

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

DECLARATION OF PROTECTIVE COVENANTS
FOR ELLINWOOD POINTE SUBDIVISION
AND SUBMISSION OF PHASE I

THIS DECLARATION OF PROTECTIVE COVENANTS is made this 15th day of July, 2004, by the present owner of the property described in Paragraph 1.1(1) hereunder, Ellinwood Pointe, LLC, a North Carolina limited liability company, hereinafter called "DECLARANT".

STATEMENT OF PURPOSE

Declarant is the owner of certain property located in Merrimon, North Carolina more particularly described in Paragraph 1.1.(1) herein which it desires to develop as residential development known as Ellinwood Point Subdivision. It is the plan and intent of Declarant to develop the Subdivision in different phases or sections (referred to herein as "Phases") but each with a common identity. It is the intent of the Declarant that each Phase will be subject to the general protective covenants as well as covenants specific to each Phase.

Declarant desires to provide for the preservation of the values and amenities for such uses and for the maintenance of common areas; and, to this end, desires to subject the property known as Phase I, Ellinwood Pointe Subdivision as described on Exhibit B, together with such additions as may hereafter be made thereto, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property, Declarant and each subsequent owner thereof. Declarant deems it desirable for the efficient preservation of such values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created. To this end, Declarant has

incorporated or will incorporate under the laws of the State of North Carolina, as a nonprofit corporation, Ellinwood Pointe Homeowners' Association, Inc. (the "Association"), for the purpose of exercising the functions aforesaid;

NOW THEREFORE, Declarant declares that the real property described in herein as Phase I - Ellinwood Pointe Subdivision as described on Exhibit B hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

SECTION A
MASTER DECLARATION

ARTICLE ONE
Definitions

1.1 Definitions. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

a. "The Act" shall mean the North Carolina Planned Community Act.

b. "Architectural Review Committee (ARC)" shall mean those three or more individuals so designated from time to time by the Board of Directors of the Association. Those individuals appointed by the Board of Directors may be removed from the ARC at any time by the Board of Directors at its discretion. The Board of Directors may designate itself as the ARC.

b(1). "Associate Member" shall mean and refer to any lot owner in the Indian Summer Estates Subdivision as shown in Map Book 7, Page 88 Carteret County Registry who has agreed to comply with the provisions of this Declaration including subjecting building plans to the ARC as set forth herein.

c. "Association" shall mean and refer to Ellinwood Pointe Homeowners' Association, Inc., as formed or to be formed by Declarant.

d. "Board of Directors" shall mean the Board of Directors from time to time of the Association.

e. "Common Area" shall mean and refer to those areas of land now or hereafter shown on any recorded subdivision plat of the Property or hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the Owners, but shall not include any pond area as shown on the plat until such area is conveyed to the Association by the Declarant. Declarant has no obligation to transfer ownership of said ponds to the Association.

f. "Declarant" shall mean Ellinwood Point, LLC, and any successor and assign to which it shall convey or otherwise transfer its right, title and interest to all or any part of the Property and in so doing expressly designates the transferee as a "Declarant" hereunder.

g. "Development Period" shall mean the period that is twenty (20) years from the date this Declaration is recorded at the Register of Deeds of Carteret County. With respect to any land annexed to the Property by Declarant as herein permitted, the "Development Period" shall mean the time that is twenty (20) years from the time that such land is annexed to the Property by recording of the Amendment hereto at the Office of the Register of Deeds of Carteret County.

h. "Lot" shall mean a numbered lot or parcel of real property in the Property shown on the Plat. As used herein, "Lot" shall not include the Common Areas, nor shall it include roads, streets, or parking areas within the Property. Notwithstanding the foregoing the Declarant reserves the right to designate a numbered lot(s) as a parking area for boats, for a conservation area or common area amenity and upon such designation by Declarant said lot(s) shall be deemed Common Area.

h(1). "Marina" shall mean any marina constructed by the Declarant or Ellinwood Pointe Marina, LLC.

i. "Member" shall mean a person or entity who holds membership in the Association as provided in this Declaration hereafter.

j. "Mortgage" shall include the noteholder or cestui que trust secured by a deed of trust.

k. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot, or, if a Lot is subject to a reversion in a lease redeemable pursuant to law, the owner of the leasehold interest, and not the holder of title as such of the reversionary interest, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

k(1). "Plat" shall mean that "Final Plat of Phase I - Ellinwood Pointe Subdivision" prepared by Atlantic Coast Professional Surveying dated May 5, 2004 recorded in Book ____, Page _____, Carteret County Registry

l. "Property" shall mean all that certain property described in Exhibit A attached hereto and incorporated herein by reference, and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation and

subjected to this Declaration as herein provided.

m. "Structure" shall mean any permanent or temporary improvement to the real estate other than trees, shrubbery and landscaping, the placement of which upon a Lot (or any part thereof) may affect the appearance of the Lot (or any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, deck, shed, greenhouse, or bath house, coop or cage, covered or uncovered patio, swimming pool, clothesline, radio, television or other antenna, satellite dish, fence, sign, curbing, paving, wall, roadway, walkway, exterior light. "Structure" shall also mean (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across the Property, and (ii) any change in the grade of the Property (or any part thereof) of more than six (6) inches from that existing at the time of purchase by an Owner.

1.2 Incorporation of the North Carolina Planned Community Act. The provisions of the North Carolina Planned Community Act (the "Act") set forth in chapter 47F of the North Carolina General Statutes are generally incorporated herein by reference. However, in the event of conflict between any provision of the Act and this Declaration, the Declaration shall control if the law so allows, and if not, the Act shall control. The terms of the Act shall supplement this Declaration as required by context.

ARTICLE TWO Property Rights

2.1 Grant of Lots. Declarant shall hereafter hold, grant and convey Phase I - Ellinwood Pointe, and any part thereof, including, but not limited to Lots, subject to the covenants, conditions, easements and restrictions herein set forth and as set forth on the plat of "Final Plat of Phase I - Ellinwood Pointe Subdivision" prepared by Atlantic Coast Professional Surveying dated May 5, 2004 recorded in Book ____, Page _____, Carteret County Registry, which are for the benefit of, binding upon and shall run with the land, and are for the benefit of Declarant, the Association and the Owners, their heirs, personal representatives, successors and assigns.

2.2 Grant of Common Areas. Declarant covenants that it will convey the Common Areas to the Association, and the Association shall accept from Declarant the Common Areas, with such improvements as may be constructed thereon at the time of such conveyance and shall hold them subject to the provisions hereof. Upon conveyance of the Common Areas to the Association, the Association shall maintain all Common Areas including all open spaces and septic tank pump-off sites. The Association shall access the cost of maintaining any septic tank pump-off sites

against the Lot Owners who are using the site.

2.3 Member's Easements of Enjoyment. Every Member shall have a right and non-exclusive easement of use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provision:

The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by majority vote of the Members.

2.4. Reservation of Rights. Declarant hereby reserves the right to utilize all streets and roads within each Phase for purposes of ingress and egress to properties within Ellinwood Pointe owned by it, or for purposes of providing access to other contiguous properties owned by it. This right shall be assignable by Declarant to successors in interest of properties within Ellinwood Pointe and any adjacent properties to which Declarant makes a specific written delegation of a part or all of its reserved rights. Any utility easements reserved as shown on any recorded plat (and all roadways and walkways shall be deemed for this purpose a utility easement) shall be available for utilization by Declarant, authorized utility companies or by the owner of any Lot within Ellinwood Pointe, for purposes of providing utility services or necessary drainage, but as to Lot owners, only upon approval of the Association given by its Board of Directors.

2.5. Utility Easements and Septic Easements. There is hereby reserved a general utility easement ten feet in width along all front, side and rear lot lines. Any and all other easements as depicted on the plat are also reserved for the purposes stated. Included within this Utility Easement is the right to use the easement for the installation of septic lines to reach the septic tank pump-off areas as shown on the plat.

2.6. Drainage Easements. There is hereby reserved a drainage easement ten feet in width along all front, side and rear lot lines and any other dedicated drainage easements as appear on the recorded Phase plats. These drainage easements are for the use and benefit of all of the owners of property within the Subdivision and shall be maintained in a condition necessary to accomplish their intended purpose. It shall be the duty of the Association to provide for the continuous maintenance of these drainage easements. To facilitate maintenance the Association

shall have authority to contract for any necessary maintenance work.

2.7 Rules. The Association shall have the right to prescribe reasonable rules and regulations governing the use of the Common Areas, which rules and regulations shall apply equally to all Members.

2.8 Streets. All streets located within Ellinwood Pointe shall be maintained by the Declarant and after conveyance of the streets to the Association, the Association shall maintain the streets. The Owners of Lots in Phase I shall have no rights in Harrison Court and the northern extension of Staysail Lane beyond the temporary cul-de-sac shown on the Plat.

2.9 Pedestrian Access and Recreation Area Access Easement. There is hereby granted a fifteen (15) foot pedestrian access easement between lots 7 and 8 to reach Adams Creek. In the event one person owns both lots 7 and 8 the fifteen (15) foot easement may be relocated to another portion of either lot. The relocated easement must be fifteen (15) feet wide and a survey showing the new location must be recorded in the Carteret County Registry. There is hereby granted a thirty (30) foot recreation access easement located between lot 37, Phase 1 and lot 38, Phase 3. In the event one person owns both lots 37 and 38 the thirty (30) foot easement may be relocated to another portion of either lot. The relocated easement must be thirty (30) feet wide and a survey showing the new location must be recorded in the Carteret County Registry.

2.10 Marina. Ellinwood Pointe Marina, LLC intends to lease to Ellinwood Pointe Homeowners Association, the right to use the marina being built by Ellinwood Pointe Marina, LLC on Lot 9 Indian Summer Estates as shown on that survey recorded in Map Book 30, Page 246. All members of the Association including Associate Members shall have the right to use the Marina. However, the Association shall have the authority revoke any Member's right to use the Marina in the event the Member fails to pay any Association dues or fees for use of the Marina; fails to follow the rules of the Marina or the Association; or fails to abide by these Covenants.

ARTICLE THREE

General Restrictions and Provisions.

3.1 All Lots shall be limited to residential use only except Declarant reserves the right to use Lots 1-5 as shown on the Plat for commercial purposes. However, this residential limitation shall not affect the use of the Amenities for the purposes for which they are established. Notwithstanding the foregoing, the Declarant shall be permitted to designate lot(s) for use as a boat parking area, for a conservation area or common

area amenity and upon such designation by Declarant said lot(s) shall be deemed Common Area.

3.2 The operator of the Amenities shall be allowed to sell to the Members, Associate Members, and their Families and Guests, food and beverage, and items reasonably associated with the use and enjoyment of the Amenities. All such sales shall take place on the premises of an Amenity.

3.3 Notwithstanding the limitation of the Lots to residential use, Declarant, and Declarant's agents, shall have the right to maintain one or more offices on the Property for the purposes of selling, marketing, and developing Lots and the Property and the right to keep a maintenance facility to be used in the upkeep of the Subdivision and its amenities.

3.4 All dwelling connections for utilities, including but not limited to, water, sewer, electricity, gas, telephone, and televisions shall be run underground from the proper connecting point to the dwelling structure and any appurtenant garage or building.

3.5 Plats of various Phases may establish minimum building setback lines and easements. Such setback lines and easements are incorporated herein. Additionally, this Declaration or amendments or supplements hereto may establish setback lines.

3.6 No activity, whether active or passive, that is reasonably considered a nuisance by the Association shall be allowed within Ellinwood Pointe. Activities which are noisy, produce noxious fumes or odors or otherwise interfere with the peace and quiet or the residential character of the subdivision are prohibited.

3.7 Each Owner shall be a member of the Association, subject to suspension of membership privileges as set forth herein.

3.8 Each Lot is subject to assessment to defray the common expenses of the Association.

3.9 No Lot shall be owned or utilized in the time share, interval ownership, or use share form of ownership or use.

3.10 Manufactured homes, mobile homes, modular homes, and houses built off site are prohibited on the Property. Notwithstanding this general prohibition, the Declarant, its agents, and contractors in the course of development of the Property or constructing permitted structures on the Property shall be allowed to maintain mobile offices while development or construction is being pursued.

3.11 The Declarant is hereby subjecting the Property to

a contract with Carteret-Craven Electric Cooperative for the installation of underground electrical utilities which may require an initial contribution from an Owner, and/or the installation of street lighting, which will subject an Owner to continuing monthly payment to Carteret-Craven Electric Cooperative.

ARTICLE FOUR
Specific Building and Lot Use Restrictions

4.1 Only one (1) dwelling structure shall be allowed per Lot except Declarant reserves the right to construct multifamily dwellings on Lots 1-5 as shown on the Plat.

4.2 No permitted Structure shall be constructed which utilizes exposed concrete block, log construction, 4' x 8' or greater sheeted siding, vinyl or aluminum siding (except that vinyl may be used as an accessory or trim material and may be used as exterior siding if specifically approved for a Structure by the ARC). This restriction may be varied in accordance with the Variance procedures provided in this Declaration. This restriction shall not prohibit the use of cement or concrete block in foundations, provided they are not exposed or are covered in a material approved by the Architectural Review Committee. All chimneys visible from the exterior of any building shall be finished in brick, stone, stucco or the exterior material of the Structure.

4.3 All roofs shall have a minimum pitch of at least five (5) feet of rise for every twelve (12) feet of run and shall be shingled with dimensional shingles of Timberline brand or the equivalent, wooden shakes, tile, or pleated metal. However the Architectural Review Committee may approve roofs with less pitch, including flat roofs, when the Architectural Review Committee determines that such roofs are authentic components of an architecturally correct traditional home compatible with the character of coastal low country style approved for construction by the Architectural Review Committee. Flat roofs, where allowed, need not be made of any particular material.

4.4 Construction of any dwelling on exposed stilts or pilings is prohibited. This restriction is subject to variance pursuant to the provisions for variance contained in this Declaration.

4.5 Every dwelling and appurtenant garage, if any, must be accessed from the adjacent street by a paved driveway. Driveways shall be constructed of concrete at least four (4") inches thick, brick, or fixed stone aggregate. There shall be no "runner" type of construction permitted whereby a tract or runner is poured for each wheel of a vehicle. Driveways of brick shall be supported on a foundation at least four (4") inches thick. Minimum and maximum widths of driveways and elevations shall be

established by the Architectural Review Committee.

4.6 One detached building appurtenant to the dwelling house (for example a garage or garden house) constructed on each Lot shall be allowed if the appearance of said building, including building materials, is completely compatible with the appearance of the dwelling house, and if such detached building is approved by the Architectural Review Committee.

4.7 No sign, bill board, or advertising placard shall be allowed on any Lot so as to be visible from any street right of way or any adjoining property or Amenity, except for the following signs, which shall be allowed:

(a) one (1) sign per Lot not exceeding two (2) square feet in surface area identifying the property upon which such sign is placed only by the name of the owner and/or a street number;

(b) one (1) sign per Lot no greater than six (6) square feet in size which includes only the word "For Sale", the name of the listing real estate agent and the telephone number of said agent;

(c) street or directional signs erected by Declarant or by the Association;

(d) any sign constructed by any governmental agency;

(e) identification and informational signs constructed by Declarant, the purpose of which is to assist Declarant in identifying the project and the location of Lots, Living Units, sales offices, amenities, sales models or other uses within Ellinwood Pointe;

(f) during property development and sale, Declarant may erect such identifying and marketing signs as it may deem necessary.

(g) signs placed on Amenities or Common Areas by the Declarant or the Association for purposes of identifying the same and/or containing information about the use of such property.

4.8 Mailboxes and newspaper holders shall be erected and thereafter maintained according to standard specifications of Declarant and the rules and regulations of the Association adopted after the Declarant transfers this authority to the Association.

4.9 Walls and fences shall not exceed four (4) feet maximum height above ground elevation. Fences or walls located in the front yard are further restricted so as to not exceed three (3) feet maximum height above ground elevation. Fences facing any street shall not be of the solid opaque barrier type. Unless

approved by the Architectural Review Committee there shall be no chain link fences on any Lot or metal or chain link animal fences or cages.

4.10 No satellite receiving dish, ham radio antennae, microwave receiving and sending device or any other electromagnetic transmitting or receiving apparatus shall be allowed on any Lot, except when maintained within a building permitted by this Declaration and not visible from outside the building, and except for the following:

- a. satellite receiving dishes no greater in size than twenty four (24) inches in diameter,
- b. underground telephone and cable television wires and cables,
- c. antenna for receiving commercially broadcast radio/television transmissions and one weather station device as long as such antenna or weather device does not extend more than forty-eight (48) inches above the highest point on the building. Such antennas will be inconspicuous.

4.11 Travel trailers, truck bed campers, habitable motor vehicles, and similar devices (collectively referred to hereinafter as "RV's") are prohibited within any Phase; however, RV's may be kept in the driveway or parking area of a dwelling for up to forty-eight (48) hours to allow an owner to load or unload an RV. Additionally, either the Declarant or the Association may designate an area of Common Area for the purpose of storing RV's and boats and boat trailers of the Owners of Living Units.

4.12 No motor vehicle that is junked, partially wrecked, fails to display a current license plate, fails to display a current North Carolina inspection sticker, or is non-operative, shall be placed or allowed to remain on a Lot or within a Phase except within an enclosed garage.

4.13 No lawn or garden equipment shall be parked or stored on a Lot or within a Phase except in an enclosed structure otherwise permitted by this Declaration.

4.14 All boats shall be kept in the boat parking area or within an enclosed garage on a Lot. All boats kept in the boat parking area shall be on a trailer and both the boat and the trailer must be properly licensed.

4.15 Dismantling or repair of motor vehicles or boats is permitted on a Lot provided that all work it is completed within seventy-two (72) hours.

4.16 No stripped, partially wrecked or junked motor

vehicle or boat, or a part thereof shall be permitted to be parked or kept on a Lot or within a Phase subject to this Declaration.

4.17 No unlicensed motorcycles, dirt bikes, go-carts, or all terrain vehicles ("ATV's) shall be operated on the subdivision streets or common areas.

4.18 No trucks (including the tractors of "tractor - trailer" rigs) exceeding one ton shall be parked on a Lot or on a street within a Phase except for trucks making deliveries to a Lot and except for trucks used in construction or development of the Property or a Lot.

4.19 All lots located within Ellinwood Pointe shall be maintained in a clean and attractive condition. To further this goal the following restrictions are placed on the Property:

- a. The accumulation or storage of any rubbish, trash, debris, or unused material is prohibited. Any construction debris shall be removed on a bi-weekly basis during construction and all remaining construction debris must be removed no later than fourteen (14) days following substantial completion of a construction project on any property subject to these Covenants.
- b. No trash, ashes, garbage or other refuse shall be dumped, stored or accumulated on any Lot or Common Area except in places and containers approved by the Association.
- c. All Lots, whether occupied or unoccupied, shall be well maintained so they are compatible with the rest of the neighborhood. In order to ensure compliance with these requirement, the Association shall have the right and authority, which is specifically acknowledged by the owner of each Lot, to go upon each Lot on a frequency deemed desirable by the Association, and cause any or each of such Lots to be mowed, and trash and debris located thereon to be removed. To compensate the Association for this expense, the owner of each Lot serviced by the Association shall pay to the Association, as a special assessment, a sum equal to the actual cost to the Association causing this work to be accomplished.
- d. Cut grass and other vegetation waste will be properly disposed of and will not be deposited or allowed to gather in the Subdivision streets or storm water drainage system.

4.20 All fuel storage tanks and LP gas tanks shall be buried, screened or concealed in such a fashion that they are not visible from adjacent Lots or streets.

4.21 All trash and garbage receptacles shall be screened or concealed in such a fashion that they are not visible from adjacent Lots or streets except on the pick up day.

4.22 No window air conditioner shall be installed where it will be visible from adjacent streets.

4.23 No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or within any dwelling, except that dogs, cats and other household pets in a reasonable number established by the Association may be kept provided that such pets do not constitute a danger or nuisance to other Lot owners or their permitted pets. No animal shall be kept, bred or maintained for any commercial purpose. Snakes and other animals that are known to be harmful to humans are not to be brought to or kept in the subdivision. Wire fences or cages for keeping dogs, or other animals are prohibited outside of a dwelling. The Association shall have the authority to prohibit from all Phases annexed to this Declaration specified breeds of dogs or other animals with reputations for vicious tendencies.

4.24 No temporary structure, tent, shack or other building shall be allowed to remain on a Lot for a period greater than forty-eight (48) hours (excluding such items used by contractors in the course of construction of Structures).

4.25 Any dwelling or improvement on any Lot which is destroyed in whole or in part by fire or other casualty must either be rebuilt or removed and the Lot restored to a sightly condition with reasonable promptness. However, in no event shall any debris or remains of such destruction remain on such Lot longer than three (3) months.

4.26 No Lot owner shall construct a private dock into any waterway. All docks within the Subdivision will be constructed and maintained by the Declarant and/or by the Association. Notwithstanding the foregoing, waterfront lots may have moorings for day use.

ARTICLE FIVE Owners Association.

5.1 Creation. A Homeowners' Association named Ellinwood Point Homeowners' Association, Inc. (hereinafter "Association") is or will be created by Declarant. Every Owner of a Lot within the Property subject to this Declaration, including Declarant, shall be a member of the Association. Each new Owner automatically becomes a member of the Association upon acquisition of his Lot. Upon disposition of said property such Owner's membership

automatically terminates and the membership interest is transferred to the new owner of said lot. Mortgage holders or other equitable holders of rights shall not be members of the Association.

5.1(a) Associate Members. The Association has the right to admit as Associate Members any property owner within the Indian Summer Estates Subdivision as shown in Map Book 7, Page 88, Carteret County Registry who agree to be bound by this Declaration. Associate Members shall have no voting rights in the Association and shall only have the right to use the Marina upon payment of the fees set forth by the Association. All fees shall be the personal obligation of the Associate Member and in the event of nonpayment may be collected by the Association by a civil action. In the event of collection by a civil action, the Association's cost of collection, including attorneys fees, shall be deemed additional dues and payable by the Associate Member. The Association reserves the right to terminate an Associate Member's interest in the event of nonpayment of dues and failure to comply with the terms of this Declaration or any rules or regulations of the Association or Marina.

5.2 Voting Rights. The Association shall have two classes of voting membership.

Class A. Class A Members shall be all those Owners as defined in Article Five, Section 1, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine but in no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds interests required for membership. The Class B membership shall cease and become converted to Class A membership at the earlier occurrence of the following events: (a) when the total votes outstanding in Class A membership equal or exceed the total votes outstanding in Class B membership or (b) on January 1, 2024. From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot in which it holds the interests required for membership.

5.3 Board of Directors. The Association shall be governed by a Board of Directors. Subject to written waiver by Declarant, until Declarant's Class B membership is converted to Class A membership, Declarant shall appoint a majority of the members of the Board. As long as Declarant has the right to

appoint a majority of the members of the Board, the Board shall consist of at least three members. Declarant's appointees need not be members of the Association. Upon the conversion of the Declarant's membership interest into Class A membership, the Board will thereafter be selected in accordance with the Bylaws of the Association. All power and authority of the Association is exercisable by the Board of Directors.

5.4 Bylaws. The Bylaws of the Association may be amended as set forth therein. In the event any provision of the Bylaws are inconsistent with the provisions of this Declaration, the provisions of this Declaration shall control.

5.5 Duties of the Association. The Association shall have the responsibility for operating, maintaining, and replacing all Association Property. Notwithstanding the foregoing, the Association shall have no obligation to replace any beach or other common area lost due to erosion. The Association shall be responsible for adopting rules and regulations governing utilization of such Association Property (subject to the limitations contained herein). To the extent deeded to the Association, the Association shall be obligated to accept ownership of all Association Property including Amenities, designated on any recorded subdivision plat of any portion of Ellinwood Pointe made subject to the terms and provisions of this Declaration.

5.6 Powers of the Association. The Association, by action of the Board of Directors on behalf of the Association, shall have the following powers contained in G.S. 47F-3-102 of the Act:

- a. Adopt and amend rules and regulations;
- b. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from Lot or Living Unit Owners;
- c. Hire and discharge managing agents and other employees, agents and independent contractors;
- d. Institute, defend or intervene in litigation or administrative proceedings on matters affecting the planned community;
- e. Make contracts and incur liabilities on behalf of the Association;
- f. Regulate the use, maintenance, repair, replacement, and modification of Common Areas;
- g. Cause additional improvements to be made as a part of the Common Areas;

- h. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112;
- i. Grant easements, leases, licenses, and concessions through or over the common elements and enter into leases or other agreements for use of the Marina;
- j. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Areas other than the limited common areas and for services provided to lot owners;
- k. Impose reasonable charges for late payments of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;
- l. After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;
- m. Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;
- n. Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;
- o. Assign its right to future income, including the right to receive common expense assessments;
- p. Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and
- q. Exercise any other powers necessary and proper for the governance and operation of the association.

5.6.2 Additional Powers of the Association. In addition

to the powers incorporated from the Act above, the Association, by action of the Board of Directors on behalf of the Association, shall also have the following powers:

- a. to enforce any provision of this Declaration and any amendment or supplement hereto;
- b. to undertake any activity that is reasonable and necessary for the maintenance and operation of the properties specifically made subject to this Declaration;
- c. to acquire and operate the Amenities;
- d. to adopt and enforce rules and regulations for the use of the Amenities and Common Areas and the conduct of owners, and their families and guests, in Ellinwood Pointe;
- e. to maintain and improve landscaping in the Common Areas;
- f. to insure the Amenities;
- g. to secure liability insurance for the Association, its board members and officers;
- h. to expend Association funds on any activity that is reasonable and necessary or convenient for the operation of the Association or the enjoyment of Ellinwood Pointe by Owners whether or not that activity is specifically set forth in this Declaration;
- i. to assess the Lots and the Owners of Lots for the cost and expenses of operating the Association and fulfilling its duties and responsibilities. The amount of such assessment will be determined pursuant to the formulas set forth in this Declaration and any amendment or supplement hereto;
- j. to suspend the voting rights of any Lot owner and suspend the rights of the owner, his family and guests, to use any common areas and amenities (except as may be necessary to obtain ingress and egress to the owners Lot) if such member of the Association fails to timely pay any assessment or fine;
- k. employ the services of an engineer, attorney, accountant or other professional.

ARTICLE SIX
Covenant for Assessments

6.1 Assessments. Each Owner of every Lot, by the acceptance of title thereto, shall be deemed to covenant and agree to pay to the Association assessments as outlined in this Declaration. The purpose of the assessments will be to defray the common expenses of the Association to include, but not be limited to the operation, maintenance, repair, replacement and improvement of Common Properties and Amenities; for capital improvements to Common Properties and Amenities; for administration of the Association, and for enforcement of this Declaration. These assessments are to be fixed, established and collected from time to time as hereinafter provided. The assessments may be classified as follows:

(a) A Standard Assessment uniform in amount will be assessed against each Lot in each Phase subjected to this Declaration.

The Standard Assessment will be made on an annual basis but will be payable quarterly with payments due on January 1, April 1, July 1, and October 1. However, during the year of 2004 each Lot shall be assessed \$250.00 at the time of closing to cover the standard assessment for 2004. During the year 2005 the assessments shall be \$250.00 per quarter. The Standard Assessment for all subsequent years will be determined by the Board of Directors in an amount necessary to maintain the common area and amenities and to establish a reserve.

In addition to the Standard Assessment described above, any Owner who uses the Septic Tank Pump Off Area as part of his septic system shall be assessed an additional sum to cover the cost of maintaining said area.

(b) A Special Assessment may be levied by the Board of Directors from time to time to provide revenues for budget short falls that arise from unforeseen circumstances or otherwise, or to provide revenues for capital improvements. Special Assessments will be payable as directed by the Board of Directors.

6.2 Lien and Personal Obligation.

a. All assessments levied by the Association, and any installment thereof, if unpaid for a period of thirty (30) days after the due date, shall constitute a lien on the Lot against which such assessments are made when filed of record in the office of the Clerk of Superior Court of Carteret County in the manner provided therefor by Article 8 of Chapter 44 of the General Statutes of North Carolina (or any replacement article). The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina with the Association

being deemed as holding the power of sale.

b. The lien under this section is prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

c. Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot, obtains title as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns. However, the Lot is liable for assessments, or installments thereof, that become due and payable after acquisition of title.

d. Each assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, in addition to constituting a lien when thirty days delinquent, shall also be the personal obligation of the owner of the Lot at the time the assessment, or installment thereof, was due. In addition to foreclosure of its lien, the Association may also institute suit against the owner for collection of the delinquent assessment. The personal obligation for assessments which are delinquent at the time of transfer of a Lot shall not pass to the transferee of said Lot unless said delinquent assessments are expressly assumed by the transferee.

e. The remedies set forth herein are cumulative and shall be in addition to any other remedy provided to the Association by law.

f. If it is necessary for the association to enforce any lien, or to pursue a civil action to recover unpaid assessments, the Association shall be entitled to recover its actual reasonable attorneys fees, court costs, and any other expenses in connection therewith.

g. As used in this Declaration the term "assessment, if more than 30 days delinquent is deemed to include interest thereon at the rate of twelve percent (12%) per annum, the Association's actual reasonable attorneys fees incurred in collecting the delinquent assessment(s), and other costs of collection incurred by the Association.

ARTICLE SEVEN

Amenities

In addition to the open space and access provided on the plans, Declarant may, but is not required, to construct certain other amenities for the benefit of Lot Owners. The Declarant will convey these amenities to either the Association or another non-profit organization established to run the amenities at the time Declarant determines is appropriate. In order to preserve some of the common areas the Declarant has put into place shoreline conservation measures. The beach area, pond, common areas and any shoreline protection devices will be maintained by the Declarant until such responsibility is transferred to the Association.

The Association has the option to lease the Marina for the use and benefit of its Members and Associate Members. A fee schedule for the use of the Marina will be devised by the Association and everyone who uses the Marina shall pay the required fees prior to use. In the event fees are not paid, the Association has the right to revoke a Members right to use the Marina.

ARTICLE EIGHT

WETLANDS

All of the properties subject to these restrictive covenants shall be subject to the following special provisions relating to wetlands. In developing the property, the Declarant has agreed with the state of North Carolina and the Department of the Army Corps of Engineers (pursuant to a permit issued by the State of North Carolina and the Corps of Engineers) to restrict and prohibit any future filling or other detrimental activities in the wetland areas which presently exist within the identified area of the property. Accordingly, all wetlands shown and delineated on the wetland survey plat dated December 9, 1999, and verified by the Corps of Engineers on March 4, 2003, shall be maintained in their natural or mitigated condition. No person or entity shall fill, grade, or perform any other land disturbing activities other than for control of growth, landscaping and trimming of landscapes. Other benign structures, such as pile-supported walkways, may be permissible only after reviewed and written consent is provided by the US Army Corps of Engineers. This covenant is intended to ensure continued compliance with the mitigation condition of authorizations issued by the US Army Corps of Engineers, Wilmington District, Action ID 200001107, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it. The Wetlands as shown on the above described survey plat are the same as the wetlands identified on the Plat and Declarant has on file a copy of the wetland survey plat.

ARTICLE NINE
Architectural Review

9.1 There shall be established as a committee of the Association an Architectural Review Committee ("ARC"). The ARC will be the Declarant until such time as the Declarant transfers architectural review and control to the Association by written instrument. Following transfer, there shall be at least three (3) members on the ARC and there shall be a maximum of seven (7) members.

9.2 No construction, reconstruction, remodeling, alteration or addition of or to any Structure, building, fence, wall, driveway, or walkway, or improvement of any kind or nature that will be visible from streets, Amenities, or adjacent Lots shall be constructed without the prior written approval of the ARC as to appearance, location, and specifications. However, no approval shall be required for the construction of any living unit, Amenity, infrastructure, or other Structure constructed or installed by Declarant or the assignee of this specific Declarant right.

9.3 Prior to commencing construction of any Structure on any Lot or on the Property, a plot plan and plans for the Structure including specifications of materials to be used, must be submitted in duplicate for review and approval by the ARC. The location of all existing and proposed structures shall be shown on the plans along with calculations of roof areas, drives and any other impervious surface in order to verify compliance with the subdivision's stormwater regulations. There shall be further provided to the ARC sufficient building elevations and landscape plans, including a statement of exterior building materials and proposed exterior colors, to allow the ARC to appropriately and accurately evaluate what is proposed for construction on the Lot.

9.4 The ARC shall approve the plans as submitted, if all required information is submitted, and the following affirmative findings are made by the ARC:

- a. that the improvements sought to be constructed will not have negative economic impact on any other property within Ellinwood Pointe;
- b. that all required specific building standards and other conditions contained within this Declaration as amended or supplemented have been met;
- c. that the improvements are architecturally compatible with proposed or constructed improvements on other properties within Ellinwood Pointe, and are consistent with the general construction standards and guidelines set out herein, and

supplemented by the ARC;

d. that the improvements have been situated on the Lot within the applicable setbacks; and

e. that the impervious surface limitation coverage proposed on each Lot is consistent with the requirements of the DEHNR.

The discretion given to the ARC shall be utilized in an effort to ensure that all structures within the subdivision are compatible with the neighborhood and do not pose undue burdens on other Owners. The ARC may not impose any requirement that violates any construction code or other law or ordinance. The ARC shall be the sole arbiter of the plans and specifications for improvements and may withhold approval for any reason including purely aesthetic considerations.

9.5 Procedure. The ARC shall have thirty (30) days to approve or disapprove such submitted plans and specifications after receipt thereof. The ARC may extend the approval period by an additional thirty (30) days by giving written notice to the applicant. Failure to respond within the time period provided shall constitute approval by the ARC by default.

9.6 Documentation. One set of plans, denoted as approved (or approved with specified conditions) shall be retained by the ARC and the other shall be returned to the applicant. ARC shall be obligated to specify the particular grounds upon which denial of any application is founded.

9.7 Right of Appeal. Any Owner disagreeing with the finding of the ARC may appeal the decision to the Board of Directors of the Association by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of notice of denial (or notice of imposition of conditions unacceptable to said owner). The Board of Directors of the Association shall then review the plans, giving the Chairman of the Committee the opportunity to present to the Board of Directors of the Association specific reasons why the plans were denied, in the presence of the owner or his agent, and the owner or his agent may present information challenging the findings of the Committee. The decision of the ARC shall only be overridden by an affirmative vote of seventy-five percent (75%) of the entire membership of Board of Directors of the Association. This provision shall not be applicable until such time as Declarant has relinquished control of the ARC to the Association, as more fully set out herein.

9.8 Notices. All notices required to be given herein shall be given in writing, hand-delivered or mailed postage prepaid, return receipt requested.

ARTICLE TEN
Annexation

10.1 Additional Properties May be Annexed. During the Development Period, Declarant may subject all or any part of the Property to the terms and provisions of this Declaration by recording an amendment hereto specifically describing such additional or annexed property. In addition to subjecting any or all of the Property to this Declaration, Declarant may also include additional adjacent properties. However, to the extent that any portion of the Property has not been subjected to the terms and provisions of this Declaration at the expiration of the Development Period, the right to annex additional properties as a matter of right shall terminate. Properties shall thereafter be annexed to this Declaration only with the written consent of the Board of Directors of the Association. Declarant may assign the right to annex portions of the Property to third parties. Notwithstanding any provision to the contrary herein, no express or implied negative restriction on any portion of the Property not specifically annexed to this Declaration shall be deemed to exist.

10.2 Modified Restrictions on Annexed Properties. Declarant may impose such building and site restrictions, standards, and utilization provisions as Declarant deems appropriate on additional Phases annexed to this Declaration even though different from those set forth herein; however, all Phases annexed to this Declaration will be subject to the provisions of this Article A. The particular building restrictions and site utilization restrictions contained within an amendment or supplement to this Declaration subjecting additional properties to the terms and conditions hereof shall be binding upon the properties described in such amendment. To the extent that there are no such modifications contained in such amendment or supplement, all of the terms, provisions and conditions, including all building restrictions and site utilization restrictions set forth in this Declaration, shall be fully applicable to such annexed properties.

10.3 Additional Owners Associations. Declarant reserves the right to establish an additional and separate owners association for any Phase annexed to this Declaration. Owners in such Phase shall nevertheless be members of Ellinwood Point Homeowners' Association, Inc. and will be subject to all of the terms and provisions of this Declaration.

ARTICLE ELEVEN
Stormwater Management Permit

11.1 The State of North Carolina has imposed limitations on the amount of impervious surfaces that may be created on any Lot to manage the run off of rain or storm water. The limitations and

regulations are currently enforced by the North Carolina Department of Environmental Health and Natural Resources ("DEHNR"). The amount of impervious surface allocated to each Lot will be set forth in this Declaration as to Phase One and as to additional Phases will be set out in an amendment or supplement to this Declaration. Impervious surfaces are defined from time to time by DEHNR, but generally include the utilization of any surface area that has a substantial impact on the ability of such surface to percolate rainwater, and includes areas under roof, driveways, walkways, and other hardened surfaces, including designated parking areas, but generally excluding wood decking. The ARC shall not approve any proposed improvements on any Lot that, when combined with other improvements, exceed the allowed impervious surface limitations.

11.2 In addition to all other restrictions contained within this Declaration, and in accordance with limitations imposed by the State of North Carolina as set out herein, filling in or piping of any vegetated conveyances (ditches, swells, etc.) associated with the development, with the exception of average driveway crossings, is strictly prohibited. Furthermore, areas allowed for construction, which areas are within the Area of Environmental Concern ("AEC") defined under the Coastal Area Management Act ("CAMA") of the State of North Carolina, may have permitted built upon areas reduced in accordance with rules and regulations imposed by the Coastal Resources Commission in accordance with authorization given by the CAMA. In addition, projects covered by permits issued by the State of North Carolina shall maintain a thirty (30) foot wide vegetative buffer between all impervious areas and adjoining surface waters.

11.3 Declarant reserves the right to amend this Declaration, and any amendment or supplement hereto, to keep the Property and any Phase in compliance with stormwater regulations. Such amendments may include additional restrictions and easements on the Common Properties. Therefore, notwithstanding any provision to the contrary in this Declaration, Declarant shall have the absolute right to, in its sole discretion, amend this Declaration to include any and all such restrictions and/or easements required by DEHNR as part of its approval of a stormwater plan for the Property. Any such amendments shall become operative and binding upon all owners, and their properties when set forth in an amendment or supplement to this Declaration and recorded in the office of the Register of Deeds of Carteret County, North Carolina. The Association shall have the obligation and responsibility of maintaining the Common Properties in accordance with such additional restrictions and storm water plans.

11.4 The State of North Carolina through DEHNR, or its successor, is given specific authority to enforce this Declaration to the extent necessary to cause compliance with the impervious surface limitations imposed by the North Carolina Coastal Storm

Water Regulations. The remedies available to the State of North Carolina include, without limitation, the remedy of specific performance. None of the impervious surface limitations contained herein may be altered without the prior approval of the State of North Carolina.

ARTICLE TWELVE
General Provisions

12.1 Enforcement. The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the 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.

12.2 Variances. The Declarant and later, the Association, have the right to grant variances from the terms of this Declaration upon a specific finding that the variance will not harm the appearance of the Property and will not be harmful to Lot values within the Property.

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

12.4 Resubdivision. No resubdivision of any single Lot shall be allowed. Declarant reserves the right, however, to sell and convey to any grantee more than one (1) contiguous Lots or portion thereof without the same being a violation of this Declaration. Provided however, that if Declarant does make such a conveyance of a Lot and a portion of another Lot, then thereafter the conveyed property shall become a single land unit and further re-subdivision shall not be permitted, and all restrictions constrained herein shall then apply to that single land unit as a single lot.

12.5. Combination of lots. The Owner of multiple contiguous lots may construct a single dwelling overlapping interior lot lines, and such overlap will not be a violation of any of these covenants. Provided however, that once such multiple lot construction takes place, then said multiple lots become one (1) single land unit and further re-subdivision is not permitted, and all restrictions contained herein shall then apply to that single land unit as a single lot. Even if a Lot or Lots are combined, for the purposes of calculating and paying assessments, they shall be deemed to be the number of lots that existed before the combination.

12.6 Amendment.

a. This Declaration shall continue in full force and effect until 12:00 noon on January 1, 2025, at which time it shall be automatically extended for successive periods of ten (10) years, unless a document terminating this Declaration is recorded prior to any renewal date in the office of the Register of Deeds of Carteret County. Termination shall require the written consent of eighty per cent (80%) of the owners of Lots or Living Units subjected to this Declaration.

b. This Declaration may be amended at any time with the approval of the owners of sixty-seven percent (67%) of the Lots subjected to this Declaration by written ballot cast at a meeting of the members of the Association or by document bearing the signatures of the requisite number of such owners. No amendment shall be effective until reduced to writing and recorded at the Carteret County Registry. No amendment shall alter the rights reserved to Declarant without Declarant's written consent.

c. In addition to all other rights reserved to Declarant, Declarant reserves the right to unilaterally amend this Declaration:

i. to bring the same into conformity with any guidelines of the Veteran's Administration, Federal Housing Administration, Federal National Mortgage Association, or similar organizations;

ii. to clarify ambiguities or inconsistencies contained herein; or

iii. to add or delete any incidental provisions deemed in the sole discretion of Declarant to be in the best interest of any Phase of Ellinwood Pointe, and the Owners therein.

Declarant's rights to amend set forth in this section shall continue for so long as Declarant owns any real property within Ellinwood Pointe, or for twenty (20) years from the recording hereof, whichever is the first occurring event. In the event the Declarant amends this Declaration, such amendment will be recorded in the Carteret County Registry and a copy filed with the Association.

12.7 Notices. All notices required or provided for in this Declaration shall be in writing and hand delivered or sent by United States mail. If hand delivered, the notices shall be sent to the addresses shown below and shall be deemed to have been given on the date hand delivered to the address of the party to whom the Notice is sent. If United States mails are used, the notices shall be sent to the addresses shown below, certified or registered mail, return receipt requested, postage prepaid, and shall be deemed to have been given on the date deposited in the

United States mails. Notice shall be addressed as follows:

To Declarant: Ellinwood Pointe, LLC
705 4-H Road
Beaufort, NC 28516

with copy to: Kirkman & Whitford, P.A.
P.O. Drawer 1347
Morehead City, NC 28557

To the Association: To the Registered Agent
of the Association at his/her
address as listed with the
Secretary of State of North Carolina.

To Owner/Members: To the last known address of Owner/Member
as shown on the records of the
Association at the time of such mailing,
and if there is no such address, then to
the Lot of such Owner/Member.

Any person shall the right to designate a different address for the receipt of notices other than set forth above, provided the person's new address is contained in a written notice given to the Declarant during the Development Period and to the Association.

12.8 Right of Entry. Violation or breach of any provision herein contained shall give Declarant or the Association, to the extent that any of them may have a right of enforcement thereover, their respective agents, legal representatives, heirs, successors and assigns, in addition to all other remedies, the right (but not the obligation), after five (5) days notice to the Owner of the Lot, to apply to a court of competent jurisdiction for an order granting the Declarant or the Association the right to enter upon the Lot or the land as to which such violation or breach exists, and to abate and remove, at the expense of the Owner thereof, any Structure or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof; and the said parties shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal, except that if any agent of Declarant or the Association shall be responsible for actually committing a trespass by behavior going beyond the intent of the authority conferred by this Section, in such event neither Declarant nor the Association shall be responsible for the unauthorized acts of such agent(s). Nothing herein contained shall be deemed to affect or limit the rights of Owners of the Lots when entitled to do so, to enforce the covenants by appropriate juridical proceedings.

12.9 No Reverter or Condition Subsequent. No provision herein is intended to be, or shall be construed as, a condition

subsequent or as creating a possibility of reverter.

12.10 Remedies. Damages may not be deemed adequate compensation for any breach or violation for any provision hereof, so that any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction, preliminary or final, as well as any other available relief either at law or in equity.

12.11 Headings. The headings or titles herein are for convenience of reference only and shall not affect the meaning or interpretation of the contents of this Declaration.

12.12 Gender. Whenever used in this Declaration, the words of any gender shall include the other gender.

SECTION B

SUBMISSION OF PHASE I ELLINWOOD POINTE TO THE DECLARATION

ARTICLE 13

Phase I Restrictions Conditions and Covenants

13.1 Submission of Phase I. "Final Plat of Phase I-Ellinwood Pointe Subdivision", according to the plat thereof prepared by Atlantic Coast Professional Surveying, P.A. recorded in Map Book ____, Page ____, Carteret County Registry (referred to hereinafter as "Phase I") and more particularly described on the attached Exhibit B is hereby submitted to Article A of this Declaration. In addition to all terms and provisions of Article A, the following restrictions, covenants and easements shall also bind, and inure to the benefit of, the Lots in Phase I and shall run with the title of said Lots:

a. Only one single Family dwelling and one detached appurtenant structure is permitted on any Lot within Phase I.

b. Each Living Unit must contain the following minimum enclosed living space. For purposes of this section, minimum enclosed living areas shall consist of heated area, exclusive of all garages, attics, porches, patios and decks.

(i) waterfront lots - 2,400 square feet;

(ii) waterview lots - (lots one row back or on the eastern side of Staysail) - 2,000 square feet;

(iii) interior lots - 1,800 square feet; and

(iv) lots abutting 4-H Road - 1,600 square feet.

c. No structure containing more than three living floors shall be allowed.

d. There shall be only one (1) curb cut for each dwelling unit constructed on a Lot and that single curb cut shall be for ingress and egress for driveway purposes. Specifically, no curb cuts shall be permitted for the discharge of water (such as gutters, downspouts, water softeners or water drainage from air conditioners) from a Lot to the streets in the subdivision. Notwithstanding the foregoing, the ARC may permit two curb cuts to accommodate a circular drive.

e. Construction of a Structure on a Lot shall be completed within 12 months from its commencement. For purposes of this item, the commencement of construction shall be the date of the issuance of the building permit or actual commencement of the construction of improvements, whichever comes earliest. Completion shall include finishing of the exterior of any building, landscaping, finish painting, construction of the driveway, final trash cleanup, the issuance of a certification of occupancy and installation of permanent electrical service, all as required by context.

13.2 Phase I Storm Water Restrictions. Consistent with the storm water management permit number SW8 030622 from DEHNR for Phase I, the following restrictions apply only to Phase I. The covenants set forth in this article may not be changed or deleted without the consent of the State of North Carolina.

(a) The maximum built upon area per lot in 7,608 square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries, including easements, and that portion of the right of way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking area, but does not include raised, open wooding decking, or the water surface of swimming pools.

(b) These covenants in this section pertaining to stormwater regulations may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality;

(c) No alteration of the drainage shown on the approved plan can be made without the concurrence of the State of North Carolina, Division of Water Quality;

(d) Filing in or piping of any vegetative conveyances (ditches, swales, etc) associated with the development except for average driveway crossings, is strictly prohibited by any

persons.

(e) Lots within Coastal Area Management Act's ("CAMA") Area of Environmental Concern ("ACE") may have the permitted built-upon area reduced due to CAMA jurisdiction within the AEC.

(f) Each lot will maintain a thirty (30) foot wide vegetated buffer between all impervious areas and surface waters.

(g) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit.

(h) All roof drains shall terminate at least thirty (30) feet from the mean high water mark.

(i) These covenants are to run with the land and be binding on all persons and parties claiming under them.

IN WITNESS WHEREOF, the undersigned, being the members of the Declarant herein, have hereunder set their hand and seal, the day and year first above written.

Ellinwood Pointe, LLC

By: _____ (SEAL)
George Ellinwood, Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, _____, notary public of the State and County aforesaid, certify that George Ellinwood Member/Manager of Ellinwood Pointe, LLC, personally appeared before me and acknowledged his execution of the foregoing Declaration for the purposes therein contained.

This the _____ day of _____, 2004.

(Notary Seal)

Notary Public

My commission expires: _____

EXHIBIT A
[Property]

Ellinwood Pointe Subdivision

In Merrimon Township, Carteret County, North Carolina and beginning at a point in the northern right of way line of NCSR 1321 ("4-H Road") which point is located N 60-34-57 E 62.19 feet from the intersection of the center line of NCSR 1321 and Wackena Way (a/k/a Wakena Way) (as shown on the plat of Indian Summer Estates Subdivision recorded in Map Book 7, Page 88, Carteret County Registry). From said point or place of beginning run thence with the northern right of way line of NCSR 1321 in a northeasterly direction with a curve with a 449.44 feet radius and a chord bearing of N 77-00-35 E a chord distance of 182.60 feet to a point. Thence continuing with the northern right of way line of NCSR 1321 N 49-20-18 E 377.83 feet to a point; thence continuing with the northern right of way line of NCSR 1321 N 47-15-38 E 157.10 feet to a point; thence continuing with the northern right of way line of NCSR 1321 N 33-46-18 E 336.01 feet to a point; thence continuing with the northern right of way line of NCSR 1321 N 41-28-56 E 80.97 feet to a point; thence cornering and running N 75-50-54 W 151.22 feet to a point marked by an iron pipe thence running N 04-15-43 E 414.99 feet to a point marked by an iron pipe; thence N 38-16-46 W 231.00 feet to a point marked by an iron pipe; thence S 45-48-27 W 666.37 feet to a point marked by an iron pipe; thence N 30-45-50 W 173.33 feet to a point marked by an iron pipe; thence S 59-16-10 W 219.82 feet marked by an iron pipe; thence N 71-51-10 W 264.27 feet to a point marked by an iron pipe; thence N 22-38-08 W 498.93 feet to a point marked by an iron pipe; thence N 80-01-38 W 263.96 feet to a point marked by an iron pipe; thence S 72-47-00 W 347.32 feet marked by an iron pipe; thence S 17-01-30 E 191.05 feet to a point marked by an iron pipe; thence S 31-43-30 W 215.45 feet to a point marked by an iron pipe; thence S 87-28-30 W 533.88 feet to a point marked by an iron pipe in the high water mark of Neuse River; thence with the high water mark of Neuse River S 22-30-02 W 208.24 feet to a point marked by an iron pipe; thence continuing with the high water mark of Neuse River S 05-22-07 W 131.61 feet to a point marked by an iron pipe at the confluence of Neuse River and Adams Creek; thence with the high water mark of Adams Creek S 73-22-57 E 783.70 feet to a point marked by an iron pipe; thence continuing with the high water mark of Adams Creek S 40-04-58 E 436.14 feet to a point marked by an iron pipe; thence continuing with the high water mark of Adams Creek S 23-23-08 E 276.40 feet to a point marked by an iron pipe; thence continuing with the high water mark of Adams Creek S 28-13-48 E 23.46 feet to a point marked by an iron pipe; thence cornering and running N 78-29-40 E 237.18 feet to a point; thence with a curve with a radius of 50.00 feet in an eastwardly direction a chord bearing of N 83-16-51 E and a chord distance of 77.27 feet; thence in an eastwardly direction with the curve with a radius of

20.00 feet a chord bearing S 68-19-52 E and a chord distance of 15.12 feet to a point in the northern right of way line of NCSR 1321; thence with the northern right of way line of NCSR 1321 N 89-27-40 E 220.11 feet to a point; thence continuing in an easterly direction with the northern right of way line of NCSR 1321 to the point or place of beginning. See plat captioned "Final Plat of Phase I-Ellinwood Pointe Subdivision" dated May 5, 2004 prepared by Atlantic Coast Professional Survey, PA.

EXHIBIT B

PHASE I DESCRIPTION

Phase I - Ellinwood Pointe Subdivision

In Merrimon Township, Carteret County, North Carolina. Beginning at a point in the northern right of way line of NCSR 1321 ("4-H Road") which point is located N 60-34-57 E 62.19 feet from the intersection of the center line of NCSR 1321 with the center line of Wackena Way (also known as Wakena Way) as said street is shown on Indian Summer Estates Subdivision recorded in Map Book 7, Page 88, Carteret County Registry. From said point or place of beginning run thence with a curve with a radius of 449.44 feet with the northern right of way line of NCSR 1321 a chord bearing of N 77-00-35 E a chord distance of 182.60 feet to a point; thence continuing with the northern right of way line of NCSR 1321 N 49-20-18 E 377.83 feet to a point; thence continuing the northern right of way line of NCSR 1321 N 47-15-38 E 157.10 feet to a point; thence continuing with the northern right of way line of NCSR 1321 N 33-46-18 E 336.01 feet to a point; thence continuing with the northern right of way line of NCSR 1321 N 41-28-56 E 80.97 feet to a point; thence cornering and running N 75-50-54 W 151.22 feet to a point marked by an iron pipe; thence N 04-15-43 E 52.76 feet to a point marked by a concrete monument; thence S 45-16-44 W 962.62 feet to a point marked by a concrete monument; thence N 38-06-49 W 216.18 feet to a point; thence N 86-25-55 W 90.01 feet to a point; thence N 30-44-31 W 197.32 feet to a point; thence N 46-05-13 W 139.71 feet to a point; thence N 01-27-34 E 37.44 feet to a point; thence N 88-31-42 W 283.48 feet to a point; thence S 86-25-24 W 61.85 feet to a point; thence S 83-21-43 W 346.37 feet to a point; thence S 24-51-40 W 112.02 feet to a point in the high water mark of Adams Creek; thence with the high water mark of Adams Creek S 40-04-58 E 436.14 feet to a point marked by an iron pipe; thence S 23-23-08 E with the high water mark of Adams Creek 276.40 feet to a point marked by an iron pipe; thence continuing with the high water mark of Adams Creek S 28-13-48 E 23.46 feet to a point marked by an iron pipe; thence cornering and running N 78-29-40 W 237.18 feet to a point; thence with a curve with a 50.00 foot radius in an eastwardly direction a chord bearing of S 83-16-51 W and a chord distance of 77.27 feet, thence continuing in an easterly direction with a curve with a radius of 20.00 feet a chord bearing of S 68-19-52 E a chord distance of 15.12 feet to a point in the northern right of way line of NCSR 1321; thence with the northern right of way line of NCSR 1321 N 89-27-40 E 220.11 feet to a point; thence continuing with the right of way line of NCSR 1321 in an easterly direction to the point or place of beginning. See plat captioned "Final Plat of Phase I-Ellinwood Pointe Subdivision" dated May 5, 2004 prepared by Atlantic Coast Professional Surveying, PA