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STATE OF MISSISSIPPI  
COUNTY OF MADISON

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TIDEWATER, PART 1 and TIDEWATER, PART TWO

THIS DECLARATION is made this 19th day of September, 1985, by TIDEWATER PROPERTIES, a Mississippi General Partnership composed of Northpointe, Inc. and Treasure Cove, Ltd., a Mississippi corporation (hereinafter referred to as "Declarant"):

WITNESSETH:

WHEREAS, Declarant desires to create a residential community on certain property situated in Madison County, Mississippi, and more particularly described as follows, to-wit:

All Lots in Tidewater, Part 1, a subdivision according to a map or plat thereof on file and of record in the office of the Chancery Clerk of Madison County, Mississippi in Plat Cabinet B at Slot 54, and also all Lots in Tidewater, Part Two, a subdivision according to a map or plat thereof on file and of record in the office of the Chancery Clerk of Madison County, Mississippi in Plat Cabinet B at Slot 74.

WHEREAS, Declarant desires to provide for the preservation of the values in said community and for the maintenance of certain areas as may be designated by the Owners and, to this end, desires to subject the Property 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; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values in said community, to provide for an agency to which would be delegated and assigned the powers of and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant owns Lots 6 through 41 and Lots 45 through 76 in Tidewater Part Two and Caraway Enterprises, Inc. owns Lots 1, 3, 4 and 5 and Arthur D. Currie, Jr. and wife Tracy S. Currie own Lot 2, John Thomas Mayson and Laurie Elizabeth Mayson own Lot 44 and George H. Gregory, Inc. owns Lots 43 and 42 of Tidewater Part Two; and

WHEREAS, said owners represent all of the owners of Lots in Tidewater Part Two; and

WHEREAS, Brent L. Johnston owns Lot 46 and Lots 48 through 59 of Tidewater Part 1; and

WHEREAS, all of the aforesaid owners desire to join with Declarant to subject their respective properties to the

covenants, conditions, restrictions, easements, charges and liens hereinafter set forth; and

NOW THEREFORE, Declarant, Richard A. Caraway, Arthur D. Currie, Jr. and wife Tracy S. Currie, John Thomas Mayson and Laurie Elizabeth Mayson, George H. Gregory, Inc. and Brent L. Johnston declare that the Property is and shall be held transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

#### ARTICLE I.

##### DEFINITIONS

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

(a) The "Association" shall mean and refer to Tidewater Homeowners Association, Inc. a non-profit corporation, incorporated under the laws of the State of Mississippi for the purpose of effecting the intents and objectives herein set forth, its successors and assigns.

(b) "Property" or "Properties" shall mean and refer to that certain real property situated within the boundaries of Tide Water, Part I and Tide Water, Part II which are subject to this Declaration or which may later become subject to this Declaration.

(c) "Common Area" shall mean all real property (including the improvements thereon) owned by the Association for the common use and enjoyment of the owners. The common area to be owned by the Association shall be all of the property marked and designated as Common Area on the subdivision plats of Tidewater, Part I and Tidewater, Part Two on file and of record in the office of the Chancery Clerk of Madison County, Mississippi in Plat Cabinet B at Slot 54 and Plat Cabinet B at Slide 74, respectively.

(d) "Lot" shall mean and refer to any plot or tract of land shown upon the recorded subdivision map or plat of the Property, exclusive of the Common Area, which is designated as a lot therein and which is or will be improved with a residential dwelling.

(e) "Owner" shall mean and refer to the record owner of whether one or more persons or entities of a fee or undivided fee interest in any Lot which is part of the Properties, including contract sellers, but excluding those persons or entities who hold an interest merely as security for the performance of an obligation.

(f) "Declarant" shall mean and refer to TIDEWATER PROPERTIES, a Mississippi General Partnership composed of Northpointe, Inc. and Treasure Cove, Ltd., its successors and assigns.

(g) "Member" shall mean and refer to each Owner as provided herein in Article III.

(h) "The "Board of Directors" or the "Board" shall mean and refer to the Board of Directors of the Association.

(i) "Recorded First Mortgage" shall be deemed to mean a mortgage or deed of trust, properly recorded in the office of the Chancery Clerk of the Madison County, Mississippi or other public office designated by the statutes and laws of the State of Mississippi for the recording of mortgages in Madison County, Mississippi, the lien of which is prior, paramount, and superior to the lien of all other mortgages and deeds of trust; provided, however, that a Purchase Money Mortgage or Purchase Money Deed of Trust executed in favor of an individual lot owner to secure the payment of part or all of the purchase price of the lot shall not be deemed to be a Recorded First Mortgage.

ARTICLE II.

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association, acting by and through its Board of Directors, to levy reasonable admission and other fees for the use of any community facilities (excluding streets, roads and parking areas which have been accepted by the City of Madison, Mississippi for maintenance) situated upon the Property by the Members and their families, tenants and guests; provided, however, that any such fees shall be charged on a uniform basis for each Member; and

(b) the right of the Association to suspend any Member's voting rights and any Member's rights to use the common areas and community facilities (except rights to use streets, roadways and parking areas, which latter rights shall not be subject to suspension for any reason) for any period during which any assessment remains unpaid and for any period not exceeding sixty (60) days for any infraction of any of the published rules and regulations of the Association; and

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless 2/3rds of each class of the then Members of the Association consent to such

dedication, transfer, purpose and conditions, at a special meeting of the Members duly called for such purpose or an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

(d) the right of the Association, in accordance with its Charter of Incorporation and By-Laws, to borrow money for the purpose of improving the common areas and community facilities in a manner designed to promote the enjoyment and welfare of the Members, and in aid thereof to mortgage any of the common areas and community facilities, provided, however, that no such borrowing shall be done and no such mortgage shall be executed unless and until same has been approved by the vote of at least 2/3rds of each Class; and

(e) the right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosure; provided, however, that any such steps are in conformity with the other provisions of this Declaration; and

(f) the right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Developers or any other person, provided, however, that no such licenses, rights-of-way or easements shall be unreasonably and permanently inconsistent with the rights of the Members to the use and enjoyment of the common areas and community facilities; and

(g) the right of any owner of a lot in Treasure Cove, Parts 1, 2 and 3 to use and enjoy, as a member without voting rights, certain common area facilities and common area as may be designated by the Board of Directors and on such terms, conditions and fees as may from time to time be prescribed by said Board.

(h) the right of the Association, acting by and through its Board of Directors, to open the common areas and community facilities, or any portions thereof, to a wider group of persons, all for such purposes and on such bases as the Board of Directors may from time to time consider appropriate; and

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family who reside permanently with him, his tenants, or contract purchasers who reside on the property and guests, all subject to such reasonable rules and regulations as the Board of Directors of the Association may adopt and uniformly apply and enforce.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The Members of the Association shall be and consist of each and all of the following, to-wit:

(a) Every person who is, or who hereafter becomes, an owner of record of the fee title to a Lot. The expression "owner of record of the fee title to a Lot" shall include a contract seller of any such Lot, but shall not include any person who owns such title solely as security for the performance of an obligation or payment of a debt.

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

Class A. Class A Members shall be all Members with the exception of Declarant. Class A Members shall be entitled to one vote for each Lot owned. When more than one person or entity holds an interest or interests in any Lot, all such persons or entities 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(s) shall be the Declarant. The Class B Member(s) shall be entitled to three (3) votes for each Lot owned except as restricted under Section 2 hereof. When the total votes outstanding in the Class A membership equal the votes outstanding in the Class B membership, then the Class B membership shall cease and be converted into Class A membership. Notwithstanding the foregoing, on December 31, 1989, all Class B memberships shall cease and be converted into Class A memberships.

Section 2. Voting Rights. Each Member shall have one vote in the election of each officer of the Association. For all other purposes, the voting rights of the Members shall be by class of membership, and shall be as follows, to-wit:

(a) Class A Members. Each person, other than persons herein defined as "Declarant", who is or who hereafter becomes the Owner of a Lot shall be a Class A Member of the Association. Class A Members shall be entitled to one vote for each Lot owned.

(b) Class B Members. Each of the persons herein defined as "Declarant," and the nominee or nominees, if any, of each such person, shall be Class B Members of the Association. Class B Members shall be entitled to three votes for each Lot owned.

Section 3. Memberships Appurtenant to Real Property. In every case, the membership of both Class A and Class B Members shall be appurtenant to the ownership of a lot. A membership shall not be held, assigned, transferred, pledged, hypothecated, encumbered, conveyed or alienated in any manner except in conjunction with and as an appurtenance to the ownership, assignment, transfer, pledge, hypothecation, encumbrance,

conveyance, or alienation of the lot to which the membership is appurtenant.

Section 4. Other Voting Provisions. If the fee title to a particular Lot is owned of record by more than one person or entity, then the vote appurtenant to such lot may be exercised by any one of the fee owners thereof, unless the other owner or owners of such fee title shall object prior to the completion of voting upon the particular matter under consideration. In the case of any such objection, the vote appurtenant to said Lot shall not be counted.

ARTICLE IV

COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Properties, hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual maintenance assessments or charges for purposes set forth in Article IV, Section 2 and (2) special assessments for capital improvements as set forth in Article IV, Section 4 such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual maintenance and special individual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Properties, and in particular for the improvement and maintenance of the Common Area; and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of the Common Area, including but in no way limited to the following:

(a) the amount of all operating expenses for operating the Common Areas and common facilities and furnishing the the services furnished to or in connection with the Common Areas and common facilities, including charges by the Association for any services furnished by it; and

(b) the cost of necessary management and administration of the Common Areas and common facilities, including fees paid to any managing agents; and

(c) the amount of all taxes and assessments levied against the Common Areas and common facilities; and

(d) the cost of fire and extended coverage and liability insurance on the Common Areas and common facilities and the cost of such other insurance as the Association may place in force with respect to the Common Areas and common facilities; and

(e) the cost of garbage and trash collection to the extent provided by the Association, and of utilities and other services which may be provided by the Association, whether for the Common Areas and common facilities or for the lots, or both; and

(f) the cost of maintaining, replacing, repairing and landscaping the Common Areas and common facilities (including, without limitation, the cost of maintaining, replacing and repairing the sidewalks, streets, other than those accepted by the City of Madison, Mississippi for maintenance, and open areas in the property), and the cost of such equipment as the Board of Directors shall determine to be necessary and proper in connection therewith; and

(g) the cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and a reserve for replacement.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Fifty dollars (\$150.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3rds) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments.

(a) Special Assessments for Capital Improvements.  
In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvement upon

the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

(b) Special Assessments for Willful or Negligent Acts.  
 Upon an affirmative vote of two-thirds (2/3) of each class of members in interest, the Association may levy special assessments against individual Lot Owners, for reimbursement for repairs occasioned by the willful or negligent acts of the Lot Owners and not ordinary wear and tear.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than 15 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Annual and Special Assessments.  
 Both annual and special capital assessments must be fixed at a uniform rate for all lots payable as set forth in Section 4 above. Unless two-thirds (2/3) of each class of members and their respective first mortgagees (and if their interest be affected, the Federal National Mortgage Association, Federal Housing Administration and the Veterans Administration) have given prior written approval, the Board of Directors of the Association shall not change the pro rata interest or obligations of any Lot (or owner thereof) for the purposes of levying annual and special capital assessments and charges. The Association may add to the assessments to an individual Lot Owner such additional maintenance expense as may be required for the maintenance and upkeep of that portion of the private driveway as constructed upon their respective lot or lots as provided for in Article XI of this Declaration.

Section 7. Date of Commencement of Assessments: Due Dates.  
 The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due dates shall be established by the Board of Directors. Assessments on Lots owned by Class B members



shall commence two (2) years from the date of the conveyance of the Common Area.

Section 8. Duties of the Board of Directors with Respect to Assessments.

(a) The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association.

(b) Written notice of the assessment shall thereupon be delivered or mailed to every owner subject thereto.

(c) The Board of Directors shall upon demand at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Said certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association.

(a) If any assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment shall, together with such interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the Lot of the non-paying Owner, which lien shall be binding upon such Lot and the Owner thereof, his heirs, executors, devisees, personal representatives and assigns. The Association shall have the right to reject partial payments of an assessment and demand the full payment thereof. The obligation of the then existing Owner to pay such assessment, however, shall remain his personal obligation and shall not be extinguished by transfer of title. The lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the assessment provided herein by abandonment of his Lot.

(b) The Association shall give written notification to the holder(s) of the mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment when such default has not been cured within sixty (60) days.

(c) If any assessment or part thereof is not paid within forth (40) days after the delinquency date, the unpaid amount of such assessment shall bear interest from the date of delinquency at the maximum interest rate per annum which can be charged to individuals and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the

same in order to enforce payment and/or to foreclose the lien against the property subject thereof after giving Notice to the holder of any Recorded First Mortgage as set out in Article XII. There shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action and/or all costs of foreclosure, including a reasonable attorney's fee.

Section 10. Reserves for Replacements. The Association shall establish and maintain a reserve fund for replacements of the common areas and community facilities, and shall allocate and pay to such reserve fund whatever amount may be designated from time to time by the Board of Directors. Amounts paid into such fund shall be conclusively deemed to be a common expense of the Association, and all such amounts may be deposited in any banking institution, the accounts, or, in the discretion of the Board of Directors, may be invested in obligations of, or obligations fully guaranteed as to principal by, the United States of America. The reserve for replacements of the purpose of affecting the replacement of the common areas and community facilities, for major repairs to any sidewalks, parking areas, streets or roadways on the Property, for equipment replacement, and for start-up expenses and operating contingencies of a non-recurring nature relating to the common areas and community facilities. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of each member in any such reserves shall be considered an appurtenance to his Lot, and shall not be withdrawn, assigned or transferred separately from or otherwise than as an appurtenance to the Lot to which it appertains, and shall be deemed to be transferred with such Lot.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any Recorded First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charge and lien created herein:

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- (a) All properties dedicated and accepted by the local public authority and devoted to public use.
- (b) All areas designated as Common Area on the recorded plat of the Property.

ARTICLE V.  
GENERAL POWERS AND DUTIES OF BOARD  
OF DIRECTORS OF THE ASSOCIATION

Section 4. Powers and Duties. The Board of Directors shall have all the powers, authorities and duties necessary or appropriate for the management and administration of the affairs of the Association, and in managing and administering such affairs, the Board of Directors shall have power and authority to do all acts and things except those which by law or by the Declaration or by the Charter or by the By-Laws may be exercised and done only by the Members. The powers, authorities and duties of the Board of Directors shall include, but shall not be limited to, the following:

- (a) To provide for the care, upkeep and surveillance of the Common Areas and community facilities and services in a manner consistent with law and the provisions of the By-Laws and the Declaration; and
- (b) To provide for the establishment, assessment, collection, use and expenditure of assessments and carrying charges from the Members, and for the filing and enforcement of liens therefor in a manner consistent with law and the provisions of the By-Laws and the Declaration; and
- (c) To provide for the designation, hiring and dismissal of the personnel necessary and appropriate for the proper care and maintenance of the Common Areas and community facilities and to provide services on the project in a manner consistent with law and the provisions of the By-Laws and the Declaration; and
- (d) To provide for the promulgation and enforcement of such rules, regulations, restrictions and requirements as may be deemed proper respecting the use, occupancy and maintenance of the common areas and community facilities, including but by no means limited to rules, regulations, restrictions and requirements designed to prevent unreasonable interference with the use of the common areas and community facilities by the Members and others, all of which rules, regulations, restrictions and requirements shall be consistent with law and with the provisions of the By-Laws and the Declaration; and
- (e) To authorize, in their discretion, the payment of patronage refunds if and when the funds derived from assessments shall prove to be more than sufficient to meet all reasonably foreseeable needs of the Association during the then current fiscal year; and

(r) To purchase insurance upon the common areas and community facilities in the manner provided for in the By-Laws and Declaration; and

(g) To repair, restore or reconstruct all or any part of the common areas and community facilities after any casualty loss in a manner consistent with law and the provisions of the By-Laws and the Declaration, and to otherwise improve the common areas and community facilities; and

(h) To lease and to grant licenses, easements, rights-of-way, and other rights of use in all or any part of the common areas and community facilities; and

(i) To purchase Lots and to lease, mortgage or convey the same, subject to the provisions of the By-Laws and the Declaration.

(j) To employ for the Association, at their sole discretion, a management agent or manager (herein at times referred to as the "Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors from time to time shall prescribe. Any management agreement entered into by the Association shall provide, inter alia, that such agreement may be terminated for cause by either party upon thirty (30) days' written notice to the other party. The term of any such management agreement shall not exceed one year; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one-year periods.

ARTICLE VI.

INSURANCE

Section 1. Insurance. Except as to builder's risk and other insurance furnished by the Developer or Contractor during construction and reconstruction, the Board of Directors shall obtain and maintain, to the extent reasonably available, at least the following:

(a) A comprehensive policy of public liability insurance in such amount and in such form as may be considered appropriate by the Board of Directors in its discretion (but in an amount of not less than One Million Dollars (\$1,000,000.00) coverage for all claims for bodily injuries and/or property damage arising out of a single occurrence), which policy may include a "Severability of Interest Endorsement" or its equivalent if the Board of Directors in its discretion deems such appropriate, and which policy shall afford coverage with respect to whatever additional and special liabilities the Board of Directors in its discretion may specify, including, but not limited to, hired automobile liability,

non-owned automobile liability, liability for property of others, liability incident to the ownership and use with respect to projects similar in construction, location and use; and

(b) Workmen's compensation insurance to the extent necessary to comply with any applicable law; and

(c) A "Legal Expense Indemnity Endorsement," or its equivalent, affording protection for the officers and Directors of the Association for expenses and fees incurred by any of them in defending any suit or settling any claim, judgment or cause of action to which any such officer or Director shall have been made a party by reason of his or her services as such; and

(d) Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as shall be considered appropriate by the Board of Directors in its discretion.

Section 2. Limitations. All insurance obtained pursuant to the requirements of this Article shall be subject to the following provisions:

(a) All policies shall be written or reinsured with a company or companies licensed to do business in the State of Mississippi and holding a rating equivalent to a rating of "A + XV" or better in the most recent edition of Best's Insurance Guide.

(b) Exclusive authority to negotiate losses under said policies shall be vested in the Board of Directors, or its authorized representative.

(c) In no event shall the insurance coverage obtained and maintained pursuant to the requirements of this Article be brought into contribution with insurance purchased by the Owners of the Lots or their mortgagees, and any "no other insurance" or similar clause in any policy obtained for the Association pursuant to the requirements of this Article shall exclude such policies from consideration.

(d) Such policies shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased, whether or not within the control or knowledge of the Board of Directors, and shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Board of Directors or any one or more Members of the Association, or any of their respective agents, employees, tenants, mortgagees or invitees, or by reason of any act of neglect or negligence on the part of any of them.

(e) All policies shall provide that such policies may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior

written notice to all insureds named therein, including any mortgagee of any Lot who requests such notice in writing.

(f) All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Board of Directors, the Members and their respective agents, employees and tenants, and a waiver of any defenses based upon co-insurance or invalidity arising from the acts of the insured.

Section 3. Personal Property Insurance. All insurance with respect to hazard insurance on the individual homes, contents, and automobiles and other vehicles owned and/or leased by Members, and any other insurance desired by Members, shall be the individual responsibility of each Member, and the cost thereof shall be solely for such Members account.

ARTICLE VII

AD VALOREM PROPERTY TAXES

Each Owner shall be responsible for and promptly pay ad valorem taxes on his Lot. The Association shall pay the ad valorem taxes on the Common Area and common facilities.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Restrictions.

(a) No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant during the first five (5) years from the date hereof and by the Board, or by an architectural sub-committee composed of three (3) or more representatives appointed by the Board. In the event said Declarant, the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

(b) For a period of five (5) years immediately following the date hereof, but not thereafter, all plans and specifications required by the preceding subparagraph (a) to be submitted and approved by the Declarant which approval by the Declarant shall be obtained at least two (2) weeks prior to the commencement of construction or alteration. A copy of each such set of plans and specifications shall be furnished to the Declarant for its files

at no cost to the Declarant. After said five year period all such plans and specifications shall be submitted by the Board or the Architectural Control Committee.

ARTICLE IX.

EASEMENTS

Section 1. Ingress and Egress by the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon each Lot for the maintenance and repair of each Lot in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association at the expense of the maintenance fund.

Section 2. Ingress and Egress by Members. Full rights of ingress and egress shall be had by Members of the Association, their guests and invitees, over Common Area "A" to Common Area "B" as set out in Plat of TIDEWATER, PART TWO, on file and of record in the office of the Chancery Clerk of Madison County, Mississippi in Cabinet B at Slot 74.

Section 3. Private Drives. Private Drives located at rear of each lot shall be for the exclusive use, enjoyment and benefit of Lot Owner of lot or lots adjoining and contiguous to said private drive easement, their guests and invitees.

ARTICLE X.

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The Property. The Property is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

- (a) By filing of record a Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of the Covenants, Conditions, and Restrictions of this Declaration to such property or properties; provided, however, that such other Declaration may contain such complementary additions and modifications of the covenants, conditions, and restrictions contained herein as may be necessary to reflect the different character, if any, of the added properties but which are not generally inconsistent with the concept of this Declaration, provided, however, in no event shall such Supplementary Declaration otherwise modify the covenants established by this Declaration for the existing Properties.

(b) No other residential Property and Common Area may be annexed to the properties without the consent of 2/3rd of each class of members and such consent as required by Section 9 of Article XII.

(c) Any additions made pursuant to this Section 2, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added and grant to all Owners all property rights set forth in Article II of this Declaration to all properties now or hereafter annexed.

(d) The covenants, conditions and restrictions of this Declaration shall not effect or apply to any of the real property described in this Section unless and until such property or a portion thereof is annexed by this declaration pursuant to and in compliance with the provisions of this Section 2 of Article X. Upon a merger or consolidation of the Association with another association, as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, (by operations of law, be added to the properties, rights and obligations of another Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration except as hereinafter provided.

ARTICLE XI  
MAINTENANCE

Section 1. Responsibility of Owner. Each Owner shall keep and maintain his lot and all improvements constructed thereon in good repair including that portion of the paved access drive running across the rear of his lot.

Section 2. Failure of Owner to Perform. In the event Owner fails to maintain that portion of the access drive running across the rear of his lot, the Board, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the access drive. The cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject.



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ARTICLE XII

GENERAL PROVISIONS

Section 1. Duration. The Covenants, Conditions and Restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Owners of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date that this Declaration as recorded in the Office of the Chancery Clerk of Madison County, Canton, Mississippi, after which time said covenants shall be automatically extended for the successive periods of ten (10) years unless an instrument signed by two-thirds (2/3) of the Owners has been recorded in the Deed Records, in said Chancery Clerk's Office agreeing to abolish the said Covenants, Conditions and Restrictions in whole or a substantial portion thereof; provided, however, that no such agreements to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

Section 2. Amendments. Notwithstanding Section 1 of this Article, the Covenants, Conditions and Restrictions of this Declaration may be amended and/or changed in part with the consent of ninety percent (90%) of the Lot Owners if amended and/or changed during the twenty-five (25) year period of this Declaration, and thereafter said Covenants may be amended or terminated with the consent of at least seventy-five percent (75%) of the Lot Owners, and in each case such amendment shall be evidenced by a document in writing bearing each of their signatures. All amendments, if any, shall be recorded in the Office of the Chancery Clerk of Madison County, at Canton, Mississippi.

Section 3. Enforcement. Enforcement of these Covenants, Conditions and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, or to recover damages, or to enforce any lien created by these covenants; and failure 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 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 5. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 6. Notices to Owner. Any notice required to be given to any Owner under the provisions of this Declaration shall

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be deemed to have been properly delivered when deposited in the United States mails, postage prepaid, addressed to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

Section 7. Notices to Mortgagees. Notwithstanding any provision herein to the contrary, the holder(s) of a Recorded First Mortgage on any Lot is entitled to, and shall receive, written notification from the Association of any default by the respective mortgagor/Owner in the performance of such mortgagor's/owner's obligation(s) as established by this Declaration.

Section 8. Consent of Holders of First Deed of Trust and Federal National Mortgage Association/Federal Housing Administration/Veterans Administration. During any period when any Lot in the project is encumbered by a Recorded First Mortgage, the Owners, by any act or omission, shall not do any of the following things without the prior written consent and approval of the holders of all outstanding Recorded First Mortgages, and if their interests be affected, the Federal National Mortgage Association, Federal Housing Administration and the Veteran's Administration:

(a) Abandon, partition, subdivide, encumber, sell or transfer any of the Common Area provided, however, that the granting of rights of way, easements and the like for public utilities or for other purposes consistent with the use of the Common Area by the Owners shall not be considered an encumbrance, sale or transfer within the meaning of this Subsection; the prior written approval of the holders of only seventy-five percent (75%) or more of the holders of Recorded First Mortgages shall be required; or

(b) Abandon or terminate this Declaration; or

(c) Modify or amend any material or substantive provision of this Declaration.

(d) Annex additional properties; or merge or consolidate the Association.

Section 9. Notice to Board of Directors. Any Owner of any Lot in the project who mortgages such Lot shall promptly notify the Board of Directors of the name and address of his mortgagee and, if requested so to do, shall file a conformed copy of such mortgage with the Board of Directors. The Board of Directors shall maintain a suitable roster pertaining to such mortgages.

Section 10. Additional Rights of Mortgagees - Notice.

(a) The Association shall promptly notify the holder of the Recorded First Mortgage on any Lot as to which any assessment levied pursuant to the Declaration, or any installment thereof, shall become and remain delinquent for a period in excess of

holder of the Recorded First Mortgage on any Lot as to which there is default by the Owner with respect to performance of any other obligation under this Declaration which remains uncured for a period in excess of sixty (60) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any Recorded First Mortgage on any Lot, and the protection extended in this Declaration to the holder of any such mortgage shall not be altered, modified or diminished by reason of such failure. Also, any failure to give any such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any of the priorities for liens as specified in Article IV hereof.

(b) No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to this Declaration except after ten (10) days' written notice to the holder of the Recorded First Mortgage encumbering the Lot which is the subject matter of such suit or proceeding.

(c) Any holder of a Recorded First Mortgage on any Lot upon the Property may pay any taxes, utility charges or other charges levied against the Common Area which are in default and which may or have become a charge or lien against any of the Common Area. Any holder of a Recorded First Mortgage who advances any such payment shall be due immediate reimbursement of the amount so advanced from the Owners.

(d) No mortgagee and no beneficiary or trustee under a deed of trust shall become personally liable for or obligated for any unpaid maintenance fund assessment.

(e) No amendment to this Declaration shall effect the rights of the holder of any Recorded First Mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

Section 11. Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

IN WITNESS WHEREOF DECLARANT HAS CAUSED this instrument to be duly executed on the day and year first above mentioned.

DECLARANT

TIDEWATER PROPERTIES, a  
Mississippi General Partnership

By: NORTHPOINTE, INC., Partner

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By: TREASURE COVE DEVELOPMENT  
CO., LTD., Partner  
By: Brent L. Johnston  
Brent L. Johnston,  
General Partner  
By: CARAWAY ENTERPRISES, INC.  
By: Richard A. Caraway  
Richard Caraway, President

\_\_\_\_\_  
Arthur D. Currie

\_\_\_\_\_  
Tracy Currie

John Thomas Mayson  
John Thomas Mayson

Laurie Elizabeth Mayson  
Laurie Elizabeth Mayson

Brent L. Johnston  
Brent L. Johnston  
By: George H. Gregory, Inc.  
GEORGE H. GREGORY, INC.

By: George H. Gregory  
President

STATE OF MISSISSIPPI  
COUNTY OF HINDS

PERSONALLY came and appeared before me, the undersigned authority in and for the jurisdiction aforesaid, and while within my official jurisdiction, the within named Rayford R. Hudson, III personally known to me to be the President of the within named NORTHPOINTE, INC., General Partner of TIDE WATER PROPERTIES, a Mississippi General Partnership, who acknowledged that he signed, sealed and delivered the above and foregoing instrument of writing on the day and for the purposes therein mentioned for and on behalf of said corporation and as its own act and deed, while acting as Partner of said general partnership, he being first duly authorized so to do.

WITNESS MY SIGNATURE AND OFFICIAL SEAL OF OFFICE this the 22nd day of September, 1985.

Notary Public  
NOTARY PUBLIC

My Commission Expires:  
Commission Expires Dec. 11, 1985