

(e) Parking. Parking of vehicles on any street in the Properties shall be allowed only in accordance with the policy determined by the Board of Directors. No truck nor other vehicle in excess of a three-quarter (3/4) ton load capacity, boat, vessel, motorboat, camper, trailer, motor or mobile home, or similar type vehicle or apparatus shall be parked or kept overnight or longer, on any street or on any Unit unless it is stored in an enclosed garage and in such a manner as to not be visible to the Owners of other Units or the users of a street or recreation area. All tools or other materials stored in vehicles for overnight parking shall be kept out of sight. No vehicle or equipment which is unsightly in appearance as determined by the Board of Directors shall be allowed on the Properties.

(f) Repair or Removal of Buildings. Any dwelling or improvement on any Unit that is destroyed in whole or in part by fire or other casualty shall be either rebuilt or torn down and all debris removed and the Unit restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Unit longer than three (3) months. If a replacement Unit is to be constructed, the replacement Unit must be approved by the ARC in accordance with ARTICLE 10.

(g) Outside Burning. No outside burning shall be permitted except as may be approved by the Board in advance (provided that in no event shall burning be permitted except in compliance with all applicable governmental regulations).

(h) Signs. The ARC shall approve all signs prior to installation and may impose size limits. No advertising signs or billboards or other advertising structure(s) of any kind shall be erected on any Unit or displayed to the public on any Unit subject to these restrictions without prior written approval of the ARC. This covenant shall not apply to signs erected by the DECLARANT, including signs used to identify and advertise the Properties as a whole. DECLARANT or ARC has the right to enter upon any Unit and remove any unapproved sign(s). Without limiting the foregoing, the ARC shall issue guidelines from time to time outlining the Residential Community's policy for the posting of "for sale" signs and similar temporary signs by or upon any Unit (which policy shall include the permitted dimensions and appearance of such signs and may even prohibit such signs altogether).

(i) Hunting and Fishing. No hunting or discharge of firearms within the subdivision is permitted. The Association, through its Board of Directors, reserves the right to control or remove animals (including, without limitation, the authorization of bow hunting to reduce or eliminate nuisance animals) subject to rules and restrictions to be determined by the Board. Fishing shall be permitted only in locations designated by the Board from time to time and shall be subject to reasonable restrictions imposed by the Board.

(j) Garbage. Garbage and trash shall be disposed by Owners in accordance with the rules and regulations of the Association.

(k) Antennas. No outside antennas or satellite dishes shall be erected on any Unit or structure unless and until permission for the same has been granted by the ARC. The design and location of the dish must also be approved by the ARC.

(l) Well Installation. The Owners of single-family residential Units shall be allowed to install one single well per Unit for the purpose of irrigating the land comprising the Unit. This right shall be subject to the DECLARANT'S reservation of rights in all surface and sub-surface water in the Properties herein. All wells and pumps permitted under these Protective Covenants must be located so as not to be visible from any street or recreational area or Common Area and must be approved by the ARC, screened from view and kept free from discoloration, including rust. All structures within the Unit shall also be kept free from discoloration, including rust. In the event the use of water from any well is determined, in the Board's discretion, to be causing rust or discoloration on a Unit, the Board shall be entitled to require the Owner of such Unit to discontinue the use of such well.

(m) Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by the Board subject to any conditions imposed by the Board:

(i) Activities which materially disturb or destroy the vegetation, wildlife, water or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(ii) Any Business or Trade, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the activity does not involve regular visitation of the Unit by clients, employees, agents, customers, suppliers, or other business invitees, delivery services, or door-to-door solicitation of residents of the Properties; and (c) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

(iii) Nothing shall be kept and no activity shall be carried on, by a Person other than DECLARANT or the Association, in any building, structure or home or on the Common Area which will increase the rate of insurance, applicable to residential use, for the property or the contents thereof. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his home or on the Common Area or any Recreational Trails which will result in the cancellation of insurance on any portion of the property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Area, any Recreational Trails or any Recreational Corridor.

(n) Property Damage. Owners shall be responsible for any damage done to any streets, roadways, access ways, curbing, street gutters, sidewalks, Common Areas, Recreational Trails, or property of other Owners within the Properties which may be caused by the same Owner, his agents, contractor or its subcontractor lessees, employees, guests, licensees or invitees. The Association shall have the authority to assess any Owner for such damage and such charge shall be an Individual Assessment against the Owner and his Unit(s) and may be enforced in accordance with the provisions of ARTICLE 9 herein.

(o) Junk Vehicles. No stripped, partially wrecked, junk motor vehicle, or part thereof, or any motor vehicle not displaying a current valid inspection sticker shall be permitted to be parked or kept on any Unit.

(p) Garbage Cans and Fuel Tanks. All trash receptacles and garbage cans shall be screened so as not to be visible by the Owners of other Units or the users of any street or recreation area. All such screening shall be approved by the ARC. No fuel tanks or similar storage receptacles may be exposed to view. The placement of any such receptacles may be approved by the ARC or DECLARANT and may only be located within the main dwelling house, within an accessory building, within a screened area, or buried underground.

(q) Mailboxes. All mailboxes and other such receptacles must be approved in advance by the ARC. Any boxes provided by the DECLARANT on a Unit shall be considered an improvement and must remain with the Unit and must be maintained by the Unit Owner. Boxes and/or posts damaged shall be repaired to an attractive condition or replaced by the Unit Owner within thirty (30) days of loss or damage.

(r) Outdoor Objects. No outdoor statuary, flags or other decorative objects may be placed on any Unit unless it is in compliance with the Governing Documents, including the Design Guidelines. The American Flag no larger than 3 feet x 5 feet may be flown on a pole no longer than 5 foot 6 inches from a pole holder attached to the home in an approved location which can be reached by hand from the ground below so as to be easily installed and removed. Any flags will be displayed in accordance with traditional rules and regulations governing the flying and display of the American Flag.

(s) Alteration of Common Area. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area except at the direction of and with the express written consent of the ARC. Notwithstanding anything herein to the contrary, in no event shall any terms or other screening within any Common Area be

removed or materially altered without the consent of the DECLARANT (or, after the expiration of the Class "B" Control Period, the Association).

(t) Use of Common Areas. The Common Areas shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the homes, subject to any Rules or Regulations that may be adopted by the Association hereunder or pursuant to its By-Laws.

(u) License to Use Recreational Trails. With respect to any Recreational Trails designated by DECLARANT or the Association from time to time, each of the Owners shall have a revocable license (the "Trail License") to use such Recreational Trails for pedestrian purposes. The Association shall have the right to establish reasonable rules and regulations relating to the use of the Recreational Trails, and each Owner's rights under the Trail License shall be subject and subordinate to such rules and regulations. DECLARANT, on behalf of itself and the Association, reserves the right to revoke the Trail License with respect to any Recreational Trails or any portions thereof at any time (it being understood and agreed that Recreational Trails may be initially located upon land that may later be converted to use for residential or other purposes). By acceptance of a deed within the Properties, each Owner acknowledges that the removal or closure of any Recreational Trail by DECLARANT (with the exception of a temporary closure for purpose of maintenance or repair) shall operate as an immediate and automatic termination of the Trail License relative to the Recreational Trail so removed or closed, and no written or other further notice shall be necessary. Upon the expiration or termination of the Trail License with respect to any Recreational Trails, the rights of the Owners to use such Recreational Trails shall immediately terminate. As and to the extent provided in Section 5.1, the Association shall be responsible for the maintenance and upkeep of certain aspects of the Recreational Trails, for so long as such Recreational Trails are owned or designated by either the DECLARANT or the Association.

Notwithstanding anything herein to the contrary, no Owner shall be entitled to erect any fence or any other structure within any Recreational Corridor. Subject to the approval of the ARC, an Owner shall be entitled to install landscaping and irrigation facilities within any portion of a Recreational Corridor lying within the boundaries of such Owner's Unit, but only to the extent such landscaping and/or irrigation facilities do not impede or impair the use and enjoyment of any Recreational Trail therein, as determined in the discretion of the ARC.

Notwithstanding anything herein to the contrary, the designation of a Recreational Corridor by DECLARANT shall not be deemed to impose any obligation upon DECLARANT or the Association to install or maintain a Recreational Trail in that area.

(v) Storage of Personal Property. All lawn mowers, bicycles, toys, grills and other similar objects must be stored when not in use so as not to be visible by the Owners of other Units or the users of any street, recreation area, Common Area, or Recreational Trails.

(w) Exterior Features and Structures. All exterior storage areas, laundry facilities, utility areas, service yards or areas, carports, electrical meters, water meters, and gas meters are to be screened from view from streets and adjacent properties by an enclosure, fence, wall or natural landscape materials.

(x) Road Use. The roads are to be used by vehicles or pedestrians for the purposes of transportation. The use of any roads within Palmetto Creek shall be subject to all applicable governmental rules, as well as any restrictions in the Governing Documents. At no time shall any vehicle exceed the speed limit as determined by the Association or the applicable governmental authority. No permanent, frequent, or long-term parking is permitted along or on major roads and promenades except in specifically designated areas. Any parking is also subject to those rules in Section 11.5(e). The Association is entitled to adopt reasonable rules and regulations regarding the supervision, maintenance, control, regulation and use of the roads and promenades, and to enforce the same in any lawful manner which may include, but not be limited to, the imposition of fines for violations thereof, which fines shall be Individual Assessments and may be enforced in accordance with the provisions of ARTICLE 9.

(y) DECLARANT'S Activities. This Section 11.5 shall not apply to any activity conducted by the DECLARANT or its assigns with respect to its development and sale of the Properties or any commercial activities of the DECLARANT or its assigns, including any sales office maintained by DECLARANT or its assigns; and DECLARANT shall be specifically authorized to rent or lease any Unit which it owns or manages for other Owners, and to maintain model Units or sales offices in any Unit which it owns or leases.

(z) Boats. Except as otherwise provided in this subparagraph (z), the use of boats or watercraft in excess of sixteen (16) feet in length is not permitted upon the ponds, lakes and watercourses within the Palmetto Creek. The use of kayaks, canoes, skulling craft or other such vessels exceeding sixteen (16) feet in length may be permitted on a case-by-case basis subject to the approval of the Board (and, during the Class "B" Control Period, subject to the additional approval of the DECLARANT). The approval of the Board and/or DECLARANT may be granted or withheld in such party's sole and absolute discretion. The use of gas motors will not be allowed; provided, however, electric trolling motors may be used on permitted watercraft. All boats and/or watercraft used or stored within Palmetto Creek must be kept in excellent condition and in good order and repair and must be acceptable in appearance to the Board and, during the Class "B" Control Period, to DECLARANT. In the event DECLARANT or the Board determines that any boat or watercraft does not satisfy the foregoing requirements or is otherwise inconsistent with the Community-Wide Standard, the owner of such boat or watercraft shall be required to remove same from Palmetto Creek within forty-eight (48) hours (or upon such other timeline that may be imposed by the Board or DECLARANT). In the event such owner does not comply with such directive, DECLARANT or Board may cause such boat or watercraft to be removed from Palmetto Creek, in which case the full cost of such removal and any storage of such craft shall be the sole responsibility of the owner of such boat or watercraft. Notwithstanding the foregoing to the contrary, the use of boats upon the waters of Palmetto Creek shall be subject to reasonable rules and regulations that may be promulgated by the Board from time to time.

(aa) Recreational Pathways. Recreational pathways within the Residential Community (including, but not limited to, any Recreational Trails) may be used only by bikes, pedestrians, and pedestrian moving devices which are quiet and otherwise satisfy the requirements of this section. "Pedestrian moving devices" used within the Residential Community shall not exceed the size of a standard golf cart or touring cart used by the DECLARANT or its assigns, nor shall any such devices exceed a weight of 15 pounds per square foot dead load (or 100 pounds per square foot live load) if used on any wooden pathways, including, but not limited to, boardwalks, bridges, ramps, decks or the like. Persons using pedestrian moving devices upon wooden structures within the Residential Community do so at their own risk; DECLARANT makes no representation of the weight limitations of any such wooden structure and assumes no liability for the operation of any vehicle or device upon such structures.

11.6 Stormwater Run Off Rules. All Units shall be subject to the State of North Carolina rules and regulations concerning stormwater runoff as these rules are amended from time to time. Without limiting the foregoing, DECLARANT hereby reserves the right to impose additional restrictions upon the Properties as and to the extent required by the terms of the stormwater permit for the Residential Community as issued by the State of North Carolina. Such additional restrictions may be imposed by DECLARANT by the recording of a Supplemental Declaration, and no joinder or consent of the Association or any other Owner or Person shall be required on such Supplemental Declaration. These regulations currently provide:

(a) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit number SW8 050239, as issued by the Division of Water Quality under MCAC WH.1000.

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

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

(d) The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

(e) Alteration of the drainage as shown on the approved plans may not take place without the concurrence of the Division of Water Quality.

(f) For those lots within "Section Two" of Palmetto Creek (including, without limitation, those Units described on the plat referenced on Exhibit A attached hereto), the maximum built-upon area per Unit is as follows: 6,000 square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.

Subject to the terms and conditions of the applicable stormwater permit(s) for such areas as issued by the State of North Carolina, DECLARANT reserves the right to establish different maximum built-upon square footage limitations which may be applicable to other sections within Palmetto Creek annexed at a later time.

ARTICLE 12 EASEMENTS

12.1 Easements for Utilities. There are hereby reserved unto DECLARANT (so long as the DECLARANT owns any property described on Exhibit A or any Future Development Property which has been annexed into the Properties pursuant to the terms of these Protective Covenants), unto the Association, and unto the designees of each, access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining any cable television system, any master television antenna system, irrigation systems, any security and similar systems, roads, walkways, bicycle pathways, recreation pathways, trails, ponds, lakes, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, meter boxes, telephone, garbage pickup, and electricity, irrigation and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes in these Protective Covenants or on recorded plats of the Properties. Any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement rights. Utilities may not be installed or relocated on the Properties, except as approved by the Board or DECLARANT.

12.2 Easement for Utility Installation.

(a) All of the Property, including Units and Common Area, shall be subject to a perpetual non-exclusive easement for water lines, sanitary sewers, storm drainage facilities, telephone and electric power lines, television antenna lines, and other public utilities as shall be established by the DECLARANT as may hereinafter be designated on any plat or replat of parcels within the Residential Community whether the same be within the boundaries of any Unit(s).

(b) Easements and rights of way over and upon the rear, front and side ten (10) feet of each Unit for drainage and the installation and maintenance of utilities and services, including, without limitation, water, sewer, drainage and stormwater runoff facilities, are reserved to DECLARANT and its successors and assigns for such purposes as DECLARANT may deem incident and appropriate to its overall development plan. If the side setback is less than ten (10) feet then the reserved easement shall be the width of the setback. The easements and right of way areas reserved by DECLARANT on each Unit pursuant hereto shall be maintained continuously by the Owner, but no structures or plantings or other material shall be placed or permitted or remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Improvements within such areas also shall be maintained by the respective Owner except those for which a public authority or utility company is responsible. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any

gradings of the soil, or to take any other similar action reasonably necessary in the opinion of the DECLARANT to provide an economical and safe installation. The DECLARANT shall have no maintenance responsibilities for such easement areas.

(c) The DECLARANT reserves a perpetual, non-exclusive easement for the installation, maintenance and repair of water, sewer, drainage and all other utilities within the right of way of all roads and streets and other areas as shown on the recorded plats of the Property which easement may be exercised by DECLARANT or any public or private entity charged with the responsibility of maintenance and repair.

(d) The Association hereinafter may grant easements for utility purposes for the benefit of the Properties and the Units now or hereafter located thereon, over, under, along and through the Common Areas. Provided, however that no such grant of easement shall have a material adverse effect on the use, enjoyment or value of any Unit.

12.3 Easements to Serve Additional Property. The DECLARANT hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any Future Development Property, whether or not such property is made subject to these Protective Covenants. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

12.4 Easements for Cross-Drainage.

(a) Every Unit and the Common Area shall be burdened with easements for drainage of water runoff from other portions of the Properties; provided, no Unit Owner shall alter the drainage on any Unit so as to materially increase the drainage of water onto adjacent portions of the Properties without the consent of the Owner of the affected property.

(b) The Properties are burdened with a permanent easement for the benefit of the DECLARANT and its successors and assigns, for the stormwater runoff and drainage facilities located on the Properties, including, without limitation, any stormwater retention ponds or ditches. This easement includes the right to drill, install, locate, maintain and use pipes, conduits and pumps running to the stormwater retention ponds and other related facilities located on the Properties.

12.5 Power to Grant Easements. Subject to the requirements of the Planned Community Act, the Association shall have the power and authority to grant and to establish in, over, upon and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the property.

12.6 Easement for Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to ARTICLE 5 hereof, and to inspect for the purpose of ensuring compliance with these Protective Covenants, any Supplemental Declaration, the Articles, By-Laws, and the Rules and Regulations, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

12.7 Easement Maintenance. All maintenance of any water, sewer or drainage easement shall be the responsibility of the Owner of the Unit on which said easement is located. No structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, sewer or drainage facilities, or which may change the direction of flow of drainage channels in the easements. The easement area of each Unit and all improvements in it shall be maintained continuously by the owner of the Unit, except for those improvements for which a public authority or utility company is responsible.

12.8 Easement for Irrigation.

(a) There is hereby reserved for the benefit of the DECLARANT, the Association, and their successors and assigns, a permanent exclusive easement and right (1) to pump water from the lakes, ponds, waterways, basins, water table, wells, water dependant structures and other bodies of water located in, on or under the Properties for the purpose of irrigating any portion of the Properties, and (2) to drill, install, locate, maintain and use wells, pumping stations, water towers, filtration basins and tanks and related water facilities and systems within the Common Areas and/or lands within the Properties owned by the DECLARANT. The pumping or other removal of any water from any lake, pond, or body of water wholly or partly within the Properties, for any purpose other than fire fighting and as provided herein is prohibited without express written permission of the DECLARANT and/or the Association.

(b) The Property is hereby burdened with a permanent, exclusive easement in favor of the DECLARANT and its successors and assigns, for overspray and/or surface or sub-surface flow of water from any irrigation system serving the Properties. Under no circumstances shall the DECLARANT or the Association be held liable for any damage or injury resulting from said water, or the exercise of this easement.

12.9 Easements for Owner's Ingress and Egress. Every Owner, and his or her heirs, successors, assigns, guests and licensees, shall have a perpetual, non-exclusive easement and right of ingress and egress over and across any of the roads and sidewalks located or to be located within the Properties, as shown on any recorded plats of the Property, for the purpose of providing vehicular and pedestrian access to and from the Properties. Notwithstanding the foregoing, DECLARANT shall be entitled to restrict access on certain roads and sidewalks in DECLARANT's discretion, and certain Villages may have restricted access and other Village-specific rules. Accordingly, the use of such roads and sidewalks shall be subject to applicable Rules and Regulations.

12.10 Easement for Common Area Pathways. Each Owner, and their authorized guests or invitees, shall have a perpetual, non-exclusive easement for the use and enjoyment of any bicycle paths, pedestrian paths, or nature preserve trails, if any, which may be established by the DECLARANT or the Association within the Common Area from time to time. Notwithstanding the foregoing, DECLARANT shall be entitled to restrict access to the aforementioned improvements and amenities in DECLARANT's discretion, and certain Villages may have Village-specific rules therefor. Accordingly, the use of such improvements and amenities shall be subject to applicable Rules and Regulations.

12.11 Common Area Easement.

(a) Every Owner of a Unit within the Properties, as an appurtenance to such Unit, shall have a perpetual, non-exclusive easement over and upon the Common Areas within the Properties for each and every purpose or use to which such Common Areas were intended as determined by their type, or for which such Common Areas generally are used, including, but not limited to, easement of access, maintenance, repair or replacement of the Common Areas. Such easements shall be appurtenant to and shall pass with the title to every Unit located within the Properties, whether or not specifically included in a deed thereto.

(b) An exclusive easement is hereby established in favor of DECLARANT over all Common Areas for access to adjacent properties for the purposes of future development and the installation of streets and public utilities.

12.12 Easements for Adjacent Property and/or Adjacent Amenities. Each Owner and Member hereby acknowledges that DECLARANT, one or more affiliates of DECLARANT and/or one or more principals or shareholders of DECLARANT or its affiliates may (but shall have no obligation to) dedicate or grant easements on or relating to certain property adjacent to or in the vicinity of the Properties for educational, conservation or similar uses. DECLARANT hereby reserves the right to grant to third parties reasonable easements of access over and across the streets, sidewalks, Recreational Trails and Common Areas on the Properties as and to the extent necessary or appropriate for the full use and enjoyment of such dedications or easements.

12.13 Easements Run with the Land. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on all

undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the benefit of and be binding on the undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and any other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any Mortgage or deed of trust or other evidence of obligation, to the easements and rights described in these Protective Covenants.

ARTICLE 13
MORTGAGEE PROVISIONS

13.1 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

13.2 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response within thirty (30) days of the mailing of such request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE 14
DECLARANT'S RIGHTS

14.1 Transfer of DECLARANT'S Rights. Any or all of the special rights and obligations of the DECLARANT set forth in these Protective Covenants or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in these Protective Covenants or the By-Laws. No such transfer shall be effective unless it is in a written instrument signed by the DECLARANT and duly recorded in the land records of Brunswick County, North Carolina.

14.2 Rights of DECLARANT and Authorized Builders. Notwithstanding anything in these Protective Covenants to the contrary, so long as sales of Units by the DECLARANT shall continue, the DECLARANT, and builders authorized by DECLARANT, may maintain and carry on such facilities and activities as, in the sole opinion of the DECLARANT, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, the construction and use of sales and business offices, signs and model units, and the use of any Common Areas and any facilities therein. The DECLARANT and authorized builders shall have easements for access to and use of such facilities.

14.3 Rights to Alter. The rights reserved by DECLARANT in these Protective Covenants (including, without limitation, the right to annex property under ARTICLE 8 herein) include the right to change, alter or designate Unit(s), roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment of the DECLARANT, be necessary or desirable. The rights reserved in this Section specifically include the right of DECLARANT to redesignate, change, or alter any platted Unit(s) into road(s).

ARTICLE 15
DURATION, AMENDMENT AND TERMINATION

15.1 Units, Persons and Entities Subject to the Protective Covenants. All present and future Owners, tenants, and occupants of Units and their guests or invitees, licensees, employees or agents, shall be subject to, and shall comply with the covenants, conditions, restrictions and affirmative obligations set forth in these Protective Covenants, and as the Protective Covenants may be amended from time to time. The Acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of these Protective Covenants are accepted and ratified by such Owner, tenant or occupant and that they will fully comply with the terms and conditions of said Protective Covenants.

15.2 Duration and Termination. The covenants, conditions, restrictions, and affirmative obligations of these Protective Covenants shall inure to the benefit of and be enforceable by the DECLARANT, the Association, or the Owner of any Unit, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date these Protective Covenants

are recorded in the Brunswick County Registry, after which date these Protective Covenants shall be extended automatically for successive periods of forty (40) years, unless these Protective Covenants are terminated as provided in §47F-2-118 of the Planned Community Act (provided that, during the Class "B" Control Period, any termination shall also require the consent of DECLARANT). The covenants, restrictions, conditions and affirmative obligations of these Protective Covenants shall run with and bind the land and shall bind any person having at any time any interest or estate in any of the Properties as though such provision were made a part of each and every deed of conveyance or lease.

15.3 Amendment. As long as DECLARANT owns any of the property described on Exhibit A or any Future Development Property, these Protective Covenants may be amended by DECLARANT in its discretion. Retention of this right by the DECLARANT is not intended to materially alter the general or common scheme of development for the property herein described but to correct and/or modify situations or circumstances which may arise during the course of development. Thereafter, these Protective Covenants may be amended by vote of not less than sixty-seven percent (67%) of the Class "A" Members, and an instrument must be recorded at the Brunswick County Registry for such an amendment to be effective. In addition, the DECLARANT may amend these Protective Covenants to annex additional property and make it subject to the terms, conditions, restrictions, obligations and covenants of these Protective Covenants as provided in ARTICLE 8 herein.

No amendments may remove, revoke, or modify any benefit, right or privilege of the DECLARANT hereunder without the written consent of the DECLARANT or the assignee of such right or privilege.

15.4 Stormwater Restrictions. Notwithstanding the foregoing to the contrary, DECLARANT shall be entitled to unilaterally amend these Protective Covenants as provided in Section 11.6 herein.

ARTICLE 16

COMPLIANCE WITH THESE PROTECTIVE COVENANTS, THE ARTICLES THE BYLAWS AND THE RULES AND REGULATIONS OF THE ASSOCIATION

In the case of failure of an Owner to comply with the terms and provisions contained in these Protective Covenants, the Articles, the By-Laws or Rules and Regulations of the Association, the following relief shall be available:

16.1 Enforcement. The Association, the DECLARANT and any aggrieved Owner within the Residential Community shall have the right to enforce by any proceeding at law or in equity, all of the conditions, covenants and restrictions of these Protective Covenants and the Articles, By-Laws and Rules and Regulations of the Association and any and all laws hereinafter imposed pursuant to the terms of these Protective Covenants. The prevailing party shall be entitled to collect all costs thereof, including reasonable attorney's fees (which shall be determined using reasonable hourly rates).

16.2 Remedies. The Association shall have the right to remedy the violation and assess the costs of remedying same against the offending Owner as an Individual Assessment as provided in ARTICLE 9 herein.

16.3 Suspension of Rights. For any violation by an Owner, including, but not limited to, the nonpayment of any general, special or individual assessment, the Association shall have the right to suspend the offending Owner's voting rights and the use by such Owner, his agents, lessees, employees, licensees and invitees of the Common Areas and recreational facilities in the Residential Community for any period during which a violation continues.

16.4 Fines. The Association may establish a schedule of fines for the violation of these Protective Covenants, the Articles, By-Laws and Rules and Regulations. If an Owner does not pay the fine within fifteen (15) days the fine shall be an Individual Assessment against the property and may be enforced by the Association in accordance with ARTICLE 9 herein and with applicable law.

16.5 Remedies Cumulative. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.

16.6 Waiver. The failure of the Association or any person or Owner to enforce any restriction contained in these Protective Covenants, the Articles, the By-Laws or the Rules and Regulations shall not be deemed a waiver of the right to do so thereafter.

ARTICLE 17
GENERAL PROVISIONS

17.1 Common Area and Amenities. All of the Common Area and any other park, recreation area, recreation facility, dedicated access or other amenity appurtenant to the Properties, whether or not shown and delineated on any recorded plat of the Properties, shall be considered private and for the sole and exclusive use of the Owners of Units within the Properties. Neither DECLARANT'S execution nor the recording of any plat nor any other act of DECLARANT with respect to such area is, or is intended to be, or shall be construed as a dedication to the public of any such areas, facilities, or amenities.

17.2 Conflict. In the event of any irreconcilable conflict between these Protective Covenants and the By-Laws or Articles of the Association, the provisions of these Protective Covenants shall control.

17.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or any court, agency or legislative order shall in no way affect any other provision, covenants, conditions or restrictions contained in these Protective Covenants.

17.4 Captions. The captions preceding the various Articles of these Protective Covenants are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Protective Covenants. As used herein, the singular includes the plural and where there is more than one Owner of a Unit, said Owners are jointly and severally liable for the obligations herein imposed. Throughout these Protective Covenants, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and feminine.

17.5 Use of the Words "Palmetto Creek". No Person shall use the words "Palmetto Creek", "Palmetto Creek of the Carolinas", any derivative or any other term which DECLARANT may select as the name of the development or any component thereof in any printed or promotional material without the DECLARANT's or the licensee's prior written consent. However, Owners may use the words "Palmetto Creek" in printed or promotional matter solely to specify that particular property is located within the Properties and the Association shall be entitled to use the words "Palmetto Creek" in its name.

17.6 Conflict with Planned Community Act. To the extent any provision of these Protective Covenants is directly inconsistent with the terms of the Planned Community Act and such provision of these Protective Covenants cannot reasonably be reconciled with the Planned Community Act, the terms of the Planned Community Act shall be controlling with regard to such term.

[NEXT PAGE IS SIGNATURE PAGE]

IN TESTIMONY WHEREOF, the DECLARANT has caused this instrument to be executed in its corporate name as of the date first above written.

XDV, INC.

BY: Robert C. Egan
President

NORTH CAROLINA

New Hanover COUNTY

I, Sandra S. Haigler, a Notary Public of the State and County aforesaid, certify that Robert C. Egan personally came before me this day and acknowledged that he is President XDV, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President.

WITNESS my hand and official seal this 30 day of JANUARY, 2006.

Sandra S. Haigler
Notary Public

My commission expires:

3/10/2008

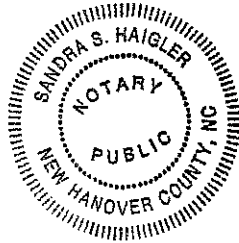


EXHIBIT A

BEING ALL the property described as "Palmetto Creek of the Carolinas Section Two," as shown on map thereof and titled there as recorded in Map Cabinet 34, Page 235-245 of the Brunswick County Registry. Reference to said map is hereby made for a more particular description.

EXHIBIT B

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Initial By-Laws of the Ass.

**BY-LAWS
OF
PALMETTO CREEK POA, INC.**

Article I Name, Principal Office, and Definitions

1.1 Name.

The name of the corporation is Palmetto Creek POA, Inc. (the "Association").

1.2 Principal Office.

The principal office of the Association shall be located in Brunswick County, North Carolina. The Association may have such other offices, either within or outside the residential community of Palmetto Creek ("Palmetto Creek"), as the Board of Directors may determine or as the affairs of the Association may require.

1.3 Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain recorded Master Declaration of Protective Covenants for Palmetto Creek (as amended from time to time, the "Declaration"), unless the context indicates otherwise.

Article II Membership: Meetings, Quorum, Voting, Proxies

2.1 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.

The Association shall have two classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2 Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

2.3 Annual Meetings.

The first meeting of the Association, whether a regular or special meeting, shall be held within one year after the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board in the same quarter of the Association's fiscal year on a date and at a time set by the Board.

2.4 Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution signed by a majority of the Board or upon a

petition signed by Members representing at least 10% of the total Class "A" votes of the Association.

2.5 Notice of Meetings.

Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the Association's records, with postage prepaid.

2.6 Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings.

If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called; provided, however, in the event any meeting is adjourned and reconvened due to lack of a quorum, the quorum requirement applicable to such reconvened meeting shall be one-half (½) of the quorum requirement applicable at the meeting adjourned due to lack of a quorum.

If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8 Voting.

The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9 Proxies.

Members may vote in person or by proxy, subject to the limitations of North Carolina law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws.

Every proxy shall be in writing specifying the Unit for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) conveyance of any Unit for which it was given or (b) receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, from the date of the proxy, unless a shorter period is specified in the proxy.

2.10 Majority.

As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11 Quorum.

Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by proxy of Members representing a majority of the total Class "A" votes in the Association shall constitute a quorum at all Association meetings.

2.12 Conduct of Meetings.

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13 Action Without a Meeting.

Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Article III Board of Directors: Selection, Meetings, Powers

A. *Composition and Selection.*

3.1 Governing Body: Composition.

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. Except with respect to directors appointed by the Class "B" Member, directors shall be Members or residents; provided, however, no Owner, resident or tenant representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person eighteen (18) years of age or older whose principal residence is a Unit within Palmetto Creek. If a Member is not a natural person, any officer, director, partner or officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2 Number of Directors.

The Board shall consist of one (1) to five (5) directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of one (1) director as identified in the Articles of Incorporation.

3.3 Directors During Class "B" Control Period.

Directors appointed by the Class "B" Member pursuant to Section 3.5 of these By-Laws shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

3.4 Nomination and Election Procedures.

Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by votes of the Members. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Nominations also may be permitted from the floor.

Except with respect to directors selected by the Class "B" Member, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairman, who shall be a member of the Board, and three (3) or more Members. Members of the Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each annual meeting to serve a term of one (1) year and until their successors are appointed, and such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

3.5 Election and Term of Office.

Except as these By-Laws may otherwise specifically provide, election of directors shall take place at the Association's annual meeting. Notwithstanding any other provision of these By-Laws:

(a) Within thirty (30) days after the time that Class "A" Members other than "authorized builders" own 25% of the total number of the planned Units in Palmetto Creek (including, without limitation, any of the Future Development Property which may be annexed thereto), or whenever the Class "B" Member earlier determines, the Board shall be increased to three (3) directors. The President shall call for an election by which the Class "A" Members shall be entitled to elect one (1) of the three (3) directors. The remaining directors shall be appointees of the Class "B" Member. The director elected by the Members under this subsection (a) shall not be subject to removal by the Class "B" Member (except as otherwise provided by North Carolina law) and shall be elected for a term of two (2) years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within thirty (30) days after the time that Class "A" Members other than "authorized builders" own 50% of the total number of the planned Units in Palmetto Creek (including, without limitation, any of the Future Development Property which may be annexed thereto), or whenever the Class "B" Member earlier determines, the Board shall be increased to five (5) directors. The President shall call for an election by which the Class "A" Members shall

be entitled to elect two (2) of the five (5) directors. The remaining three (3) directors shall be appointees of the Class "B" Member. Directors elected by the Members under this subsection (b) shall not be subject to removal by the Class "B" Member (except as otherwise provided by North Carolina law) and shall be elected for a term of two (2) years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within ninety (90) days after termination of the Class "B" Control Period, the President shall call for an election by which the Class "A" Members shall be entitled to elect all five (5) of the directors.

Upon expiration of the term of office of each director elected by the Members, Members entitled to elect such director shall be entitled to elect a successor to serve a term of two (2) years. Directors elected by the Members shall hold office until their respective successors have been elected.

3.6 Removal of Directors and Vacancies.

Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as Declarant's representative. The Class "B" Member or Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

B. *Meetings.*

3.7 Organizational Meetings.

The first meeting of the Board following each annual meeting of the membership shall be held within thirty (30) days thereafter at such time and place as the Board shall fix.

3.8 Regular Meetings.

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter.

3.9 Special Meetings.

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by a majority of the directors.

3.10 Notice; Waiver of Notice.

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(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, fiber optics or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five (5) business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting.

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11 Telephonic Participation in Meetings.

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12 Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13 Conduct of Meetings.

The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.14 Open Meetings; Executive Session.

(a) Except in an emergency, notice of Board meetings shall be posted at least forty-eight (48) hours in advance of the meeting at a conspicuous place within Palmetto Creek which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of Section 3.15 and applicable law, all Board meetings shall be open to all Members and, if required by law, all Owners; but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they

be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) At regular intervals, the Board meeting shall provide Owners an opportunity to attend a portion of a Board meeting and to speak to the Board about their issues or concerns. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided in these Bylaws, meetings of the Board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

(d) Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.15 Action Without a Formal Meeting.

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. *Powers and Duties.*

3.16 Powers.

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Declaration or North Carolina law require to be done and exercised exclusively by the Members or the membership generally.

3.17 Duties.

Duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget of expenses (including, without limitation, Common Expenses);
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Common Area and the Recreational Trails consistent with the standards required by the Declaration;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve; and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's best judgment in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area and Recreational Trails in accordance with the Declaration and these By-Laws;

(i) enforcing by legal means the provisions of the Declaration and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be subject to the provisions of the Declaration;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the Association's receipts and expenditures;

(m) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Palmetto Creek; and

(n) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association, to the extent such indemnity is required by North Carolina law, the Articles of Incorporation or the Declaration.

3.18 Compensation.

Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes (and, if during the Class "B" Control Period, the Class "B" Member) at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

3.19 Right of Class "B" Member to Disapprove Actions.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of Declarant or authorized builders under the Declaration or these By-Laws, or interfere with development or construction of any portion of Palmetto Creek, or diminish the level of services being provided by the Association.

(a) Notice. The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with Sections 3.8, 3.9, 3.10, and 3.11 herein and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard. The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20 Management.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3.17(a) (with respect to adoption of the budget), 3.17(b), 3.17(f), 3.17(g) and 3.17(i) herein. Declarant or its affiliate may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period unless such contract contains a right of termination exercisable by the Association, with or without cause and without penalty, at any time after termination of the Class "B" Control Period upon not more than ninety (90) days' written notice.

3.21 Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise (*i.e.*, any thing of value received shall benefit the Association);
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Class "B" Control Period, the annual report shall include certified financial statements.

3.22 Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, however, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed ten percent (10%) of the Association's budgeted gross expenses for that fiscal year.

3.23 Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or a Village Association and other owners' or residents' associations, within and outside Palmetto Creek. Any common management agreement shall require the consent of a majority of the Board.

3.24 Enforcement.

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Declaration. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) Notice. The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.