

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK
This instrument has been filed for
Registration on the Date, Time and in the
Book and Page shown on the First Page
hereof, and is being returned for
your safekeeping.
Robert J. Robinson
Robert J. Robinson, Register of Deeds

Brunswick County--Register of Deeds
Robert J. Robinson
Inst #013321 Book 2324Page 1123
01/21/2006 02:53:20pm Rec# 261070

MASTER DECLARATION OF PROTECTIVE COVENANTS FOR PALMETTO CREEK

Prepared by: Murchison, Taylor & Gibson, PLLC
16 North Fifth Avenue, Wilmington, NC 28401

NORTH CAROLINA

BRUNSWICK COUNTY

THIS MASTER DECLARATION OF PROTECTIVE COVENANTS FOR PALMETTO CREEK (these "Protective Covenants") is made this 30th day of January, 2006, by XDV, INC., a North Carolina corporation ("DECLARANT").

DECLARANT is the owner of the real property described in Exhibit A, which is attached hereto and incorporated by reference. These Protective Covenants impose restrictions upon the Properties (as defined in ARTICLE 1) under a general scheme of development for the mutual benefit of the owners of each portion of the Properties.

DECLARANT hereby declares that all of the property described in Exhibit A and any additional property subjected to these Protective Covenants by Supplemental Declaration shall be held, sold, used and conveyed subject to the North Carolina Planned Community Act and to the following easements, restrictions, covenants, and conditions, which shall run with the real property subjected to these Protective Covenants. These Protective Covenants shall be binding on and shall inure to the benefit of all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, and assigns.

ARTICLE 1 DEFINITIONS

The terms used in these Protective Covenants shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "ARC": the Architectural Review Committee, as described in ARTICLE 10 herein.

1.2 "Articles of Incorporation" or "Articles": the Articles of Incorporation of Palmetto Creek POA, Inc., as filed with the North Carolina Secretary of State, and as may be amended from time to time.

1.3 "Association": Palmetto Creek POA, Inc., a North Carolina nonprofit corporation, its successors and assigns formed or to be formed by the DECLARANT as a property owners association for Owners (as defined in Section 1.22), all of whom shall be members of the Association.

1.4 "Board of Directors" or "Board": whether composed of one or more directors, the board governing the Association and managing the affairs of the Association.

RET mTG
45 TOTAL 146 REV. TCH# 38
RBC# CK AMT 146 CK# 4194
CASH REF BY 57

1.5 “Business” and/or “Trade”: shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration.

1.6 “By-Laws”: the By-Laws of Palmetto Creek POA, Inc., as they may be modified or amended from time to time. The initial By-Laws are attached hereto as Exhibit B and incorporated herein by reference.

1.7 “Class “B” Control Period”: the period of time during which the Class “B” Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3.

1.8 “Common Area”: all real and personal property which the Association owns or leases for the common use and enjoyment of the Members, excepting, however, any Recreational Trails (as defined in Section 1.28 herein) which DECLARANT or the Association may maintain within the Properties from time to time.

1.9 “Common Expenses”: the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve and actual and estimated expenses of maintaining and operating the Common Areas, any Recreational Trails, conservation and buffer areas, and landscaped areas within road right of ways, as the Board may find necessary and appropriate pursuant to these Protective Covenants the By-Laws, and the Articles of Incorporation, including the following:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses of administration, maintenance, repair or replacement of the Common Areas, the Recreational Trails, and the stormwater system;
- (c) Expenses declared to be Common Expenses by the provisions of these Protective Covenants or the By-Laws;
- (d) Expenses agreed by the members to be Common Expenses of the Association; and/or
- (e) Any ad valorem taxes and public assessments levied against the Common Area.

Common Expenses shall not include any expenses incurred during the Class “B” Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class “A” vote of the Association.

1.10 “Community-Wide Standard”: the standard of conduct, maintenance, or other activity generally prevailing throughout the Residential Community. Such standard may be more specifically determined by the Board of Directors and the ARC.

1.11 “DECLARANT”: XDV, Inc., a North Carolina corporation, together with such successors or assigns of DECLARANT who should acquire more than one undeveloped Unit from the DECLARANT for the purpose of development and who are specifically granted DECLARANT’s rights hereunder.

1.12 “Design Guidelines”: the architectural design guidelines and procedures set forth in ARTICLE 10 or adopted by the ARC pursuant to ARTICLE 10 and applicable to all Units within the Properties.

1.13 “Future Development Property”: any real property within a one (1) mile radius of the real property described on Exhibit A attached hereto and incorporated herein by reference.

1.14 “Governing Documents”: consists of the following, as they may be amended or modified from time to time: the Protective Covenants, the Articles of Incorporation, the By-Laws,

any Supplemental Declarations, the Design Guidelines, the Rules and Regulations, Board resolutions, and recorded plats of the Property.

1.15 "Individual Assessment": assessments levied in accordance with Section 9.6 of these Protective Covenants.

1.16 "Limited Common Area": portions of the Common Area which the Association or DECLARANT has designated or designates for the common use and enjoyment of one or more, but less than all, of the Members (including, without limitation, Common Area intended to benefit a particular Village or Villages).

1.17 "Master Association Assessment": assessments levied on all Units subject to assessment under ARTICLE 9 to fund Common Expenses for the general benefit of all Units.

1.18 "Member": a Person entitled to membership in the Association, as provided in Section 3.2.

1.19 "Mortgage": a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.20 "Mortgagee": a beneficiary or holder of a Mortgage.

1.21 "Mortgagor": any Person who gives a Mortgage.

1.22 "Owner": the record Owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.23 "Palmetto Creek": the development created or to be created on the Properties.

1.24 "Person": a natural person, a corporation, a partnership or limited partnership, a limited liability company or partnership, a trustee, association, or any other legal entity.

1.25 "Planned Community Act": the North Carolina Planned Community Act (N.C.G.S. §47F-1-101 et seq.), as same may be amended from time to time.

1.26 "Property" or "Properties": the real property described in Exhibit A, together with such additions thereto (including, without limitation, portions of the Future Development Property) as may hereafter be brought within the jurisdiction of the Association by the filing of a Supplemental Declaration.

1.27 "Protective Covenants": shall mean this instrument as it may from time to time be amended or supplemented.

1.28 "Recreational Trails": any scenic or recreational pathways and trails that may be designated on the Properties from time to time by DECLARANT or the Association for the use and benefit of the Owners in accordance with the terms and conditions of Section 11.5(u) herein. The term "Recreational Corridor" shall refer to any area designated on a plat of the Properties recorded by DECLARANT in which DECLARANT shall have the right, in its discretion, to install a Recreational Trail.

1.29 "Residential Community": the residential development created or to be created on the Property.

1.30 "Rules and Regulations": the rules and regulations adopted by the Board governing land use, individual conduct and uses or actions upon the Property, as they may be amended or supplemented from time to time.

1.31 "Service Assessment": assessments levied in accordance with Section 9.13 of these Protective Covenants.

1.32 "Special Assessment": assessments levied in accordance with Section 9.5 of these Protective Covenants.

1.33 "Supplemental Declaration": an amendment or supplement to these Protective Covenants filed pursuant to ARTICLE 8 which subjects additional property to these Protective Covenants and/or imposes, expressly or by reference, changes to or additional restrictions and obligations on the land described therein.

1.34 "Unit": a portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, single-family detached houses on separately platted lots, and single family residential lots.

Subject to the terms and conditions of these Protective Covenants, Units may be combined, further subdivided, and/or recombined, and boundary lines of Units may be changed, only by the recording of a plat or other legal instrument further subdividing or resubdividing the parcel of property. In the absence of recording such a legal instrument, ownership of adjacent Units by the same Owner shall not permit such Units to be treated as a single Unit for purposes of voting and assessment, notwithstanding that such Units may be improved with a single structure.

1.35 "Village": two or more Units which share interests other than those common to all Units, as more particularly described in Section 3.4. By way of illustration and not limitation, a condominium development, townhome development, patio home development, cluster home development, or single-family detached housing development might each be designated by the DECLARANT as separate Villages, or a Village may be comprised of more than one housing type with other features in common.

Where the context permits or requires, the term "Village" shall also refer to the Village Committee, if any, established in accordance with the By-Laws, or the Village Association established to act on behalf of the Owners of Units within the Village. Village boundaries may be established and modified as provided in Section 3.4.

1.36 "Village Assessments": assessments levied by the Association against the Units in particular Village or Villages to fund Village Expenses as described in ARTICLE 9.

1.37 "Village Association": any condominium association or other owners association having jurisdiction over any Village.

1.38 "Village Declaration": a declaration created in compliance with the Planned Community Act (or the North Carolina Condominium Act (N.C.G.S. §47C-1-101 et seq.), as the case may be) and Section 3.4 herein encumbering and restricting a Village within the Residential Community.

1.39 "Village Expenses": the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Owners and occupants of Units within a particular Village or Villages, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize and as may be authorized herein or in Supplemental Declarations applicable to the Villages.

ARTICLE 2 PROPERTY RIGHTS

2.1 Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, and for ingress and egress to and from the Common Area, which shall be appurtenant to and pass with the title to every Unit, subject to the following provisions:

- (a) The Governing Documents;

(b) Any restrictions or limitations contained in any deed conveying any portion of the Common Area to the Association;

(c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area and improvements thereon, including rules restricting use of the recreational facilities within the Common Area to occupants of Units and their guests and rules limiting the number of guests who may use the Common Area; and the right of the Board to establish penalties for any infractions thereof;

(d) The right of the Board to suspend the voting rights and the right to use the Common Areas and the recreational facilities within the Common Area by an Owner (i) for any period during which any assessment(s) secured by a lien against such Owner's Unit remains unpaid, and (ii) for a period not to exceed sixty (60) days for a single violation of the Governing Documents (other than a failure to pay any charges or liens due), and (iii) for any period greater than sixty (60) days in the case of any continuing violation, of the Governing Documents, after notice and a hearing pursuant to the By-Laws;

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7;

(f) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate, any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth herein and the rights of such Mortgagees in said properties shall be subordinate to the rights of the Unit Owners hereunder; and

(g) Easements as provided in ARTICLE 12.

2.2 Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, contract purchasers and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the duration of the lease and any such lessee shall abide by all the restrictions contained herein. Any such lease shall not release the owner of his liability for damage to the Common Area caused by said lessee.

ARTICLE 3

ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

3.1 Function of Association. The Association shall be the entity responsible for management, maintenance, ownership, operation and control of the Common Area owned or leased by the Association within the Properties. The Association shall be the primary entity responsible for enforcement of these Protective Covenants and such reasonable rules regulating use of the Common Areas owned or leased by the Association and the use of the Property as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural design guidelines and controls set forth in these Protective Covenants and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and applicable North Carolina law.

3.2 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of that membership. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association, provided that only one person (and such person's immediate family members with respect to membership rights other than voting) may be designated to act in such capacity for such an Owner at any particular time.

3.3 Voting. The Association shall have two classes of membership, Class "A" and Class "B":

(a) Class "A". Class "A" Members shall be all Owners of Units except the Class "B" Member, if any. Class "A" Members shall have one vote for each Unit in which they

hold the interest required for membership under Section 3.2; there shall be only one vote per Unit.

(b) Class "B". The sole Class "B" Member shall be the DECLARANT. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under these Protective Covenants and the By-Laws, are specified throughout the Governing Documents. The Class "B" Member may appoint the members of the Board during the Class "B" Control Period, which period is further defined herein. After termination of the Class "B" Control Period, the members of the Board shall be selected as provided in the By-Laws.

During the Class "B" Control Period, the Class "B" Member shall be entitled to three (3) votes for each platted Unit and three (3) votes for each planned but currently-unplatted Unit in the Residential Community. The total number of planned Units in the Residential Community is currently four hundred and eighty (480), although the actual number of Units may be more or less, and the Class "B" Member makes no representation whatsoever regarding the actual number of Units to be included in the Residential Community. The Class "B" Control Period shall terminate and the Class "B" membership shall cease and be converted to Class "A" membership on the happening of one of the following events, whichever occurs earliest:

(i) when the DECLARANT owns ten percent (10%) or less of the total number of the planned Units in the Residential Community, including any of the Future Development Property which may be annexed thereto, as herein provided,

(ii) on January 1, 2042, or

(iii) when, in its discretion, DECLARANT so determines and declares in an instrument recorded in the public land records.

(c) Exercise of Voting Rights. In any situation in which a Member is entitled personally to exercise the vote for his or her Unit and there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such Co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

3.4 Villages and Village Associations. In order to allow a flexible mechanism for the orderly development of the Residential Community, the DECLARANT may (but shall have no obligation to) divide the Residential Community into distinct Villages to account for varying standards, restrictions, uses and maintenance issues within the development. In the event DECLARANT elects to form one or more Villages within the Residential Community, DECLARANT shall have the right, in its discretion, to assign and/or allocate Limited Common Area responsibility to such Village(s).

If a Village Association is to be formed, a Village Declaration shall be filed relative to such property (which Village Declaration shall be subject in all respects to these Protective Covenants). A Village Declaration may (but need not) subject Units within a particular Village to covenants in addition to the covenants provided by these Protective Covenants. If a Village is created, each Owner of a Unit within such Village shall become a member of the respective Village Association in addition to being a Member of the Association. During the Class "B" Control Period, no Village Declaration shall be binding upon or applicable to any of the Properties unless approved in writing by DECLARANT. The Articles of Incorporation and By-Laws of any Village Association shall require the prior written approval of the DECLARANT.

DECLARANT shall also be entitled to initially assign any of the Properties to a specific Village by name. In order to insure that all Villages in the Residential Community will be consistent with the general or common scheme of development, the DECLARANT may unilaterally amend these Protective Covenants, by Supplemental Declaration, to designate and/or redesignate Village boundaries; provided, however, two (2) or more Villages shall not be combined without the consent of Owners of a majority of the Units in the affected Villages.

ARTICLE 4
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area and Recreational Trails. The Association, subject to the rights of the Owners set forth in these Protective Covenants, shall manage and control the Common Area and all improvements thereon (as defined in other sections herein including, without limitation, roads, road rights of way, recreation pathways, decks, docks, boardwalks, lighting, irrigation, furnishings, equipment, and common landscaped areas) as well as any Recreational Trails (if any) (provided that the Association's obligation to maintain any Recreational Trails shall be limited as contemplated in Section 5.1 herein). The Association shall keep such areas and improvements in good repair and in a clean, attractive, and sanitary condition consistent with these Protective Covenants and the Community-Wide Standard.

4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. DECLARANT may convey to the Association improved or unimproved real estate located within the Residential Community, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth herein and in the deed.

4.3 Rules and Regulations. The Association, through its Board, may make, revoke, amend and enforce reasonable rules governing the use of the Properties, in addition to further defining or limiting, and, where specifically authorized hereunder, creating exceptions to, those covenants and restrictions set forth in these Protective Covenants. Such rules shall be binding upon all Owners, occupants, invitees, lessees, guests and licensees.

4.4 Enforcement. Subject to the requirements of the Planned Community Act, the Association may impose sanctions for violations of any of the Governing Documents, including reasonable monetary fines, suspension of the right to vote, and/or suspension of the right to use any recreational facilities within the Common Area and/or the Recreational Trails. In addition, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. The Board may assess the reasonable monetary fines authorized by this Section as an Individual Assessment authorized by Section 9.6 of these Protective Covenants.

4.5 Implied Rights: Board Authority. The Association may exercise any other right or privilege given to it expressly by these Protective Covenants, the By-Laws, the Planned Community Act, or Chapter 55A of the North Carolina General Statutes, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in these Protective Covenants, the By-Laws, or the Articles, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.6 Indemnification. To the maximum extent allowed by North Carolina law, the Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board incumbent at the time of such settlement) to which he or she may be party by reason of being or having been an officer, director or committee member. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 Dedication of Common Areas. The Association may dedicate portions of the Common Areas to any local, state, or federal governmental entity, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association.

4.8 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION NOR THE DECLARANT (OR ANY SUCCESSOR TO DECLARANT) SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES. NOR SHALL ANY OF THEM BE HELD LIABLE

FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

4.9 Powers of the Association Relating to Villages. The Association shall have the power to veto any action taken or contemplated to be taken by any Village Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Village Association in connection with any of the Village Association's obligations and responsibilities. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Village Association, and (b) require that a proposed budget include certain items and that specific expenditures be made, and (c) require the Village Association to ensure its members' compliance with all Governing Documents.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Village Association shall be taken within the reasonable time frame set by the Association in such written notice. If the Village Association fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Village Association.

To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Units in such Village for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Section 9.6. Such assessments may be collected as an Individual Assessment hereunder and shall be subject to all lien rights provided for herein.

4.10 Management and Administration. The management and administration of the Association Common Areas and Amenities shall be the sole right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of these Protective Covenants, the Articles, By-Laws and Rules and Regulations, but they may be delegated to a manager or a management service.

4.11 Assignment to Association. DECLARANT shall be entitled to assign all water, sewer, land use, stormwater system and utility permits, agreements and easements between DECLARANT and any governmental agency or department or public or private utility company to the Association, in which case the Association shall be required to assume same. After such an assignment, the Association shall be responsible for and assume all duties, obligations, and rights and privileges of the DECLARANT under such permits, agreements and easements, including all maintenance responsibility, even if part of the water, sewer, land use, stormwater system or utility areas covered by the permits, agreements and easements are not located within the Properties.

4.12 Common Area. The Common Area cannot be mortgaged, conveyed or encumbered without the consent of eighty percent (80%) of the Unit Owners. During the Class "B" Control Period, any such mortgage, conveyance or encumbrance shall also require the consent of DECLARANT.

ARTICLE 5 MAINTENANCE

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Area and, while they are owned or operated by DECLARANT or the Association, the Recreational Trails. Such maintenance responsibility may include, but need not be limited to:

- (a) all Recreational Trails (if any) and all landscaping and other flora, parks, and signage for the Residential Community situated upon the Common Area; structures and improvements situated upon the Common Area or any Recreational Corridor (as specified on an applicable recorded plat), including any private streets and rights of way and islands within their streets and cul-de-sacs; bicycle and pedestrian pathways and trails situated upon the Common Area or any Recreational Corridor; ponds, lakes, drainways, recreation

pathways within or upon the Common Area or the Recreational Trails; the main entrance to Palmetto Creek from Highway 211 (including, without limitation, 500 foot approaches to such main entrance plaza in both directions on or along Highway 211); the secondary entrance to Palmetto Creek from Old Lennon Road (a/k/a Secondary Road 1504), including, without limitation, 500 foot approaches to such secondary entrance plaza in both directions on or along Old Lennon Road; the gates located at the main entrance and the secondary entrance; and any other areas designated as Common Area, Limited Common Area, or Recreational Trails by DECLARANT or the Association from time to time, excepting any real or personal property for which a Village Association or some entity other than the Association has expressly assumed responsibility;

(b) all pools, tennis courts, clubhouses and other amenities constituting a portion of the Common Area, excepting any real or personal property for which a Village Association or some other entity has expressly assumed responsibility;

(c) Common Area or Limited Common Area within any Village which may be repaired or maintained by the Association in the Association's sole discretion either by agreement with the Village or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as an Individual Assessment only against the Units within the Village to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class. The Association also has the authority to take appropriate legal action to require the responsible Village to comply with the provisions of these Protective Covenants, the Articles, By-Laws and Rules and Regulations adopted hereunder; and

(d) any other Common Area designated by the Board or the DECLARANT from time to time in a Supplemental Declaration.

Additionally, if and to the extent DECLARANT or any principal or affiliate of DECLARANT shall install any boardwalk, bridge, deck, pathway or other pedestrian amenity on property adjacent to or in the vicinity of the Properties for aesthetic, recreational, pedestrian, conservation or educational purposes (each, an "Adjacent Amenity") and shall request the Association to accept responsibility for maintenance of such Adjacent Amenity, the Association shall be required to accept such responsibility and shall be entitled to include the costs of such maintenance in Common Expenses hereunder.

Notwithstanding anything herein to the contrary, the Association's obligation to maintain the Recreational Trails (if any) and/or any Recreational Corridors which are not Common Area shall be limited to (i) the replacement of concrete or other materials used to build or surface such trails and (ii) the trimming or removal of any plants, landscaping, structures or other impediments which may have been installed by Owners in the areas surrounding the Recreational Trails.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, landscaping, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Village pursuant to the Supplemental Declaration or other Declaration of Protective Covenants applicable to such Unit. As to Units which abut a watercourse or body of water, it shall be the responsibility of each Owner to maintain, in a manner consistent with the Community-Wide Standard and these Protective Covenants, any area lying between the boundary or lot line of such Unit and the waterline of such watercourse or body of water (as such waterline may fluctuate from time to time). As to Units which abut or include a portion of any Recreational Corridor or a pathway or sidewalk within the Common Area, it shall be the responsibility of each Owner to maintain, in a manner consistent with the Community-Wide Standard and these Protective Covenants, any area or landscaping, including any landscaping that may have been initially placed by DECLARANT, lying within any portion of a Recreational Corridor located upon such Owner's Unit or between the boundary or lot line of such Unit and the boundary of such Recreational Trail, pathway or sidewalk (except as otherwise provided in these Protective Covenants). Any fencing which is not maintained by the Association or a Village Association shall be maintained and kept in good condition and repair by the Owner of the Unit on which such fencing is located (at such Owner's cost and expense). In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may, but is not required to, perform such maintenance

responsibility and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 9.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation, as such situation may be reasonably determined by the Association.

Additionally, with respect to any Unit which has a landscape berm located between the boundary of such Unit and any platted street within the Properties, it shall be the responsibility of the Owner of such Unit to maintain, in a manner consistent with the Community-Wide Standard and these Protective Covenants, any area or landscaping, including any landscaping that may have been initially placed by DECLARANT, lying between the boundary or lot line of such Unit and the top of such landscape berm. The obligation stated in the immediately preceding sentence shall apply regardless of whether the area in question has been or has not been designated as Common Area hereunder.

5.3 Maintenance of Units. Each Owner shall maintain his or her Unit and all landscaping and improvements comprising the Unit in a manner consistent with the Community-Wide Standard and these Protective Covenants, the Articles, the By-Laws, the Rules and Regulations and any other applicable covenants or Supplemental Declarations, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Village pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. If, in the opinion of the Association, any Owner shall fail to maintain any Unit owned by him in a manner which is reasonably neat and orderly and as is required by ARTICLE 11 herein or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the sole opinion of the Association, the Association in its discretion, by the affirmative vote of a majority of the members of the Board of Directors, and following ten (10) days written notice to Owner, may enter upon and make or cause to be made repairs to such improvements and perform such maintenance on the Unit as the removal of trash, cutting of grass, pruning of shrubbery, weeding and items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing, as provided herein and in ARTICLE 12. The reasonable cost incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such cost, shall be added to and become an Individual Assessment to which such Unit is subject as provided in ARTICLE 9 herein.

5.4 Village's Responsibility.

(a) Upon Board resolution, the Owners of Units within each Village shall be responsible for paying, through assessments levied by the Village Association or the Association (as the case may be), the costs of operating, maintaining and insuring certain Limited Common Areas within or adjacent to such Village.

(b) Any Village Association having any responsibility for exterior maintenance of property and/or landscaping within such Village shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may, but is not required to, perform such responsibilities and assess the costs against all Units within such Village as provided in Section 9.6.

(c) Upon Board resolution any Village may provide lawn maintenance to and for areas outside a Village boundary, pursuant to contract between the Village and the respective area's Owner.

5.5 Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as other duties, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

ARTICLE 6
INSURANCE AND CASUALTY LOSSES

As and to the extent provided in the By-Laws of the Association and as required by the Planned Community Act, the Association shall maintain adequate and appropriate insurance coverage on all Common Areas and, while they are owned or operated by the DECLARANT or the Association, the Recreational Trails.

ARTICLE 7
SUBDIVISION

7.1 Subdivision by DECLARANT. Until January 1, 2042,, DECLARANT shall be permitted, without the joinder or consent of the Association or any other Owner, to subdivide or replat any Units owned by DECLARANT and/or any property subject to these Protective Covenants which is then owned by DECLARANT.

7.2 No Subdivision without DECLARANT Consent. No subdivision of a Unit, or any change of the boundary lines of any Unit after a subdivision plat including such Unit has been approved by DECLARANT and recorded, shall be permitted without DECLARANT's prior written consent and joinder.

7.3 General Provisions Regarding Subdivision. No Unit or Units shall be subdivided except to enlarge an adjoining Unit, but any Unit so enlarged cannot be improved with more than one single family dwelling. An Owner of a Unit and a portion or all of an adjoining or contiguous Unit or Units may construct a dwelling or other structure permitted hereunder upon and across the dividing line of such adjoining and contiguous Unit(s). Even if one or more Units are combined as provided in this Section 7.3, the initial number of Units (*i.e.*, the total number of Units combined) shall remain the same and shall be treated for all purposes under these Protective Covenants as the original number of Units, so that the combined Units must conform to the obligations created by these Protective Covenants, in the same way that these Protective Covenants initially attached to the Units. Notwithstanding anything in this Article 7 to the contrary, this Section 7.3 shall not apply to Units or portions of the Property which are then owned by DECLARANT (provided that this section shall apply once such Units or portions of the Property are no longer owned by DECLARANT).

ARTICLE 8
ANNEXATION AND WITHDRAWAL OF PROPERTY

8.1 Annexation without Approval of Membership.

(a) Until January 1, 2042, DECLARANT may subject any portion(s) or all of the Future Development Property to the provisions of these Protective Covenants as provided in this Section 8.1. DECLARANT may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the Property. Nothing in these Protective Covenants shall be construed to require the DECLARANT or any successor to annex or develop any of the Future Development Property in any manner whatsoever.

(b) An annexation by DECLARANT under Section 8.1(a) shall be accomplished by filing a Supplemental Declaration in the land records of Brunswick County, North Carolina, describing the property to be annexed and specifically subjecting it to the terms of these Protective Covenants. Such Supplemental Declaration shall not require the consent of any Members other than DECLARANT, but shall require the consent of the owner of such property, if other than DECLARANT. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

8.2 Annexation by Membership. Except as provided in Section 8.1 herein, annexation of additional property shall require the assent of two-thirds ($\frac{2}{3}$) of the Class "A" Members at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. During the Class "B" Control Period, annexation of additional property under this Section 8.2 shall also require the consent of DECLARANT.

8.3 Withdrawal of Property. The DECLARANT reserves the right to amend these Protective Covenants so long as it has a right to annex additional property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing property then owned by the DECLARANT, its affiliates, or the Association from the coverage of these Protective Covenants, to the extent originally included in error or as a result of any changes in the DECLARANT'S plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

8.4 Additional Covenants and Easements. The DECLARANT may unilaterally subject the property submitted to these Protective Covenants initially or by Supplemental Declaration to additional covenants and easements, provided that such amendment or modification does not alter the general or common scheme of development for the Properties described herein and further provided that this right to amend shall not render these covenants and restrictions purely personal to the DECLARANT and the benefits and burdens contained in these Protective Covenants shall remain mutual and reciprocal to all Owners.

8.5 Amendment. This ARTICLE 8 shall not be amended without the prior written consent of DECLARANT so long as the DECLARANT owns any of the property described on Exhibit A or any Future Development Property.

ARTICLE 9 ASSESSMENTS

9.1 Creation of Assessments.

(a) The Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be five types of assessments for Association expenses: (1) Master Association Assessments to fund Common Expenses for the general benefit of all Units within the Properties; (2) Village Assessments for Village Expenses benefiting only Units within a particular Village or Villages (to the extent these are assessed by the Association as opposed to the applicable Village Association); (3) Special Assessments as described in Section 9.5; (4) Individual Assessments as described in Section 9.6; and (5) Service Assessments as described in Section 9.13. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments.

(b) All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by North Carolina law), late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 9.9. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage or any individual obtaining title by or through a foreclosure shall be personally liable for unpaid assessments which accrued prior to such acquisition of title. In the event of any transfer of title to a Unit, the lien of the assessments shall not be extinguished.

(c) No Owner may exempt himself from liability for assessments, by non-use of Common Area, abandonment of his Unit, or any other means. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

9.2 DECLARANT'S Obligation for Assessments. During the Class "B" Control Period, DECLARANT may annually elect either: (1) to pay regular assessments on its unsold Units, (2) to pay the difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year, or (3) to pay one-half (½) of the assessments for an unimproved Unit for all Units which are platted of record in the Office of the Register of Deeds of Brunswick County but which have not yet been sold to a Person other than DECLARANT or an authorized builder. Unless the DECLARANT otherwise notifies the Board in writing at least 45 days before the beginning of each fiscal year, the DECLARANT shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The DECLARANT's obligation hereunder may be satisfied in the form of cash or by "in kind" contribution of services or materials, or by a combination of these.

9.3 Computation of Master Association Assessment. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare and distribute to the Members a budget covering the estimated Common Expenses during the coming year (including, without limitation, a capital contribution to establish a reserve fund in accordance with a budget prepared as provided in Section 9.4) as and to the extent required in the Planned Community Act.

9.4 Capital Reserve Budget. The Board shall annually prepare a capital reserve budget for maintenance and replacement of capital improvements which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

9.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover capital improvements or unbudgeted expenses (including, without limitation, expenses required to complete repair, maintenance and/or clean-up which the Board deems necessary or advisable after a storm, hurricane or other casualty event) or other expenses in excess of those budgeted. The Board may establish the amount of the Special Assessment if it is ONE HUNDRED DOLLARS (\$100.00) or less in any assessment year for each Member. All other Special Assessments shall require the affirmative vote of sixty-seven percent (67%) of Members present and voting in person or by proxy who will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.6 Individual Assessments.

(a) The Board shall have the power to levy Individual Assessments against a particular Unit or Units constituting less than all Units within the Properties or within a Village, as follows:

(1) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(2) to cover costs including overhead and administrative costs and reserves incurred for maintenance, repair and replacement of any private roads, signs, mail boxes, fences and berms which are constructed for the benefit of certain specified lots, as shall be more specifically set forth in a Supplemental Declaration.

(3) to cover costs incurred in bringing the Unit into compliance with the terms of these Protective Covenants, including, without limitation, Section 5.3, any applicable Supplemental Declaration, the Articles, the By-Laws, Rules and Regulations, or Design Guidelines or costs incurred as a consequence of the conduct of the Owner or occupant of the Unit, their lessees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing before levying an Individual Assessment under this subsection (a).

(b) The Association may also levy an Individual Assessment against any Village to reimburse the Association for costs incurred in bringing the Village into compliance with the provisions of these Protective Covenants, any applicable Supplemental Declaration, the Articles, the By-Laws, and Rules and Regulations, provided the Board gives the board of directors from such Village prior written notice and an opportunity to be heard before levying any such assessment.

9.7 Working Capital Assessment. Upon the conveyance of title to any Unit, the acquiring Owner shall contribute to the Association as working capital an amount equal to one year's Master Association assessment. Such funds shall be used for operating and capital expenses of the Association, such as prepaid insurance, supplies, furnishings and equipment, etc. Amounts paid into

the working capital fund are not to be considered advance payment of regular assessments. All working capital funds shall become part of the general operating funds of the Association.

9.8 Date of Commencement of Master Association Assessments and Due Dates. The Master Association assessments provided for herein shall commence on the date of conveyance of each Unit to an Owner other than DECLARANT. The due dates shall be established by the Board of Directors.

9.9 Lien for Assessments.

(a) All assessments authorized in this Article and levied against a Unit, which remain unpaid for a period of thirty (30) days or longer, shall constitute a lien against the Unit against which they are levied when a claim of lien is filed of record in the Office of the Register of Deeds of Brunswick County. The lien shall also secure payment of any fees, charges, interest, fines, late charges (subject to the limitations of North Carolina law), and costs of collection [including, without limitation, those reasonable attorneys fees allowed by North Carolina law, including but not limited to fees described in N.C.G.S. § 47F-3-116(e)], and other charges imposed pursuant to the Governing Documents and/or the Planned Community Act. Such lien shall be superior to all other liens, except the liens of all ad valorem taxes or assessments, and any other liens which by law would be superior.

(b) The Association may record notice of the claim of lien in the Office of the Clerk of Superior Court of Brunswick County or file a suit to collect such delinquent assessments and charges. The Association may file Notice of Lis Pendens, bring an action of law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property, or utilize any other remedy provided under North Carolina law. No Owner may waive or otherwise escape liability for the assessments provided for herein.

9.10 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at a rate not to exceed the maximum legal rate allowed in the State of North Carolina per annum and in addition, a late fee shall be assessed in such amount as may be determined by the Board of Directors. The Association may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and, in either event, interest, costs and reasonable attorney's fees (as allowed by North Carolina law) of any such action shall be added to the amount of such assessment. The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments.

9.11 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Master Association Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

9.12 Exempt Property. The following property shall be exempt from payment of Master Association Assessments, Service Assessments and Special Assessments:

- (a) all Common Area;
- (b) any property dedicated to and accepted by any governmental authority or public utility;
- (c) any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Unit which is subject to assessment hereunder (in which case the Unit shall not be exempted from assessment);

(d) any Unit which is not approved by any governmental agency for residential use; and

(e) any Unit or property owned of record by the DECLARANT, its successors or assigns, except as otherwise provided in Section 9.2.

9.13 Service Assessments. The Board shall have the power to levy Service Assessments against a particular Unit or Units constituting less than all Units (and/or against a particular Village or Villages constituting less than all Villages) within the Properties to cover the costs, including overhead and administrative costs, of providing specialized maintenance and/or landscaping services to such Units and/or Villages and the occupants thereof. Such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner. Notwithstanding the foregoing to the contrary, the fact that the Association levies a Service Assessment shall not be deemed to impose any obligation upon the Association to (i) monitor the quality of work or services being provided, (ii) assume any responsibility for the quality of work or services provided, (iii) ensure the structural integrity or soundness of any construction or modifications provided or (iv) ensure compliance with building codes and other governmental requirements relating to the work or services provided.

9.14 Surplus Funds. Notwithstanding the provisions of N.C.G.S. § 47F-3-114, any excess of Association income over Common Expenses (as defined in Section 1.9 herein and which shall include reasonable reserves) shall be applied to reserves or other future expenses as the Board deems appropriate.

ARTICLE 10 DESIGN GUIDELINES

10.1 General.

(a) No structures or buildings shall be erected or maintained upon any Unit or the Properties, no improvements or construction (which terms shall include within their definitions: clearing, grading, excavation, landscaping, and other site work) shall be commenced, erected, or maintained upon any Unit or the Properties, and no exterior addition to or change or alteration therein (including, without limitation, any change of color) shall be made upon any Unit or the Properties, except in compliance with this Article and the Design Guidelines. Without limiting the generality of the foregoing, no work described in the immediately preceding sentence shall commence until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing by the ARC according to the provisions of ARTICLE 10. With regard to the provisions of this ARTICLE 10, the terms, "structures," "buildings" and "improvements" shall include, but not be limited to any dwelling, garage, fence, wall, sidewalk, hedge, mass planting, change in grade or slope, drainage pipe, drainage canal, ditch, swale, catch basin, swimming pool, tree house, playhouse, sign, flag pole, exterior illumination, monument or marker, outdoor statuary, exterior lights, security lights, storm door, well utility facility, mailbox, patio, deck, screening for outdoor trash cans or other purposes, sprinkler system, driveway, outdoor decorative objects, shrubbery or landscaping.

(b) Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(c) This ARTICLE 10 shall not apply to the activities of the DECLARANT, nor to alterations of or improvements to the Common Area by or on behalf of the Association.

(d) This ARTICLE 10 may not be amended without the prior written consent of the DECLARANT, so long as the DECLARANT owns any land subject to these Protective Covenants or subject to annexation to these Protective Covenants.

10.2 Architectural Review.

(a) Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be

handled by the ARC as described in subsections (a) and (b). The members of the ARC need not be Members of the Association and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full and paid prior to review.

(b) Architectural Review Committee (herein "ARC"). The ARC shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all structures, buildings, improvements, and construction on any portion of the Properties. During the Class "B" Control Period, the DECLARANT retains the right to appoint all members of the ARC who shall serve at the DECLARANT'S discretion. Upon the expiration of such period, the Board shall appoint the members of the ARC, who shall serve and may be removed in the Board's discretion.

10.3 Guidelines and Procedures. The DECLARANT shall prepare the initial Design Guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. The ARC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them subject to the approval of the Board of Directors. The ARC shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines.

10.4 Submission of Plans and Specifications.

(a) No construction or improvements, as defined in Section 10.1(a), shall be commenced, erected, placed or maintained on any Unit, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout, screening, and any other supporting documents, as may be required by the ARC, shall have been submitted to and approved in writing by the ARC. The Design Guidelines shall set forth the procedure for submission of the Plans. A reasonable fee for the review of said plans shall be required and submitted, along with said Plans and any other supporting documents required by the ARC and the Board may require a deposit to be posted prior to the commencement of any construction or work, which sum shall be used to collect any fees, fines or penalties incurred during construction or work. Any such sums remaining at the completion of construction shall be returned to the Owner.

(b) In reviewing each submission, the ARC may consider visual aesthetics, natural platforms and finish grade elevations, harmony of external design with surrounding structures and environment, and location in the relation to surrounding structures and plant life. The ARC may require relocation of native plants within the construction site as a condition of approval of any submission. Location of any driveways shall be subject to the approval of the ARC.

(c) The Association shall have the right to refuse to approve any plans and specifications or grading plans which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons. In so approving such plans, specifications and grading plans, the Association shall consider the suitability of the proposed building, improvements, structure, or landscaping and the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, and the effect thereof on the adjacent or neighboring property.

(d) No bulldozing or clearing of trees or excavation of lakes or ponds shall be commenced until the plans, specifications and grading plans showing the nature, kind, shape and location of work to be done shall have been submitted to and approved in writing by the Association and a copy thereof, as finally approved, filed permanently with the Association.

(e) Upon receipt of a submission of Plans, the ARC shall advise the party submitting the same in writing, at an address specified by such party at the time of

submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with these Protective Covenants and/or the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. The ARC shall use good faith, diligent efforts to respond to a Plan submittal within 30 days after receipt of same, although matters not within the reasonable control of the ARC may prevent this from occurring in certain cases. In the event the ARC fails to advise the submitting party by written notice within 60 days of either the approval or disapproval of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

(f) If construction does not commence on a project for which Plans have been approved within nine (9) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans for reconsideration.

(g) Once construction has been initiated on a Unit, the Owner thereof must complete such construction within ten (10) months. If an Owner does not comply with such schedule, then DECLARANT, the Board and the Association shall each have the right (but not the obligation) to complete such construction on Owner's behalf and at such Owner's expense. In the event the DECLARANT, the Board or the Association exercises the right provided in the immediately preceding sentence, then DECLARANT, the Board and/or the Association (as the case may be) shall be entitled to collect from such Owner, in addition to a reimbursement of all costs expended in the completion of construction of the Unit, an administrative fee for such work, which fee shall be equal to twenty percent (20%) of the costs incurred by such party in completing the work. Any and all of the foregoing costs and fees that may be incurred by or payable to DECLARANT, the Board and/or the Association shall be a charge and continuing lien upon such Unit until paid, and DECLARANT, the Board and/or the Association may bring an action against such Owner, or foreclose the lien against the property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and, in either event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount payable to DECLARANT, the Board and/or the Association.

10.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the ARC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

10.6 Variance. The ARC may authorize in its discretion reasonable variances or adjustments from compliance with any of its guidelines and procedures in order to alleviate practical difficulties and hardship in their enforcement and operation. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, or (b) prevent the ARC from denying a variance in other different or even identical circumstances. Any such variances shall not violate the spirit or the intent of this document to create a subdivision of Units owned in fee by various persons with each such Owner having an easement upon areas owned by the Association.

10.7 Limitation of Liability. The ARC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the DECLARANT, the Association, the Board, nor the ARC, shall be held liable for any injury, damages, or loss arising out of the review and approval of any application, including, but not limited to, the grant or denial of a variance, the manner or quality of construction, defects in any plans or specifications, or deficiencies in kind or quality of materials used, or for compliance or non-compliance with building codes and other governmental requirements.

10.8 Enforcement.

(a) Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the DECLARANT, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, then DECLARANT, the Board and the Association shall each have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Unit's Owner and the benefited Unit and collected as an Individual Assessment. In the event the DECLARANT, the Board and/or the Association exercises any right provided hereto in this Section 10.8(a), then DECLARANT, the Board and/or the Association (as the case may be) shall be entitled to collect from the relevant Owner, in addition to a reimbursement of all costs expended in the removal of the violation and/or the restoration of the property, an administrative fee for such work, which fee shall be equal to twenty percent (20%) of the costs incurred by such party in performing the work.

(b) Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be prohibited by the Board from entering and conducting any activities within the Properties. In such event, none of the Association, its officers, or its directors shall be held liable to any Person for exercising the rights granted by this paragraph.

(c) The Association shall have the authority to establish fines for violations of this Article and the Design Guidelines, including fines for continuing violations. The fine amounts may be deducted from any bond posted. If the fines are not paid, the Association may establish an Individual Assessment in accordance with the provisions of ARTICLE 9.

(d) In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC.

10.9 Architectural Change Committee. At the discretion of the DECLARANT or after the expiration of the Class "B" Control Period, either the DECLARANT or the Association shall have the option, but not the obligation, to establish an Architectural Change Committee to review minor changes or renovations to improvements previously approved by the ARC. If the DECLARANT or the Association elects to establish such an Architectural Change Committee, the Board shall establish guidelines regarding the operation and jurisdiction of such committee and shall appoint its members, each of whom shall serve and may be removed in the Board's discretion. Additionally, during the Class "B" Control Period, the DECLARANT shall have the right to remove and replace any member of the Architectural Change Committee.

ARTICLE 11
USE GUIDELINES AND RESTRICTIONS

11.1 Plan of Development: Applicability: Effect.

(a) DECLARANT has created the Residential Community as a residential and recreational development and, in furtherance of its and every other Owner's interest, has established a general plan of development for the Residential Community. Accordingly, the Properties are subject to the affirmative and negative covenants, easements, and restrictions governing land use, individual conduct, and uses of or actions upon the Properties that are provided in this ARTICLE 11 (the "Use Guidelines and Restrictions").

(b) All provisions of these Protective Covenants and of any Association rules shall also apply to all occupants, lessees, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of these Protective Covenants, the By-Laws, and the rules of the Association; provided however, that the lack of such a lease provision shall not waive these Protective Covenants, the By-Laws, and the rules of the Association in any way.

11.2 Rules and Regulations. Subject to the terms of this ARTICLE 11, the Board may implement and manage the Use Guidelines and Restrictions through rules and regulations which adopt, modify, cancel, limit, create exceptions to, or expand the Use Guidelines and Restrictions.

11.3 Owners' Acknowledgment.

(a) All Owners and all the Properties are subject to the Use Guidelines and Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board may add, delete, modify, create exceptions to, or amend the Use Guidelines and Restrictions in accordance with Section 11.2.

(b) Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by these provisions, and that the Use Guidelines and Restrictions and rules may change from time to time; and each Owner agrees to be bound thereby

11.4 Rights of Owners. Except as may be specifically set forth in Section 11.5, the Board may not adopt any rule in violation of the following restriction: No rules shall interfere with the activities carried on within the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that, in the Association's reasonable judgment, create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that significantly block the normal views from other Units, or that create an unreasonable source of annoyance, or that create a nuisance.

11.5 Use Guidelines and Restrictions.

(a) General. The Properties shall be used only for residential and related purposes (which may include, without limitation, offices for any property manager retained by the Association, business or sales offices for the DECLARANT or the Association, and certain recreational uses ancillary to home ownership or as permitted in the Common Areas), except as otherwise provided herein. No commercial use shall be permitted on any Unit except in accordance with Section 11.5(m) and Section 11.5(y).

(b) Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained on any Unit or in any dwelling except a limited number of domestic household pets, which limit may be set by the Board. Domestic household pets may not be raised, bred, or kept for any commercial purpose. Pets must be accompanied and leashed at all times when off Owner's Unit and droppings must be immediately removed. Fines assessed by the Association shall become an Individual Assessment in accordance with ARTICLE 9. All parties are hereby notified that, in the event any dog kept or maintained on a Unit or in any dwelling on the Properties barks excessively, continuously or in a manner that constitutes a nuisance, the Board may require the Unit Owner to employ a collar or other device designed to reduce or control such excessive barking (provided that such action shall in no event limit any other rights or remedies for such situation that may be available to the Board or to any other parties at law or in equity).

(c) Placement of Outdoor Clothes Drying Structure. No outdoor poles, clotheslines or similar equipment shall be erected or located on any Unit.

(d) Offensive and Illegal Activities. No immoral, improper, illegal, noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done thereof tending to cause embarrassment, discomfort, annoyance or nuisance to the Association, the DECLARANT or any Owners. There shall not be maintained any plants or animals, odors, fumes, or devices or anything of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other Properties by the Owners thereof. All laws, orders, rules, regulations, ordinances or requirements of any government agency having jurisdiction thereof, relating to any Person or the Property, shall be complied with, by or at the sole expense of the Owner or of the Association, whichever shall have the obligation and/or right to maintain or repair such portion of the Property.