

any portion of Common Areas, or (iii) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility, the responsibility of the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Common Areas or any other portion of the Subdivision. No diminution or abatement of assessments or any dues or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by order or directive of any municipal or other governmental separate and independent covenant on the part of each Owner.

(b) In the event that the Developer or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his, her or its obligations, with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, the Developer or the Association, except in the event of an emergency situation, may give such Owner written notice of the Developer's or the Associations' intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Developer or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, and said cost shall be added to and become a part of the assessment to which such Owner and his Lot are subject and shall become a lien against such Lot. In the event that the Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse the Developer for the Developer's costs and expenses.

Article VI

COVENANT FOR ASSESSMENTS

Section 6.1 Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot


by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments, including such reasonable reserves as the Association may deem necessary, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs of collection, and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest costs of collection, and reasonable attorney's fees for the collection thereof, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall run with the land and pass to his successors in title.

Section 6.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners in the Subdivision (and their respective families, guests, tenants, and invitees) and for the improvement, protection, replacement, operation, and maintenance of the Common Areas, landscaping and maintenance of landscaping of individual Lots as provided in this Declaration; and for the provision of various forms of insurance for the Association, its property (including the dedicated Common Areas), members, directors, officers, employees and agents, and for the provision of necessary and reasonable services for and other expenses of the Association.

Section 6.3 Initial Assessment. At the time of the first sale of each Lot from the Developer to an Owner, there shall be assessed by the Association and collected from each Owner/Purchaser an initial assessment of Two Hundred Dollars (\$200.00) for such Lot, to establish and maintain a working capital fund for the use and benefit of the Association. The purpose of such working capital fund is to insure that the Association will have cash available to meet unforeseen expenditures, or to acquire equipment or service deemed necessary by the Association. Such initial assessments shall not be considered as advance payment of regular assessments.

Section 6.4 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 the bulkheads or of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for any other purpose set forth in the ByLaws of the Association, provided that any such

assessment shall have the assent of two thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose. Notwithstanding the foregoing, the Board shall have the authority to enact a special assessment not to exceed Five Hundred Dollars (\$500.00) per Lot per year without the assent of the Owners when the Board, in its discretion, determines that such special assessment is necessary.

 Section 6.5 Notice and Quorum for Any Action Authorized under Section 6.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.4 above shall be sent to all member not less than thirty (30) days nor more than sixty (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 shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same 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 sixty (60) days following the preceding meeting.

Section 6.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots (whether improved or unimproved) and may be collected on a monthly, quarterly or annual basis, except as to platted Lots without an occupied dwelling thereon owned by the Developer which are subject to this Declaration, which Lots shall not be assessed the assessments chargeable to other Lots.

Section 6.7 Date of Commencement of Annual Assessments: Due Dates. The Annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of that Lot by the Developer to an Owner; provided, however, that as to each platted Lot subject to this Declaration which is owned by the Developer and upon which there is no occupied dwelling such Developer owned Lots shall not be assessed at the annual assessments provided for herein. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6.8 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate equal to the lesser of (a) eighteen percent (18%) per annum or (b) the maximum rate provided by applicable law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot (as in the foreclosure of a mortgage), or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot. Penalties, costs, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment.

Section 6.9 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any 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 deed or other 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 6.10 Exempt Property. The following property, individuals, partnership, or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein:

- (a) The Grantees in conveyances made for the purposes of granting utility easements;
- (b) Owners of all open space and common properties;
- (c) All lands below the mean high water mark;
- (d) All Lots without an occupied dwelling owned by Developer.

Section 6.11 Assessments by Toler's Cove Homeowners Association, Inc. Pursuant to Paragraph 13 of that certain unrecorded Closing Agreement dated February 10, 1995 by and between Toler's Cove Homeowner's Association, Inc. and the Developer, Horlbeck Creek Land Corporation (attached hereto as Exhibit "C"), the Owner of each Lot shall pay a fee of \$250.00 per month through December 31, 1997 for using the private road system and recreational amenities. The monthly fee per Lot shall be increased or decreased based on the increase or decrease in per unit assessments for the Toler's Cove Homeowners Association, Inc. unit owners as a whole, but net of condominium building maintenance charges, condominium building security charges and insurance on condominium buildings.