

Melanie Arthur 38P
CARTERET COUNTY
LDL Date 02/28/2006 Time 08:30:00
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NORTH CAROLINA, CARTERET COUNTY
This instrument and this certificate were duly filed at the
date and time and in the Book and Page shown on the
first page hereof.

Melanie Arthur, Register of Deeds
By Barbara Cahoon
Asst. Deputy, Register of Deeds

Prepared by Richard L. Stanley 05 RLS 7349
STATE OF NORTH CAROLINA

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
EMERALD VIEW SUBDIVISION**

COUNTY OF CARTERET

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is
made this 18 day of November 2005, by BACKFIN PARTNERS, LLC, a North Carolina
LIMITED LIABILITY COMPANY, 8754 REED DRIVE, EMERALD ISLE, NC, and any and
all persons, firms and corporations hereafter acquiring any of the lots within Emerald View
Subdivision as shown on a Bell and Phillips, PLLC Engineering plat dated Dec 15, 2005, and
recorded in Map Book _____, page _____, Carteret County;

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property as conveyed by Deed
recorded in Book 1114, Page 220, Carteret County Registry. Declarant has caused the
property described therein to be subdivided into lots for a subdivision known as Emerald View
Subdivision, and a plat is recorded in Map Book 30, Page 119, Carteret County Registry,
hereinafter called "Emerald View", or the "Property";

WHEREAS, Declarant intends to develop the property into a quality, resort residential
subdivision with all improvements being constructed using the quality materials and
workmanship so as to create a unique community that is harmonious with its seaside coastal
environment. The Declarant intends to form a homeowners' association to enforce and maintain
the quality of the property and its amenities which includes a sewage easement area, road,
stormwater swales and ditches, entrance way, signage, lighting, sewer easement areas, and such
other common areas and amenities that Declarant or the homeowners' association may provide
for the general welfare and recreation of the owners;

WHEREAS, it is in the mutual interest of the Declarant as well as every person, firm or
corporation hereafter acquiring any of the lots within Emerald View that these covenants,
conditions, easements, assessments, liens and restrictions governing and regulating the use and

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(38)

occupancy of the subdivision lots be established, fixed and set forth and declared to be covenants running with the land;

WHEREAS, Declarant desires to preserve the value, amenities, desirability, and attractiveness of the subdivision and to provide for the continued maintenance and operation of the common areas as may be provided therein, and to accomplish this purpose, Declarant desires to coordinate the architectural work, landscaping, signage, lighting and other aspects of the development so that they will fit into the landscape of the property, and so that improvements on each lot as nearly as possible fit in with the natural environment.

NOW, THEREFORE, in order to provide for the foregoing, the Declarant does hereby covenant and agree with all persons, firms or corporations now owning or hereafter acquiring any portion of Emerald View Subdivision, that the use of lots in Emerald View Subdivision is hereby made subject to the following restrictions, covenants, terms and conditions which shall run with said land and shall be binding on all property owners within said Subdivision and their successors and assigns.

SECTION I - DEFINITIONS

As used throughout this Declaration, the following terms shall have the definitions set out herein as follows:

A. "Amenities" shall mean the easement areas and facilities constructed, erected, installed or set aside on the common areas for the use, benefit and enjoyment of members.

B. "Association" shall mean and refer to Emerald View Association, Inc., a non-profit Corporation organized and existing under the laws of the State of North Carolina, its successors and assigns, which is established for the administration, maintenance and regulation of the easements and roads within said subdivision area, amenities, sewer easements, and other common areas and facilities assigned to, purchased, or otherwise provided for by the Association for the use and enjoyment of members of the Association.

C. "CAMA" shall mean the Coastal Area Management Act as set forth in North Carolina General Statute 113A-100 et seq, and any of the rules and regulations promulgated thereunder.

D. "Committee" shall mean and refer to the Architectural Committee.

E. "Common Areas" shall mean and refer to any and all real property subject to this Declaration which is defined and bounded by properly referenced and recorded plats designated thereon as "Common area(s)", "sewage easements", or "roads", which are private and have not been turned over to any governmental authority for maintenance, "private easements" or

driveways created by the Declarant to provide access to the streets or roads for more than one lot, or any area that is set aside for the general use of the members. Common areas shall also include all real property and easement interests owned or assigned by the Association for the common use and enjoyment of all members or designated classes of members of the Association, which may include but are not limited to, sewer easement areas, entrance way, and signage. (This list of possible amenities is for descriptive purposes only and does not bind the Declarant to construct any or all of said amenities.)

F. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Emerald View Subdivision, and any amendments thereto as recorded in the Carteret County Registry.

G. "Declarant" shall mean and refer to Backfin Partners, LLC, its successors and assigns, and "Declarant" and "Developer" are interchangeable and have the same definition.

H. "Lot" shall mean and refer to any plot of land within Emerald View Subdivision with or without improvements thereon, which constitute or will constitute after construction of improvements, a single residential site as shown on the plats or plans for the Subdivision or amendments thereto, recorded in the Carteret County Registry.

I. "Lot sewer area" means and refers to each of the 23 numbered nitrification system and drepair field areas with manifold system (TYP-UNO) shown the recorded plats as being located north of lots 2 through 15.

J. "Member" shall mean and refer to any person or other entity which holds membership in the Association.

K. "Owner" shall mean and refer to the owner of record of fee simple interest in any lot in the Subdivision, excluding those persons having such interest merely of the security interest for the performance of an obligation.

L. "Person" shall mean and refer to a natural person, corporation, partnership, firm, association, trust or other legal entity. The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

M. "Sewer System and Easement" are those sewer easements shown on the plat of the sewer system prepared by John Freshwater, P.E., recorded in Map Book 30, page 883, Carteret County Registry.

N. "Nitrification System and Repair Field Easements" are those nitrification system and repair fields shown and numbered for each corresponding lot within the subdivision on the plat recorded in Map Book 30, page 883, Carteret County Registry.

SECTION II - PROPERTIES SUBJECT TO THIS DECLARATION

1. Applicability. Lots 1 through 23 as shown on the map of Emerald View Subdivision referred to above are expressly made subject to the operation of these Covenants.

2. Additional Lands. Declarant at any time prior to December 31, 2015, reserves the right to add or bring additional phases, lots, or lands under this Declaration if Declarant should acquire title to nearby or adjacent property, by filing in the Office of the Register of Deeds for Carteret County, North Carolina, either an applicable amendment or a Supplementary Declaration of Covenants and Restrictions with respect to the additional lots, phases, or properties. Said Amendments or Supplementary Declaration would extend the scheme of development and the binding effect of these Covenants and Restrictions on the additional property, and such Amendments or Supplementary Declarations may contain complementary additions and modifications of these Covenants and Restrictions as may be necessary to reflect the different character of the added properties. In no event shall the Supplementary Declaration revoke, modify or add to these Covenants as they are applicable to the Lots set forth in Section 1 above.

3. Reservations. The Declarant reserves the right absolutely to change, alter or redesignate the allocated, planned, platted, or recorded use, area, or designation of any of the lots shown on the map of Emerald View Subdivision recorded aforesaid so long as the Declarant retains title to the property involved, so long as any changes or alterations are in conformance with Carteret County's Subdivision and Zoning Ordinances, including, but not limited to the right to change, alter or redesignate roads, utility and drainage facilities, and to change, alter or redesignate such other present or proposed lot lines and facilities as may, in the sole judgment of the Declarant, be necessary or desirable.

SECTION III - ASSOCIATION MEMBERSHIPS AND VOTING RIGHTS

Declarant has heretofore incorporated Emerald View Association, Inc. for the benefit of lot owners within said subdivision so as to provide for the maintenance, upkeep and repair of roads pending acceptance of maintenance responsibilities by a governmental authority, as well as the maintenance, upkeep and/or repair of sewer areas and drainage easements, amenities, and common areas which are subject to the management and administration of the Association.

Section 1. Membership.

(a) Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by these covenants to assessments by the Association shall be a member of the Association, subject to and bound by the Association's Articles of Incorporation, By-Laws, Rules and Regulations. The foregoing is not intended to include persons, or entities who hold an interest in any lot merely as security for the performance of an obligation.

Ownership of record of such lot shall be the sole qualification for membership. When any lot is owned of record in tenancy by the entireties, joint tenancy, or tenancy in common or by some other legal form of multiple ownership, the membership (including the voting power arising therefrom) shall be exercised only as stipulated in Section 2 herein below.

(b) During any period when a member shall be in default in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights and right to the use of the common area or any other facilities which the Association may provide, may be suspended by the Board of Directors of the Association until such assessment is paid. In the event of violation by a member of any rules and regulations established by the Board of Directors of the Association, such member's voting and use rights may be suspended by the Board of Directors of the Association after a hearing at which the general requirements of due process shall be observed. Such hearing shall only be held by the Board of Directors of the Association (or a committee thereof) after giving the member ten (10) days prior written notice specifying the alleged violation and setting the time, place and date of the hearing. Determination of violation shall be made by majority vote of the Board or the committee thereof.

(c) No membership fee shall be charged nor shall members shall be required to pay at any time any amount to carry on the business of the Association except to pay when due the charges, assessments, and special assessments levied upon each member's lot as specified in the Declaration or as the members of the Association may from time to time adopt.

Section 2. Voting and Voting Rights.

(a) The voting rights of the membership shall be appurtenant to the ownership of lots. The ownership of each lot by a person other than Declarant shall entitle its owner to one vote. The Association shall have two classes of voting membership as follows:

(1) Class A Regular Member. Class A regular members shall be all owners, other than the Declarant; however, the Declarant shall be a Class A regular member to the extent provided in Subparagraph 2 below. Class A regular members shall be entitled to one vote for each lot owned.

(2) Class B Regular Members. The Class B regular member shall be the Declarant, and it shall be entitled to three votes for each lot in which it holds a fee or undivided fee interest; provided, the Class B regular membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever first occurs:

(i) Four (4) months after the total votes outstanding in the Class A regular membership equal the total votes outstanding in the Class B membership; or

(ii) On December 31, 2015.

(b) When two or more persons hold an interest (other than a leasehold or security interest) in any lot, all such persons shall be members. The vote for such lot shall be exercised by one or such persons as proxy and nominee for all persons holding an interest in a lot and in no event shall more than one (1) vote be cast with respect to any lot (except with respect to lots owned by Declarant), nor shall any fractional vote be cast.

(c) Any member who is delinquent in the payment of any charges duly levied by the Association against any lot owned by such member shall not be entitled to vote until all such charges, together with such reasonable penalties as the Board of Directors of the Association may impose, have been paid.

(d) Members shall vote in person or by proxy executed in writing by the member. No proxy shall be valid after eleven (11) months from the date of its execution or upon conveyance by the member of his lot. A corporate member's vote shall be cast by the President of the member corporation or by any other officer or proxy appointed by the President or designated by the Board of Directors of such corporation, which designation must be in writing.

(e) Voting on all matters except the election of directors shall be by voice vote or by show of hands unless a majority of the members present at the meeting shall, prior to voting on any matter, demand a ballot vote on that particular matter. Where directors or officers are to be elected by the members, the solicitation of proxies for such elections may be conducted by mail.

SECTION IV - COMMON AREA PROPERTY RIGHTS

Section 1. Description of Association Common Areas. The Association Common Areas shall initially consist of the on-site sewage easement area and easements to and from said area, access road designed "Backfin Court", drainage easements, access easements, and other areas designated "common area", as shown on the recorded plat. The road shown on the plat has been publicly dedicated to the owners of lots within said subdivision and their heirs, successors and assigns, for vehicular access, and the drainage and sewer areas have been privately dedicated to owners and their heirs, successors and assigns, for drainage and sewer and septic disposal purposes, as well as the maintenance of adequate drainage of surface waters within the subdivision. The Declarant has reserved the right in accordance with these covenants to assign, lease or transfer or assign the road,, utility and drainage easements to governmental agencies or third parties for maintenance purposes. Declarant further retains the right which right is assignable to the Association, to withdraw from private dedication the ownership and use of the on site sewage easement area at such time as public sewer services are available to each subdivision lot and each owner has connected thereto and no longer has the need for sewer or septic disposal services with such common areas.

Section 2. Ownership of Association Properties. The Declarant by the recordation of the Emerald View plat has dedicated the road within the subdivision to public dedication, and all lot owners and their heirs, successors in interest and assigns, and members of the Association shall have the right of enjoyment of the road. Declarant reserves the right to convey, transfer or assign the road by right of way, easement or other conveyance in association with the Emerald View Association, Inc., to the North Carolina Department of Transportation or other public agency for the future maintenance and upkeep of said road. Pending acceptance of said road by a governmental agency, the Association shall have the continuing obligation and duty beginning one year after date of recordation of the final plat to maintain said road.

Title to the drainage easements located within the subdivision is vested in the owner of each lot over which such drainage easement runs, but the Association shall have the continuing responsibility to maintain the drainage easements.

Section 3. On Site Sewage Areas and Sewer Easements. Title to the on-site sewage treatment easements and areas are part of the common areas of the subdivision. There is a specifically designated and like numbered nitrification system and repair field area with manifold system(TYP-UNO)(herein "Lot sewer area") for each numbered lot together with a sewer easement from the numbered lot to the sewer area for that lot. The Declarant and Association as the owner and manager of the same shall have the the right to contract with, lease to, assign or place under the partial or total operation and administration sewage easement areas with one or more third parties. Unless the on site sewer area is contracted for, leased to, assigned or placed for operation and management by the Association with a third party, the Association shall have the affirmative duty hereafter to budget, assess and collect such dues and assessments as may be necessary for the proper maintenance, supervision, upkeep and control of the area, securing suitable insurance coverage from perils, provision for liability insurance, the carrying out and completion of inspections and mowing of grass and growth as deemed necessary, and generally to provide for the administration and operation of the sewer easement area in a good business like manner and in accordance with Federal, State, and local rules and regulations.

Section 4. Subdivision Septic Disposal Practices. Declarant has secured septic system approvals for lots within the subdivision which require that each lot owner as part of the construction of a residential dwelling thereon install at his cost a septic and pump tank, pump, piping and accessories within approved locations within the lot, and to then connect the house and its tank, pumps and system accessories on the lot to the forced mains within the sewer easements provided by the Declarant for that numbered lot. The Declarant shall have the obligation to install the forced mains at its costs within the sewer easement areas and to run the mains and pipes to each lot sewer area set aside for each numbered lot as shown on the recorded plats. The lot owner shall also have the obligation at his costs to install the piping, nitrification trenches and other equipment and accessories on and within the specific lot sewer area set aside for the numbered lot and to then install and connect piping from the forced mains provided by the Declarant to the lot sewer area system so that the same is functioning in accordance with

Carteret County Health Department permits. The easement lines and nitrification repair septic field areas are shown on the plat recorded in Map Book 30, page 883, Carteret County Registry. For example, the owner of Lot 1 would install his septic and pump tanks, pump, piping and accessories on Lot 1 and connect the same to the forced mains running from Lot 1 northerly, westerly and northerly to the Lot 1 sewer area, and then would install within the Lot 1 sewer area the nitrification field, trenches and equipment within the lot sewer area and would then connect the same through piping to the forced main provided at the boundaries of the lot sewer area. Each owner at his own cost will be required to install, maintain, replace or repair his septic tank, pump tank, pump, connecting lines, piping and equipment within his number lot and the nitrification trenches, pipes and equipment within the lot sewer area, and the Association shall be required to complete inspections to insure compliance with County and State rules and guidelines and to mow the grass and control the growth of weeds and underbrush within the lot sewer areas and sewage easement areas as shown on the plat. All owners of lots within the Subdivision shall be required to connect to their respectively numbered lot sewer area as shown on the plat and to pay to the Association or its successors and assigns, or the then operator or owner of the system, all dues and periodic usage and maintenance fees in the event the normal dues structure of the Association is not sufficient to provide the costs of inspections and the mowing and control of weeds and undergrowth. Each owner shall be required to bear the responsibility for and the cost of repairing, maintaining and replacement all parts of his septic system including the septic tank, pump tank, pump, equipment, connecting lines and all parts of the nitrification and repair areas, and the Association shall only be responsible for the completion of inspections and the control of grass, weeds and growth within the lot sewer areas and sewage easement areas. All lot owners shall be required to hook on to the subdivision sewer system as described herein and as shown on the plats and drawings and continue to use said system in lieu of all other sewer services unless and until public sewer is available to the lots and has been so certified by the State or local governmental agency having regulatory authority over the same.

In the event an owner should default with regard to his responsibilities for maintenance, repair or replacement of any part of his system and should fail or refuse to comply with Health Department or Association directives regarding the same, then the Association shall have the authority to carry out all needed repairs, maintenance or replacement and to assess, collect and enforce the same as a special assessment against the lot owner and his lot in accordance with Section V hereafter.

Section 5. Area Lights. It shall be the responsibility of the Association to maintain and pay for all utility charges and maintenance expenses associated with any area lights not specifically assigned to a numbered lot by a utility company, and the Association shall also maintain any privacy fences installed by the Declarant around a portion or all of the subdivision boundaries or on any portions of the common areas, including any lighted entrances, walls, and utilities associated therewith.

Section 6. Easements of Enjoyment. Every member of the Association shall have a right and easement of enjoyment in and to the Association properties. Each regular Owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Areas and

facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Said rights of use and enjoyment shall be subject to the following provisions:

(a) The Association shall have the right to charge dues and assessments for the upkeep and maintenance of Association properties, sewage easement areas, drainage easements, and other amenities which are the responsibility of the Association herein. Likewise, the Association shall have the right to charge dues and assessments for the construction and maintenance of any improvements within said Areas, and to provide for all types of insurance for the Association and its properties, and the upkeep and maintenance of roads and other subdivision amenities.

(b) The Association shall charge such dues, assessments or fees for the proper upkeep, maintenance and operation of the sewage easement areas and its related equipment, including special assessments against lot owners in default, to provide insurance coverage, and to subcontract for or hire part-time or full-time personnel. Said on site sewage areas shall at all times be maintained in a good state of repair and in accordance with all local, state and federal rules and guidelines by each lot owner and/or Association as their responsibilities are outlined herein.

(c) The Association shall have the right to suspend the right to the use of any Association Properties by any Member for any period during which any dues or assessments against such Member are overdue and unpaid, and for a period not exceeding sixty (60) days for any infraction of rules and regulations established by the Association for the regulation and control of Association Properties. Likewise, the Association shall have the right to fine any Member an amount not exceeding \$50.00 for each violation of rules and regulations established by the Association. However, the Association may not terminate or suspend the right of any owner to connect to the sewage easement areas or disconnect the owner from hook on thereto.

(d) The Association by rules and regulations established from time to time shall have the right to provide for the use and enjoyment of Common Areas and Association Properties. This right to the use of Association Properties shall extend to regular members of the Association and relatives of members who reside with and in the house of members, tenants of each member' lots in the subdivision so long as the tenancy exist, and contract purchasers of lots in the subdivision who reside on the lot.

Section 7. Title to the Common Area. The Declarant hereby covenants that it will convey fee simple title to the common areas shown on the aforementioned recorded plat to the Association, free and clear of all encumbrances and liens, except utility, drainage easements, and easements to governmental authorities, at such time as 75% of the lots have been sold.

Section 8. Antennas and Satellite Discs. The Association may regulate or prohibit the erection of any type of antennas on individual lots. The Association may further regulate or prohibit satellite discs except that satellite discs no larger than 24 inches in diameter may be erected with the prior written approval of the Association. A satellite disc less than 24 inches in diameter shall be screened such that the disc is not visible from the street or other common areas and such screening must be approved by the committee.

SECTION V - COVENANTS FOR DUES AND ASSESSMENTS

Section 1. Annual Assessments for Maintenance Fund. For each lot owned within Emerald View, each owner covenants and agrees, and each subsequent Owner of any such lot covenants and agrees, that by acceptance of a deed therefor whether or not it is so expressed in such deed, that the owner will pay to the Association the assessments and charges provided for in this Declaration.

(a) Every Owner of a lot in the subdivision by the acceptance of a deed to the same, which shall be conclusively evidenced by the recording of a deed in the Office of the Register of Deeds covenants and agrees to pay to the Association such annual dues and assessments for maintenance and upkeep of Association properties, capital improvements and the construction of improvements and facilities on or to Association properties, and the administration of properties and facilities assigned to the Association for operation and management, as may established from time to time by the Board of Directors and membership of the Association. Such dues and assessments together with interest at the legal rate of interest, cost and reasonable attorney's fees if the dues and assessments remain unpaid, shall be a continuing lien on each lot against which said assessment is made until paid in full. Said dues and assessments shall also be the personal obligation of the Owner of each lot at the time the dues and assessments become due, and the personal obligation shall not pass to a successor in title unless expressly assumed by the successor. However, said dues and assessments shall be a lien on said lot and a sale or transfer of any lot shall not affect the lien for unpaid dues or special assessments against said lot.

(b) Every Associate member as approved for membership by the Association Board of Directors as a condition for membership agrees to pay to the Association such membership fees, dues and assessments for maintenance, upkeep, capital improvements and the construction of improvements and facilities on Association Properties, as well as the operation and administration of properties and facilities assigned to the Association, as may be established from time to time by the Association. Nonpayment of any fees, dues, assessments or costs by the

Associate Member to the Association shall be subject to the right of the Association Board of Directors to impose fines, penalties, suspensions or terminations of membership in addition to the right of the Association to collect all unpaid charges in the North Carolina Courts. In the event it becomes necessary for the Association to retain an attorney in order to collect any charges due the Association, then it shall also be the responsibility of the Associate Member to pay the Association's reasonable attorney's fees and cost.

(c) The dues and assessments shall be used exclusively for the purpose of maintaining and improving Subdivision roads, drainage ditches and sewage easements, the maintenance and upkeep of Association Properties, the construction of improvements and facilities thereon, the upkeep, maintenance, operation and management of properties or facilities leased to or assigned to the Association in accordance with these Covenants, as well as the upkeep, maintenance and replacement of equipment, improvements in facilities thereon, and generally for the promotion of the health, safety and welfare of the membership. Additionally, the dues and assessments may be used for acquiring all types of property, casualty and liability insurance for the Association, and the dues and assessments may be used to fund any of the activities, powers and authority of the Association as the Association is authorized to do as a non-profit Owners' Association.

(d) The Association is responsible for the mowing and control of vegetation and growth as well as completion of inspections of the system, and the Association shall have the right to budget for, assess and collect such dues, assessments, impact and user fees, as deemed appropriate by the Association using good business and accounting principles, for management of the sewage easement areas, the hiring of subcontractors, employees or other personnel, the payment of engineers and similar professionals, the costs of maintenance, repair and upkeep of equipment and supplies, insurance premiums, reserves for replacement of equipment and facilities, and generally all expenses associated with the management of the sewage easement areas.

(e) The Declarant shall have no obligation to pay dues and assessments for unsold lots. As a lot is sold in the subdivision, the Declarant may collect from each Purchaser two months assessments and dues as working capital which shall be paid to the Association, and the Declarant shall notify the Association as to the name and address of each Purchaser. The obligation to pay dues shall commence as to all members purchasing lots on the date the deed to the lot from the Declarant shall be recorded.

Section 2. Maximum Monthly or Annual Assessments. The Association Board of Directors is authorized to assess and collect its regular dues and assessments on either a monthly, quarterly, semi-annual, or annual basis. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessments shall be \$100.00 per lot, per year pending further notification from the Association.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year not more than ten (10%) percent above the maximum assessment for the previous year without a vote of the regular membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above ten (10%) percent by a majority vote of the regular members of the association who are voting either in person or by proxy, at a meeting duly called for said purpose.

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

Section 3. Special Assessments for Capital Improvements or Extraordinary Expenditures; Special Assessments against Defaulting lot owners. In addition to the regular annual assessments authorized in Paragraph 2 above, the Association may levy, in any assessment year, one or more special assessments applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Areas, or property or facilities assigned to the Association for operation and administration, including equipment, fixtures and personal property related thereto, as well as for the purpose of defraying, in whole or in part, any extraordinary expenses resulting from storms, casualties or similar expenses resulting from extraordinary circumstances beyond the control of the Board of Directors, provided that each such assessment shall have the assent of fifty one (51%) percent of the regular members of the association who are voting in person or by proxy at a meeting duly called for this purpose.

Additionally, the Association Board of Directors may levy a special assessment against any lot owner and the lot or lots owned without the necessity for approval by the Membership for the costs of maintaining, repairing or replacing any portion of the septic tank system, piping and equipment which the lot owner has failed to so maintain, repair or replace as required under Section IV with regard to the septic system for that lot, and the special assessment, interests and attorney's fees shall be a lien to the same extent and be enforceable to the same extent as the annual dues and assessments under Section 5 hereafter.

Section 4. Notice and Quorum for any Action Authorized under Sections 2 and 3 Above. Written notice of any meeting called for the purpose of taking any action authorized under Sections 2 or 3 above shall be sent to all Regular Members not less than ten (10) days nor more than twenty (20) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) percent of all the votes of the membership of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. No such notice

shall be required with regard to special assessments against a lot owner in default for failure to maintain his septic system except that the Board shall be required to notify the lot owner of such default in writing and give the lot owner the opportunity for a hearing before the special assessment is levied.

Section 5. Non Payment of Assessments. Any Member failing to pay the annual or special assessments and dues or any fees or charges authorized by the Association within a period of thirty (30) days after the billing thereof, shall be deemed to be in default. The Board of Directors shall caused to be filed in the Office of the Clerk of Superior Court or in the Office of the Register of Deeds of Carteret County an instrument suitable for recordation which shall set for the name of the Owner, the lot description, the amount of the assessment, the date the assessment was due, and the fact that the Board of Directors has given the Owner notice of said assessment and said Owner has failed to pay said assessment. In addition to the assessment so stated, all amounts necessary for the collection of said assessment, including, but not limited to mailing costs, recording costs, and a reasonable attorney's fee incurred for the collection thereof, together with interest at the legal rate of interest, shall constitute a lien against said lot and shall be due and payable from the delinquent Owner.

Following the recordation of said lien, the Board of Directors are authorized to institute an appropriate action in a Court having jurisdiction over the subject matter and the parties in order to collect the assessments, interest, costs and attorney's fees from the Owners and in order to effect a sale of the property to satisfy the lien for the delinquent assessments and expenses.

Additionally, the Board of Directors shall have the right to impose fees and penalties for non-payment of charges, dues and assessments by Associate Members, and shall have the right to suspend and terminate membership rights for Associate Members.

Section 6. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to the sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Likewise, the sale or transfer shall not relieve the lot Owner from personal liability therefrom.

Section 7. Suspension or Termination of Voting Rights.

In addition to any other rights the Association may have with regard to non-payment of assessments and dues, the payment of any assessments levied by the Association shall be a prerequisite to the exercise of any voting rights earlier provided for herein and for serving on the Board of Directors of the Association. Any member failing to pay the assessments or dues on his lot so that the same thereafter become delinquent, shall be deemed ineligible to vote at any annual or special meeting of the membership and shall be deemed ineligible to serve on the Board of Directors or as an officer of the Association so long as said delinquency continues.

SECTION VI - ARCHITECTURAL CONTROL, INSPECTION AND USE RESTRICTIONS

Declarant shall have the responsibility of enforcing the restrictions set forth in this section prior to the formation of the Committee, which, upon appointment by the Board of Directors, shall assume and be responsible for enforcement. References in this Section to "Committee" shall mean Declarant until the Committee is appointed and references to "Declarant" shall include the Committee once it is appointed. The following architectural restrictions shall apply to each and every lot now or hereafter subject to this Declaration:

Section 1. Approval of Plans and Architectural Committee.

(a) No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residences, outbuildings, landscaping, fences, walls, signs, antennas and other structures, shall be undertaken upon the lots unless the plans and specifications therefor, showing the nature, kind, shape, size, height, colors, materials, and location of the proposed improvements on the lot, including but not limited to, the house, decks, garage, driveways, parking areas, plants, shrubs, trees (including tree to be removed), wetland areas to be disturbed, and any other permanent structures or changes to be made to the lot, shall have been first submitted to the Committee and expressly approved in writing. No subsequent alternation or modification which will result in an exterior, structural change to the residence, outbuilding, or significant changes to the landscaping may be undertaken on any of the lots without the prior review and express written approval of the Committee.

(b) In the event the Committee fails to approve or disapprove the site or design of any proposed improvements within sixty (60) days after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Committee if they contain erroneous data or fail to present adequate information upon which the Committee can arrive at a decision.

(c) The Committee shall have the right, at its election, to enter upon any of the lots during site preparation or construction, erection or installment of improvements, to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing standard industry methods and good quality materials.

(d) The approval of any such plans, specifications or other items submitted to the Committee pursuant to this Section shall not impose any liability or responsibility on the Committee or the Association with respect to either the compliance or non-compliance with any such plans, specifications, or other items (including any improvements or structures erected in accordance therewith) with applicable zoning ordinances, building codes or other governmental or quasi-governmental laws, ordinances, rules and regulations or defects in or arising from such plans, specifications or other items (including, without limitation, defects relating to engineering matters, structural and design matters and the quality or suitability of materials).

(e) For so long as Declarant is a Class B Regular Member of the Association, or until such time as the Declarant notifies the Board of Directors in writing of its desire to have the Association elect the members of the Committee, the Declarant shall serve as the Committee, and shall exercise the authority to approve plans and other matters set forth in this Article. After Declarant divests itself of all lots within the property, or so notifies the Association in writing, the Committee shall be appointed by the Board of Directors to serve for a term of one year or until their successors have been duly appointed in the event of the death, resignation or removal by the Board of Directors of a member of the architectural review committee.

(f) With the submission of the plans and specifications, the owner may be required to pay a nominal non-refundable architectural review fee to the Declarant in such amount as may be established from time to time by the Declarant for the costs of review of the plans and specifications, so long as the Declarant is acting as the Committee, and thereafter shall pay to the Board of Directors such fee as may be approved from time to time for architectural review of the plans and specifications.

Section 2. Use Restrictions.

(a) All numbered lots shall be used for single family residential purposes only. No structures shall be constructed, altered, placed or permitted to remain on any lot in the subdivision unless the same is a single family residence.

(b) Mobile homes, trailers, manufactured homes, modular homes, tents and all other structures of a temporary character are expressly prohibited from being placed, put or maintained on any lot at any time. Provided, this prohibition shall not apply to on site temporary offices used by a Contractor or Builder during the construction of a single family dwelling so long as said temporary shelter is not used at any time as a resident and said temporary shelter is immediately removed following completion of the dwelling. As used herein, the term "mobile home" and "manufactured home" shall have those definitions and meanings set forth in G.S. 41-2.5, G. S. 143-143.9(6), and G.S. 143-145(7). Provided, that the width and length of a manufactured home, or mobile home shall be irrelevant and inapplicable as it is the intent of these covenants to prohibit manufactured homes, modular homes and mobile homes of all sizes regardless of length or width.

(c) Only stick built detached single family homes first submitted to and approved by the Architectural Control Committee shall be permitted on any of the lots within the subdivision. A "modular" home which is defined herein as a prefabricated structure having floors, walls, ceilings, or roof composed of sections or panels of varying size which have been fabricated prior to erection on a building foundation, shall be prohibited. No buildings or structures of any kind shall be permitted on any lot within the Subdivision unless first submitted to and approved in advance by the Architectural Control Committee. All structures shall be stick built or constructed in place on each lot except that roof and floor trusses may be manufactured off site and brought to the lot for use in the house or structure.

(d) All fuel tanks or similar storage receptacles are prohibited from being exposed to view. Any such receptacles may be installed only within the main dwelling house, within a permitted accessory

building, within a screened area, or buried underground. Provided, the Declarant shall be permitted to erect, place or permit the placement of tanks, equipment and other apparatus within the Subdivision for uses related to the provision of sewage, water and other utilities to the Subdivision.

Section 3. Minimum Building Requirements. No residential structure shall be constructed on any of the residential lots within the Subdivision unless the residential structure shall contain a minimum of 1,500 square feet of enclosed dwelling area for each residential structure. For any dwelling containing more than a single story, (a) an one and one-half story must contain a minimum of 1,500 square feet with 1,000 square feet on the first floor; and (b) a two story dwelling must contain a minimum of 1500 square feet with a minimum of 750 square feet on the first floor. As used herein the term "enclosed dwelling area" shall mean the total enclosed heated area within a dwelling, excluding garages, parking and utility areas within the outer walls of pilings constituting the first floor, terraces, decks, unenclosed porches, and similar areas. In the event the Declarant specifies a higher minimum square footage of enclosed dwelling area in deeds to purchasers of lots within the Subdivision than as set forth in this paragraph, then the higher minimum square footage figure set out in the deed shall be controlling and shall be complied with.

(a) No building shall be erected or allowed to remain on any lot in said Subdivision within 30 feet of the street abutting the front of each lot or within 10 feet of any side line of each lot, within 15 feet of any side street, or within 25 feet of the rear lot line, or as said setbacks may be shown on the recorded maps of the Subdivision, whichever is the greater amount of setback. If due to topography, irregular lot shape or similar factors directly related to other lots within the Subdivision, the setbacks herein would create a hardship or burden on an Owner, upon written application to the Architectural Control Committee, the Architectural Control Committee is authorized to vary said setbacks the minimum amount necessary in order to provide for a suitable and aesthetically pleasing structure on the subject lot. However, any such variance by the Architectural Control Committee would be subject to prior approval by Carteret County or other governmental agency having authority over the issuance of building permits and enforcement of Subdivision or zoning setback requirements.

(b) The exterior of all houses and other structures must be completed within twelve (12) months after construction is commenced, except under such circumstances where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities. No house may be occupied unless it has been built substantially in accordance with the approved plans and specifications as approved by the Committee and a certificate of completion has been issued by the appropriate governmental inspector. During all periods of construction, the lot owner shall be responsible for providing suitable receptacles for debris, trash, building materials, and the like, and shall be responsible for insuring that trash and debris from construction activities does not move to or accumulate on adjoining properties, the subdivision streets or roads, or common areas. Additionally, each lot owner shall be responsible for the damages to subdivision roads, utilities, and vegetation within the common areas, on adjoining lots, or within the subdivision roads and utility easements, as may be caused by the acts or omissions of each lot owner's contractors, subcontractors, material suppliers, agents or employees.

(c) Each lot Owner shall provide receptacles for garbage and trash in a screened area not generally visible from the road giving access to the premises, or shall provide underground trash and garbage receptacles or similar facilities. All fuel tanks and wood piles shall be enclosed within a fence, wall or plant screen so that the same shall not be visible from any street or residence in the Subdivision

(d) Each lot Owner shall provide space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on said lot and automobiles shall not be parked on the streets within said subdivision.

(e) Each lot Owner shall be permitted to build, erect or maintain both a detached garage and one additional detached structure to be used as either a cabana or gazebo. Any detached structure to be used as a cabana or gazebo shall not exceed one story in height, and any detached building used as a garage shall not exceed one and a half stories in height. The dwelling and any detached building shall not be used for any activity normally conducted as a business. Any cabana or gazebo shall be so located where the same does not interfere with the view of adjoining lot owners as determined by the architectural control committee. All detached buildings shall be prohibited from being constructed prior to the construction of the main dwelling, and all detached buildings shall comply with all setback requirements set forth herein for the main dwelling. Every detached building shall be built of the same quality and type of materials and so designed as to be compatible with the main dwelling house located on the same lot. All detached buildings shall be located no closer to the street on which the lot fronts than the detached single family dwelling located thereon.

(f) In order to cut down on the amount of stormwater run-off of soil and lot coverings, each lot Owner shall be prohibited from cutting, killing, or otherwise providing for the removal either directly or indirectly of any tree on any lot within the Subdivision exceeding six inches in diameter except for any tree or vegetation within the proposed "footprint" of the dwelling or outbuilding to be constructed on the lot, or suitable safety zone around the same, without the prior written approval of the Architectural Control Committee. The Architectural Control Committee is authorized to allow the cutting or removal of trees that are diseased or damaged, or constitute a potential damage to structures, automobiles or persons on the subject lot or adjoining lots.

The Architectural Control Committee is further authorized to allow the removal of trees which obstruct the lot owner's water view.

"Footprint" as used herein is defined as the specific location on each lot where the dwelling, outbuilding, driveway, decks, terraces, and utilities systems are proposed to be located. Trees and vegetation within the footprint may be removed so long as the footprint of each lot is submitted to and approved in advance by the Architectural Control Committee. The Architectural Control Committee shall be guided by the intent of the Declarant herein that existing vegetation outside the footprint be protected.

(g) Clothes lines and television satellite disks exceeding twenty four (24) inches in diameter are expressly prohibited. Any television satellite disk meeting the requirements of not exceeding 24 inches in diameter shall additionally be installed at a location to the rear of the main dwelling and

screened appropriately with fencing or vegetation so that the same may not be seen or observed from the Subdivision street on which the lot fronts.

(h) The pickup of garbage, trash and refuse shall be in accordance with such rules and regulations as may be established from time to time by the Association.

(i) The first 20 feet of driveway leading from the subdivision road to the dwelling and/or structure located on said lots shall be paved with asphalt, concrete, paving brick or other materials as approved by the Architectural Control Committee. The paving of driveways with gravel or marl is prohibited unless approved in writing by the Architectural Control Committee.

(j) No campers, recreational vehicles or commercial trucks shall be parked at any time or any lot unless the same is enclosed within a garage or accessory building or within a fenced or screened area which has been approved by the Architectural Control Committee.

(k) The only permitted access to each lot from the Subdivision street or access road shall be over a culvert and driveway constructed over the drainage ditching and swales along the subdivision road. No lot Owner shall fill in or alter any of the drainage system, ditches or swales of the Subdivision without the written approval of the developer.

(l) No metal or wire fencing is permitted on any Lot or portion thereof. All other fencing materials shall be approved in advance by the Architectural Control Committee before being used or installed, and no fencing of any type shall be erected, placed or allowed to remain on the front lot line or street side of any lot beyond the facade of the exterior wall or porch of the home closest to the street right of way upon which the lot fronts.

Section 4. Nuisances, Inoperable Vehicles, Etc.

(a) No unserviceable motor vehicles, appliances or other assorted junk and useless materials may be kept on any lot. All lots shall be maintained free and clear of rubbish and debris.

(b) No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No horses, fowl, livestock or other animals shall be allowed on any of the lots, except that lot Owners actually residing upon their lots may keep pets which are customarily domesticated, tame and considered house pets such as dogs, cats and birds, so long as the number does not exceed three per lot.

(c) All buildings, structures and their appurtenances shall be maintained in a reasonable state of repair. In the event of damage to a building or other structure by fire or other casualty, the exterior of a building or structure shall be repaired within six (6) months or the building structure shall be demolished and the premises cleared of debris within six (6) months of the date the damage occurred.

Section 5. Signs. Without the prior written permission of the Architectural Control Committee, no sign of any character shall be displayed on any lot except for a property identification sign not exceeding two square feet, and "for sale" or "for rent" signs not exceeding six square feet in size each. Provided, nothing herein shall prohibit the Declarant from erecting, placing or maintaining such signs as may be deemed necessary or appropriate by the Declarant for carrying out the Declarant's identification and marketing of the Subdivision.

Section 6. Subdividing. Except as to any lot still owned by the Declarant, no lot shall be further subdivided, or its boundary lines changed, except with the prior written consent of the Declarant. Likewise, no lot shall be used as a street, road, lane, way or easement over which access may be obtained from a Subdivision lot to adjacent properties without the specific written consent of the Declarant. In the event the Declarant hereafter determines it necessary to alter or change any boundary lines or lot, then a revised plat of said subdivision or section thereof subject to the alteration or change shall be recorded, and all such lots thereon shall be subject to the terms and conditions of these covenants.

Section 7. Lot Recombinations. In the event an owner owns two adjoining lots and builds one residential structure thereon so that an additional primary residential structure may not be constructed thereon, so that the owner effectively combines two lots into one lot, then the owner upon application to and approval by the Association Board of Directors, may be permitted to pay dues and assessments for only one lot. Upon such approval by the Board of Directors, thereafter binding on future Boards and the Owner's Association, the lot owner's vote at any special or annual meeting shall be reduced from one vote per lot to one total vote, and the minutes, records and membership list of the Association shall be so amended. Any further division of the recombined lots thereafter or the sale of one or more parts of either lot for future development will thereafter void such approval and the Board is thereafter authorized to collect dues and assessments for each lot owned and the vote of the lot owner shall be restored to one vote per lot.

Section 8. Restrictions on Built-Up Area. In order to comply with the rules and regulations of the North Carolina Division of Coastal Management and other state agencies with regard to stormwater runoff and the location of the Subdivision within the ORW area under CAMA, each Owner of a lot shall be restricted to clearing, constructing and using as "built-upon" area that square footage, percentage or areas which may be set out in any permit issued for construction on each lot by a local permitting agency, inclusive of that portion of the right-of-way between the front lot line and the edge of the pavement, structures, pavement, walkways of brick, stone, slate, but not including wood decking. "Built-Upon Area" is defined as that portion of a residential lot that is covered with impervious or partially pervious cover including buildings, pavement, recreation facilities, etc., but not including decking. The State of North Carolina and/or Carteret County is designated a third party beneficiary to the provisions of this paragraph and may enforce the same through proceedings, in law or in equity, if built-up area restrictions are hereafter provided for.

Section 9. Compliance with Environmental Regulations. No lot shall be bulkheaded or increased in size by filling in the wetlands areas without the prior written approval of the Architectural Committee, CAMA, and other appropriate State and Federal Agencies.

Likewise, the drainage facilities, roads, utilities, Areas of Environmental Concern, wetlands, Common Areas and other properties within the subdivision shall be maintained at all times in a manner consistent with all state and federal agencies, and the State of North Carolina shall have standing to enforce the provisions of these Covenants with regard thereto.

SECTION VII - EASEMENTS

A. Utility Easements. The Declarant reserves unto itself a perpetual, alienable and releasable easement and right-of-way on, over, under, through and upon the ground with men and equipment to erect, maintain, and inspect, repair and use electric and telephone poles, wires, cables, conduits, sewers, water mains and pipes and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewage, water and community utilities or conveniences in and over the front twenty feet of each lot and ten feet along one side line of each lot and such other areas as may be shown on the recorded map of the Subdivision, together with the right to cut drainways for surface water whenever action may appear to the Declarant to be necessary in or to maintain reasonable standards of health, safety and appearance. These easements and rights-of-way expressly include the right to cut trees, bushes or shrubbery, grading of the soil, or to take similar actions reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Declarant further reserves the right to assign said easements to one or more public or private water and/or sewer utility companies for service to each lot in the future.

B. Sewer Easements. Declarant reserves unto itself a perpetual, alienable and releasable easement and right-of-way on, over, under, through and upon each lot for the installation, inspection, repair and use of individual septic tanks, pipes, and other equipment associated with or related to the specific tank located on the individual lot(s). Said easement is shown and indicated on the recorded subdivision plat and would include an access easement for the location and maintenance of sewer pipes to connect the tank to the nitrification and repair areas within the Association sewer easement areas. Each lot owner shall be responsible for the installation, maintenance, upkeep, repair and replacement of the septic holding tanks, grinder pumps, and piping and equipment associated therewith, as well as the nitrification and repair areas assigned with regard to the sewer system serving each lot.

C. Street Lighting. The Declarant reserves the right to subject the real property in this subdivision to a contract with Carteret Craven Electrical Membership Corporation for the installation of underground electric cables which may require an initial contribution and/or the installation of street lighting, which will require a continuing monthly payment to the applicable electrical utility company by the Owner of each building or the Association.

D. Drainage Easements. Each lot Owner shall keep free and clear any and all drainage easements shown on the recorded map of the Subdivision, and each Owner shall in no way obstruct, block or impede

the flow of water through said drainage easements. In the event any lot Owner should obstruct, block or impede the flow of water through said drainage easements or allow said obstruction or blockage to remain so as to impede the flow of water, then the Declarant, Association of Property Owners, or one or other property Owners within the Subdivision shall have the right to clear said drainage easements and to recover from the party responsible the cost of said clearing if said obstruction or blockage were the results of deliberate acts or negligence of the responsible party.

E. Use and Maintenance of Roads. Declarant specifically grants to each lot Owner and his heirs, executors, administrators, successors and assigns, as well as regular members of the Owners' Association and their guests and invitees, an permanent easement appurtenant to either ownership of each lot or in connection with association membership over and across the streets and roads of said subdivision as shown on said recorded plat. All roads within the subdivision shall be public and are for the use of the lot owners herein and their heirs, executors, administrators, successors and assigns, as well as the guests and invitees of the lot Owners and the regular members of the Association. Declarant in conjunction with the Association reserves the right to grant, transfer and convey a permanent right of way and easement to the North Carolina Department of Transportation for Subdivision roads, thereby dedicating said roads to the public. Pending transfer of the roads to the North Carolina Department of Transportation or other governmental agency, all costs and responsibilities for maintenance and upkeep of the subdivision roads shall belong to the Association. The Association shall provide as part of its annual dues all estimated costs for the upkeep and maintenance of the rights of way and road. The Declarant and the Association shall at all times have the right to grant easements and privileges to regular members of the Association for access to and from amenities of the subdivision.

F. Subdivision Identification Signs. The Declarant reserves the right to place signs, fencing, brick or stucco walls, or other appropriate structures identifying the Subdivision on one or more lots adjacent to or in close proximity to the intersection of the entrance road and Live Oak Road, so as to identify said Subdivision. In the event any part of the walls, fencing or structures encroach onto any lot, said encroachment may continue and the Declarant reserves the right to go on, over, under, through and upon the ground of such portion of the lots as may be necessary in order to make repairs or alterations to said walls and signs.

SECTION VIII - COVENANTS RUN WITH THE LAND

These Covenants and Restrictions shall run with the land and inure to the benefit of the lot owners for a term of twenty-five (25) years from the date these Restrictive Covenants are recorded. Thereafter, said Covenants shall be automatically renewed and extended for successive periods of ten (10) years each. These Covenants and Restrictions may be amended by an instrument executed by not less than three-fourths of the lot Owners within said Subdivision. Any amendment adopted pursuant to this Section must be properly recorded.

SECTION IX - VIOLATIONS

In the event of a violation or breach of any of these Covenants by any lot Owner or other person, the Declarant, Owners' Association or any one or more Owners of lots in the Subdivision, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms and conditions set forth herein and to prevent the violation or breach of these covenants, and to recover damages as compensation for a breach or violation of these covenants. Any failure to enforce any right, reservation, or conditions contained in these covenants, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach, or as to a breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement.

SECTION X - INVALIDATION

The invalidation by a Court or other public agency of any of the provisions of these covenants shall not in any way affect any of the remaining provisions, and the same shall remain in full force and effect.

SECTION XI - INITIAL BY-LAWS AND RULES AND REGULATIONS OF
EMERALD VIEW ASSOCIATION, INC.

The initial By-laws to be adopted by the Board of Directors of said Association are set forth on Appendix B attached hereto and incorporated by reference. All Owners of lots together with Members and the guests, families and invitees of Regular and Members, shall be bound by and fully comply with the By-laws of said Association as well as the Articles of Incorporation of said Association attached as Exhibit A. The Association shall have the authority to adopt amendments to the By-laws governing the business and affairs of the Association from time to time in the manner and procedures prescribed by the By-laws and Articles of Incorporation attached as Exhibits hereto. The By-laws set forth the organization of the Board of Directors and Officers, the time and manner of meetings of the Association, quorum and voting procedures, and other rights, powers, responsibilities, duties and obligations of the officers, directors and members of the Association.

The Association shall further have the authority to adopt from time to time rules and regulations regarding the duties and responsibilities of the Association and its individual members with regard to the use, enjoyment, maintenance, Ownership, upkeep and maintenance of Association Properties and the purposes of the Association.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the day and year first above written.

BACKFIN PARTNERS, LLC, a North Carolina LIMITED LIABILITY COMPANY

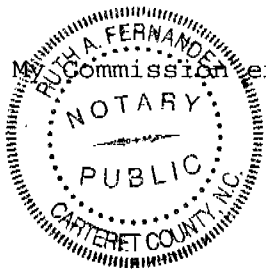
By: *Floyd Messer*
FLOYD MESSER MANAGING MEMBER

BY: *Kenneth West*
KENNETH WEST, MANAGING MEMBER

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, a Notary Public, in and for said County and State, do hereby certify that FLOYD MESSER AND KENNETH WEST, MANAGING MEMBERS OF BACKFIN PARTNERS, LLC personally appeared before me this day and acknowledge the due execution of the foregoing instrument for and in behalf of the limited liability company for the purposes therein expressed for in behalf of Backfin Partners, LLC

Witness my hand and official seal or stamp this the 18th day of November, 2005.



Commission expires: 4-5-08

Ruth A. Fernandez
Notary Public

PREPARED BY: **Richard L. Stanley, Attorney at Law, P.O. Box 150, Beaufort, North Carolina 28516**

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BY-LAWS
OF
EMERALD VIEW OWNERS' ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

Section 1. The Name: The name of the corporation is Emerald View Owners' Association, Inc.

Section 2. The Principal Office: The principal office of the Association shall be located at 8754 Reed Drive, Emerald Isle, NC 28594, pending further notice, but the meetings of the members and Directors may be held at such places within the State of North Carolina and/or County of Carteret as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Emerald View Owners' Association, Inc., its successors and assigns.

Section 2. The term "Subdivision", "Development" or "Property" as used herein shall mean and refer to the lots within Emerald View Development or Subdivision as shown on plats prepared by Bell and Phillips Surveying and/or other surveying or engineering firms hereafter as recorded in the Office of the Carteret County Registry, as well as any additional properties which may hereafter be submitted to the Protective Covenants and Restrictions for Emerald View Subdivision, by Backfin Partners, LLC, herein "Declarant" or "Developer" of Emerald View Subdivision.

Section 3. Other Definitions: The terms "Developer", "Association", "Owner", "Lot", and "Common Area", shall have those terms and definitions as defined in the Protective Covenants and Restrictions for Emerald View Subdivision, to which these by-laws are attached.

ARTICLE III

EMERALD VIEW OWNERS ASSOCIATION, INC.

Section 1. General: Every owner of a lot in Emerald View Subdivision shall be a regular member of the Association upon the terms and conditions hereinafter set forth and as defined in the

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Declaration of Covenants. Regular memberships in the Association shall be limited to owners of subdivision lots.

Section 2. Administration of the Association: The operating entity of the Association shall be Emerald View Owners' Association, Inc.

a. Powers: The Association shall have all of the powers and duties set forth in Chapter 55A of the North Carolina General Statutes for non-profit corporation, as well as all of the powers and duties granted to or imposed upon the Association by the Declaration of Covenants and Restrictions for the Subdivision and the Articles of Incorporation of the Association, and all of the powers and duties necessary in the ownership, administration and management of the Association properties.

All affairs of the Association shall be conducted by the Board of Directors who shall be designated in the manner provided for in these By-Laws and Articles of Incorporation of the Association.

In the administration of the operation and management of the Association, the Board of Directors is hereby granted the authority and power to enforce the provisions of these By-Laws and Articles of Incorporation, and rules and regulations governing the use of lots and common areas as the Board of Directors of the Association may deem to be in the best interest of the Association.

b. Purposes: The Association does not contemplate pecuniary gain or profit to the members thereof and no part of the Association's net income shall inure to the benefit of its officers, directors or members or any other private individual. The purposes and objectives of the Association shall be to administer and manage the Association properties and the acts and duties incident to the administration of the Association properties in accordance with the terms, provisions or conditions of the Declaration of Covenants for Emerald View Subdivision, and the Articles of Incorporation; and to own, operate, lease, sell, trade and otherwise deal with such property, whether real or personal, as may be necessary or convenient in the administration of said Subdivision.

In carrying out the foregoing purposes the Association shall have all of the powers reasonably necessary to implement and effectuate the purposes of the Association, including, but not limited to the power to make and establish reasonable rules and regulations governing the use of subdivision lots and subdivision properties, to levy and collect assessments from lot owners in accordance with the Declaration of Protective Covenants and Restrictions for Emerald View Subdivision and these By-Laws, to maintain, repair, replace and manage the Association properties, to acquire or lease real and personal property for the benefit of lot owners, and generally to possess all powers necessary in order to carry out the foregoing purposes.

Section 3. Easements of Enjoyment: Every member of the Association shall have a right and easement of enjoyment in and to the Association properties. Each regular Owner may delegate,

in accordance with the By-laws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Said rights of use and enjoyment shall be subject to the following provisions:

(a) The Association shall have the right to charge dues and assessments for the upkeep and maintenance of Association properties, sewer areas, lot sewer areas, parking areas, utility and drainage easements, and other amenities which are the responsibility of the Association herein. Likewise, the Association shall have the right to charge dues and assessments for the construction and maintenance of any improvements on said common areas, and to provide for all types of insurance for the Association and its properties, and the upkeep and maintenance of subdivision amenities.

(b) The Association shall have the right to suspend the right to the use of any Association Properties by any Member for any period during which any dues or assessments against such Member are overdue and unpaid, and for a period not exceeding sixty (60) days for any infraction of rules and regulations established by the Association for the regulation and control of Association Properties. Likewise, the Association shall have the right to fine any Member an amount not exceeding \$100.00 for each violation of rules and regulations established by the Association.

(c) The Association by rules and regulations established from time to time shall have the right to provide for the use and enjoyment of common areas and Association Properties. This right to the use of Association Properties shall extend to members of the Association and relatives of members who reside with and in the house of members, tenants of each member's lots in the subdivision so long as the tenancy exist, and contract purchasers of lots in the subdivision who reside on the lot.

Section 4. Membership and Voting Rights: There shall be two types of memberships in the Association. Class A or Regular membership shall be limited to owners of lots in the subdivision. The Class B member shall be the Declarant who shall have 3 votes for each lot owned by the Declarant.

Every owner of a lot in Emerald View Subdivision shall become a regular member(class A) of the Association upon the date of recordation of the deed conveying the lot to the purchaser. Every owner as a member of the Association shall be bound by the terms and conditions set forth in these By-Laws and the Covenants and Restrictions for the Subdivision, and the lot owner and his heirs, successors and assigns, shall be obligated to comply with the duties and obligations set forth herein. Regular membership shall be appurtenant to the lot and may not be severed, separately transferred or conveyed. Persons or entities who hold an interest in the lot merely as security for the performance of an obligation shall not be members.

Every Regular Members shall have one (1) vote at all meetings of the membership. The Class B member shall have 3 votes for each lot owned. When more than one person or entity holds an interest in any lot, the purchasers of said lot shall designate one of them as the voting class A

member, if the lot is owned by a corporation or other business entity, an officer or employee shall be designated a voting member. Regular class A Members may vote either in person or by proxy, but if by proxy, the same must be in writing and delivered to the Secretary of the Association prior to, or at the start of, the meeting at which the proxy is to be exercised. Every proxy shall be revocable and shall automatically cease upon the conveyance of the lot by the Regular Member.

The Secretary of the Association shall keep a list of any and all lot owners for purposes of determining what owners shall be entitled to vote. The membership list shall be arranged numerically by Subdivision lots and shall be accessible to all members of the Association.

Section 5. Meeting of Membership: There shall be an annual meeting of the membership (class A and B) held each year between June 1 and June 30 until otherwise changed by vote of either the Executive Board or Membership, with the specific date, time, and place to be determined by the President of the Association unless the Board of Directors or a meeting of the membership has already specified the exact date, time and place. The presence at the meeting of a member or members entitled to cast, either in person or by proxy, 60% of all eligible votes of persons entitled to vote for election of the Board of Directors shall constitute a quorum for the transaction of all business except such as may otherwise expressly be provided for in this instrument. If a quorum is not met through 60%, then at a subsequent called meeting to be held within 60 days thereafter, the requirements for a quorum shall be reduced to 30%. Special meetings of the membership may be called at anytime either by the President, the Board of directors, or one-third of the members. Such request for a special meeting shall state the purpose or purposes of the proposed meeting. At the annual meeting, the members shall elect the new members of the Board of Directors, and transact such other business as may properly come before the meeting. Written notice of the annual and special meetings of the membership shall be given to each member entitled to vote at least 10 days prior to said meetings as specified in Section 4 above. The Secretary shall maintain a list of all members entitled to vote at annual and special meetings with said list containing a mailing address of each member. All members shall be responsible for notifying the said Secretary of any change in their address between annual meetings, and all written notice of annual and special meetings sent to the addresses of the members as shown on the membership list shall be effective as notice by the Association.

Section 6. Special Meetings: Special meetings of the members (class A and B) for any purpose or purposes unless otherwise prescribed by statute or by these By-Laws, may be called by the President, the Board of directors or members holding one-third of the total eligible votes. Such request shall be in writing and shall state the purpose or purposes of the proposed special meeting. Written notice of the special meeting of members stating the time, place and purpose thereof, shall be served upon or mailed to each member entitled to vote thereat, at such address as appears on the list of the Secretary of the Association, at least 10 days before such meeting. Business transacted at all special meetings shall be confined to the objects and purposes stated in the notice thereof, unless 100% of the members present at such meeting in person or by proxy consent to the transaction of business not stated in the notice.

Section 7. Quorum: 60% of the total number of eligible votes of the Association, present in person or represented by written proxy, shall be requisite to and shall constitute a quorum at all meetings of the members of the Association for the transaction of business, except as otherwise

provided by Statute, by the Subdivision Covenants, or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the members, the members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum thereafter reduced to 30% of the membership, shall be present or represented. At such adjourned meeting at which a quorum of 30% shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called.

Section 8. Order of Business: The order of business at the annual Association meetings and as far as practical at other meetings of the membership, will be as follows:

1. Roll call and certifying of proxies;
2. Proof of notice of meeting without waiver of notice;
3. Reading of minutes of prior meeting;
4. Officers' reports;
5. Committee reports;
6. Approval of budget;
7. Election of directors;
8. Unfinished business;
9. New business;
10. Adjournment.

Section 9. Officers: The Association shall have not less than three (3) officers, a President, Secretary and Treasurer, which shall be elected by the Board of Directors for a term of one year or until their successors have been elected. The Board may provide for one or more Vice-Presidents or Assistant Secretary or Assistant Treasurer. The President shall act for the Association, but shall not have the authority to obligate the credit of the Association, nor the members thereof, without authorization of either the Board of Directors or the membership. All checks written on any bank account of the Association shall be signed by any two or more of the authorized officers as indicated on the Association's bank signature cards and resolution adopted pursuant thereto. The Association may authorize the Treasurer or Assistant Treasurer to sign all checks for the Association, and the Assistant Treasurer need not be a member of the Association. The duties of the officers shall be as follows:

a. President: The President shall preside at all meetings of the members and Directors; he shall have general and active management of the business of the Association; he shall see that all orders and resolutions of the Board of Directors are carried into effect; he shall have equal superintendence and direction of all the other officers of the Association, and shall see that their duties are performed properly. He shall report on the operations of the Association for the fiscal year to the directors when ever called for by them, and to the members at the annual meeting, and from time to time shall report to the Board of Directors all matters within his knowledge which the interest of the Association may require to be brought forward. He shall be an ex-officio member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of the President of an Association.

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b. Vice-President: If a Vice-President is hereafter elected, the Vice-President shall be vested with all of the powers and required to perform all the duties of the President in his absence, and such other duties as may be prescribed by the Board of Directors.

c. Secretary: The Secretary shall keep the minutes of the meetings of the members and the Board of Directors; he shall see that all notices are fully given in accordance with the provisions of these By-Laws or as required by law. He shall keep a register of the post-office address of each member, which shall be furnished to the Secretary by all members.

d. Treasurer: The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name and to the credit of the Association, in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Association as ordered by the Board, taking proper vouchers for such disbursements and shall render to the President and Directors at the regular meetings of the board or whenever they may require it an account of all his transactions as Treasurer and of the financial condition of the Association. Such records shall be open to inspection by members at a reasonable time. In addition he may be required to give the Association at the Association's costs a bond in the sum and with one or more sureties satisfactory to the Board, for the faithful performance of the duties of his office, and the restoration to the Association, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the Association. He shall maintain a register for the names of any mortgage holders or lien holders on lots who have requested in writing that they be registered to whom the Association will give notice of default in case of non-payment of assessments. No responsibility by the Association or its members is assumed with respect to said register except that it will give notice of default to any registered mortgagee or lienor therein, if so requested by said mortgagee or lienor. In general he shall perform all duties as may from time to time be assigned to him by the President or by the Board of Directors.

Section 10. Executive Board:

a. Number and Term. The initial Board of Directors shall consists of three (3) Directors. The number of Directors shall remain three until these By-Laws have been amended by the Directors in accordance with Article VI hereafter. All Directors shall be required to be members of the Association. Provided, until such time as seventy-five percent (75%) of all lots within the subdivision have been sold which shall be evidenced by the recordation of a Deed or Deeds to lots therein, then the Developer as the initial Declarant or its written appointee shall appoint the three members of the Board of Directors annually and theirs successors until control of the Board of Directors has been completely transferred to the lot owners. The three members so appointed by the Declarant or its written designee shall not be required to be members of the Association. No later than one hundred and twenty (120) days after conveyance of seventy-five percent (75%) of the lots within the Subdivision to owners other than the Declarant, a special meeting of the Association shall be held for the purpose of selecting members to the Board of Directors to replace those members of the Board of Directors appointed by the Declarant. Pending transfer of control of the Association,

the Declarant shall have the absolute right to appoint all members of the Board of Directors. Additionally, so long as the Declarant continues to own one lot and for a period of 10 years after control of the Association is assumed by the membership, the Declarant shall have the right to designate one member of the Executive Board.

b. Subject to the provisions of subparagraph (d) hereafter, if the office of any Director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the Executive Board shall appoint at a properly called meeting thereafter a replacement to fill the unexpired term in respect to which said vacancy occurs.

c. Members representing at least 67% of all eligible votes present and entitled to vote at any meeting of the membership at which a quorum is present, may remove any member of the Board of Directors with or without cause, in accordance with G.S. 47C-3-103.

d. Pending transfer of control of the Association in accordance with Article XI of the Articles of Incorporation, the Declarant shall have the right to remove any member of the Board of Directors with or without cause, and to appoint and elect successors to the Board in the event of the death, resignation, retirement, disqualification, removal from office or otherwise of a Director.

e. Powers. The property and business of the Association shall be managed by the Board of Directors, which may exercise any and all authority over the management of the Association and the common areas not specifically prohibited by Statutes, these By-Laws, or the Declaration of Covenants and Restrictions for Emerald View Subdivision. The powers of the Board shall specifically include all powers set forth in the Declaration of Protective Covenants and Restrictions and the Articles of Incorporation, which powers are incorporated herein by reference as if fully set out, and shall include but not to be limited to the following:

1. To make and collect regular and special assessments and establish the time within which payment of the same are due.
2. To use and expend the assessments collected to maintain, care for and preserve the subdivision properties.
3. To purchase the necessary equipment and tools required in the maintenance, care and preservation referred to above.
4. To enter into and upon Association properties and lots when necessary and with as little inconvenience to the lot owner as possible in connection with such maintenance, care and preservation.
5. To insure and keep insured Association properties in the manner set forth in the Declaration of Covenants against loss from fire and/or other casualty, and the lot owners and

Association against public liability, and to purchase such other insurance as the Board may deem advisable.

6. To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin or seek damages from purchasers for violations of these By-Laws and the terms and conditions of the Declaration of Protective Covenants.

7. To employ and compensate such personnel as may be required for the maintenance and preservation of the property.

8. To make appropriate changes in the Rules and Regulations for the use and occupancy of Association properties as may be deemed necessary.

9. To acquire and/or rent and/or lease personal and real properties in the name of the Association or a designee.

10. To contract for management of the Association properties and to delegate to such other party all powers and duties of the Association except those specifically required by the Declaration of Protective Covenants to have specific approval of the Board or membership.

11. To carry out the obligations of the Association under any restrictions and/or covenants running with any land submitted to the Declaration of Protective Covenants for the Subdivision.

12. To designate, as the board deems appropriate, assigned parking spaces for each lot, visitors, service vehicles, boats, and other vehicles.

13. To adopt Rules and Regulations pursuant to Article IV of these By-Laws pertaining to "Default".

14. To impose a special assessment, fine or penalty against any purchaser, not to exceed \$100.00 for each occurrence, for the violation by the purchaser or his guests of any rule or regulation adopted by the Board or the breach of any By-Laws contained herein, or the breach of any provision of the Declaration.

15. To enforce the provisions and requirements of the Covenants including the obligation that each owner secure and keep in effect insurance, and to purchase insurance for any lot or improvements thereon which fails to provide evidence of insurance or defaults with respect to payment or procurement of the same.

Section 11. Meetings of the Board of Directors:

a. The first meeting of each Board newly elected by the members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board shall be held at the same place as the general membership meeting.

b. Special meetings shall be held whenever called by the Director or the President or a majority of the Board. The Secretary shall give notice of each special meeting either personally or by mail, or telegram, at least three (3) days before the date of such meeting, but the directors may, in writing, waive notice of the calling of the meeting, before or after such meeting.

c. A quorum shall be deemed present throughout any meeting of the Board of Directors of persons entitled to cast 50% of the votes on that Board, if present at the beginning of the meeting. The act of a majority present at such meeting and which there is a quorum shall be the act of the Board. If the quorum shall not be present at the meeting, the Directors then present may adjourn the meeting without notice other than announcement at the meeting until a quorum shall be present.

d. Order of Business: The order of business at all meetings of the Executive Board shall be as follows:

- i. Roll call;
- ii. Proof of notice of meeting or waiver of notice;
- iii. Reading of minutes of last meeting;
- iv. Consideration of communications;
- v. Reports of officers
- vi. Report of committees;
- vii. Unfinished business;
- viii. Election of officers at annual meeting;
- ix. New Business;
- x. Adjournment.

e. Annual Statement: The Board shall present, no less often than at the annual meeting, a full and clear statement of the business and condition of the Association, including a report of the operating expenses of the Association and the assessments paid by each member.

Section 12. Liability: The officers, and directors shall not be liable to the owner for any mistake in judgment, negligence, or otherwise except for their own individual willful misconduct, bad faith, or gross negligence.

Section 13. Compensation: Neither Directors nor officers shall receive compensation for their services as such.

Section 14. Removal of Officers and Directors: Any one or more of the officers and Directors may be removed at any time, with or without cause, by a vote of lot owners representing at least 67% of all persons present and entitled to vote at any meeting of the owners at which a quorum is present. Upon the removal of any officer or Director, the membership shall elect a replacement to fill the unexpired term subject to the Declarant's rights set forth in Section 10(d) above.

ARTICLE IV

FINANCES

Section 1. Fiscal Year: The fiscal year shall be the calendar year.

Section 2. Checks: All checks or demands for money and notes of the Association shall be signed by the following officers: President or Vice-President and Treasurer, or by such officer or officers or such other persons as the Executive Board may from time to time designate.

Section 3. Determination of Assessments:

a. The Board shall determine from time to time the sum or sums necessary and adequate for the common expenses of the Association. The Board shall adopt a proposed budget for the Association, and within 30 days after adoption of the proposed budget, the Board of Directors shall provide a summary of the budget to all regular members, and shall set a date for a meeting of the regular members to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the owners reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the owners ratify a subsequent budget proposed by the Board of Directors.

The budget shall constitute the basis for all dues and assessments for common expenses against owners, which assessments shall be due and payable periodically as determined by the Board of Directors. Common Expenses shall include expenses for the operation, maintenance, repair or replacement of Association properties, cost of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, and any other expenses designated as common expenses from time to time by the Board of Directors.

b. The Board is specifically empowered on behalf of the Association to make and collect assessments and to maintain, repair and replace the common areas and facilities. The dues and assessment shall be uniformed for all lot owners and shall be payable periodically as determined by the Board.

c. Special assessments for common expenses and repairs or replacement of capital not adequately funded through the regular assessments may be required by the Board and

shall be levied and paid in the same manner as hereinbefore provided for regular assessments. Notwithstanding anything in these By-Laws or the Declaration of Protective Covenants which authorize assessments and expenditures, no special assessment exceeding \$1500 per lot per annum or expenditure for the improvement of the Association properties exceeding \$15,000 per annum for the subdivision shall be made without the approval of sixty-seven percent (67%) of the eligible membership. Nothing herein shall restrict or limit the number of special assessments which may be made annually if deemed necessary for common expenses and repairs or the replacement of capital not adequately funded through the regular assessments.

d. When the Board has determined the amount of any assessment, the Treasurer of the Association shall mail or present a statement of the assessment to each of the assessed owners. All assessments shall be payable to the Association, and upon request, the Treasurer shall give a receipt for each payment made.

e. The Board may enter into a management contract with third parties to whom the Board of Directors may delegate the power to levy and collect assessments approved by the Board or required by the Declaration of Protective Covenants.

f. All assessments not paid when due shall bear interest at the highest legal rate of interest.

g. The Declarant shall have no obligation to pay dues or assessments for unsold lots.

ARTICLE V

DEFAULT

Section 1. Dues and Assessments: Each purchaser of a lot in Emerald View Subdivision by the acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association such monthly, quarterly or periodic dues and special assessments as shall be established from time to time by the Board of Directors or membership of the Association. Such monthly or periodic dues and special assessments, together with interest, cost, and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien on the land against which each assessment is made, until paid. In addition such monthly dues and special assessments shall also be the personal obligation of the purchaser of the lot at the time the dues or assessments become due. This personal obligation shall not pass to a successor in title to the purchaser unless expressly assumed by such successor. The dues and any assessments shall be used exclusively to promote the recreation, health, safety and welfare of the members of the Association and for improvements, maintenance of the common areas and properties, buildings or improvements within said subdivision development. The lien of the monthly dues and special assessments provided for herein shall be subordinate to the lien of any first mortgage. No sale or transfer of any lot shall affect the lien for unpaid dues or special assessments. The monthly dues shall be payable monthly in advance, unless otherwise directed by the Board of Directors. The pro rata portion of the dues

levied for the month purchased shall be collected by the Declarant from the purchaser of each lot at the time the sale is closed. This money shall be paid by the Declarant to the Association. The amount of the monthly dues for each year shall be fixed at the annual meeting of the membership for the following fiscal year of the Association. The monthly dues shall commence as to all lots on the date a deed to the lot from the Declarant is recorded. In addition to the monthly dues the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvements upon the Association properties, or for acquiring additional land for Association properties, or for the any other related purpose, and the Association shall give notice of meeting clearly stating that a vote is to be held on whether to levy such special assessment.

Section 2. Enforcement of Lien for Assessments: In the event a lot owner does not pay any sums, charges, or assessments required to be paid to the Association by the due date, the Association, acting on its behalf or through its Board of Directors, may enforce its lien for assessments and to take such other action to recover the sums, charges or assessments to which it is entitled, in accordance with Chapter 44 and 44A of the North Carolina General Statutes. Provided, no foreclosure of a lien incurred exclusively for non-payment of penalties, fines and attorney's fees is authorized herewith. However, if dues or special assessments and interests and attorneys fees thereon for non-payment are also part of the lien, then foreclosure is permitted and authorized even though part of the sums owed may be penalties or fines.

Section 3. Legal Costs: In the event such legal action is brought against any lot owner and results in a judgment for the Association; the lot owner shall pay the Association's reasonable attorney's fees, costs of collection, and court costs.

Section 4. Foreclosure: If the Association becomes the purchaser of a lot by reason of foreclosure, it shall offer said lot for sale and at such time as a sale is consummated, it shall deduct from the proceeds of said sale all sums or money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the resale of the lot, which shall include but not be limited to advertising expenses, real estate brokerage fees and other incidental expenses.

Section 5. Other Remedies: In the event of violation of the provisions of the Protective Covenants or rules and regulations adopted by the Board of Directors for thirty (30) days after notice from the Association to the lot owner and failure to correct the same, the Association, on its own behalf or through its Board of Directors, may bring appropriate action to enjoin such violation or may enforce the provisions of the Protective Covenants or these By-Laws, or may sue for damages, or take other courses of action, or pursue other legal remedies as it may deem appropriate.

Section 6. Intent: Every lot owner, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to collection of dues and assessments, default and abatement of nuisances, regardless of the harshness of the remedy available to the Association and regardless of the availability of the other equally adequate legal procedures. It is the intent of all purchasers of lots

to give the Association a method of procedure which will enable the Association at all times to operate on a business-like basis, to collect the monies due and owing it from the purchasers of lots, and to preserve each lot purchaser's right to enjoy his lot, free from unreasonable restraint and nuisance.

ARTICLE VI

AMENDMENTS

The By-Laws may only be altered, amended or added to at any duly called meeting of the members; provided (1) that the notice of the meeting shall contain a full statement of the proposed amendment; and (2) that the quorum requirements for such purposes shall be a 60 percent of the eligible votes in person or by proxy. In addition, it shall be necessary that there be an affirmative vote of the Board of Directors, in order to amend the By-Laws. No amendment to these By-Laws shall be passed which would operate to impair or prejudice the rights and/or liabilities of any mortgagee.

ARTICLE VII

CONSTRUCTION

Whenever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the context so requires.

Should any of the covenants herein imposed be void or be or become unenforceable at law or in equity, the remaining provisions of this instrument shall nevertheless be and remain in full force and effect.

IN WITNESS WHEREOF, Backfin Partners, LLC, the Declarant herein, has caused these By-Laws to be executed by its duly authorized member managers on this the 18th day of November 2005.

BACKFIN PARTNERS, LLC.

Kenneth West
By: Kenneth West Member Manager

Floyd Messer
By: Floyd Messer Member Manager

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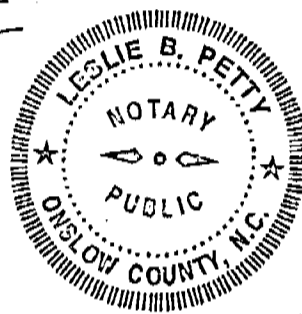
STATE OF NORTH CAROLINA

COUNTY OF ~~GARTHER~~ ONSLOW

I, a Notary Public, in and for said County and State, do hereby certify that Kenneth West and Floyd Messer, member managers of Back Fin Partners, LLC. personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and in behalf of Back Fin Partners, LLC..

Witness my hand and official seal or stamp this the 15 day of November, 2003.

Leslie B. Petty
Notary Public



My Commission expires: 3/28/10

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