes for each Class B Lot owned by it.

(c) Upon the expiration of five (5) full years after the registration of the Declaration, all of the Class B Lots shall automatically convert to Class A Lots, unless Declarant, in its sole discretion, elects to convert the Class B Lots to Class A Lots at an earlier date.

(d) The members of the Association shall have the right to vote for the election and removal of directors and upon such other matters with respect to which the right to vote is given to members under the Declaration or under the provisions of Chapter 55A of the General Statutes of North Carolina, the voting rights of the members being more

particularly described in the Declaration and by the Bylaws attached thereto. The term of the directors shall be as provided in the Bylaws.

(e) Membership of the Owners in the Association shall be appurtenant to and may not be separated from ownership of a Lot in the Development.

6. The address of the initial registered office of the Association is 2600 Charlotte Plaza, Charlotte, Mecklenburg County, North Carolina 28244, and the initial registered agent of the Association at such address is Woodard E. Farmer, Jr.

7. The business and conduct of the Association shall be regulated by a Board of Directors who shall be elected in the manner and for the terms provided in the Bylaws. The number of directors constituting the initial Board of Directors shall be three; and the names and addresses of the persons who are to serve as the initial directors are:

<u>Name</u>	<u>Address</u>
Stephen M. Schreiner	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28230
Sharon Arrowood	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28230
Robert B. Dienst	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28230

8. The incorporator of this Association is Woodard E. Farmer, Jr., and his address is 2600 Charlotte Plaza, Charlotte, Mecklenburg County, North Carolina 28244.

9. In the event of a dissolution and/or liquidation of the Association, all of the residual assets of the Association shall be distributed to such organizations that are exempt under §501(c)(3) of the Internal Revenue Code of 1986 or corresponding sections of any prior or future Internal Revenue Code at the time of dissolution as shall, in the judgment of the directors, be most likely to fulfill the purposes of the Association.

IN TESTIMONY WHEREOF, the undersigned has set her hand and affixed her seal, this 14th day of September, 1990.

S/Woodard E. Farmer, Jr. (SEAL)  
Woodard E. Farmer, Jr.



STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Maurice L. Beck, a Notary Public of the County and State aforesaid, certify that Woodard E. Farmer, Jr., personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 14<sup>th</sup> day of September, 1990.

Maurice L. Beck  
Notary Public

My Commission Expires:

November 19, 1994

[SEAL]

EXHIBIT "B"  
TO  
DECLARATION  
FOR  
EAST SHORES

True Copy of Bylaws for  
East Shores Owners' Association, Inc.

\*\*\*\*\*

See Rider #1 Attached

RIDER #1 TO  
EXHIBIT "B" TO  
DECLARATION

BYLAWS  
OF  
EAST SHORES OWNERS' ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

Section 1. Name. The name of the corporation is EAST SHORES OWNERS' ASSOCIATION, INC., hereinafter referred to as the "Association."

Section 2. Location. The principal office of the Association shall be located in either Burke County or Mecklenburg County, North Carolina. The registered office of the Association may be, but need not be, identical with the principal office.

ARTICLE II

DEFINITIONS

Section 1. "Access Easement" shall mean and refer to the easement area for pedestrian ingress and egress and drainage reserved and granted by Declarant in Article IX, Section 9 of the Declaration over portions of Lots 11, 12, 13, 14 and 16 of the Subdivision, as shown and designated as "Access Easement" on the Map, as well as signs, gazebo, lighting and other improvements located thereon. The Access Easement shall be owned by the Association for the common use, benefit, and enjoyment of the Non-Waterfront Lot Owners, to provide access to and from the Pier and Boatslips.

Section 2. "Additional Property" shall mean and refer to additional real estate lying contiguous or adjacent to the Property which may be made subject to the terms of the Declaration in accordance with the provisions of Article II, Section 2 of the Declaration.

Section 3. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association.

Section 4. "Association" shall mean and refer to EAST SHORES OWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 5. "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 6. "Boatslips" shall mean and refer to those certain twenty-nine (29) boatslips located within the Pier which is constructed over the waters of Lake James, which Boatslips are designated as Boatslips A through CC on Exhibit "C" attached hereto and incorporated herein by reference, and which Boatslips are more particularly addressed in Article VI of the Declaration.

Section 7. "Common Area" or "Common Areas" shall mean and refer to the Pier, Boatslips, Common Area A, Parking Area, Private Roads, Roadway, Access Easement, Frontage Fence, Entrance Monuments and Promontory Entrance Monument, collectively, and any other property shown and designated on the Map as "Common Area.". The Common Areas shall be owned by the Association (except for the Entrance Monuments and Frontage Fence, over which Property the Association shall own an easement) for the common use, benefit and enjoyment of the Owners; provided, however, that the Owners of Non-Waterfront Lots only shall be entitled to the use, benefit and enjoyment of the Pier, Boatslips, Parking Area and Access Easement, subject to individual Non-Waterfront Lot Owners' exclusive rights to use specified Boatslips; and provided further, that only the Owners of Promontory Lots shall be entitled to the use, benefit and enjoyment of the Roadway. Following acceptance of the Public Roads for maintenance by the State of North Carolina Department of Transportation, "Common Area" shall no longer include the Public Roads.

Section 8. "Common Area A" shall mean and refer to that 1.15 acre tract of land located in the Development and more particularly shown and described as "Common Area A" on the Map, as well as all improvements located thereon.

Section 9. "Declarant" shall mean and refer to Crescent Resources, Inc., its successors and assigns.

Section 10. "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for East Shores Subdivision, recorded contemporaneously herewith in the Burke County, North Carolina Public Registry.

Section 11. "Development" shall mean and refer to East Shores, a single-family residential development proposed to be developed on the Property by Declarant.

Section 12. "Entrance Monuments" shall mean and refer to the easement areas reserved and granted by Declarant in Article VIII, Section 10 of the Declaration, over portions of Lots 1, 2, 3, 15, 17, 36 and 49 of the Subdivision, as shown and

designated as "Sign Easement" on the Map, and the stone monuments, entrance signs located on such monuments, lighting, landscaping and other improvements to be constructed on such areas, to be used for entryways for the Subdivision and individual streets within the Subdivision, and for the purposes set forth in said Article VIII, Section 10.

Section 13. "Frontage Fence" shall mean and refer to the easement area reserved and granted over Lots 1 and Lot 49 by Declarant in Article VIII, Section 11 of the Declaration.

Section 14. "Lot" or "Lots" shall mean and refer to the separately numbered parcels depicted on the Map, which Lots do not include the Common Area.

Section 15. "Map" shall mean and refer to the map of East Shores Subdivision recorded in Map Book 9, Pages 189 and 190 in the Burke County, North Carolina, Public Registry.

Section 16. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 17. "Mortgage" shall mean any mortgage or deed of trust constituting a first lien on a Lot.

Section 18. "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied.

Section 19. "Non-Waterfront Lots" shall mean and refer to those Lots in the Development which do not adjoin the waters of Lake James, which are Lots 1 through 7, Lots 12 through 20, Lot 36, Lot 37, and Lots 42 through 49, as shown on the Map; together with Lots 10, 11 and 21, also as shown on the Map, which adjoin the waters of Lake James but upon which certain circumstances prevent the construction of individual piers or boatslips.

Section 20. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including the Declarant if it owns any Lot, but excluding those having such interest merely as security for the performance of an obligation.

Section 21. "Parking Area" shall mean and refer to the parking lot to be constructed upon and over Common Area A for the common use, benefit and enjoyment of the Non-Waterfront Lot Owners, to provide parking for such Owners, their families, guests and invitees in connection with their use of the Pier, Boatslips and Access Lot. The Parking Area is more particularly addressed in Article IV, Section 9, of the Declaration.

Section 22. "Pier" shall mean and refer to that certain pier or piers, containing the Boatslips, constructed over the

waters of Lake James, which Pier adjoins the Development at the terminus of the Access Easement and which Pier is shown on Exhibit "C" attached hereto and incorporated herein by reference and is more particularly addressed in Article IV, Section 8 of the Declaration.

Section 23. "Promontory Lots" shall mean and refer to Lots are Lots 23 through 32, as shown on the Map.

Section 24. "Promontory Entrance Monument" shall mean and refer to the easement area reserved and granted by Declarant in Article VIII, Section 10 of the Declaration over a portion of Lots 23 and 31 of the Subdivision as shown and designated on the Map as "Promontory Easement", and the stone monument, entrance sign, lighting, landscaping, irrigation, and other improvements to be constructed thereon, to be used for an entryway for the Promontory Lots, and for the purposes set forth in Article VIII, Section 10.

Section 25. "Property" shall mean and refer to the property shown on the Map, exclusive of the public rights-of-way shown on the Map, which Property includes the Lots and the Common Area.

Section 26. "Public Roads" shall mean and refer to all roads and cul-de-sacs in the Subdivision and shown on the Map except the Roadway, all to be dedicated for public use but privately maintained by the Association until they are accepted for public maintenance as set forth in the Declaration.

Section 27. "Roadway" shall mean and refer to the twenty-foot (20') wide private road in the Subdivision serving and adjoining the Promontory Lots, all as shown on the Map, which shall be privately maintained by the Association as set forth in the Declaration.

Section 28. "Subdivision" shall mean and refer to East Shores Subdivision, as the same is shown on the Map.

Section 29. "Waterfront Lots" shall mean and refer to those Lots in the Development which adjoin the waters of Lake James, which Waterfront Lots are Lots 8 and 9, Lots 22 through 35, and Lots 38 through 41, as shown on the Map.

### ARTICLE III

#### MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held on the first (1st) Tuesday in March of 1990, and each subsequent regular annual meeting of the Members shall be held on the first (1st) Tuesday in March each year thereafter, at the hour of 7:00 o'clock, P.M. If the day

for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes appurtenant to the Lots.

Section 3. Meetings of Non-Waterfront Lot Owners. Meetings of the Members owning Non-Waterfront Lots may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes appurtenant to the Non-Waterfront Lots, for the purpose of discussing and voting on matters affecting the Non-Waterfront Lots, the Pier, Boatslips or Access Lot. Such meetings may be held at the annual meeting of the Members or at a special meeting of the Members owning Non-Waterfront Lots.

Section 4. Meetings of Promontory Lot Owners. Meetings of the Members owning Promontory Lots may be called at any time by the President of the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes appurtenant to the Promontory Lots, for the purpose of discussing and voting on matters affecting the Promontory Lots or the Roadway. Such meetings may be held at the annual meeting of the Members or at a special meeting of the Members owning Promontory Lots.

Section 5. Place of Meetings. All meetings of the Members and the Members owning Non-Waterfront or Promontory Lots shall be held at such place, within Mecklenburg County or Burke County, North Carolina, as shall be determined by the Board of Directors of the Association.

Section 6. Notice of Meetings. Written notice of each meeting of the Members and Members owning Non-Waterfront or Promontory Lots shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than thirty (30) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 7. Classes of Lots and Voting Rights. The voting rights of the Membership shall be appurtenant to the ownership

of Lots. There shall be two classes of Lots with respect to voting rights.

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. The Declarant shall be entitled to four (4) votes for each Class B Lot owned by it.

Section 8. Relinquishment of Control. Upon the expiration of five (5) full years after the registration of the Declaration, all of the Class B Lots shall automatically convert to Class A Lots, unless Declarant, in its sole discretion, elects to convert the Class B Lots to Class A Lots at an earlier date.

Section 9. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, a majority of the votes appurtenant to the Lots (or to the Non-Waterfront Lots, if a meeting of the Members owning Non-Waterfront Lots) shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 10. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 11. Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a vote of no less than two-thirds (2/3) of all votes present at a duly held meeting of the Members at which a quorum is present shall be regarded as the act of the Members.

Section 12. Action by Members Owning Non-Waterfront Lots. Except as otherwise provided in the Articles of Incorporation,



the Declaration or the Bylaws, any act or decision approved by a vote of no less than two-thirds (2/3) of all votes present at a duly held meeting of the Members owning Non-Waterfront Lots at which a quorum is present shall be regarded as the act of such Members.

Section 13. Action by Members Owning Promontory Lots. Except as otherwise provided in the Articles of Incorporation, the Declaration or the Bylaws, any act or decision approved by a vote of no less than two-thirds (2/3) of all votes present at a duly held meeting of the Members owning Promontory Lots at which a quorum is present shall be regarded as the act of such Members.

Section 14. Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members or Members owning Non-Waterfront or Promontory Lots in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members or Members owning Non-Waterfront or Promontory Lots shall constitute a waiver of notice by him of the time and place thereof except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Members are present at any meeting of the Members, or if all the Members owning Non-Waterfront or Promontory Lots are present at a meeting of such Members, no notice shall be required and any business may be transacted at such meeting.

Section 15. Informal Action by Members. Any action which may be taken at a meeting of the Members or Members owning Non-Waterfront or Promontory Lots may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

#### ARTICLE IV

##### BOARD OF DIRECTORS

Section 1. Number. The business and affairs of the Association shall be managed by a Board of three directors, who need not be Members of the Association.

Section 2. Initial Directors. The initial directors shall be selected by the Declarant. Such initial directors shall serve at the election of the Declarant from the date upon which the Declaration is recorded in the Burke County Public Registry until such time as their successors are duly elected and qualified.

The names of the persons who shall serve on the initial Board of Directors from the date upon which the Declaration is recorded in the Burke County Public Registry until such time as their successors are duly elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Stephen M. Schreiner	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28230
Sharon Arrowood	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28230
Robert B. Dienst	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28230

Section 3. Nomination. Nomination for election to the Board of Directors shall be made from the floor at the first meeting of the Members. After the first election of directors, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 4. Election. Except as provided in Section 6 of this Article, Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 5. Term of Office. Each director shall hold office for the term for which he was elected, or until his death, resignation, retirement, removal, disqualification or until his successor is elected and qualified. At the first annual meeting of the Members, the Members shall elect one (1) member of the Board of Directors for a term of three (3) years, who shall be the person receiving the largest number of votes, one (1) Member of the Board of Directors for a term of two (2) years, who shall be the person receiving the second largest number of votes, and one (1) Member of the Board of Directors for a term of one (1) year, who shall be the person receiving

the third largest number of votes. At all annual elections thereafter, a director shall be elected by the Members to succeed that director whose term then expires. Nothing herein contained shall be construed to prevent the election of a director to succeed himself.

Section 6. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. The Members may elect a director at any time to fill any vacancy not filled by the directors.

Section 7. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE V

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Meetings of the Board of Directors shall be held on a regular basis as often as the Board sees fit, but no less often than annually, on such days and at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special Meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board of Directors shall be elected by the directors and shall preside over all Board meetings until the President of the Association is

elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board of Directors and serve until a new President is elected.

Section 6. Liability of the Board. The members of the Board of Directors shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. 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, except to the extent that they are Owner(s).

#### ARTICLE VI

##### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) Adopt and publish rules and regulations governing the use of the Common Area and facilities, including the Pier, Boatslips and Access Easement, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) Suspend the voting rights and right to use of the recreational facilities of a Member, including the rights to use the Pier, Parking Area, Access Easement and a Boatslip, during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration;

(d) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and prescribe their duties.

(f) Employ attorneys to represent the Association when deemed necessary;

(g) Grant easements for the installation and maintenance of sewer or water lines and other utilities or drainage facilities upon, over, under and across the Common Area without the assent of the membership when such easements are requisite for the convenient use and enjoyment of the Property; and

(h) Appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by Members entitled to at least one-third (1/3) of the votes appurtenant to the Lots;

(b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration:

(1) Fix the amount of the Annual Assessments, Boatslip Assessments and Promontory Assessments, as defined in the Declaration, against each Lot at least thirty (30) days before January 1 of each year;

(2) Send written notice of each assessment to every Owner subject thereto before its due date and before January 1 of each year;

(3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same;

(d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. (A reasonable charge may be made by the Board for the issuance of these certificates.

If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.)

(e) Procure and maintain adequate liability insurance covering the Association and the directors and officers thereof and adequate hazard insurance on the property owned by the Association;

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) Cause the Common Areas to be maintained.

## ARTICLE VII

### OFFICERS AND THEIR DUTIES

Section 1. Officers. The officers of the Association shall be a President and Vice-President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. Each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Compensation. No officer shall receive any compensation from the Association for acting as such.

Section 9. Duties. The duties of the officers are as follows:

President

(a) The President shall be the principal executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President

(b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, shall keep the corporate seal of the Association and affix it on all papers requiring said seal, shall serve notice of meetings of the Board and of the Members, shall keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors, shall sign all checks and promissory notes of the Association, shall keep proper books of account, shall cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year, and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

## ARTICLE VIII

## COMMITTEES

The Association shall appoint a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE IX

## BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE X

## ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association Annual and Special Assessments, as defined in the Declaration, which are secured by a continuing lien upon the property against which such assessments are made. Further, each Member owning a Non-Waterfront Lot is obligated to pay to the Association Boatslip and Special Boatslip Assessments, as defined in the Declaration, which are secured by a continuing lien upon such Member's Non-Waterfront Lot and such Member's right to use the Pier, Access Lot Parking Area and a Boatslip. Also, each Member owning a Promontory Lot is obligated to pay to the Association Promontory and Special Promontory Assessments, as defined on the Declaration, which are secured by a continuing lien upon such Member's Promontory Lot. Any assessments which are not paid when due shall be delinquent. If an Annual, Boatslip or Promontory Assessment installment is not paid by its due date, as set forth in the Declaration, or if any other assessment is not paid by its due date, the assessment shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less, plus such late charge as may be established by the Board of Directors, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot and the right to use the Pier, Access Lot, and a Boatslip, if applicable and interest, late payment charges, costs and reasonable attorneys' fees related to any such action or foreclosure shall be added to the amount of such assessment.



No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas and/or his Boatslip or abandoning his Lot.

#### ARTICLE XI

##### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words EAST SHORES OWNERS' ASSOCIATION, INC.

#### ARTICLE XII

##### AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of at least two-thirds (2/3) of all votes present at a duly held meeting of the Members at which a quorum is present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

#### ARTICLE XIII

##### MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

#### ARTICLE XIV

##### INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit

or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XIV, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

JPM/1263

EXHIBIT C  
EAST SHORES

