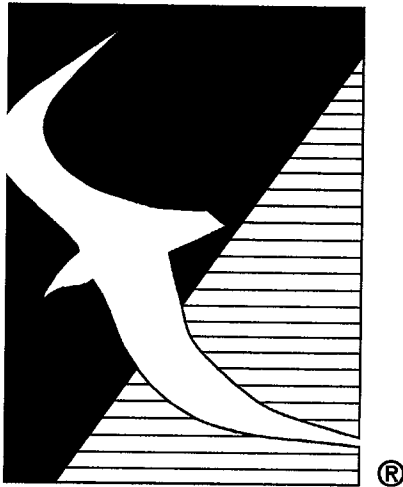


Brunswick County Register of Deeds
Robert J. Robinson
Inst #127112 Book 1628 Page 1129
09/11/2002 11:26:43am Rec# 118730

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TOTAL 233 REV. TC# 17
REC# CK AMT 130 CK# 5267
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DEVAUN PARK

PROCLAMATION OF PROTECTIVE COVENANTS

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DEVAUN PARK PROCLAMATION OF PROTECTIVE COVENANTS

THE DEVAUN PARK PROCLAMATION OF PROTECTIVE COVENANTS ("Proclamation") is made this ninth day of September, 2002, by Stanaland Stewart Company, LLC, a North Carolina limited liability company ("Founder").

WITNESSETH

WHEREAS, Founder is the owner of certain real property located in Brunswick County, North Carolina, and more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference; and

WHEREAS, this Proclamation is intended to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Property, to provide a flexible and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Property as are now or hereafter subjected to this Proclamation.

NOW, THEREFORE, Founder hereby declares that all of the property described in Exhibit "A" and any additional property as may be added by subsequent amendment hereto, and in accordance with the terms and conditions hereof, is subjected to this Proclamation of Protective Covenants, and will be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions which are for the purpose of protecting the values and desirability of, and which will touch and concern and run with title to, the real properties subjected to this Proclamation and which will be binding on all parties having any right, title, or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and will inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

1.1 Definitions. When used in this Proclamation, unless the context will prohibit or otherwise require, the following words, will have all the following meanings, and all definitions will be applicable to the singular and plural forms of such terms:

(a) Additional Property. "Additional Property" will mean and refer to the real property as may be added pursuant to Section 2.2, and all improvements thereon.

(b) Architectural Review Committee. "Architectural Review Committee" or "ARC" will mean and refer to the committee established herein to approve exterior and structural improvements, the siting thereof, and the additions and changes thereto, within the Development as provided in ARTICLE 4. In exercising any right or easement granted or reserved to it hereunder, such right or easement shall be deemed to extend to its duly authorized members, officers, agents, employees and contractors.

(c) Articles of Incorporation. "Articles of Incorporation" will mean and refer to the Articles of Incorporation of The Devaun Park Community Association, Inc., as amended from time to time, filed in the Office of the Secretary of State of the State of North Carolina as amended from time to time.

(d) Assessment. "Assessment" will mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

(e) Association. "Association" will mean and refer to the Devaun Park Community Association, Inc., a North Carolina nonprofit corporation, its successors and assigns. In exercising any rights or easement granted or reserved to it hereunder, such right or easement shall be deemed to extend to its duly authorized directors, officers, agents, employees and contractors.

(f) Board of Aldermen or Board. "Board of Aldermen" or "Board" will mean and refer to the Board of Aldermen of Devaun Park, which is the governing body of the Association.

(g) Bylaws of the Association or Bylaws. "Bylaws of the Association" or "Bylaws" will mean and refer to those Bylaws of The Devaun Park Owners' Association attached hereto as Exhibit "B", which govern the administration and operation of the Association, and as the same may be amended from time to time.

(h) Common Areas. "Common Areas" will mean and refer to any and all real and personal property now or hereafter deeded or leased to, or which is the subject of a use agreement with, the Association, and wherein the property therein described is specifically denominated to be a part of the Common Areas. The Common Areas may include the Association's private roads, streets, alleyways or service lanes, road and street shoulders, walkways, sidewalks, leisure trails, bike paths, gazebos, gates, fountains, entry walls and features, street lighting, signage, and such maintenance and drainage areas, easements, lagoons, and ponds located within the Property and which are not maintained by governmental authority. The designation of any land and/or improvements as a Common Area will not mean or imply that the public at large acquires any easement of use or enjoyment therein. All Common Areas are to be devoted to and intended for the common use and enjoyment of the Founder, Owners, and their respective guests, and invitees.

(i) Common Expenses. "Common Expenses" will mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Proclamation for the maintenance, repair and management of the Common Areas, and for the maintenance, repair and management of other property, whether owned by the Association or not and set forth in this Proclamation or incorporated herein by a Supplemental Declaration, for which the Association has responsibility.

(j) Development. "Development" will mean and refer to the Property and all improvements located or constructed thereon, and being a part of the overall plan, from time to time existing hereunder, for the real estate development known as Devaun Park.

(k) Equivalent Residential Unit. "Equivalent Residential Unit" or ERU will mean and refer to the number used for the purpose of determining the number of votes for a Unit and determining a Unit's share of regular or special Assessments, calculated as follows:

(i) Each Residential Unit will be assigned one (1) ERU.

(ii) Each Non-residential Unit will be assigned an ERU by the Founder through a Supplemental Declaration filed Of Record at the time said Non-residential Unit is subjected to this Proclamation.

(l) Founder. "Founder" will mean and refer to the Stanaland Stewart Company, LLC, or any successor-in-title to the entire interest of such person with respect to the Property at the time of such transfer to said successor-in-title, or any party designated Of Record to succeed to the rights of Founder hereunder as to the matters set forth in such writing. In exercising any right or easement granted or reserved to it hereunder, such right or easement shall be deemed to extend to its duly authorized Aldermen, officers, agents, employees and contractors.

(m) Founder Control Period. "Founder Control Period" means the time period commencing on the date this Proclamation is filed Of Record and ending on the earlier of:

(i) December 31, 2032; or

(ii) Three (3) months after the conveyance by the Founder, in the ordinary course of business to persons other than a successor Founder, property representing ninety-five percent (95%) of the total number of Units intended for development on all of the Property as set forth in a Supplemental Declaration executed and filed Of Record by the Founder on or before December 31, 2032, making specific reference to this Section; or

(iii) Three (3) months following the date the Founder surrenders its authority to appoint Aldermen of the Association by an express amendment to this Proclamation executed and filed Of Record by the Founder.

(n) Institutional Mortgage. "Institutional Mortgage" will mean and refer to a Mortgage held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental insurer or purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(o) Limited Common Expense. "Limited Common Expense" shall be those maintenance, repair and replacement costs and expenses chargeable to each Unit that is assigned to a specific Utility District pursuant to Section 11.8(b).

(p) Member. "Member" will mean and refer to an Owner with appurtenant membership in the Association as defined in Section 6.1.

(q) Mortgage. "Mortgage" will mean and refer to a mortgage, security deed, deed of trust, installment lands sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Unit.

(r) Mortgagee. "Mortgagee" will mean and refer to the holder of a Mortgage, its successor and assign.

(s) Neighborhood Area. "Neighborhood Area" will mean and refer to any portion of the Property, separately developed and identified by Founder on the Site Plan therefor or in a Supplemental Declaration as an area comprising one (1) or more Unit types subject to this Proclamation in which Owners of Units therein may have common interests other than those common to all Owners of the Development, such as common theme, entry feature, development name, and/or common areas and facilities that are not available for use by all Owners. For example, and by way of illustration and not limitation, a condominium with Residential Units located over Non-residential Units within an established shopping district may, upon Founder filing a Neighborhood Declaration therefor, create a separate Neighborhood Area where common elements are owned by a Neighborhood Association composed of such Owners, or where Units therein are subject to additional covenants, conditions, restrictions and easements not otherwise applicable to Owners outside of such Neighborhood Area.

(t) Neighborhood Association. "Neighborhood Association" will mean and refer to a corporation or an unincorporated association whose shareholders or members are comprised entirely of Owners of Units within a Neighborhood Area.

(u) Neighborhood Declaration. "Neighborhood Declaration" will mean and refer to any instrument or document, and any amendments thereto, which is filed Of Record with respect to any

Neighborhood Area and which creates a condominium or horizontal property regime for such Neighborhood Area, creates a community association for such Neighborhood Area, and/or imposes covenants, conditions, easements, and restrictions with respect to such Neighborhood Area.

(v) Non-residential Unit. "Non-residential Unit" will mean and refer to a portion of the Property, whether improved or unimproved, which may be independently owned and conveyed and which is for non-residential purposes, including, but not limited to, retail, office, and other commercial establishments. The term will not include Common Areas or the common property of any Neighborhood Association, nor will it include property dedicated to the public unless otherwise specified in the deed from the Founder conveying the property. A parcel of land will not be deemed to be a "Non-residential Unit" until the time an exact metes and bounds survey thereof has been conducted and a plat thereof has been approved by the Town of Calabash and the plat is filed Of Record, and the Founder, or some other Person with the express, written approval of Founder, has designated said parcel of land a "Non-residential Unit" in the Site Plan or in a Supplemental Declaration by use of such words or other words that clearly label said part of the Property as being a Non-residential Unit.

(w) Occupant. "Occupant" will mean and refer to any person, including, without limitation, any Owner, occupying or otherwise using a Unit within the Development, and their respective families, servants, agents, guests, and invitees.

(x) Of Record. "Of Record" will mean and refer to the place of filing a writing in the applicable public records, currently being the Brunswick County Register of Deeds, Brunswick County, North Carolina, as will give legal notice to the world of the matters set forth in the writing so filed.

(y) Owner. "Owner" will mean and refer to one or more persons, including Founder, who or which owns fee simple title to any Unit, its respective heirs, executors, legal representatives, successors, and assigns, excluding, however, those persons having such an interest under a Mortgage. In the event that there is filed Of Record any installment land sales contract covering any Unit, the Owner thereof will be deemed to be the purchaser under the installment sales contract and not the fee simple titleholder. An installment land sales contract will be an instrument whereby the purchaser is required to make payment for such property for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to such property until all such payments are made, although the purchaser is given use thereof.

(z) Proclamation. "Proclamation" will mean and refer to the Devaun Park Proclamation of Protective Covenants, as amended, from time to time, by any Supplemental Declaration filed Of Record.

(aa) Property. "Property" will mean and refer to those pieces, parcels and lots of land described on Exhibit "A," or any portion thereof, together with all improvements thereon.

(bb) Referendum. "Referendum" will mean and refer to the vote of Members by mailed written ballot on certain actions submitted to the Members by the Board of Aldermen, as more particularly set forth herein and in the Bylaws.

(cc) Residential Unit. "Residential Unit" will mean and refer to a portion of the Property, whether improved or unimproved, which may be independently owned and conveyed and which is for residential purposes. The term will refer to the land and the improvements thereon which are a part of the Residential Unit. The term will include by way of illustration and not limitation, a single family lot and any home constructed thereon, a patio or zero lot line lot and any home constructed thereon, a townhouse, duplex, triplex, quadruplex and any condominium unit. The term will not include Common Areas, common property of any Neighborhood Association, or property that is dedicated to the public. In the case of mixed-use building, each Unit designated for residential purposes is deemed to be a separate Residential Unit. If an

unimproved tract, parcel or lot of land is to be subdivided, the said land will not contain the Residential Units designated therefor until the subdivision plat is filed Of Record.

(dd) Site Plan. "Site Plan" will mean and refer to that certain subdivision plat or plats further described in Exhibit "A", and all re-subdivisions, modifications, revisions and additions thereto. Further, "Site Plan" will mean and refer to any subdivision plat placed Of Record for any land added hereto pursuant to Section 2.2.

(ee) Supplemental Declaration. "Supplemental Declaration" will mean and refer to any amendment to this Proclamation filed Of Record, which makes any changes hereto.

(ff) Unit. "Unit" will mean and refer to a Residential Unit or a Non-residential Unit.

(gg) Utility District. "Utility District" means one of the Utility Districts established for the clustered Low Pressure Pipe (LPP) or other septic wastewater systems installed within the Development. Section 11.8(b) sets forth the Owner's responsibilities concerning the costs and expenses arising from the Utility District to which the Owner's Unit is assigned. A schedule of the Utility Districts and the Units assigned thereto is attached as Exhibit "D".

ARTICLE 2

THE GENERAL PLAN FOR DEVAUN PARK

2.1 Plan of Development of the Property.

(a) The Plan. The Plan of Development for Devaun Park is to achieve a more desirable living environment through a Traditional Neighborhood Design (TND). Devaun Park's development pattern is structured to bring about community interaction by offering the privileges and necessities of daily life within a comfortable walking distance from an Owner's home. A walk within Devaun Park will put neighbors in contact with one another in the streets, in shops and on front porches. Devaun Park promotes the public realm as a neighborhood amenity thereby fostering a sense of community.

(b) The Development; Properties Subjected Hereto. The Property initially contains twenty-four (24) Residential Units as shown on the Site Plan, upon each of which one house may be constructed. The Property may also include Non-residential Property, Common Areas, including recreational facilities as may, but shall not be required to, be developed, and such private roads, utility systems, drainage systems, and other improvements serving the Property and as are, from time to time, denominated as such in this Proclamation or by the Founder on the Site Plan or in any deed, lease, use agreement, Supplemental Declaration or memorandum thereof filed Of Record, and which are installed and existing. Without the consent of any person, Founder will have the right, but not the obligation, during the Founder Control Period, to make improvements and changes to all Common Areas and to all such properties owned by Founder, including, without limitation, (a) installation and maintenance of any improvements, (b) changes in the location of the boundaries of any such properties owned by Founder, and (c) installation and maintenance of any water, sewer, and other utility systems and facilities.

2.2 Additions To Property. Other property may become subject to this Proclamation in the following manner:

(a) Additions By Founder. During the Founder Control Period, the Founder shall have the right, without further consent of the Association or any Owner, to bring within the plan and operation of this Proclamation, or to consent thereto, the whole or any portion of any property contiguous or nearly contiguous to the Property described in Exhibit "A", whether or not owned by the Founder. Such property

may be subjected to this Proclamation as one parcel or as several smaller parcels at different times. The additions authorized under this subsection shall be made by filing Of Record a Supplemental Declaration and Site Plan with respect to the land to be added hereto and which shall extend the operation and effect of the covenants and restrictions of this Proclamation thereto, and which, upon filing Of Record of a Supplemental Declaration, shall constitute a part of the Property.

(i) The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Proclamation as may be necessary or convenient, in the sole judgment of the Founder, to reflect the different character, if any, of the land added hereto, and as are not materially inconsistent with, this Proclamation, but such modifications shall have no effect on the Property described in Section 2.1 above.

(ii) In the event that Founder submits the Additional Property or any portion or portions thereof to the terms of this Proclamation as Neighborhood Areas, whether composed of single family detached residential, commercial or mixed use properties, the Founder may establish one or more Neighborhood Associations for the Neighborhood Areas in order to promote their health, safety, and social welfare, as well as to provide for the maintenance of common elements thereof, provided that such Owners will also be Members of the Association and such Units and other improvements will be subject to the terms of this Proclamation as are imposed by the Supplemental Declaration with respect thereto. Such Neighborhood Areas may be subject to Neighborhood Proclamations which impose covenants and restrictions which are in addition to, but not in derogation or substitution of, those imposed hereby and applicable thereto, and such Neighborhood Associations may levy additional Assessments and make and enforce supplementary covenants, restrictions, rules, and regulations with respect to such Neighborhood Areas.

(iii) The Founder hereby reserves the right to submit any portion of the Property described in Exhibit "A" or any Additional Property under Section 2.2(c) to the terms of this Proclamation as a Non-residential Unit by filing Of Record a Supplemental Declaration submitting said property to this Proclamation. The Founder may establish restrictions as to the type of use and improvements which may be developed or constructed thereon, and as will be permitted in accordance with the zoning ordinances therefore and the terms and conditions thereof, and such other declarations, covenants and restrictions as will promote the general health, safety, and social welfare, and provide for maintenance of improvements and/or common elements to be located thereon. In addition, the Founder reserves the right to assign the number of Residential Equivalent Units to each Non-residential Unit for purposes of voting and assessments. Founder may also amend this Proclamation to insure Non-residential Units fair representation through an equal voting system, class voting system or weighted board representation.

(b) Withdrawal of Property by Founder. The Founder reserves the right to amend this Proclamation during the Founder Control Period for the purpose of removing any portion of the Property from the coverage of this Proclamation, provided the withdrawal is not contrary to the overall, uniform scheme of development for the Property. Such amendment will not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Founder. If the property is Common Area, the Association will consent to the withdrawal.

(c) Additions of Other Properties. Following the Founder Control Period and upon approval by sixty-seven percent (67%) of the votes cast by Members pursuant to a duly held Referendum therefor or upon approval by sixty-seven percent (67%) of the votes of the Members present, in person or by proxy, at a duly held meeting at which a quorum is present, the owner of any property contiguous, or nearly contiguous, to the Property and who desires to add the property to the plan of this Proclamation and to subject it to the jurisdiction of the Association, may file Of Record a Supplemental Declaration with respect to the property to be added, which will extend the operation and effect of the covenants and restrictions of the Proclamation to such property, thereafter constituting a part of the Property. Any such Member approval shall

be reflected in consent to such Supplemental Declaration executed by the President of the Association. During the Founder Control period, the addition of other properties in accordance with this Section 2.2(c) shall require the written consent of the Founder, as well as the vote of the members provided herein.

(d) Additions By Merger. Following the Founder Control Period and upon merger or consolidation of the Association with another association, following approval by eighty percent (80%) of the votes cast by Members pursuant to a duly held Referendum therefor or upon approval by eighty percent (80%) of the votes of the Members present, in person or by proxy, at a duly held meeting at which a quorum is present, the Association's property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights, and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the existing property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation will affect any revocation, change, or addition to the covenants established by this Proclamation within the Property, including, without limitation, the maximum limits on Assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association. Lands that become subject to this Proclamation under the provisions of this Section 2.2(d) may in the future be referred to as a part of the Property. During the Founder Control period, the addition of property by merger in accordance with this Section 2.2(d) shall require the written consent of the Founder, as well as the vote of the members provided herein.

2.3 Conveyances Of Common Areas. All parcels of land shown as Common Areas on the Site Plan or which are identified herein as Common Areas and require a conveyance to vest in the Association ownership and use thereof, will be deeded or an easement will be granted with respect thereto by Founder within five (5) years after the Founder has completed improvements thereon. Upon any such conveyance or grant of easement, if such is required, or upon completion of any improvements thereon or thereto by the Founder, if earlier, the Association will immediately become responsible for all maintenance, repair and replacements therefor, the operation thereof and such additional construction of improvements as may be authorized by the Board of Aldermen. For purposes of measuring the foregoing five (5) year period, any improvements will be deemed completed the later of the date all required certificates or permits of occupancy or use are issued therefor, or the date such improvements may be used in the manner and for the purposes for which they are constructed. It is the purpose of this provision to provide that the Association will be responsible for all maintenance of Common Areas when improvements thereto have been completed, notwithstanding the fact that the Founder is not obligated to deed or grant an easement for such properties until five (5) years after improvements have been completed thereon. Any such conveyance by the Founder will be conveyed subject to:

- (a) All restrictive covenants filed Of Record at the time of conveyance; and
- (b) The right of access of the Founder, its successors and assigns, over and across such property; and
- (c) The right of both the Founder, during the Founder Control Period, or the Association, after expiration of the Founder Control Period, and the ARC to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Common Areas prior to the commencement of such activities or location of any object therein;
- (d) All utilities and drainage easements; and
- (e) All reserved rights set forth in Section 2.1.

Notwithstanding anything in the foregoing to the contrary, the Founder will not be required to so convey the Common Areas where such conveyance would be prohibited under agreements to which the Founder is a party on the date of establishment of such Common Areas, but, in such case, Founder will be allowed to postpone such conveyance, without a penalty, until such time as said prohibition terminates, is released or is nullified.

In consideration of the benefits accruing to the Association and to the Members under this Proclamation and in consideration of the covenants and agreements of the Founder hereunder, the Association hereby agrees to accept title to any property, or to any interest in property, now or hereafter conveyed to it pursuant to the terms and conditions of this Proclamation. Upon the due recording of a deed, easement, lease or other instrument or memorandum of conveyance Of Record to the Association, title or such other interest in property conveyed will vest in and to the Association without the necessity of any further act, deed or approval of any person, including the grantor, lessor and/or Association.

2.4 Owner's Interest Subject to Plan of Development. Every purchaser of a Unit will purchase such property, and every Mortgagee and lien holder holding an interest therein will take title, or hold such security interest with respect thereto, subject to the plan of development for Devaun Park and this Proclamation.

ARTICLE 3

OWNERS' COVENANTS AND USE RESTRICTIONS

3.1 Building Restrictions. Except as may be otherwise set forth in this Proclamation, in the Site Plan, in any Supplemental Declaration, in any agreement with Founder, or by specific deed restriction, the following building restrictions will apply with respect to the properties subject to this Proclamation:

(a) Number of Buildings on lots. On a single family lot no structure will be constructed other than one (1) detached, single-family house and one (1) accessory building, which may include a detached private garage, servant's quarters, guest house or pool house, provided a single structure may incorporate any or all of said uses and provided such house or accessory building does not overcrowd the lot and is not used for any business activity that would generate vehicular traffic other than that of the property owner. Such accessory building may not be constructed prior to the construction of the main house. A guest suite or like facility may be included as part of the main house or accessory building. For the purpose herein as structure connecting the main house and accessory building, whether or not enclosed shall not, itself, be considered a separate building.

(b) Completion of Construction of Improvements, Approved Contractors. Unless otherwise agreed to by the Founder in writing, construction of an owner's house and related improvements must commence within thirty-six (36) months following the closing of the Unit; and must be completed not later than the expiration of twelve (12) months from the date actual construction starts. The Founder has or may establish a "Signature Builder," or similarly designated, program composed of a number of builders that the Founder has, or will have, in good faith, determined to be qualitatively and financially qualified to construct houses and/or other structures that will meet the ARC guidelines, foster the Traditional Neighborhood Design vision for Devaun Park, and represent the craftsmanship envisioned by the Founder. If, at the date of an Owner's contract to purchase of a Unit the program is not fully operational, the Owner may contract with any builder to construct a home, provided all plans are in accordance with ARC guidelines. At such time the Founder deems the program operational subsequent purchasers are required to use an approved Signature Builder designated by the Founder for house construction; provided however, those under contract to purchase at the time the program is deemed operational or those purchasers of Units under which the original sale from the Founder was prior to the program being deemed operational are exempt there from. The Signature Builder program, once established, shall remain in place at the discretion of the Founder who

may discontinue the program or membership therein for qualitative, economic, or other reasons, as necessary and incidental to the betterment of Devaun Park and the owners therein.

(c) Other Requirement of Residences. In addition, all residential structures constructed on a Unit will be designed and constructed in compliance with the requirements of such political subdivision with jurisdiction thereof.

3.2 Trees. No Owner, other than Founder, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of four (4) inches or more at a point of four (4) feet above the ground level, or other significant vegetation as may be designated, by the ARC, without obtaining the prior approval of the ARC. Provided however, that obviously dead or diseased trees, as well as obviously dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any property by the Owner thereof. Nothing herein shall be construed so as to limit any applicable law or ordinance.

3.3 Alteration of Setback Lines in the Best Interest of Development. When because of size, natural terrain, alignment, view, or any other reason the Founder deems reasonable in the best interest of the Development, the setback lines of any Unit should be altered or changed, then, subject to applicable zoning, the Founder reserves unto itself, its successors or assigns, and no other, the right to change any setback lines to meet such conditions. The Founder specifically reserves the right to transfer and assign this right of approval to the ARC hereinafter established.

3.4 Use of Residential Units. Except as permitted by Section 3.23, each Residential Unit will be used for residential purposes only, and no trade or business of any kind may be carried on therein. The use of a portion of a Residential Unit as an office by an Owner or Occupant will not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic; provided that in no event will any Residential Unit be used as the office of or storage area for any building contractor, real estate developer or real estate broker, except as may be on a temporary basis, with the express written approval of the Founder during the Founder Control Period, and thereafter by the Board of Aldermen, and in accordance with reasonable rules and regulations promulgated therefor. Nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on a lot or the showing of Residential Units for the purpose of selling houses in the Development; and nothing herein shall be construed to prevent the Founder or its permittees from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales in the Development. Lease or rental of a Residential Unit for domestic residential purposes will also not be considered to be a violation of this covenant so long as the lease does not otherwise conflict with this Proclamation or the rules and regulations as may be promulgated and published from time to time by the Founder and the Board of Aldermen. All leases or rental agreements will be in writing and will be for a duration of one (1) year or more unless, for good cause shown, the Board permits, in writing, a shorter term, which, nevertheless, shall not be shorter than six (6) months. The Owner will provide the Founder and Board of Aldermen with copies of such lease or rental agreement upon request. Any Occupant, lessee or otherwise will, in all respects, be subject to the terms and conditions of this Proclamation and the rules and regulations adopted hereunder.

3.5 Time Sharing Plans. No part of the Property subject to this Proclamation, including any improvements thereon or to be built thereon, will be used for or subject to any type of Time Share Program or Time Share Project as defined by the North Carolina Time Share Act, N.C. Gen. Stat. 93A-41 (1983), or any subsequent laws of this State dealing with that or similar type of ownership by a Residential Unit Owner, or which is used for, in conjunction with and/or as an advertised part of any time share exchange program which makes available as accommodations the Residential Unit and which is not otherwise registered as a Time Share Program or Time Share Project or which utilizes the Residential Unit as accommodations for time share sale prospects of any Person, without the prior written consent of the Founder, which it may grant or deny in

whole, or may grant to some and deny to others, in its sole discretion. Any Residential Unit designated in any amendment hereto or Supplemental Declaration by the Founder as being subject to a Time Share Program or a Time Share Project shall be deemed to have received the written consent of the Founder, as aforesaid, without the necessity of any additional consent or writing.

3.6 Antennas. No television antenna, radio receiver, or other similar device will be attached to or installed on any portion of the Development, except as required by the Telecommunications Act of 1996 and implementing rules therefor issued by the Federal Communications Commission and by the Association in conformity with rules or guidelines of the Federal Communications Commission; provided, however, the Founder and the Association will not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Development.

3.7 Water Wells. Subject to the terms of Section 5.15, no private deep water well may be drilled, installed or maintained on any of the Development. A shallow well pump may be authorized by the ARC, in its sole and absolute discretion, following written application therefor by an Owner for lawn and garden use if tests indicate water is satisfactory and will not cause staining of improvements. Furthermore, the ARC may authorize shallow wells for closed-end, close-loop, or other geo-thermal residential systems.

3.8 Clotheslines. No clotheslines or drying yards shall be located upon the premises so as to be visible from any Common Area or from any adjoining property or Unit.

3.9 Propane Gas Tanks. Any propane gas tanks permitted by the ARC shall be buried underground on the Unit and the lid shielded from the view from any road by plantings or other means approved by the ARC.

3.10 Firearms and Fireworks.

(a) Firearms. No firearms shall be discharged upon the Units, in any house or upon any Common Area. The term "firearms" shall include, without limitation, guns, "B-B" guns, paint-ball guns, and pellet guns.

(b) Fireworks. No fireworks shall be discharged upon the Units, in any house or upon any Common Area except as to organized events permitted by Founder or the Association, as permitted by law.

3.11 Exclusion of Above Ground Utilities. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. Provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Development. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

3.12 Signs. Except as may be required by law or by legal proceedings, no signs or advertising posters of any kind, including, but not limited to, "For Rent," "For Sale," and other similar signs, shall be erected by an Owner, the Association, or any agent, broker, contractor or subcontractor thereof, nor shall any sign or poster be maintained or permitted on any window or on the exterior of any improvements or on any unimproved portion of property located within the Development, without the express written permission of the ARC. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the ARC and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 3.12 shall not apply to the Founder or to any person having the written approval of the Founder. In addition, the Association shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas in accordance with architectural

design standards adopted therefor by the ARC and approved by the Founder and governmental authority with jurisdiction thereof.

3.13 Pets. No animals of any kind shall be kept by any Occupant upon any portion of the Development, provided that a reasonable number of generally recognized house pets, may be kept in a Unit, subject to rules and regulations adopted by the Association, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose; provided further, however, dog houses, kennels, fenced runs or pens for the outside housing of any pet shall be subject to the approval of the ARC, which it may grant or deny in its sole discretion. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. Pets shall be under leash at all times when walked or exercised in any portion of the Common Areas, and the owner of such pet shall clean up after such pet. Upon the written request of any Occupant, the Board of Aldermen may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 3.13, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the owner of a particular pet to remove such pet from the Development if such pet is found to be a nuisance or to be in violation of these restrictions. The Board of Aldermen shall have the further right, subject to Section 12.2, to fine any Occupant for the violation of these pet restrictions by such Occupant, and the Occupant shall be liable to the Association for the cost of repair of any damage to the Common Areas caused by the Occupant's pet. Any such fine or cost of repair shall be added to and become a part of that portion of any Assessment next coming due to which such Unit and its Owner are subject.

3.14 Lakes. No lake area shown on any map of the Development shall be used for swimming, boating or diving, nor shall the use of any personal flotation devices, jet skis or other such items be permitted on any lake or drainage way. Fishing by Owners maybe permitted subject to Association rules and regulations. No piers, docks or barriers shall be constructed on any portion of lakes, streams or ponds, drainage ways, nor attached to the shoreline or banks thereof, except those that may be constructed by the Founder. No Unit Owner may use or permit to be used any water from any lakes or other bodies of water for irrigation of such Owner's Unit. Neither the Founder nor the Association shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or drainage ways within or contiguous to the Development. Nothing shall be done which disturbs or potentially disturbs wetlands within the Development in any manner unless approved by the Founder and appropriate regulatory authorities. No dredging or filling shall be undertaken on any property adjacent to any water body or wetland without the approval of the Founder and appropriate regulatory authorities.

3.15 Drainage. No Owner shall channel or direct drainage water onto a neighboring Lot, Unit, or Common Area except in accordance with a drainage plan approved by Founder. No Owner shall make any change to or modification of the originally established grades, swales and slopes of his or her Unit in any way that changes or impedes the originally established flow of storm water drainage. Pursuant to permits issued, or to be issued, in connection with state storm water management, the allowable built-upon area per lot is listed in Exhibit "E" and subsequent exhibits hereof. No Owner shall exceed the allowable built upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina, driveways, and parking areas, but does not include raised, open wood decking, or water surface of swimming pools.

3.16 Artificial Vegetation, Exterior Sculpture, Exterior Lighting, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Development. Exterior sculpture, fountains, flags, and similar items are subject to ARC prior approval; provided however, that nothing contained herein shall prohibit the appropriate display of the American flag. Exterior lighting shall be subject to ARC approval; provided however, that such lighting shall not be of a (soffit or otherwise mounted) flood, wide spot, or similar nature unless the source of the lighting is concealed and the light produced does not, at night,

spill over onto adjacent properties including common areas. Exterior lighting should be via indirect sources for discriminately highlighting landscape and exterior residence features, not brightly illuminating the residence or property.

3.17 Nuisances. No rubbish or debris of any kind will be dumped, placed, or permitted to accumulate upon any portion of the Development, nor will any nuisance or odors be permitted to exist or operate upon or arise from the Development, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Development. Noxious or offensive activities will not be carried on in any part of the Development, and the Association and each Owner and Occupant will refrain from any act or use which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the Occupants of other portions of the Development or which could result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, will be located, used, or placed within the Development, except as may be permitted pursuant to terms, conditions, rules and regulations adopted therefor by the Board of Aldermen. Any Owner or Occupant who dumps or places any trash or debris upon any portion of the Development will be liable to the Association for the actual costs of removal thereof plus an administrative fee of \$500.00, or such other sum set therefor by the Board as a recoupment of administrative costs in administering the cleanup and notices to the Owner and Occupant, and such sum will be added to and become a part of that portion of any Assessment next becoming due to which such Owner and his property is subject.

3.18 Motor Vehicles, Trailers, Boats, Etc. Each Owner will provide for parking of automobiles off the streets and roads within the Development. There will be no storage outside of the garage, carport, or any accessory building permitted under Section 3.1(a) nor will there be parking upon any portion of the Development of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices, except in a garage, carport, or accessory building. Any permitted parking of a mobile or motor home will not be construed as to permit any person to occupy such mobile or motor home, which is strictly prohibited. Furthermore, although not expressly prohibited hereby, the Board of Aldermen may at any time prohibit or write specific restrictions with respect to the operating of mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, all terrain vehicles (ATVs), and other vehicles, or any of them, upon any portion of the Development if in the opinion of the Board of Aldermen such prohibition or restriction will be in the best interests of the Development. Such policies may change from time to time with changing technology. The storage of any such vehicles within a garage will be permitted, even if operating the same is prohibited. No Owners or other Occupants of any portion of the Development will repair or restore any vehicle of any kind upon or within a property subject to this Proclamation except (a) within enclosed garages, or (b) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

3.19 Mining and Drilling. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Development, nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or materials of any kind be produced or extracted from the premises.

3.20 Garbage Disposal. Each Unit Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Founder, or a roll-out garbage rack of the type approved by the Founder, which shall be only visible from the alleys on garbage pickup days unless the pickup location is otherwise directed by the Founder. No garbage or trash incinerator shall be permitted upon

the premises. No burning, burying or other disposal of garbage on any Unit or within the Development shall be permitted (except licensed contractors may burn construction debris if, and only if, permitted to do so by the ARC, but only during the period of construction of improvements on the Unit); provided, however, the Founder shall be permitted to modify the requirements of this Section 3.20 where necessary to comply with orders of governmental bodies.

3.21 Owners Landscape Maintenance Between Unit and Adjacent Paving. Each Owner will be responsible for maintaining on a regular basis the landscaping, if any, and ground cover along the right-of-way roadside or sidewalk, as applicable, bordering the Owner's Unit, whether or not such area is a part of the Owner's Unit. Each Owner will perform such maintenance within the unpaved area of right-of-way immediately adjacent to a Unit's lot line, and will be of such quality of maintenance as is required to maintain a Development consistency in appearance and cleanliness. An Owner's responsibility under this Section 3.21 to provide regular maintenance will be fulfilled regardless of whether or not an Owner has constructed improvements upon his Unit or whether or not the Owner permanently resides in the Development.

3.22 Owner's Landscape Maintenance Between Unit and Adjacent Lake or Pond. Each Owner will be responsible for maintaining on a regular basis the landscaping, if any, and ground cover along the edge of any lake or pond (above the waterline, from time to time existing) bordering the Owner's Unit, whether or not such area is a part of the Owner's Unit. Each Owner will perform such maintenance with such quality of maintenance as is required to maintain a Development consistency in appearance and cleanliness. An Owner's responsibility under this Section 3.22 to provide regular maintenance will be fulfilled regardless of whether or not an Owner has constructed improvements upon his Unit or whether or not the Owner permanently resides in the Development.

3.23 Development, Sales and Construction Activities of Founder. Notwithstanding any provisions or restrictions contained in this Proclamation to the contrary, the Founder and its agents, employees, successors, and assigns are permitted to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the development, completion, improvement, and sale of the whole or any portion of the Property, including, without limitation, the installation and operation of development, sales and construction trailers and offices, signs and models, provided that the location of any such trailers of any assignees of Founder's rights under this Section 3.23 are subject to Founder's prior written approval. The right of Founder to maintain and carry on such facilities and activities will include specifically the right of Founder to use Units as models and as offices for the sale or lease of Units and for related activities.

3.24 Use of Trademark. Each Owner and Occupant, by acceptance of a deed to any lands, tenements or hereditament within the Development hereby acknowledges that "Devaun Park" is a service mark and trademark. Each Owner and Occupant agrees to refrain from misappropriating or infringing this service mark or trademark.

3.25 Owner Recording Additional Restrictions on Property. No Owner may impose additional restrictive covenants on any lands within the Property beyond those contained in this Proclamation without approval of the Founder during the Founder Control Period, and thereafter without consent of the Board of Aldermen. The Founder may impose additional restrictive covenants on property then owned by the Founder without the consent of any other Owner or the Association.

3.26 Repurchase Option. During the Founder Control Period, the Founder will have the right and option to purchase any unimproved Unit within the Development which is offered for sale by the Owner thereof, such option to be at the price and on the terms and conditions of any bona fide offer therefor which is acceptable to such Owner and which is made in writing to such Owner. The Owner will promptly submit a copy of the same to Founder, and Founder will have a period of ten (10) business days (exclusive of Saturday, Sunday and Federal holidays) from and after the presentation of such offer to Founder in which to exercise its

purchase option by giving such Owner written notice of such exercise in accordance with Section 15.16. If Founder fails to respond or to exercise such purchase option within said ten (10) day period, Founder will be deemed to have waived such purchase option. If Founder responds by declining to exercise such option, Founder will execute an instrument evidencing its waiver of its repurchase option, which instrument will be in recordable form. In the event that Founder does not exercise its purchase option and such sale to a third party is not consummated on such terms and conditions set forth in the bona fide offer within six (6) months of the date in which the offer is transmitted to Founder, or within the period of time set forth in such bona fide offer, whichever is later, the terms and limitations of this Section 3.26 will again be imposed upon any sale by such Owner. If Founder elects to purchase, the transaction will be consummated within the period of time set for closing in said bona fide offer, or within thirty (30) days following delivery of written notice by Founder to such Owner of Founder's decision to so purchase such Unit, whichever is later.

3.27 No View Easement.

NO OWNER OR OCCUPANT OF A UNIT SHALL HAVE ANY VIEW EASEMENT OVER AND ACROSS ANY PROPERTY, AND NEITHER THE FOUNDER NOR ANY AFFILIATE THEREOF SHALL BE REQUIRED TO MAINTAIN ANY UNDEVELOPED LAND CONTINGUOUS TO THE PROPERTY IN ANY PARTICULAR MANNER OR IN ITS CURRENT CONFIGURATION, OR EVEN AS OPEN SPACE, AND MAY DEVELOP THE SAME IN ANY MANNER PERMITTED BY LAW.

3.28 Assignment of Founder's Rights to the Association. The Founder reserves the right to assign to the Association, at its sole discretion, its rights reserved in this Proclamation, including all rights set forth in this ARTICLE 3. The Association hereby agrees to accept any and all assignments of rights hereunder, and no further action will be required by it.

3.29 Other Rights and Reservations.

THE OMISSION OF ANY RIGHT OR RESERVATION IN THIS ARTICLE WILL NOT LIMIT ANY OTHER RIGHT OR RESERVATION BY THE FOUNDER WHICH IS EXPRESSLY STATED IN OR IMPLIED FROM ANY OTHER PROVISIONS IN THIS PROCLAMATION.

ARTICLE 4

ARCHITECTURAL GUIDELINES; APPROVALS

4.1 Purpose. In order to enhance the beauty of the Development, to establish and preserve harmonious and aesthetically pleasing designs and mixture thereof anticipated and incorporated into the Development, and to protect and promote values for the Development, the subdivisions thereof and the Units and improvements located therein or thereon, no Unit site plan improvements will be undertaken (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) nor any structures placed, erected, or installed upon any Unit or adjacent to any Unit where the purpose of the structure is to service the Unit, except in accordance with this ARTICLE 4 and upon approval as herein provided unless specifically exempted from the application and approval requirements hereof by specific terms and conditions hereof pursuant to this Proclamation or pursuant to a writing signed by Founder in recordable form.

4.2 Architectural Review Committee. The Founder will establish an Architectural Review Committee ("ARC") to administer the architectural and aesthetic approval process for the Development; however, an Owner satisfying the architectural guidelines of the ARC functions assigned by the Founder to a Neighborhood Association or to another committee or board established by the Founder pursuant to a Neighborhood Proclamation will be deemed to have satisfied the architectural guidelines and review

procedures hereunder. The ARC under this Proclamation will consist of no more than five (5) or less than three (3) members, who need not be Unit Owners. The terms of office for each member and other matters of governance to be applicable to the ARC will be established by the Founder prior to the time any review and approval process hereunder would otherwise have to take place. The Founder may remove with or without cause a member appointed by the Founder at any time by written notice to the appointee, and any successor appointed to fill the vacancy will serve the remainder of the term of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the ARC following assignment of the whole or any portion of ARC functions pursuant to Section 4.2(a) below is subject to the prior approval of Founder until that date which is five (5) years following the termination of the Founder Control Period. The ARC is responsible for administering the Design Guidelines, adopted and amended from time to time as hereinafter provided, and for the review and approval process conducted in accordance with this ARTICLE 4. The ARC is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. The ARC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers or other professionals.

(a) Right to Assign ARC Functions. The Founder reserves the right to assign to the Association, to a Neighborhood Association, or to a committee or board established by the Founder pursuant to a Neighborhood Proclamation, at its sole discretion at any time during the Founder Control Period, the whole or any portion of its rights reserved in this Proclamation, which are exercisable by the ARC. The Association, each Neighborhood Association and each such committee or board established by the Founder under a Neighborhood Proclamation does hereby agree to accept any such assignment of rights without the necessity of any further action by it. Upon the expiration of three (3) years following the termination of the Founder Control Period, any then remaining rights are deemed assigned to the Association, which will succeed to all the rights of Founder over the ARC then remaining unassigned without further action on the part of either the Founder or the Association.

(b) Liability of ARC Members. No member of the ARC, or any assignee of rights hereunder, will be liable to any Unit Owner for any decision, action or omission made or performed by the ARC member in the course of his duties unless the member acted in bad faith or in reckless disregard of the rights of another or of the terms of this Proclamation.

(c) Indemnification. Until all the ARC functions are assigned, the Founder will, to the full extent permitted by law, indemnify all persons designated from time to time by the Founder to serve as members of the ARC exercising unassigned rights hereunder from and against any liability, including attorney fees, as may be incurred by the members contrary to the provisions of this Section 4.2(c). Following any such assignment by the Founder, members of the ARC or successor board exercising rights so assigned are indemnified by the Association or Neighborhood Association to which the exercised right was assigned.

4.3 Design Guidelines. The Founder will prepare the initial design and development guidelines, as well as the form of application and review procedures (the "Design Guidelines"), which will apply to all development and construction activities within the Development. The Design Guidelines may contain general provisions applicable to all of the Development, as well as specific provisions which may vary according to Neighborhood, location therein, unique characteristics, and intended use.

(a) Interior Improvements. Generally speaking, the Design Guidelines will not cover interior improvements, which will, generally, not be subject to review and approval by the ARC, unless the review and approval may otherwise be required because the interior improvements are made within an area plainly within view of adjacent properties.

(b) Drainage. The Design Guidelines may provide that, in connection with the ARC's approval and to prevent excessive drainage or surface water runoff, the ARC may have the right to establish a maximum percentage of property which may be covered by buildings, structures, or other improvements, which guidelines may be promulgated on the basis of topography, percolation rates of the soil, soil types and conditions, vegetation cover, and other environmental factors, governmental regulation, or to impose guidelines for the installation of storm water management facilities deemed appropriate to limit or control runoff.

(c) Siting and Setbacks. Unless otherwise specifically provided or allowed, in writing by the Founder or by applicable zoning, the location of all improvements will be, pursuant to the Design Guidelines, vested solely in the ARC.

(d) Other Guidelines. The Development's Design Guidelines may, in the sole discretion of Founder, and, following the Founder Control Period, the ARC may also provide applicable guidelines (i) prohibiting or restricting the erection and use of temporary structures; (ii) setting permissible times of construction and requirements concerning construction debris; (iii) covering the allowance of and, where allowed, the content, size, style and placement location for, signage; (iv) requiring or encouraging visually screened service yards; (v) establishing exterior lighting design and location criteria; (vi) prohibiting or limiting installation and use of wells; (vii) and establishing conditions for property subdivision or consolidation, and for subjecting Development property to further covenants, conditions, restrictions and easements; provided, however, Founder's activities are excepted or exempted from any and all such guidelines. This listing of possible guidelines is not an comprehensive listing and is intended merely to provide an example of the diversity of guidelines that may be incorporated in the Design Guidelines, and will not act as a limitation upon guidelines.

(e) Guidance: Final Authority of ARC. The Design Guidelines are intended to provide guidance, and will not be the exclusive basis for decisions of the ARC, and compliance with the Design Guidelines may not guarantee approval of any application. The ARC will have the sole discretion to determine whether plans and specifications submitted for approvals are acceptable to it, and the refusal of approval of any plans and specifications may be based by the ARC upon any ground which is consistent with the objects and purposes of this Proclamation, as may be supplemented by the Design Guidelines, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

(f) Inspections and Permit and Certificate Issuance. The Design Guidelines may also provide procedures for ARC inspection of work, for the issuance of a permit to commence work and for the issuance of a certificate following completion thereof, in addition to any such permits and certificates as may be issued by governmental authority with jurisdiction thereof, which may constitute conditions precedent to use or occupancy.

(g) Fees and Charges. In addition to application fees and charges, the Design Guidelines may provide a schedule of fees, charges, required damage or other deposits, fines for noncompliance, and other amounts due and payable by an Owner as part of the application, review and approval processes, which schedule the ARC may increase, modify and amend at any time. All fees and charges provided herein will constitute specific Assessments and a lien upon the Unit to which the fees and charges relate.

4.4 ARC Landscaping Approval. To preserve the architectural and aesthetic appearance of the Development, no landscaping, grading, excavation, or filling of any nature whatsoever, and no construction of improvements of any nature whatsoever, will be commenced or maintained by the Association or any Owner, other than Founder, on any portion of the Development, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, decks, patios, courtyards, amenities and recreational facilities, walls, fences, or exterior lights, nor will any building construction, exterior addition, change or alteration, be made (including, without limitation, painting or staining of any exterior surface), unless and

until application is made to the ARC pursuant to the Design Guidelines and the plans and specifications therefor are approved by the ARC.

4.5 Approval Not a Guarantee. No approval of plans and specifications and no publication of Design Guidelines and architectural guidelines thereunder will be construed as representing or implying that the plans, specifications, or guidelines will, if followed, result in properly designed improvements. Such approvals and guidelines will in no event be construed as representing or guaranteeing that any Unit or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Founder, the Association, nor the ARC is responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this ARTICLE 4, or any defects in construction undertaken pursuant to the plans and specifications.

4.6 Founder's Right to Create Separate ARC. In the event any Non-residential Unit is submitted to this Proclamation pursuant to Section 2.2(a)(iii), the Founder hereby reserves the right to create a separate and distinct Architecture Review Committee to administer the architectural and aesthetic approval process for the Non-residential Units.

ARTICLE 5

PROPERTY RIGHTS

5.1 General Rights of Owners. Each Unit will for all purposes constitute real property which will be owned in fee simple and which, subject to the provisions of this Proclamation, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner will be entitled to the exclusive ownership and possession of his said property, subject to the provisions of this Proclamation, including without limitation, the provisions of this ARTICLE 5. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for the furnishing of utilities or other services or for the provision of support to any Unit lie partially within and partially outside of the designated boundaries of the Unit, any portions thereof which serve only such property will be deemed to be a part thereof, and any portions thereof which serve more than one such Unit or any portion of the Common Areas will be deemed to be a part of the Common Areas. The ownership of each property subject to this Proclamation will include, and there will pass with each property as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established hereunder, and the limitations applicable, which will include, but not be limited to, membership in the Association. Each Owner will automatically become a Member of the Association and will remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association will automatically pass to his successor-in-title to his or its property.

5.2 Owner's Easement of Enjoyment. Subject to the provisions of this Proclamation and the rules, regulations, fees, and charges from time to time established by the Board of Aldermen in accordance with the Bylaws and the terms hereof, every Owner and Occupant will have a nonexclusive right, privilege, and easement of use and enjoyment in and to the Common Areas, to the extent so entitled hereunder, such easement to be appurtenant to and to pass and run with title, subject to the rights, restrictions, reservations, covenants, easements and obligations reserved, granted or alienable in accordance with this Proclamation, including, but not limited to:

(a) Right Of Association To Borrow Money. The right of the Association to borrow money (a) for the purpose of improving the Development, or any portion thereof, (b) for acquiring additional Common Areas, (c) for constructing, repairing, maintaining or improving any facilities located or to be located within the Development, or (d) for providing the services authorized herein, and, subject to the provisions of Section 10.2, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and

encumbrance of any such security instrument given by the Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Founder, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given. The right of the Association to borrow money under this Section 5.2 is subject to the written approval of eighty percent (80%) or more of the votes of the entire Association, by a duly held Referendum or a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting).

(b) Founder's Reserved Rights and Easements. The rights and easements specifically reserved to Founder in this Proclamation.

(c) Association's Rights to Grant and Accept Easements. The right of the Board of Aldermen of Association to grant and accept easements as provided in Section 5.8 and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, public service district, public or private utility, or other person, provided that any such dedication or transfer must be approved by Founder during the Founder Control period and thereafter for so long as Founder owns any of the Property primarily for the purpose of development or sale.

(d) Association's Rights and Easements. The rights and easements specifically reserved in this Proclamation for the benefit of the Association, its Aldermen, officers, agents, and employees.

(e) Founder's Easements for Additional Property. The Founder's right to add Additional Property to this Proclamation pursuant to Section 2.2(a) and the rights and easements reserved in Section 5.5(a) hereof for the benefit of the Additional Property so added to this Proclamation.

5.3 Access, Ingress and Egress; Roadways. All Owners, by accepting title to property conveyed subject to this Proclamation, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such property and acknowledge and agree that such access, ingress, and egress will be limited to roads, sidewalks, walkways, and paths located within the Development from time to time, provided that pedestrian and vehicular access to and from all such property will be provided at all times.

(a) Public Roadways Within The Development. During the Founder Control Period, the Founder, and thereafter, the Association, shall have the right to dedicate any portion of the roadways within the Development to the State of North Carolina or any political subdivision thereof for the purpose of granting public access thereto and over said roadway and for the purpose of having said political subdivision assume responsibility for maintenance of such roadways. Furthermore, during the Founder Control Period, the Founder, and thereafter, the Association, shall have the right to impose upon the Association the requirement of maintaining any such dedicated roadway until such time as the roadway is brought up to standards acceptable to such public body and maintenance thereof is assumed by such public body; provided however, Founder may, in its sole discretion, reserve an easement over any such public roadway to be primarily maintained by such public body for the purpose of doing additional maintenance to said public streets and roads and to maintain landscaping along the unpaved rights-of-way thereof, and thereafter designate in a Site Plan or Supplemental Declaration that said easement will constitute a Common Area of the Development to be maintained by the Association. The Board of Aldermen may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 11.5(a) hereof, in an amount sufficient to provide funds required to bring any roadway up to standards acceptable to any public body for the assumption by it of maintenance of a said roadway.

5.4 Easements Over Private Roadways.

(a) Public and Service Vehicles. Police, fire, water, health and other authorized municipal officials, employees and their vehicles; paramedic, rescue and other emergency personnel and their

vehicles and equipment; school bus and U.S. Postal Service delivery drivers and their vehicles; private delivery or courier service personnel and their vehicles; and persons providing garbage collection services within the Development and their vehicles and equipment will each have a perpetual, non-exclusive easement for access, ingress and egress over the private roadways constituting a portion of the Common Areas, solely for the performance of their official duties.

5.5 Development Easements for Founder. During the period that Founder owns any of the Property for sale or where Founder may add additional property during the Founder Control Period, Founder will have an alienable and transferable right and easement on, over, through, under, and across the Common Areas for the purpose of constructing improvements in and to the Units and for installing, maintaining, repairing and replacing other improvements to the Property contemplated by this Proclamation or as Founder desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by ARTICLE 2, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event will Founder have the obligation to do any of the foregoing.

(a) Founder's Easements for Any Additional Property. There is hereby reserved for Founder, and its successors, assigns, and successors-in-title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property, when added to this Proclamation pursuant to Section 2.2(a), and as a burden upon the then existing Development, perpetual, non-exclusive rights and easements for (d) pedestrian, vehicular, access, ingress, egress, parking over, across, within, and on all private roads, alleys, service lanes, sidewalks, trails, parking facilities, and lagoons, from time to time located within the Common Areas or within easements serving the Common Areas, (e) the installation, maintenance, repair, replacement, and use within the Common Areas, and those portions of properties encumbered pursuant to Section 5.8 for security systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, and electrical, gas, telephone, water sewer, and master television antenna and/or cable system lines, and (f) drainage and discharge of surface water onto and across the then existing Development, provided that such drainage and discharge shall not materially damage or affect the then existing Development or any improvements located thereon.

5.6 Changes in Boundaries: Additions to Common Areas. Founder expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Areas and any Units between such adjacent properties owned by Founder, provided that any such change or realignment of boundaries will not materially decrease the acreage of the Common Areas and will be evidenced by a revision of or an addition to the Site Plan which will be filed Of Record. In addition, Founder reserves the right, but will not have the obligation, to convey to the Association at any time and from time to time any portion of the Additional Property, such real property to be conveyed to the Association as an addition to the Common Areas and subject to the provisions of Section 2.2.

5.7 Fire Breaks. During the Founder Control Period, the Founder, and thereafter, the Association, shall have a perpetual, alienable and releasable easement and right on and over and under any property to cut fire breaks and other activities which in the opinion of the holder are necessary or desirable to control fires on any portion of the Property, or any improvements thereon. Entrance upon property pursuant to the provisions of this Section 5.7 will not be deemed a trespass.

5.8 Easements for Utilities. There is hereby reserved for the benefit of Founder, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (a) all of the Common Areas in accordance with this Proclamation; (b) those strips of land, ten (10') feet in width, running adjacent to and parallel with the front and the rear lines of Units, and (c) such other such easement areas shown on the Site Plan or recited in any Supplemental Declaration for the purpose of installing, replacing, repairing,

maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and drainage systems and electrical, gas, telephone, water, and sewer improvements. Such easements may be granted or accepted by Founder, its successors or assigns, or by the Board of Aldermen, provided, however, that during the Founder Control Period and thereafter for as long as the Founder owns any of the Property primarily for the purpose of development and sale, the Board of Aldermen must obtain the written approval of Founder prior to granting and accepting any such easements. To the extent practical, in Founder's sole discretion, all utility lines and facilities serving the Development and located therein will be located underground. By virtue of any such easement and facilities, it will be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonable necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

5.9 Easement for Construction and Installation of Walks, Paths, and Signs. There is hereby reserved for the benefit of Founder and the Association the alienable, transferable, and perpetual right and easement upon, over and across (a) all portions of the Common Areas in which improvements are not constructed or erected, and (b) all areas shown and noted on any Site Plan or described in any Supplemental Declaration for the installation maintenance, and use as recreational bike, pedestrian and/or equestrian pathways and trails ("trail system"), as well as for traffic directional signs and related improvements. The trail system shall not interfere with or inhibit the residential purposes of the Properties.

(a) Easement for Use of Trail System. The Founder reserves for itself and the Association, and its members, a nonexclusive, perpetual easement of ingress, egress, access and use over, across and upon the trail system and such portions of the Common Areas which are necessary to travel to and from the trail system.

5.10 Easements for the Association. There is hereby reserved a general right and easement for the benefit of the Association, and to any manager employed by the Association and any employees of such manager, to enter upon any Unit or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner directly affected thereby.

5.11 General Maintenance Easement. There is hereby reserved for the benefit of Founder and the Association an alienable, transferable, and perpetual right and easement to enter upon any Property subject to this Proclamation for the purpose of providing insect and reptile control, mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Development, provided that such easements will not impose any duty or obligation upon Founder or the Association to perform any such actions, or to provide garbage or trash removal services. Furthermore, it is hereby reserved for the benefit of the Founder and the Association an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of a Unit which is located within thirty (30') feet from the water's edge of any lagoon, pond or other body of water within the Development for the purpose of (a) mowing such area and keeping the same clear and free from unsightly growth and trash and (b) maintaining such bodies of water, such maintenance to include without limitation, the maintenance of reasonable water quality standards provided that the foregoing reservation of easements will not be deemed to limit the responsibility therefor by Owners under Section 7.1 hereof. The costs thereof incurred as a result of the action or inaction of any Owner will be paid by such Owner, and until paid will be a continuing lien upon the Owner's Unit.

5.12 Environmental Easement. There is hereby reserved for the benefit of Founder and the Association an alienable, transferable, and perpetual right and easement on, over, and across all unimproved portions of properties subject to this Proclamation for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board of Aldermen, or by any governmental entity, such easement to include, without limitation, the right to drain standing water and the right to dispense pesticides.

5.13 Easement For Sewer Conversion. There is hereby reserved for the benefit of Founder, its designee or assigns, an easement of access, ingress and egress in and upon any Unit assigned to a Utility District to reclaim use of any land forming part of an LPP or similar septic wastewater system no longer being used or subject to being converted to another sewerage system or provider. Upon the event of reclamation or conversion all rights, title, and interests in and to the land previously used by the LPP septic wastewater system shall revert to the Founder. Unless otherwise agreed to in writing by the Founder, each Owner shall be responsible for payment of a prorated share of the costs of the conversion or reclamation according to the Utility District of which the Owner is a member. Such costs may include, but are not limited to, preparation for planning the conversion, connections (such as impact, tap, or other fees), ongoing fees for new service, disconnection or abandonment costs, fees for work related to these items, and associated cleanup work or inspection fees. All property reserved by the Founder for the use of the LPP systems and reclaimed or subject to conversion shall be returned in an environmentally stable state and condition.

5.14 Party Structure.

(a) Applicability. This Section shall apply to each wall, fence or driveway built as a part of the original construction on the Units:

- (i) any part of which is built upon or straddling the boundary line between two adjoining Units; or
- (ii) which is built within four feet of the boundary line between adjoining Units, has no windows or doors, and is intended to serve as a privacy wall for the benefit of the adjoining Unit; or
- (iii) which otherwise serves and/or separates two adjoining Units, regardless of whether constructed wholly within the boundaries of one Unit;

and shall constitute a party wall, party fence, or party driveway, respectively (each herein referred to as "Party Structure"). The Owners of each such Unit (the "Adjoining Owners") shall own that portion of the Party Structure lying within the boundaries of their respective Units and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the Party Structure lying within the boundaries of the adjoining Unit.

(b) Joint and Equal Obligations of Maintenance, Repair and Replacement. In the event of required maintenance, repair as a result of damage, or replacement because of destruction of a Party Structure from any causes, other than the negligence of an Adjoining Owner, the Adjoining Owners of the subject Party Structure shall, at joint and equal expense, maintain, repair and rebuild the Party Structure. Required repair or rebuilding of a damaged or destroyed Party Structure shall be the same size and of the same or similar material and of like quality as the Party Structure initially constructed, situate generally in the original location on the common property line between adjoining Units, all pursuant to applicable governmental regulation and permits. Each such Adjoining Owner, their respective heirs, successors, and assigns, shall have the right to the use of the Party Structure so repaired or rebuilt. The Adjoining Owners shall undertake repairs and reconstruction of the Party Structure wherever a condition exists which may result in damage or injury to person or property if repair or reconstruction work is not undertaken. Either Adjoining Owner, upon discovering the possibility of damage or destruction, shall notify the other Adjoining Owner of

the nature of the damage, the work required to remedy the situation, and the estimated cost of the repair or reconstruction. The other Adjoining Owner shall then have twenty (20) days from the receipt of the notice either to object to the repairs or reconstruction or to pay such noticed Adjoining Owner's share of the cost of the work. However, in the event of an emergency (i.e., a condition that is immediately threatening to the safety of persons or property), the Adjoining Owner giving such notice may undertake without consent only such work as shall abate the emergency, and the noticed Adjoining Owner shall then have five (5) days from receipt of the notice, which notice shall state with particularity the nature and extent of the existing emergency and the immediate actions taken or to be taken to abate the emergency and what further work, if any, is required for full repair and restoration, after which the noticed Adjoining Owner shall pay its share of the emergency abatement costs, and within the twenty (20) days above provided, shall either object to the further repair or reconstruction work or pay the noticed Adjoining Owner's share of the cost of such further work. The failure of the Adjoining Owner receiving such notice to object in writing to the Adjoining Owner sending such notice within the period of time provided shall be deemed to constitute such noticed Adjoining Owner's acceptance. In the event the Adjoining Owner receiving such notice objects in writing to such work to be done within the period of time provided, either Adjoining Owner may initiate resolution of such disputed repair or reconstruction pursuant to the terms and conditions of ARTICLE 14.

(c) Damage or Destruction Caused By Negligence. If either Adjoining Owner's negligence, which is deemed to include the negligence of such Adjoining Owner's family, tenant, guest or invitee, shall cause damage to or destruction of the Party Structure, the negligent Adjoining Owner shall bear the entire cost of repair or reconstruction.

(d) Failure to Pay Share of Expenses. If an Adjoining Owner shall neglect or refuse to pay such Adjoining Owner's share, or all of the cost in case of negligence, arising from the repair or reconstruction of the Party Structure in accordance with Section 5.14(b), the other Adjoining Owner may, but shall not be required to, undertake such repair or reconstruction and to pay the share of the cost and expense of the Adjoining Owner neglecting or refusing to so pay, which amount thereof shall constitute a "Shared Cost Assessment" collectable in accordance with Section 5.14(h) and subject to lien therein provided.

(e) Decision Not to Rebuild. Any portion of the Party Structure which is damaged or destroyed must be repaired or replaced promptly by the Owners unless:

(i) Repair or replacement would be illegal under any law, statute or ordinance governing health and safety; or

(ii) The Adjoining Owners agree unanimously, in writing, not to repair and reconstruct the damaged or destroyed Party Structure.

(f) Disputes Generally. All disputes between the Adjoining Owners shall be resolved pursuant to the provisions of ARTICLE 14.

(g) Adjoining Owners' Easements.

(i) Access. Each Adjoining Owner, and their respective guests, invitees, successors and assigns shall have a non-exclusive, perpetual easement of access, ingress and egress on, over and across any Party Structure designed for access, ingress and egress, such as shared driveways and walkways.

(ii) Maintenance, Repair and Construction Easement. There shall exist for the benefit of each Adjoining Owner, and their respective guests, invitees, successors and assigns a perpetual easement for access, ingress and egress on, over and across such portions of the other Adjoining Owner's Unit reasonably necessary or desirable for the construction, repair, maintenance and replacement of the Party

Structure. With respect to the whole or any portion of a Party Structure located upon an Adjoining Owner's Unit, an Adjoining Owner shall have an encroachment easement upon the other Adjoining Owner's Unit pursuant to Section 5.14(g)(iii). This construction, repair, maintenance and replacement easement shall include the right to temporarily alter, obstruct and/or block off portions of the Party Structure during construction or repair in order to avoid injury to persons or damage to property. However, in every case of alteration, obstruction or blocking, the said Adjoining Owner exercising such right shall provide, if possible, reasonable alternative means of use and access around the affected area to allow access to and the continued use and enjoyment thereof by persons entitled to such use and enjoyment. All such construction, repair, maintenance and replacement shall be undertaken and completed in accordance with applicable governmental regulations and permits therefor.

(iii) Encroachment Easements and Licenses. There shall exist for the benefit of each Adjoining Owner an exclusive perpetual encroachment easement and license on and across such portions of the Party Structure reasonably necessary or desirable, to perform any maintenance, repair, reconstruction or replacement of the Party Structure, being generally along the common property line between the Adjoining Owner's Units. There shall also exist for the benefit of each Adjoining Owner an encroachment easement and license to physically attach to the Party Structure any portion of its improvements attached in the original construction or required or desirable for support. Such encroachment easements and licenses shall include the right (but not the duty) to install, use, replace and maintain utility lines and facilities under and beneath such properties, including without limitation pipes and lines for water, electricity, telephone and cable television, all subject to the reasonable right of the respective Adjoining Owners to designate the actual location of any such utility easements encumbering their respective Units.

(h) Shared Cost Assessments for Joint Structures.

(i) Creation of Lien and Personal Obligation for Shared Cost Assessments. Each Adjoining Owner hereby covenants to pay its share of the costs and expenses of maintenance, repair and reconstruction of the Party Structure required pursuant to Section 5.14(b). Any such shared cost or expense remaining unpaid following five (5) days written demand therefor shall constitute a "Shared Cost Assessment". Any Shared Cost Assessment remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Adjoining Owner's Unit when a claim of lien is filed of record in the office of the Clerk of Superior Court for Brunswick County, North Carolina. A claim of lien shall set forth the name and address of the Adjoining Owner filing the lien, the name of the delinquent record holder of the adjoining Unit at the time the claim of lien is filed, a description of the Unit and the amount of the lien claimed. Such lien may be enforced by judicial foreclosure by the other Adjoining Owner in the same manner in which mortgages on real property may be foreclosed in the State of North Carolina. Proceedings to enforce the lien must be instituted within three (3) years after the docketing of the claim of lien in the office of the Clerk of Superior Court in Brunswick County, North Carolina or the lien for unpaid Shared Cost Assessments will be extinguished. In any such foreclosure, the delinquent Adjoining Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees) and such costs and expenses shall be secured by the lien being foreclosed. The delinquent Adjoining Owner shall also be required to pay any Shared Cost Assessments against the Adjoining Owner's Unit, which shall become due during the period of foreclosure, and all such Shared Cost Assessments shall be secured by the lien being foreclosed. The Adjoining Owner holding such lien shall have the right and power to bid in at any foreclosure sale, and to thereafter hold, lease, mortgage, or convey the subject Unit. Each such Shared Cost Assessment, together with such interest, costs and reasonable attorney's fees shall be the personal obligation of the person who was the delinquent Adjoining Owner at the time when the Shared Cost Assessment fell due and also of any subsequent Adjoining Owner of the lien Unit; provided, however, that no Adjoining Owner acquiring title to the lien Unit at a foreclosure sale, or conveyance in lieu of foreclosure, of any mortgage, his successors and assigns, shall have any personal obligation with respect to the portion of any Shared Cost Assessments

(together with late charges, interest, fees and costs of collection) related to such Unit, the lien for which is subordinate to the lien of the mortgage being foreclosed, as provided in Section 5.14(h)(iv).

(ii) Assumption of Obligation by Transferee. The personal obligation of the Adjoining Owner to pay a Shared Cost Assessment shall remain his personal obligation notwithstanding the fact that any successor in title assumes such personal obligation. Furthermore, such prior Adjoining Owner and his successor in title who assumes such liabilities shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior Adjoining Owner and his successor in title creating the relationship of principal and surety as between themselves, other than one by virtue of which such prior Adjoining Owner and his successor in title would otherwise be jointly and severally liable to pay such amounts.

(iii) Miscellaneous. An Adjoining Owner may bring legal action against the defaulting Adjoining Owner personally obligated to pay a Shared Cost Assessment or foreclose its lien against the defaulting Adjoining Owner's Unit or pursue both such courses at the same time or successively. Adjoining Owners are deemed to have, to the fullest extent permitted by law, waived the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained against a defaulting Adjoining Owner in the event of such foreclosure, and further waive all benefits that might accrue to an Adjoining Owner by virtue of any present or future homestead exemption or law exempting a Unit or portion thereof from sale.

(iv) Subordination of the Charges and Liens.

(A) The lien and permanent charge for the Shared Cost Assessments (together with late charges, interest, fees and cost of collection) authorized herein with respect to a Unit is hereby made subordinate to the lien of any unpaid taxes, and any mortgage or mortgages upon the Unit. Sale or transfer of a Unit shall not affect the lien of the Shared Cost Assessments. However, the sale or transfer of the Unit, which is subject to any mortgage, pursuant to a decree of foreclosure thereunder, or any proceeding or conveyance in lieu of foreclosure thereof, shall extinguish the lien of the Shared Cost Assessments which became due prior to such sale or transfer. No sale or transfer shall relieve the Unit's Adjoining Owner from liability for any Shared Cost Assessments thereafter becoming due or from the lien thereof. Notwithstanding anything in this Agreement to the contrary, no amendment, or change or modification of this Section shall be effective unless such amendment, change or modification shall be first consented to, in writing, by all mortgagees of record of affected Units.

(B) Such subordination is merely a subordination and shall not relieve the Unit's Adjoining Owner of his personal obligation to pay all Shared Cost Assessments coming due at a time when he is the Adjoining Owner; shall not relieve such Unit from the lien and permanent charge provided for herein (except as to the extent the subordinated lien and permanent charge is extinguished by foreclosure or deed in lieu thereof); and no sale or transfer of such Unit to the mortgagee or to any other person pursuant to a foreclosure sale, or deed in lieu thereof, shall relieve any previous Adjoining Owner from liability for any Shared Cost Assessment coming due before such sale or transfer.

5.15 Irrigation Wells and Pumps. There is hereby reserved for the benefit of the Association, for the purpose of irrigating any portions of the Development, an alienable, transferable, and perpetual right and easement (a) to pump water from lagoons, ponds, and other bodies of water located within the Development, and (b) to drill, install, locate, maintain, and use wells, pumps, and irrigation systems within the Common Areas.

5.16 Easements Deemed Granted and Reserved. All conveyances of a Unit hereunder, whether by the Founder or otherwise, will be deemed to have granted and reserved, as the context will require, all easements set forth in this Proclamation, including, but not limited to, those set forth in this ARTICLE 5.

5.17 No Partition. There will be no judicial partition of the Development or any part thereof, nor will any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Proclamation.

ARTICLE 6

MEMBERSHIP

6.1 Membership. Every Owner, including the Founder, of a Unit will be a Member of the Association. Ownership of a Unit will be the sole qualification for such membership. In the event that fee title to a Unit is transferred or otherwise conveyed, the membership in the Association, which is appurtenant thereto, will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

6.2 Voting Rights. The Association will initially have two (2) types of voting memberships which are as follows:

(a) Type A Member. Type A Members will be Owners (including the Founder) of Unit. A Type A Member will be entitled to one (1) vote for each ERU owned.

(b) Type B Member. The Type B Member will be the Founder or its designated assign. The Type B Member will be entitled to three (3) votes for each ERU held by Type A Members, plus one (1) vote during the Founder Control Period. Thereafter, the Type B Member will exercise votes only as to its Type A Memberships.

(c) Creation of Additional Membership Types. The Founder may create additional types of Members for any Additional Property added to this Proclamation pursuant to Section 2.2 including any property designated as Non-residential Unit pursuant to Section 2.2(a)(iii).

(d) Members in Good Standing Entitled to Vote. Payment of Special Assessments or Emergency Special Assessments will not entitle Type A Members to additional votes. Only those Members in good standing and eligible to vote pursuant to the Bylaws shall be entitled to cast any vote required or permitted hereunder, and only the votes of Members in good standing and eligible to vote shall be considered in any calculation of votes or any required percentage thereof.

(e) Voting By Multiple Owners. When any Unit of a Type A Member of the Association is owned Of Record in the name of two or more persons, other than husband and wife, either of whose vote will bind both, by an entity, or in any other manner of joint or common ownership, the owner who is present at said meeting of the Association is entitled to vote on behalf of such Unit. If more than one Owner is present at an Association meeting, the vote for such Unit will be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting; or the vote will be exercised by such co-Owner, or his duly appointed proxy, as will be designated in a writing by all co-Owners filed Of record, a copy of which will be delivered to the Secretary of the Association and will remain effective for all meetings until revoked by the co-Owners in a similar writing or until such designation terminates pursuant to the terms of such writing.

6.3 Association Governance by Board. A Board of Aldermen consisting of Three (3) or five (5) members will govern the Association. Initially, during the Founder Control Period, the Board will consist of

three (3) members appointed by the Founder, and following expiration of the Founder Control Period, the Board will consist of five (5) members elected as provided in the Bylaws of the Association.

6.4 Meetings and Membership Voting. Except as otherwise provided in this Proclamation, rules and procedures of the Association, including, but not limited to, conducting elections, meetings (both regular and special), and for casting of votes by members, and the number thereof required for quorums and approval or ratification, shall be as set forth in the Bylaws.

6.5 Voting Approval By Separate Membership Classifications. In the event a Membership classification is created under Section 6.2(c) for Non-residential Unit Owners, Founder hereby reserves the right to amend this Proclamation to require that Members approval or disapproval be exercised by class voting.

ARTICLE 7

MAINTENANCE

7.1 Responsibilities of Owners. Unless specifically identified herein as the responsibility of the Association, all maintenance and repair of Units together with all other improvements thereon or therein and all lawns, landscaping, and grounds on and within such property will be the responsibility of the Owner thereof. Each Owner will be responsible for maintaining his or its property in a neat, clean, and sanitary condition, and such responsibility will include the maintenance and care of all exterior surfaces of all Units, buildings, and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. Except as provided in Section 7.2(a) hereof, each Owner will also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. Such costs and expenses, including reasonable costs and expenses of collection and such fines as may be established by the Association, from time to time, to reimburse the Association for the administrative costs incurred thereby, or otherwise, will be a specific Assessment under Section 11.8. No Owner will (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Unit, building or other structure, or the landscaping, grounds, or other improvements within his or its property unless such decoration, change, or alteration is first approved, in writing, by the ARC, as provided in this Proclamation, or (ii) do any work which, in the reasonable opinion of the Board of Aldermen, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Board of Aldermen and the Owners, and the Mortgagees of property directly affected thereby or benefiting from such easement or hereditament.

7.2 Association's Responsibility.

(a) General. Except as may be herein otherwise specifically provided, the Association will maintain and keep in good repair all portions of the Common Areas and any easement area encumbering properties of Owners for which the Association is responsible under this Proclamation, including responsibility prior to transfer to the Association in accordance with Section 2.3, or under any Supplemental Declaration, which responsibility will include the maintenance, repair, and replacement of (i) all drainage not under the expressly specified jurisdictional care and maintenance of any governmental authority or the Association, and walking, ingress and egress easements shown and noted on the Site Plan, (ii) all private roads, road shoulders, alleys, services lanes, walks, trails, lagoons, ponds, parking lots, landscaped areas, and other improvements situated within the Common Areas or easements, (iii) security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of its said properties and which are not maintained by a public authority, public service district, public or private utility, or other person, and (iv) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon its said properties. The Association will not be liable for injury or damage to any person or property (A) caused by the elements or by

any Owner or any other person, (B) resulting from any rain or other surface water which may leak or flow from any portion of its properties, or (C) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor will the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of its properties or any other portion of the Property. No diminution or abatement of Assessments will be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Proclamation, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

(b) Work In Behalf of Owners. In the event that Founder or the Board of Aldermen determines that: (a) any Owner or Occupant has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he or it is responsible hereunder, or (b) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner or Occupant, and is not covered or paid for by insurance in whole or in part, then, in either event, Founder or the Association, except in the event of an emergency situation, may give such Owner written notice in accordance with Section 15.16 of Founder's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner, and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of emergency situations, such Owner will have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15)-day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Founder or the Association may provide (but will not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost will be added to and become a part of the Assessment to which such Owner and his property is subject and will become a lien against such property. In the event that Founder undertakes such maintenance, cleaning, repair, or replacement, the Association will promptly reimburse Founder for Founder's costs and expenses.

ARTICLE 8

INSURANCE AND CASUALTY LOSSES

8.1 Insurance.

(a) Association's Property Insurance. The Board of Aldermen will have the authority to obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association. Such coverage will insure all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover, after application of any deductibles, not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. If adequate property insurance can not be obtained at reasonable rates, the Board of Aldermen shall promptly cause notice of that fact to be hand delivered or mailed first class, postage prepaid, to all Owners.

(b) Association's Liability Insurance. The Board will have the authority to and will obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its Members, its Aldermen and officers, or any of its agents. Such public liability policy will provide such coverages as are determined to be necessary by the Board of Aldermen. If adequate liability insurance can not be obtained at reasonable rates, the Board of Aldermen shall promptly cause notice of that fact to be hand delivered or mailed first class, postage prepaid, to all Owners.

(c) Fidelity Bonds. The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a blanket fidelity bond for all officers, Aldermen, trustees and employees of the Association and all other persons handling or responsible for funds belonging to or administered by the Association, including any professional management company assisting with the administration of the Association. The total amount of the fidelity bond coverage required will be based upon the best business judgment of the Board of Aldermen. Fidelity bonds will meet the following requirements: the Association will be named as an obligee; the bonds will contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and the bond will provide that it may not be canceled or substantially modified (including cancellation for nonpayment of a premium) without at least ten (10) days prior written notice to the Association and each Mortgagee listed as a scheduled holder of a first Mortgage in the fidelity bond.

(d) Association's Other Insurance. The Board will have the authority and may obtain (a) workers' compensation insurance to the extent necessary to comply with any applicable laws and (b) other types and amounts of insurance as may be determined by the Board to be necessary or desirable, including, but not limited to, fidelity and Aldermen' and officers' liability coverage.

(e) Association's Policies. All such insurance coverage obtained by the Board of Aldermen will be written in the name of the Association as trustee for each of the Owners to the extent of his insurable interest and costs of all such coverage will be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development will be vested in the Board of Aldermen; provided, however, that no mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law, the Association will be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

(i) All policies will be written with a company holding a rating of A+ in a financial category of 10, or a better rating and financial category, as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best possible rating.

(ii) All property insurance policies will be for the benefit of the Owners and their Mortgagees as their interests may appear.

(iii) All policies will contain a waiver of the insurer's right to cancel without first giving thirty (30) days' prior written notice of such cancellation to the Association and to any Mortgagee to which a mortgagee endorsement has been issued.

(iv) In no event will the insurance coverage obtained and maintained by the Association's Board of Aldermen hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees, and all policies will contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their Mortgagees.

(v) All policies will contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's Aldermen and officers, the Owners, Occupants, the Association's manager and any Owner or member of the Owner's household.

(vi) All policies will contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners or Occupants or on account of the acts of any director, officer, employee, or agent of the Association or of its manager, without prior demand in writing to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured, said time to be at least thirty (30) days. All written demands shall be delivered to the Association and to each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued, at their respective last known address.

(vii) All liability insurance will contain cross-liability endorsements to cover liability of the Association to an individual Owner.

(viii) All policies will contain a provision that no act or by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy.

(ix) All policies will contain a provision that the insurer issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit owner, mortgagee, or beneficiary under a deed of trust; provided further, however, the insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each lot owner, and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses

(f) Owner's Insurance. It will be the individual responsibility of each Owner at his own expense and election to provide public liability, property damage, title, and other insurance with respect to his or its own Unit. The Board of Aldermen may require all Owners to carry public liability and property damage insurance with respect to their respective properties and to furnish copies or certificates thereof to the Association.

8.2 Damage or Destruction to Common Areas: Insurance Recover. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board will obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this ARTICLE 8, means repairing or restoring the damaged property substantially to the same condition in which it existed prior to the fire or other casualty. Unless the Association is terminated, or repair or replacement would be illegal under any State or local health or safety statute or ordinance, or the Owners, by a vote of eighty percent (80%) or more of the votes of the entire Association, including one hundred percent (100%) approval of owners assigned to any limited common elements not to be rebuilt by a duly held Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), and to which the Founder consents during the Founder Control Period, vote not to rebuild or restore, then within sixty (60) days following any damage or destruction to all or a part of the Common Areas, the Association will restore or replace such damaged improvements. If any insurance proceeds for such damage or destruction are not sufficient to defray the cost thereof, including any amount attributable to Association's insurance deductible, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 11.5(a) hereof, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost or repair or reconstruction. Such a Special Assessment will be levied against the Owners equally

in the same manner as Annual Assessments are levied, and additional Special Assessments may be made at any time during or following the completion of any repair or reconstruction. If it is determined that the damage or destruction for which the insurance proceeds are paid will not be repaired or reconstructed, such proceeds will be used to restore the damaged or destroyed Common Areas to a condition compatible with the remainder of the subdivision. Any remaining insurance proceeds will be distributed to the Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all Units.

8.3 Damage or Destruction to Owners' Properties. In the event of damage or destruction by fire or other casualty to any property subject to this Proclamation, or the improvements thereon, and in the further event that the Owner responsible for the repair and replacement of such property elects not to repair or rebuild, such Owner will promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such property in a clean, orderly, safe, and sightly condition. Should such Owner elect to repair or rebuild such property or other improvements thereon, such Owner will repair or rebuild substantially to the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provision of this Proclamation (including, without limitation, the procedures and architectural guidelines under ARTICLE 4) and all applicable zoning, subdivision, building, and other governmental regulations. All such work or repair or construction will be commenced promptly following such damage or destruction and will be carried through diligently to conclusion.

8.4 Damage or Destruction to Common Areas by Owners. If an Owner is responsible for damage inflicted on any Common Area, the Association may direct such Owner to repair such damage, or the Association may itself cause the repairs to be made and recover the amount from the Owner.

8.5 Damage to an Owner's Unit by Association. If damage is inflicted on any Unit by an agent of the Association in the scope of the agent's activities as such agent, the Association is liable to repair such damage or to reimburse the Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Owner.

8.6 Hearing Procedure Following Damage or Destruction. When a claim arising under Sections 9.4 or 9.5 is less than or equal to \$4,000 or the then current jurisdictional amount for small claims pursuant to N.C. Gen. Stat. 47F-3-107, the aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the Board of Aldermen to determine if an Owner is responsible for damages to any Common Area or if the Association is responsible for damages to a Unit. The adjudicatory panel may assess liability for the damage incurred by the aggrieved party. If the amount of damage is found to be more than the current jurisdictional amount for small claims, liability of any Owner or the Association shall be determined as otherwise provided by law.

(a) If the party charged is assessed an amount pursuant to this Section said amount will be due within thirty (30) days of receipt of the amount assessed.

(b) Any assessment payable by an Owner remaining unpaid for thirty (30) days, together with simple interest at a rate established from time to time by the Board of Aldermen, not to exceed eighteen (18%) per annum, will be an equitable charge and a continuing lien when a claim of lien is filed of record in the office of the Clerk of Superior Court in Brunswick County, North Carolina. A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Unit at the time of the claim of lien is filed, a description of the Unit and the amount of the lien claimed. A lien for unpaid assessments for damages by an Owner is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court in Brunswick County, North Carolina.

(c) A judgment, decree, or order in any action brought under this Section shall include costs and reasonable attorney's fees of enforcement and collection for the prevailing party.

(d) In addition, any liabilities of the Association determined by the adjudicatory Panel in the hearing pursuant to Section 8.6(e)(ii) below or as otherwise provided by law may be offset by the Owner against sums owing to the Association and if so offset, shall reduce the amount of any Lien of the Association against the Unit at issue.

(e) Procedure. In the event an aggrieved party requests that an Owner or the Association be brought before an adjudicatory Panel, the following procedures shall control.

(i) Notice. If an aggrieved party requests a hearing pursuant to this Section 9.6, then the Board shall provide the party charged with twenty (20) days notice of the time and place of the hearing and the damage alleged.

(ii) Hearing. All hearings under this Section 8.6 will be held before an adjudicatory panel appointed by the Board, or if no adjudicatory panel is appointed, the hearing will be before the Board itself sitting as the adjudicatory panel. The party charged will be afforded an opportunity to be heard and to present witnesses and written notice of the decision

ARTICLE 9

CONDEMNATION

9.1 Condemnation of Common Areas. Whenever all or any part of the Common Areas of the Development will be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the affirmative vote of seventy-five percent (75%) or more of the votes of the entire Association, by a duly held Referendum or at a duly held meeting of Members, which percentage will also constitute the quorum required for any such meeting, and following written approval by the Founder for so long as Founder owns any of the Property primarily for development or sale, the award or proceeds made or collected for such taking or sale in lieu thereof will be payable to the Association and will be disbursed or held as follows:

(a) Common Areas With Improvements. If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Founder, for so long as Founder owns any of the Property primarily for development or sale, and the Board, acting on the vote of seventy-five percent (75%) or more of the votes of the entire Association, by a duly held Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), will otherwise agree, the Association will restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefore, in accordance with the plans approved by the Board of Aldermen, the ARC, and by Founder during the Founder Control Period. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Aldermen may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 11.5, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost or repair or reconstruction. Such a Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Special Assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds will be retained by and for the benefit of the Association.

(b) Common Areas Without Improvements. If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or net funds will be retained by and for the benefit of the Association.

(c) Including Owner's Property. If the taking or sale in lieu thereof includes all or any part of an Owner's property and also includes any part of the Common Areas, then a court of competent jurisdiction will apportion such award or proceeds and such award or proceeds will be disbursed to the Association and the Owners so affected so as to give just compensation to the Owners for their interest in such property; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board of Aldermen, (ii) the Owners of all properties wholly or partially taken or sold, together with the Mortgagees for each such property, and (iii) Founder, for so long as Founder owns any of the Property primarily for development or sale.

9.2 Condemnation of Owners' Properties.

(a) Election Not To Restore. In the event that all or any part of a property subject to this Proclamation, or any improvements thereon is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner thereof elects not to restore the remainder of such property, then the Owner making such election will promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and will leave such property and any remaining undamaged improvements thereon in a clean, orderly, safe, and slightly condition. In addition, if the size or configuration of such property remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provision of this Proclamation and all applicable zoning, subdivision, building, and other governmental regulations, then such Owner will have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and slightly condition referred to above, of deeding the remaining portion of the property to the Association as a part of the Common Areas, and thereafter any such Owner will not have any further voting rights or membership rights or privileges in the Association or with respect to the Development and will not be subject to any further Assessments imposed by the Association and payable after the date of such deeding and attributable to such property deeded to the Association.

(b) Election to Restore. In the event that any part of a property subject to this Proclamation, or any improvements thereon, is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner thereof elects to restore the remainder of the property, such Owner making such election will restore such remainder thereof as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Proclamation and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration will be commenced promptly following such taking or conveyance and will be carried through diligently to conclusion.

ARTICLE 10

FUNCTIONS OF THE ASSOCIATION

10.1 Board of Aldermen and Officers. The Association, subject to the rights of Founder and the rights and duties of the Owners set forth in this Proclamation, will be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and will keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. Except to the extent otherwise required by the provisions of the North Carolina Planned Community Act, the North Carolina Nonprofit Act, this Proclamation, the Bylaws, or the Articles of Incorporation, the powers herein or otherwise granted to the Association shall be exercised by the Board of Aldermen, acting through the officers of the Association and their duly authorized delegates, without any further consent or action on the part of the Owners. As provided in Section 15.1 hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Development, Founder will have the right to appoint or remove any member or

members of the Board of Aldermen or any officer or officers of the Association during the Founder Control Period. Each Owner, by acceptance of a deed to or other conveyance of a Unit vests in Founder such authority to appoint and remove Aldermen and officers of the Association as provided by this Section 10.1 and by Section 15.1 hereof.

10.2 Duties and Powers. The duties and powers of the Association will be those set forth in the provision of the North Carolina Planned Community Act, the North Carolina Nonprofit Corporation Act, the Bylaws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided; however, that if there are conflicts or inconsistencies between the North Carolina Planned Community Act, the North Carolina Nonprofit Corporation Act, this Proclamation, the Bylaws, or the Articles of Incorporation, the provisions of the North Carolina Planned Community Act, the North Carolina Nonprofit Corporation Act, this Proclamation, the Articles of Incorporation, and the Bylaws, in that order, will prevail, and each Owner of a property within the Development, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Proclamation or the Bylaws, together with every other right or privilege reasonable to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association will include, but will not be limited to, the power to purchase one or more properties subject to this Proclamation and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but will not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to the Owners, to furnish trash collections, water, sewer, and/or security service for the properties subject to this Proclamation. Notwithstanding the foregoing provision of this Section 10.2 or any other provision of this Proclamation to the contrary, during the Founder Control Period the Association will not, without the written approval of Founder, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

(a) **Ownership of Properties.** The Association will be authorized to own, purchase, lease, use under any use agreement, and maintain (subject to the requirements of any Federal, State or local governing body of North Carolina) Common Areas, equipment, furnishings, and improvements devoted to the uses and purposes expressed and implied in this Proclamation, including, but not limited to, the following uses:

- (i) For walks, paths and trails throughout the Property;
- (ii) For security services, including security stations, maintenance building and/or guardhouses;
- (iii) For providing any of the services which the Association is authorized to offer under Section 10.2(b) below; and
- (iv) For purposes set out in deeds or agreements by which Common Areas are conveyed or by which use rights are granted to the Association.

(b) **Services.** The Association will be authorized (unless prohibited by the requirements of any Federal, State or local governing body) to provide such services required to promote the uses and purposes for which the Association is formed as expressed or implied in this Proclamation, including, but not limited to, the following services:

- (i) Cleanup and maintenance of all private roads, roadways, road shoulders, roadway medians, parkways, lakes, lagoons, drainage areas and easements and Common Areas within the Property and also all public properties which are located within or in a reasonable proximity to the Property such that their deterioration would affect the appearance of the Property as a whole;

Common Area;

(ii) Landscaping of Common Areas and walking paths within or constituting a

(iii) Lighting throughout the Property;

(iv) Maintenance of any installed electronic and other access and control devices for the protection of the Property, if any such devices are ever installed, and assistance to the local police and sheriff departments in the apprehension and prosecution of persons who violate the laws of North Carolina within the Property;

(v) Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Aldermen to supplement the service provided by the state and local governments;

(vi) The services necessary or desirable in the judgment of the Board of Aldermen to carry out the Association's obligations and business under the terms of this Proclamation and to collect Annual Assessments, Special Assessments, Emergency Special Assessments, specific Assessments, and other fees and charges collectable from the Owners hereunder;

(vii) To take any and all actions necessary to enforce these and all covenants and restrictions affecting the Property and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Property;

(viii) To set up and operate an architectural review board in the event that the Association is assigned the whole or any portion of the function of the ARC by the Founder, pursuant to this Proclamation.

(ix) To construct improvements on Common Areas for use for any of the purposes or as may be required to provide the services as authorized in this Section;

(x) To provide administrative services including but not limited to legal, accounting and financial; and communications services informing Members of activities, notice of Meetings, Referendums, etc., incident to the above listed services;

(xi) To provide liability and hazard insurance covering improvements and activities on Common Areas;

(xii) To provide water, sewage, and any necessary utility services not provided by a public body, private utility or the Founder;

(xiii) To provide any or all of the above listed services to another Association or Owners of real property under a contract, the terms of which must be approved by the Board of Aldermen; and

(xiv) To provide for hearings and appeal process for violations of rules and regulations.

10.3 Agreements. Subject to the prior approval of Founder during the Founder Control Period, all agreements and determinations lawfully authorized by the Board of Aldermen will be binding upon the Association and all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development will comply with and be subject to the authorized actions of the Board of Aldermen. In performing its responsibilities hereunder, the Board of Aldermen, will have the authority to delegate to persons of its choice

such duties of the Association as may be determined by the Board of Aldermen. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association will deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager will be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Aldermen, exercise all of the powers and will be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the Aldermen, officers, or Members of the Association by this Proclamation or the Bylaws. Such manager may be an individual, corporation, or other legal entity, as the Board of Aldermen will determine, and may be bonded in such a manner as the Board of Aldermen may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Aldermen may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Proclamation, the Bylaws, or the rules and regulations of the Association.

10.4 Mortgage or Pledge. Subject to the provisions of Section 5.2(a), the Board of Aldermen will have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans will be used by the Association in performing its authorized functions upon the approval of eighty percent (80%) or more of the votes of the entire Association, by a duly held Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting). The Founder may make loans to the Association, subject to approval by the Founder of the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Proclamation to the contrary, the Association will not be allowed to reduce the limits of the regular Annual Assessment at any time there are outstanding any amounts due the Founder as repayment of any loans made by the Founder to the Association.

10.5 Conveyance Common Area. The Association may convey portions of the Common Area if persons entitled to cast at least ninety-five percent (95%) of the votes in the Association agree in writing.

10.6 Personal Property and Real Property for Common Use. The Association, through action of its Board of Aldermen, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, will be held by and for the benefit of the Association. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Unit also transfers the membership in the Association, which is an appurtenance to such Unit.

10.7 Rules and Regulations. As provided in ARTICLE 12 hereof, the Board of Aldermen, may make, amend, revoke and enforce reasonable rules and regulations governing the use of the Units and Common Areas, which rules and regulations will be consistent with the rights and duties established by this Proclamation.

10.8 Reduction in Services. During the calendar years of 2002 and 2003, and during the first two years when any Additional Property may be added to this Proclamation, the Board of Aldermen will define and list a minimum level of services, which will be furnished by the Association. So long as the Founder is engaged in the development of properties that are subject to the terms of this Proclamation, the Association will not reduce the level of services it furnishes below such minimum level. Such minimum level of service

will expressly include an obligation of the Association to maintain the Common Areas and pay the costs and expenses set forth in any lease or use agreement therefor.

10.9 Obligation of the Association. The Association will not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 10.8 above. The functions and services to be carried out or offered by the Association at any particular time will be determined by the Board of Aldermen taking into consideration the funds available to the Association and the needs of the Members of the Association. Special Assessments will be submitted for approval as herein provided. Subject to the provisions of Section 10.8 above, the functions and services which the Association is authorized to carry out or to provide may be added or reduced at any time upon the sole approval of the Founder during the Founder Control Period, and thereafter, the functions and services which the Association is authorized to carry out or to provide may be added or reduced by the Board acting on the vote of fifty-one percent (51%) or more of the votes of the entire Association, by a duly held Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting).

ARTICLE 11

ASSESSMENTS

11.1 Purpose of Assessments. The Assessments for Common Expenses provided for herein will be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Development, and maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board of Aldermen.

11.2 Creation of Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed or other conveyance thereof, whether or not it will be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments, such Assessments to be established and collected as provided in Section 11.3, (b) Special Assessments, such Assessments to be established and collected as provided in Section 11.5, (c) Emergency Special Assessments, such Assessments to be established and collected as provided in Section 11.6, (d) individual or specific Assessments pursuant to Section 11.8. Any such Assessments remaining unpaid for thirty (30) days, together with late charges, simple interest at a rate established from time to time by the Board of Aldermen, and court costs and attorneys' fees incurred to enforce or collect such Assessments, will be an equitable charge and a continuing lien when a claim of lien is filed of record in the office of the Clerk of Superior Court in Brunswick County, North Carolina. A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Unit at the time of the claim of lien is filed, a description of the Unit and the amount of the lien claimed. Each Owner will be personally liable for Assessments, coming due while he is the Owner of a property, and his grantee will take title to such property subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid Assessments will be subordinate to liens and encumbrances (specifically including, but not limited to, a Mortgage on the Unit) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Unit. Sale or transfer of a Unit shall not affect the lien of the Assessments. However, where the holder of a Mortgage, or other purchaser of a Unit obtains title thereto as a result of foreclosure of a Mortgage, such purchaser and its heirs, successors, and assigns, shall not be liable for the Assessments against such Unit which became due prior to the acquisition of title to such Unit by such purchaser. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Owners including such purchaser, its heirs, successors, and assigns. In the event of co-ownership of any property subject to this Proclamation, all of such co-Owners will be jointly and severally liable for the entire amount of such Assessments. Assessments will be paid in such manner and on such dates as may be

fixed by the Board of Aldermen in accordance with Section 11.3(d), provided that unless otherwise provided by the Board, the Annual Assessments will be paid in equal monthly installments. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court in Brunswick County, North Carolina. A judgment, decree, or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

11.3 Establishment of Annual Assessment. It will be the duty of the Board of Aldermen at least ninety (90) days prior to the first day of the Association's first full fiscal year, and each fiscal year thereafter, to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a reserve account, if necessary, for the capital needs of the Association. In calculating the budget, the Board shall have the power to either reduce the budgeted expenses for the fiscal year being budgeted or to set aside such surplus in such operating and/or capital reserve account as the Board, in its sole discretion, shall determine. The Board will cause notice of the budget and the proposed total of the Annual Assessments to be levied against properties subject to this Proclamation for the following year to be delivered to each Owner at least thirty (30) days prior to the first day of the fiscal year for which the budget and Assessments are established. Such notice shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of said notice. The total Annual Assessments will be divided among Units equally, each unimproved Unit bearing the same Assessment as an improved Unit.

(a) Disapproval of Annual Assessments. The annual budget and Annual Assessments, as determined by the Board of Aldermen, as hereinabove provided, will become effective unless disapproved (a) solely by the Founder in writing during the Founder Control Period, and (b) thereafter by a majority of the total Association vote at a meeting to consider ratification of the budget, which percentage will also constitute the quorum required for any such meeting. Notwithstanding the foregoing, in the event the proposed budget and Annual Assessments are disapproved or in the event the Board of Aldermen fails for any reason to determine an annual budget and to set the Annual Assessments, then and until such time as a budget and Annual Assessment will have been determined as provided herein, the budget and Annual Assessments will be the Default Budget and Default Annual Assessments calculated in accordance with Section 11.4.

(b) Board Authority to Increase. If the Board of Aldermen determines that the important and essential functions of the Association budgeted for the year will not be properly funded by the Annual Assessment herein provided, it may increase such Assessment; provided, however, an increase in Assessments in any year pursuant to special Board action as aforesaid will in no way affect Annual Assessments for subsequent years.

(c) Initial Annual Assessments. The Board of Aldermen will establish the initial Annual Assessment for all Owners of Units for the calendar year in which this Proclamation is filed Of Record within ninety (90) days following the date this Proclamation is filed Of Record. Notwithstanding the establishment of such initial budget and initial Annual Assessments, the Board of Aldermen may charge a lesser amount until such time as improvements constituting Common Areas have been substantially completed.

(d) Billing of Annual Assessments. The Annual Assessments may, in the sole discretion of the Board of Aldermen, be billed monthly, quarterly, semiannually or annually, and will be due and payable on or before the last day of the month in which billed.

(e) Rounding. All Annual Assessments charged by the Association will be rounded off to the nearest dollar.

(f) For Common Expenses. The Common Expenses to be funded by the Annual Assessments may include, but will not necessarily be limited to, the following:

(i) management fees and expenses of administration, including legal and accounting fees;

(ii) utility charges for utilities serving the Common Areas and charges for other common services for the Development, including trash collection and security services, if any such services or charges are provided or paid by the Association;

(iii) the cost of any policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Proclamation, including fire, flood, and other hazard coverage, public liability coverage, and other insurance coverage determined by the Board to be in the interests of the Association and the Owners;

(iv) the expenses of maintenance, operation, and repair of those portions of the Common Areas which are the responsibility of the Association under the provisions of this Proclamation;

(v) the expenses of any architectural review board established to receive and administer the whole or any portion of the ARC functions transferred and conveyed to the Association pursuant to this Proclamation which are not defrayed by plan review charges;

(vi) ad valorem real and personal property taxes assessed and levied against the Common Areas;

(vii) such other expenses as may be determined from time to time by the Board of Aldermen to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Units; and

(viii) the establishment and maintenance of a reasonable reserve fund or funds (i) for maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired, or replaced on a periodic basis, (ii) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (iii) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Aldermen.

11.4 Determination of Default Budget and Default Annual Assessment. Upon the failure of the Board of Aldermen to adopt a budget, or upon the disapproval of any budget pursuant to Section 11.4(a), the Default Budget and Default Annual Assessments will be the greater of:

(i) The then existing budget and Annual Assessments, increased in proportion to the percentage increase, if any, in the "CPI-U," as hereinafter defined, from December of the preceding year to November of the then current year in which the said maximum budget and Annual Assessment is being determined, or by ten percent (10%), whichever is greater; or

(ii) The budget and Annual Assessments for the year in which this Proclamation is filed Of Record by the Founder, increased to the year in which the said maximum budget and Annual Assessment is being determined in proportion to the percentage increase, if any, in the "CPI-U," as hereinafter defined, from December of the year preceding the year in which this Proclamation is filed Of Record to November of the year in which the said maximum budget and Annual Assessment is being determined, or by ten percent (10%) per annum, compounded, whichever is greater.

The "CPI-U" will mean the Consumer Price Index for All Urban Consumers (1982-84'100), or, if such index is discontinued or revised, by reference to such other government index or

computation with which it is replaced or which would produce substantially the same measure as would be obtained if such index had not been discontinued or revised.

(b) Change in Default Amounts Upon Merger or Consolidation. The limitations of Section 11.4 will apply to any merger or consolidation in which the Association is authorized to participate under Section 2.2(c), and under the Bylaws of the Association.

11.5 Special Assessments for Improvements and Additions.

(a) Purposes. In addition to the regular, Annual Assessments authorized by Section 11.3 hereof, the Association may levy Special Assessments, for the following purposes:

(i) Construction, Reconstruction, and Repair. For the construction, reconstruction, unexpected repair or replacement of a damaged capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto as well as any insurance policy deductible if the damage is an insured loss;

(ii) Provide Essential Facilities and Equipment. For the unexpected and unbudgeted acquisition of necessary facilities and equipment required for the Association to offer the services authorized herein;

(iii) Extraordinary Expenditures. To provide funding for such other extraordinary and unbudgeted expenditures of the Association as the Board shall determine to be required for the efficient discharge of the Association duties and responsibilities hereunder, and which cannot, in the Board's reasonable judgment, be delayed until the next budget is prepared.

(b) Approval by Founder and Disapproval by Members. Except as otherwise permitted in Sections 5.3(a), 8.2, 9.1 and 11.6 hereof, any Special Assessment will only be levied if: (a) during the Founder Control Period the Founder approves, in writing, such Special Assessment; and (b) after the Founder Control Period the Special Assessment is not disapproved by sixty-seven percent (67%) or more of the votes of the entire Association at a special meeting of Members called therefor and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting. The notices of such special meeting will include one statement from the Aldermen favoring the Special Assessment and one statement from those Aldermen opposing the Special Assessment containing the reasons for those Aldermen's support and opposition for the Special Assessment, if any such statements are provided by the Aldermen supporting and opposing the Special Assessment (Aldermen being under no obligation to provide such statements).

(i) Founder may change the within voting requirement to a class voting requirement requiring disapproval by Residential Unit Owners and Non-residential Unit Owners or such lesser percentages as may be established by Supplemental Declaration if additional property per Section 2.2(a)(iii) is added.

(c) Apportionment. Special Assessments will be apportioned among the Units equally in the same manner as Annual Assessments.

11.6 Emergency Special Assessments. In addition to the Annual Assessments authorized by Section 11.3 and the Special Assessment authorized by Section 11.5 hereof, the Association may levy Assessments for repairs, reconstruction, alterations or improvements due to emergencies of any type, as determined by the Founder during the Founder Control Period, and/or by the Board of Aldermen, in their sole discretion ("Emergency Special Assessment"). Any Emergency Special Assessment may be imposed without a vote of the Members. Emergency Special Assessments will be apportioned among the Units equally in the

same manner as Annual Assessments unless it is determined by the Founder and/or Board that another apportionment thereof is more reasonable and more equitably justified by the circumstances giving rise to such emergency.

11.7 Founder's Properties. Anything contained herein to the contrary notwithstanding, Founder will be exempt from the payment of Annual Assessments, Special Assessments and Emergency Special Assessments with respect to unimproved Units and unoccupied Units owned by the Founder and subject to this Proclamation. The Founder hereby covenants and agrees, however, that during the Founder Control Period it will annually elect either to pay an amount equal to the Annual Assessment for each such Unit owned by it or to pay the difference between the amount of Assessments collected on all other Unit not owned by Founder and the amount of actual expenditures by the Association during the fiscal year, but not in a sum greater than the Annual Assessments Founder would pay if not exempt therefrom. Unless the Founder otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Founder will be deemed to have elected to continue paying on the same basis as existed during the immediately preceding year. Furthermore, so long as the Founder owns any Unit for sale, the Founder may, but will not be obligated to, reduce the Annual Assessment for any year to be paid by Owners. The Founder will fund any such reduction in the amount assessed against the Owners as a subsidy. Any such subsidy will, in the Founder's sole discretion, be (a) a contribution to the Association, (b) an advance against future Annual Assessments due from said Founder, or (c) a loan to the Association. The amount and character (contribution, advance or loan) of such payment by the Founder will be conspicuously disclosed as a line item in the budget and will be made known to the Owners. The payment of such a subsidy in any year will under no circumstances obligate the Founder to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Founder. Any such subsidy payment by Founder may be made in-kind.

11.8 Individual Specific Assessments.

(a) Any expenses incurred by the Association or the Founder because of the negligence or misconduct of one or more Owners or Occupants, and with respect to which such expenses are chargeable thereto and recoverable therefrom pursuant to any provision of this Proclamation, and any fines as may be imposed against an Owner in accordance with ARTICLE 11, and any Common Expense or portion thereof benefiting fewer than all of the Units, and chargeable therefor, will be specially assessed as a specific Assessment against each such Owner and the Owner's Unit to whom and to which such expense or fine is chargeable. The provisions hereof are subject to the right to a hearing pursuant to Section 8.6 if such specific Assessment is assessed as a result of damage to or destruction of a Common Area. Assessments to pay a judgment against the Association shall be made only against the Units in the Development at the time the judgment was entered, in equal proportions, as an individual specific Assessment

(b) The Owners of Units assigned to a specific Utility District will share the maintenance, repair and replacement costs and expenses arising from said Utility District. The costs and expenses will be a Limited Common Expense and specifically assessed based on the Unit's prorated share of said costs and expenses. Upon the availability of regional sewerage service to a Utility District each Unit Owner therein shall be notified that a conversion from the current system to the regional service will occur and does hereby agree to allow access, during normal business hours, to their property for purposes related to the conversion. The Owner or occupant shall not by disallowing access, refusal to pay any special assessment associated therewith, or in any other manner, prohibit the Founder or the Association from proceeding in a timely fashion with the conversion. The Association, upon approval of the Founder, shall be empowered to oversee the conversion process which may include, but is not limited to, assessing Owners therein an amount equal to their estimated share of their prorated costs of the conversion and paying the associated costs therefore. The Association shall proceed with and complete the conversion process upon notification, in a timely fashion as Time is of the Essence, therewith. Nothing contained herein shall preclude the Association

from proceeding with the conversion or paying the associated costs therewith prior to receipt of any assessment to Owners for the purpose of reimbursing the Association for the conversion costs.

11.9 Effect of Nonpayment; Remedies of the Association. An Assessment shall be due in full not later than the last day of the month in which the Assessment is billed, and any Assessment or portions thereof which is not paid when so due will be delinquent. Any delinquent Assessment will incur a late charge in an amount as may be determined by the Board from time to time and, upon adoption of a policy therefor by the Board of Aldermen, will also commence to accrue simple interest at the rate set by the Board of Aldermen from time to time not to exceed eighteen percent (18%) per year. A claim of lien may be filed as discussed in Section 11.2 for each Assessment installment remaining unpaid for thirty (30) days as the same will become due and payable, and if an Assessment installment has not been paid as aforesaid, the entire unpaid balance of the Assessment installments remaining to be paid during the fiscal year may be accelerated by the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such Assessment will include all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law, subordinate only to liens as provided in Section 11.2 above. In the event that the Assessment remains unpaid sixty (60) days following the date when so due, the Association may institute suite to collect such amounts and to foreclose its lien within three years from the docketing of the claim of lien in the office of the Clerk of Superior Court for Brunswick County, North Carolina, otherwise said lien will be extinguished. The equitable charge and lien provided for in this Section will be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Unit, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such Assessments as a debt and/or to foreclose the aforesaid lien in like manner as a mortgage of real property. The Association will have the power to bid on the Unit at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Unit, and an Owner will remain personally liable for Assessments, including interest and late charges which accrue prior to a sale, transfer, or other conveyance of his Unit.

11.10 Certificate. The Treasurer, any Assistant Treasurer, or the manager of the Association will, within ten (10) days of a written request furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate signed by the Treasurer, Assistant Treasurer, or manager setting forth whether the Assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other penalty charges. Such certificate will be conclusive evidence against the Association, the Board, and every Unit Owner of payment of any Assessments stated therein to have been paid.

11.11 Date of Commencement of Assessments. The Assessments provided for herein will commence on the date on which a Unit is conveyed to a person other than Founder and will be due and payable in such manner and on such schedule as the Board of Aldermen may provide. Annual Assessments, Special Assessments and Emergency Special Assessments will be adjusted for such property according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such property is first conveyed.

11.12 Working Capital Collected At Closing. Notwithstanding anything to the contrary in this Proclamation, a working capital fund will be established for the Association by collecting a working capital amount equal to one-sixth ($1/6^{\text{th}}$) of the Annual Assessment then in effect at the time of each closing taking place within Devaun Park, which Assessment will be due and payable, and will be transferred to the Association, at the time of transfer of each Unit. Such sum is and will remain distinct from the Annual Assessment and will not be considered advance payment of the Annual Assessment. The working capital receipts may be used by the Association in covering operating expenses as well as any other expense incurred by the Association pursuant to this Proclamation and the Bylaws.

ARTICLE 12RULE MAKING

12.1 Rules and Regulations. Subject to the provisions hereof, the Board of Aldermen may establish reasonable rules and regulations concerning the use of Units, the Common Areas and facilities located thereon. In particular, but without limitation, the Board of Aldermen may promulgate, from time to time, rules and regulations that will govern activities that may, in the judgment of the Board of Aldermen, be environmentally hazardous, such as application of fertilizers, pesticides, and other chemicals. The Association will furnish copies of such rules and regulations, and amendments thereto, to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations will be binding upon the Owners and Occupants until and unless any such rule or regulation is specifically overruled, cancelled, or modified by the Board of Aldermen or any such rule or regulation is disapproved by a majority or more of the votes of the entire Association at a special meeting of Members called therefor and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting. Any action by the Board to adopt, overrule, cancel or modify any rule or regulation, or any vote of Members disapproving any rule or regulation, will not be effective and binding upon the Owners and Occupants until and unless the same is approved by the Founder during the Founder Control Period.

12.2 Authority and Enforcement. Subject to the provisions of Section 12.3 hereof, upon the violation of this Proclamation, the Bylaws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Board will have the power (i) to impose reasonable monetary fines which will constitute an equitable charge and a continuing lien as a specific Assessment, (ii) to suspend an Owner-Member's right to vote in the Association, or (iii) to suspend an Owner's or Occupant's right to use any of the Common Areas. The Board will have the power to impose all or any combination of these sanctions, and may establish each day a violation remains uncured as a separate violation for which a fine is due; provided, however, an Owner's access to its property over the private roads and streets constituting Common Areas will not be terminated hereunder. An Owner or Occupant will be subject to the foregoing sanctions in the event of such a violation by such Owner or Occupant. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

12.3 Procedure. Except with respect to the failure to pay Assessments, the Board will not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other Occupant of the Development for violations of the Proclamation, Bylaws, or any rules and regulations of the Association, unless and until the following procedures are followed:

(a) Demand to Cease and Desist. Written demand to cease and desist from an alleged violation will be served upon the Owner responsible for such violation specifying:

- (i) The alleged violation;
- (ii) The action required to abate the violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Proclamation, the Bylaws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(b) Notice of Hearing. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation

subsequently occurs, the Board may serve such Owner with written notice, in accordance with 15.16 of a hearing to be held by the Board in executive session. The notice will contain:

- (i) The nature of the alleged violation;
- (ii) The time and place of the hearing, which time will be not less than ten (10) days from the giving of the notice;
- (iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and
- (iv) The proposed sanction to be imposed.

(c) Hearing. The hearing will be held in executive session of the Board of Aldermen pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if a copy of the notice together with a statement of the date and matter of delivery is entered by the officer, alderman, or other individual who delivered such notice. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any.

ARTICLE 13

MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first mortgages on Units in the Properties. The provisions of this Article apply to both this Proclamation and to the Bylaws, notwithstanding any other provisions contained therein.

13.1 Notice of Action. An institutional holder, insurer, or guarantor of a first mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Condemnation or Casualty. Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Unit on which there is a first mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Assessment Payment Delinquency. Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Proclamation or Bylaws relating to such Unit or the Owner or Occupant which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a first mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Unit of any obligation under the Proclamation or Bylaws, which is not cured within sixty (60) days;

(c) Insurance Change. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) Matter Requiring Vote. Any, proposed action that would require the consent of a specified percentage of Eligible Holders.

13.2 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first mortgagees or Members holding at least sixty-seven percent (67%) of the total Association vote consent, the Association shall not:

(a) Change in Common Areas. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Areas which the Association owns, directly or indirectly; provided, however, areas set aside for LPP cluster wastewater systems shall be free and clear of this requirement upon change to an approved provider and reclamation thereof by the Founder. The granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this subsection;

(b) Change in Method of Levy. Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit;

(c) Abandon Architectural Scheme. By act or omission waive or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Units and the Common Areas (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail To Maintain Insurance. Fail to maintain insurance, as required by this Proclamation; or

(e) Use of Proceeds for Other Than Repair. Use hazard insurance proceeds for any Common Areas losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas and may pay overdue premiums on property insurance policies or secure new property insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

13.3 No Priority. No provision of this Proclamation or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

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

13.5 Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements that necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

13.6 Applicability of ARTICLE 13. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Proclamation, Bylaws, or North Carolina law for any of the acts set out in this Article.

13.7 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association

does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE 14

ALTERNATIVE DISPUTE RESOLUTION & LITIGATION

14.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Founder, Association, Owners, and any person not otherwise subject to the Proclamation who agrees to submit to this ARTICLE 14 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving this Proclamation or the Development, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving the Proclamation or the Development including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 14.2, are subject to the procedures set forth in Section 14.3.

14.2 Exempt Claims. The following Claims ("Exempt Claims") are exempt from the provisions of Section 14.3:

(a) Enforcement of Assessments. any suit by the Association against a Bound Party to enforce any Assessments or other charges hereunder; and

(b) Court Order to Maintain Status Quo. any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association hereunder until the matter may be resolved on the merits pursuant to Section 14.3 below; or

(c) Suites Between Owners Not Involving Founder or Association. any suit between Owners which does not include the Founder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Proclamation and the Development; or

(d) Indispensable Party Not a Bound Party. any suit in which an indispensable party is not a Bound Party; or

(e) Suit Otherwise Barred by Statute of Limitations. any suit which otherwise would be barred by any applicable statute of limitation; or

(f) Bound Party Waiver of Mandatory Provisions. any suit involving a matter that is not an Exempt Claim under (a) through (e) above, but as to which matter the Bound Party against whom the Claim is made waives the mandatory provisions of Section 14.3 below.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 14.3, but there is no obligation to do so.

14.3 Mandatory Procedures for Non-Exempt Claims. Any Bound Party having a Claim ("Claimant") against a Bound Party involving this Proclamation or the Development, or all or any combination of them ("Respondent"), other than an Exempt Claim under Section 14.2, will not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of the

Claim until it has complied with the procedures set forth in Exhibit "C" attached hereto and incorporated herein by this reference, and then only to enforce the results hereof:

14.4 Litigation. No judicial or administrative proceeding, including any mandatory procedure under Section 14.3 above, with an amount in controversy exceeding \$10,000.00, will be commenced or prosecuted by the Association unless approved by seventy-five percent (75%) or more of the votes of the entire Association, by a duly held Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required for any such meeting. This Section will not apply, however, to (a) actions brought by the Association to enforce the provisions of this Proclamation (including, without limitations, the foreclosure of liens); (b) the imposition and collection of Assessments; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by the requisite percentage of votes of Members, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this ARTICLE 14 and the procedures therefor set forth in Exhibit "C," if applicable.

14.5 Miscellaneous Alternative Dispute Resolution Provisions.

(a) Conflicting Provisions. Any conflict or discrepancy between the terms and conditions set forth in this ARTICLE 14 and the procedures set forth in Exhibit "C" to this Proclamation and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein and in Exhibit "C" will control.

(b) TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this ARTICLE 14 will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

ARTICLE 15

GENERAL PROVISIONS

15.1 Control of Founder. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS PROCLAMATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BYLAWS OF THE Association, Founder hereby retains for the duration of the Founder Control Period the right to appoint and remove any member or members of the Board of Aldermen and any officer or officers of the Association. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Founder will have the authority to appoint and remove Aldermen and officers of the Association in accordance with the foregoing provisions of this Section 15.1. The provisions of this Section 15.1 are supplemental to, and not in substitution of, other rights retained by Founder pursuant to this Proclamation.

(a) Voting Agreement and Proxy. By acceptance of a deed or other conveyance of a real estate interest subject hereto, an Owner-Member does hereby grant, and if further required, does agree to vote in a manner to provide, to Founder all voting rights and other corporate powers specifically reserved to and designated for Founder under this Proclamation. **IN CONNECTION WITH THIS VOTING AGREEMENT, EACH MEMBER APPOINTS FOUNDER AS PROXY FOR SUCH MEMBER WITH FULL POWER OF SUBSTITUTION TO VOTE FOR THE MEMBER ON ALL SUCH MATTERS ON WHICH THE MEMBER MAY BE ENTITLED TO VOTE, AND WITH RESPECT TO WHICH THERE IS A RESERVATION OR DESIGNATION OF VOTING RIGHTS IN FOUNDER UNDER THIS PROCLAMATION, AND WITH ALL POWERS WHICH THE MEMBER WOULD POSSESS IF PERSONALLY PRESENT AT ANY MEETING OF MEMBERS. SUCH APPOINTMENT WILL BE, UPON A MEMBER'S ACCEPTANCE OF A DEED OR OTHER CONVEYANCE AND**

WITHOUT THE NECESSITY OF FURTHER ACTION BY THE FOUNDER OR THE MEMBER, A POWER COUPLED WITH AN INTEREST AND IRREVOCABLE. Such appointment will be effective as of the date on which a deed or other conveyance of an interest to the Owner-Member is filed Of Record. This irrevocable proxy will automatically terminate on the date Founder's voting rights as a Type B Member terminate. The within voting agreement and proxy are in addition to, and not in substitution of, all rights of Founder herein provided, which will run with the Property.

(b) Creation of New Board Following Control Period. Upon the expiration of the Founder Control Period, election of the Board will pass to the Owners as provided in the Bylaws. Following election of a new Board of Aldermen, Founder will deliver all books, accounts, and records, if any, which Founder has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Founder has in its possession.

15.2 Amendments by Founder. During the Founder Control Period, the Founder may amend this Proclamation or the Bylaws by an instrument in writing filed Of Record without the approval of any Owner or Mortgagee; provided, however, that, (a) in the event that such amendment has a material adverse effect upon any Owner's rights hereunder or adversely affects the title to any Unit, such amendment will be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; and (b) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment will be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 15.2 will be certified by Founder as having been duly approved by Founder, and by such Owners and Mortgagees if required, and will be effective only upon it being filed Of Record or at such later date as will be specified in the amendment itself. Furthermore, following the Founder Control Period, this Proclamation and the Bylaws may be amended solely by the Founder filing same Of Record if such amendment is necessary, in the reasonable determination of the Founder, (i) to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which will be in conflict therewith, (ii) to enable any reputable title insurance company to issue title insurance coverage with respect to any properties subject to this Proclamation, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any properties subject to this Proclamation, or (iv) to enable any governmental agency or reputable private insurance company to insure Mortgages on the properties or other improvements subject to this Proclamation. Each Owner by acceptance of a deed or other conveyance of a Unit agrees to be bound by amendments permitted by this Section 15.2, and further agrees, if requested by the Founder, such Owner will consent to such amendment.

15.3 Amendments by the Association. Amendments to this Proclamation or the Bylaws, other than those authorized by Section 15.2 hereof, will be proposed and adopted in the following manner:

(a) Notice. Notice of the subject matter of the proposed amendment will be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and will be delivered to each Member of the Association.

(b) Resolution to Amend and Vote to Approve. At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Aldermen or Members of the Association. Such amendment must be approved by sixty-seven percent (67%) or more of the votes of the entire Association, by a duly held Referendum or at a duly held meeting of Members called for the purpose of approving a proposed amendment, which percentage will also constitute the quorum required for any such meeting; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee; (ii) during the Founder Control Period,

such amendment must be approved by Founder; and (iii) in the event that such amendment also is an amendment to the Bylaws, the amendment will be adopted pursuant to the applicable procedures of the North Carolina Nonprofit Corporation Act.

(c) Execution and Delivery of Approved Amendment. The agreement of the required percentage of the Owners and, where required, Founder and any Mortgagee, to any amendment of this Proclamation pursuant to this Section 15.3 will be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement will state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Proclamation will become effective only when filed Of Record or at such later date as may be specified in the amendment itself.

(d) Required Approval of Founder. Anything contained in this Section 15.3 to the contrary notwithstanding, no amendment under this Proclamation shall be made, or any vote therefor effective, if the result or effect thereof would have a material adverse effect upon Founder or any right, limitation, approval or easement of Founder without the prior written approval of the Founder.

15.4 Duration. The provisions of this Proclamation will run with and bind title to the Property, will be binding upon and inure to the benefit of all Owners and Mortgagees, and will be and remain in effect for a period of thirty (30) years from and after the date this Proclamation is filed Of Record, provided that rights and easements which are stated herein to have a longer duration will have such longer duration. Upon the expiration of said thirty (30) year period, this Proclamation will be automatically renewed for successive ten (10) year periods. The number of ten (10)-year renewal periods will be unlimited, with this Proclamation being automatically renewed and extended upon the expiration of each ten (10)-year renewal period for an additional ten (10)-year period; provided, however, that there will be no renewal or extension of this Proclamation, if, during the last year of an initial thirty (30)-year period or the last year of any ten (10)-year renewal period, eighty percent (80%) or more of the votes of the entire Association, by a duly held Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required, approve terminating this Proclamation at the end of the then current term. In the event that the Association votes to terminate this Proclamation, an instrument evidencing such termination will be filed Of Record, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Proclamation will run with and bind title to the Property as provided hereby.

15.5 Termination of the Association. In the event that this Proclamation is declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within ten (10) years following the date of recording this Proclamation, all Common Areas belonging to the Association at the time of such adjudication will revert to the Founder, and the Founder will own and operate said Common Areas as Trustee for use and benefit of Owners within the Property as set forth below. If said adjudication will occur on a date more than ten (10) years after the date of recording of this Proclamation, or if the Members of the Association should vote not to renew and extend this Proclamation as provided for in Section 15.4, all Common Areas owned by the Association at such time will be transferred to a properly appointed Trustee, which Trustee will own and operate said Common Areas for the use and benefit of Owners within the Property as set forth below:

(a) Each Unit, parcel or tract of land located within the Property will be subject to an Annual Assessment which will be paid by the Owner thereof to the Founder or Trustee, whichever becomes

the successor in title to the Association. The amount of such Annual Assessment and its due date will be determined solely by the Founder or the Trustee, as the case may be, but the amount of such Annual Assessment on any particular Unit, parcel or tract of land will not exceed the amount actually assessed against that Unit, parcel or tract of land in the last year that Assessments were levied by the Association, subject to the adjustment set forth in subparagraph (b) immediately below.

(b) The rate of the Annual Assessment which may be charged by the Founder or Trustee hereunder on any particular Unit or parcel may be automatically increased each year by either ten percent (10%) or the percentage increase between the first month and the last month of the Annual Assessment period in the CPI-U issued by the U.S. Bureau of Labor Statistics in its monthly report, whichever of these two percentage figures is larger. The actual amount of such increase in the regular Annual Assessment on a parcel will equal the regular Annual Assessment on such Unit or parcel for the previous year multiplied by the larger of the two percentage factors set forth above. If the CPI-U is discontinued, then there will be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

(c) Any past due Annual Assessment together with interest thereon at a rate no greater than eighteen percent (18%) per annum from the due date and all costs of collection including reasonable attorney's fees will be a personal obligation of the Owner at the time that the Annual Assessment becomes past due, and it will also constitute and become a charge and continuing lien on the Unit or parcel of land and all improvements thereon, against which the Assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

(d) The Founder, or the Trustee, as the case may be, will be required to use the funds collected as Annual Assessments for the operation, maintenance, repair and upkeep of the Common Areas. Founder or Trustee may charge as part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided. Neither the Founder nor the Trustee will have the obligations to provide for operation, maintenance, repair and upkeep of the Common Areas once the funds provided by the Annual Assessment have been exhausted.

(e) The Founder will have the right to convey title to the Common Areas and to assign its rights and duties hereunder, provided that the transferee accepts such properties subject to the limitations and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed hereby.

(f) The Trustee will have the power to dispose of the Common Areas free and clear of the limitations imposed hereby; provided, however, that such disposition will first be approved in writing by fifty-one percent (51%) of the Owners of Property within the Property or in the alternative will be found, in the exercise of reasonable business judgment, to be in the best interest of the Owners of property within the Property. The proceeds of such a sale will first be used for the payment of any debts or obligations constituting a lien on the Common Areas, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of such Property, then for the payment of any obligations distributed among the Owners of property within the Development, exclusive of the Trustees, in a proportion equal to the portion that the Default Annual Assessment on property owned by a particular Owner bears to the total Default Annual Assessment for all property located within the Property.

15.6 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Proclamation will be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions will continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Rose Kennedy, mother of U. S. Senator Edward Kennedy.

15.7 Interpretation. In all cases, the provisions set forth or provided for in this Proclamation will be construed together and given that interpretation or construction which, in the opinion of Founder or the

Board of Aldermen will best effect the intent of the general plan of development. The provisions hereof will be liberally interpreted and, if necessary, they will be so extended or enlarged by implication as to make them fully effective. The provisions of this Proclamation will be given full force and effect notwithstanding the existence of any zoning ordinance or building codes that are less restrictive. The effective date of this Proclamation will be the date of its filing Of Record. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Proclamation will be construed under and in accordance with the laws of the State of North Carolina.

15.8 No Affirmative Obligation Unless Stated. ANY RESERVATION OR RIGHT OF THE FOUNDER WHICH IS STATED IN OR IMPLIED FROM THIS PROCLAMATION WILL NOT GIVE RISE TO ANY AFFIRMATIVE OBLIGATION OR DUTY ON THE PART OF THE FOUNDER UNLESS EXPRESSLY STATED IN THIS PROCLAMATION.

15.9 No Implied Liabilities or Duties. ANY RULES OR REGULATIONS ESTABLISHED BY THE FOUNDER PURSUANT TO THIS PROCLAMATION WILL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY PROPERTY OWNER.

15.10 Gender and Grammar. The singular wherever used herein will be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, will in all cases be assumed as though in each case fully expressed.

15.11 Severability. Whenever possible, each provision of this Proclamation shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Proclamation to any person or to any property will be prohibited or held invalid, such prohibition or invalidity will not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Proclamation are declared to be severable.

15.12 Rights of Third Parties. This Proclamation will be filed Of Record for the benefit of Founder, the Owners, and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party will have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Founder and Mortgagees as herein provided, the Owners will have the right to extend, modify, amend, or otherwise change the provisions of this Proclamation without the consent, permission, or approval of any adjoining owner or third party.

15.13 Conflicts With Neighborhood Proclamations. In the case of any conflict between this Proclamation and a Neighborhood Proclamation, the applicable provision of this Proclamation shall control, unless the effect thereof would be to make the applicable provision of this Proclamation less restrictive, in which later case the applicable provision of the Neighborhood Proclamation shall control.

15.14 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Unit, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

15.15 No Trespass. Whenever the Association, Founder, or the ARC are permitted by this Proclamation to enter upon, correct, repair, clean, maintain, preserve, or do any other action within any portion of the Development, the entering thereon and the taking of such action will not deem to be trespass.

15.16 Notices. Notices required hereunder will be in writing and will be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners will be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Units. All notices to the Association will be delivered or sent in care of the Founder to 9286 River Terrace SW, Calabash, NC 28467, or to such other address as the Association may from time to time notify the Owners. All notices to Founder will be delivered or sent to the Founder at 9286 River Terrace SW, Calabash, NC 28467, or to such other address as Founder may from time to time notify the Association. Notices to Mortgagees will be delivered or sent to such addresses as such Mortgagees specify in writing to the Association. Notices to any other person or persons entitled to same hereunder will be delivered or sent to such address or addresses as such person or persons specify, from time to time, in writing to the sender, or, in the absence thereof, to such address or addresses as will, in the exercise of reasonable judgment by the sender, reasonably expected to be received by such person or persons.

15.17 Conflicts. If anything contained in this Proclamation, including all exhibits attached hereto, shall conflict with the North Carolina Planned Community Act, the North Carolina Planned Community Act shall control.

15.18 Tort and Contract Liability.

(a) Neither the Association nor any Owner of a Unit, except the Founder, is liable for the Founder's torts in connection with any part of the Development that the Founder has the responsibility to maintain.

(b) An action alleging a wrong done by the Association shall be brought against the Association and not against an Owner of a Unit.

(c) Any statute of limitations affecting the Association's right of action under this Section 15.18 is tolled until the Founder's Control Period terminates. An Owner is not precluded from bringing an action contemplated by this Section 15.18 because the person is a member of the Association.

[SEPARATE SIGNATURE PAGE ATTACHED]

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[SIGNATURE PAGE FOR DEVAUN PARK PROCLAMATION OF PROTECTIVE COVENANTS]

IN WITNESS WHEREOF, the undersigned Founder herein has hereby caused this instrument to be executed this ninth day of September, 2002.

FOUNDER:
STANALAND STEWART COMPANY, LLC

By: W. Vaughn Stanaland
W. Vaughn Stanaland
Its: Member/Manager

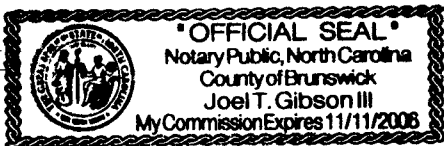
By: Scott D. Stewart
Scott D. Stewart
Its: Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

I, Joel T Gibson, III, a Notary Public for the said County and State, do hereby certify that W. Vaughn Stanaland and Scott D. Stewart, the Member/Managers of **Stanaland Stewart Company, LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of their company.

WITNESS my hand and official stamp or seal, this ninth day of September, 2002.

[SEAL] 
My Commission Expires:

Joel T. Gibson III
Notary Public

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STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

JOEL T GIBSON III

The Foregoing (or annexed) Certificate(s) of _____

Notary(ies) Public is (are) Certified to be Correct. _____ 11th _____ September _____ 2002
This Instrument was filed for Registration on this _____ Day of _____
in the Book and page shown on the First Page hereof.

Robert J. Robinson
ROBERT J. ROBINSON, Register of Deeds

DESCRIPTION OF PROPERTY SUBMITTED TO THE PROCLAMATION OF PROTECTIVE COVENANTS, CONSTITUTING DEVAUN PARK AT THE TIME OF FILING THE PROCLAMATION OF PROTECTIVE COVENANTS.

LOTS

All those certain pieces, parcels or lots of land situate, lying and being the Shallotte Township, Extraterritorial Jurisdiction of the Town of Calabash, Brunswick County, North Carolina and being shown and designated as Lots Forty-One (41), Forty-Two (42), Forty-Three (43), Forty-Four (44), Fifty-Four (54), Fifty-Five (55), Fifty-Six (56), Fifty-Seven (57), Fifty-Eight (58), Fifty-Nine (59), Sixty (60), Sixty-One (61), Sixty-Two (62), Sixty-Three (63), Sixty-Four (64), Sixty-Five (65), Sixty-Six (66), Sixty-Seven (67), Sixty-Eight (68), Sixty-Nine (69), Ninety-One (91), Ninety-Two (92), Ninety-Three (93), and Ninety-Four (94) on Plat of Survey for Devaun Park Phase One, Section One prepared by Brunswick Surveying, Thomas W. Morgan, Professional Land Surveyor, dated November 1, 2001, and recorded in the office of the Register of Deeds for Brunswick County in as Instrument Number 2828, Map Book 26, Pages 514 and 515, which plat is incorporated herein and made a part hereof by reference.

STREETS, ROADS, AND ALLEYS

Those certain streets shown and described on the plat referenced above known as River Terrace, Hutton Heights Way, and Whisper Park Drive; together with alleys; together with an alienable, nonexclusive easement and right to use the road shown as Shady Forest Road for access, ingress and egress to and from the property.

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EXHIBIT "B"

BYLAWS
OF
THE DEVAUN PARK
COMMUNITY ASSOCIATION

Article I
Name And Location

Section 1. Name and Location.

The name of the corporation is "THE DEVAUN PARK COMMUNITY ASSOCIATION, INC." hereinafter referred to as the "Association." The principal office of the Association shall be located at the Development, or at such other place as may be designated by the Board.

Article II

Definitions

Section 1. Incorporation.

The definitions contained in the Proclamation are incorporated by reference herein.

(a) The Proclamation.

"Proclamation" shall mean and refer to the Devaun Park Proclamation of Protective Covenants, recorded in the Brunswick County Register of Deeds, Brunswick County, North Carolina, and subsequent amendments thereto.

Article III

Meeting Of Members And Voting

Section 1. Annual Meeting.

The first meeting of the Members, whether an annual or a special meeting, shall be held on the second Saturday of December which is more than nine (9) months following the date of the close of the sale of the first Unit in the Development. Subsequent annual meetings of the Members shall be held thereafter at an hour and place within thirty (30) days of the same month and day of such first meeting, as set by the Board.

Section 2. Special Meetings.

Special meetings of the Members shall be promptly scheduled at any time by the Board upon vote of a majority of the Board of Aldermen or upon written request of the President. A special meeting of the Members shall be called upon written demand delivered to the Secretary by the Members representing ten percent (10%) of the total voting power of the Association, notice of which shall be by written notice to all Members within thirty (30) days of the Secretary's receipt of the demand. For purposes of determining the ten percent (10%), the record date shall be thirty (30) days before delivery of the written demand. Upon the failure of the Association to send notice of a special meeting within thirty (30) days following delivery of written demand as aforesaid, any Member signing the demand may set the time and place of the special meeting and give notice

thereof to all Members in accordance with the North Carolina Planned Community Act and the North Carolina Nonprofit Corporation Act.

Section 3. Notice and Place of Meetings.

Unless otherwise provided in the Proclamation, the Articles of Incorporation, in these By-Laws, the North Carolina Planned Community Act or in the North Carolina Nonprofit Corporation Act, written notice of each meeting of the Members, annual or special, shall be given by, or at the direction of, the Secretary, by mailing a copy of such notice, first class mail, postage prepaid, at least thirty (30) but not more than sixty (60) days before such meeting to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. In the case of written demand of Members representing thirty-three percent of the total voting power of the (33%) Association, written notice of such meeting shall be given not more than thirty (30) days after written demand is delivered to the Association. The notice of any meeting shall specify the place, day and hour of the meeting, the items on the agenda, and shall provide for voting by proxy. If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal: (a) removing a Aldermen without cause; (b) filling vacancies in the Board of Aldermen by the Members; (c) amending the Proclamation, Bylaws or Articles of Incorporation or (d) any budget changes. Meetings shall be held within the Development or at a meeting location as close to the Project as practical.

Notice of a meeting of Members need not be given to any Member who signs a waiver of notice, in person or by proxy, either before or after the meeting. The waiver must be delivered to the Association for inclusion in the minutes or filing with the corporate records. Attendance of a Member at a meeting, in person or by proxy, shall of itself constitute waiver of notice, except when the Member attends a meeting solely for the purpose of stating his objection, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened. Objection by a Member shall be effective only if written objection to the holding of the meeting or to any specific action so taken is filed with the Secretary of the Association.

Section 4. Quorum.

Unless otherwise provided herein, in the Declaration, the Articles of Incorporation, the North Carolina Planned Community Act or the North Carolina Nonprofit Corporation Act, the presence of Members representing one-third (1/3) of the votes of all Members, in person or by proxy, shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum of one-third (1/3) of the votes of all Members is present may continue to do business until adjournment, notwithstanding the withdrawal from the meeting of enough Members to leave less than such required quorum, provided that Members representing twenty percent (20%) of the total votes of the Association remain present in person and/or by proxy, and provided further that any action taken shall be approved by a majority of the Members required to constitute such quorum. If the required quorum is not present, the meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy and another meeting may be called, not less than ten (10) nor more than sixty (60) days following the first meeting, and the required quorum at the subsequent meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of quorum. The quorum requirement shall continue to be reduced by fifty percent (50%) from the required quorum at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted. Unless otherwise provided, any reference hereafter to "votes cast" at a duly called meeting shall be construed to be subject to the quorum requirements established by this Section 3.4. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed in Section 3.3.

Section 5. Ballots and Representative Voting.

(a) Voting Referendum; Written Ballots.

Any vote of Members on a matter that would be cast at an annual, regular or special meeting may be taken, without a meeting, by written ballot delivered to every Member by the Association. The ballot shall set forth the matter to be voted upon and provide thereon a place to vote for or against such matter. Approval by written ballot without a meeting shall be effective only when the number of votes cast by ballot equals or exceeds the quorum required to be present had the matter been considered at a meeting, and the number voting for the matter equals or exceeds the number of votes required to approve it had the matter been considered at a meeting at which the requisite quorum is present. A solicitation of votes by ballot shall (1) indicate the record date for Members eligible to vote; (2) indicate the number of returned ballots voting for or against the matter that is required to satisfy the quorum requirement; (3) state the required number of votes or percentage voting in favor of the matter required to approve it (except in the case of election of Aldermen, which shall be by plurality); and (4) state the date and time by which a Member's completed ballot must be received by the Secretary in order to be counted in the vote to be taken. A ballot, once delivered to the Secretary, may not be revoked. A Member's signed ballot shall be delivered to the Secretary by hand delivery, by U.S. mail, or by such other means as shall be permitted under North Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

(b) Proxies.

All of the provisions of this Section 3.5(b) are subject to Section 15.1(a) of the Proclamation. To the extent that a provision set forth in this Section is inconsistent with Section 15.1(a) of the Proclamation, the provisions of Section 15.1(a) of the Proclamation shall control. At all meetings of Members, each Member may vote in person or by proxy. The appointment form of proxy shall be in writing and received by the Secretary before the appointed time of the meeting. Every proxy appointment shall automatically cease upon conveyance by the Member of his Unit, or upon receipt of written notice by the Secretary of the death or judicially declared incompetence of a Member prior to the counting of the vote, upon revocation of the appointment of the proxy in accordance with the North Carolina Planned Community Act and the North Carolina Nonprofit Corporation Act, or upon the expiration of eleven (11) months from the date of the proxy. Unless the proxy appointment form otherwise states, it shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Association. Any proxy appointment form distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon set forth in the notice of the meeting and shall be dated. The appointment shall provide that, where the Member specifies a choice, the vote shall be cast by the proxy in accordance with that choice. The form shall also identify the person or persons acting as the proxy and the length of time it will be valid. In addition, voting by a proxy shall comply with any other applicable requirements of the North Carolina Planned Community Act and the North Carolina Nonprofit Corporation Act. The Member's signed proxy appointment form shall be delivered to the Secretary by hand delivery, by U.S. mail, and by such other means as shall be permitted under North Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

Section 6. Membership and Voting.

Membership in the Association will be as set forth in the Proclamation and in the Articles of Incorporation.

Except as otherwise provided in the Proclamation, the Articles of Incorporation, these Bylaws, The North Carolina Planned Community Act, or the North Carolina Nonprofit Corporation Act, any action by the Association which must have the approval of the Members before being undertaken shall require voting approval by a majority of the votes cast by Members present at which the required quorum is present. An abstention shall be counted as a negative vote in calculating the majority. Members are divided into Type A and Type B Members for the sole purpose of computing voting rights and shall not vote as a class. Owners of Unit in all phases shall have the same voting rights.

Section 7. Eligibility to Vote:

Voting rights attributable to Units shall not vest until the Association has levied Assessments against those Units. Only Members in good standing shall be entitled to vote on any issue or matter presented to the Members for approval. In order to be in good standing, a Member must be current in the payment of all assessments levied against the Member's Units and not subject to any suspension of voting privileges as a result of disciplinary proceeding conducted in accordance with the Proclamation. A Member's good standing shall be determined as of the record date established in accordance with section 3.8. The Association shall not be obligated to conduct a hearing in order to suspend a Member's voting privileges on the basis of the nonpayment of assessments, although a delinquent Member shall be entitled to request such a hearing.

Section 8. Record Dates.

(a) Record Dates Established by the Board.

For the purpose of determining which Members are entitled to receive notice of any meeting, vote, act by written ballot without a meeting, or exercise any rights in respect to any other lawful action, the Board may fix, in advance, a "record date" and only Members of record on the date so fixed are entitled to notice, to vote, or to take action by written ballot or otherwise, as the case may be, notwithstanding any transfer of any membership on the books of the Association after the record date, except as otherwise provided in the Articles of Incorporation, by agreement, in the North Carolina Planned Community Act, or in the North Carolina Nonprofit Corporation Act. The record dates established by the Board pursuant to this Section shall be as follows:

(i) Record Date for Notice of Meetings. In the case of determining those Members entitled to notice of a meeting, the record date shall be no more than ninety (90) nor less than ten (10) days before the date of the meeting;

(ii) Record Date for Voting: In the case of determining those Members entitled to vote at a meeting, the record date shall be no more than sixty (60) days before the date of the meeting;

(iii) Record Date for Action by Written Ballot Without Meeting: In the case of determining Members entitled to cast written ballots, the record date shall be no more than sixty (60) days before the day on which the first written ballot is mailed or solicited; and

(iv) Record Date for Other Lawful Action: In the case of determining Members entitled to exercise any rights in respect to other lawful action, the record date shall be no more than sixty (60) days prior to the date of such other action.

(v) "Record Date" Means as of the Close of Business: For purposes of this subparagraph, a person holding a membership as of the close of business on the record date shall be deemed the Member of record.

(b) Failure of Board to Fix a Record Date.

If the Board, for any reason, fails to establish a record date, rules set forth in the North Carolina Nonprofit Corporation Act shall apply:

Section 9. Action Without Meeting:

Any action that may be taken at any annual or special meeting of Members (except the election of Aldermen) may be taken without a meeting in accordance with the provisions of the North Carolina Nonprofit Corporation Act. Any form of written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the written

ballot. The written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice.

Section 10. Conduct of Meetings:

Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. Except as otherwise provided by law, any proper matter may be presented at the meeting for action. Members of the Association shall have access to Association records in accordance with the North Carolina Planned Community Act and the North Carolina Nonprofit Corporation Act. No Member of the Association shall have any right as an Association Member to attend any meeting of the Board, except such meetings of the Board as the Board of Aldermen shall, in the exercise of its sole discretion, open to the membership or any other person. In any matter relating to the discipline of an Association Member, the Board shall always meet in closed session if requested by that Member, and the Member shall be entitled to attend such closed session.

Article IV

Board Of Aldermen; Selection; Term Of Office

Section 1. Number.

The affairs of the Association shall be managed by a Board of Aldermen, all of who must be Members of the Association, or an officer, alderman, employee or agent of a Member, including Founder. The initial Board of Aldermen shall consist of three (3) Aldermen who shall be appointed by the Founder. The Founder shall have the sole right to appoint and remove any member or members of the Board of Aldermen of the Association pursuant to the Proclamation until the expiration of the Founder Control Period. Within sixty (60) days after the expiration of the Founder Control Period, the Members shall elect five (5) Aldermen. The Association shall either call, and give not less than thirty (30) days' and not more than sixty (60) days' notice of, such special meeting of the Members to elect the Board of Aldermen, or the date on which the Association shall count the written ballots distributed to the Members with such notice for the election of the Board of Aldermen. Each year thereafter, the Members shall elect such number of Aldermen as shall exist whose terms are expiring.

Section 2. Term of Office.

The election of Aldermen shall be by plurality, the number of nominees equal to the number of vacancies to be filled receiving the greatest number of votes being elected. However, at the meeting of the Association following expiration of the Founder Control Period held to elect five (5) Aldermen or the date following expiration of the Founder Control Period when written ballots are to be counted for the election of such Aldermen pursuant to Section 4.1, the two (2) nominees receiving the highest number of votes will each be elected for a term of two (2) years, and the next three (3) nominees receiving the highest number of votes will each be elected for a term of one (1) year. At the expiration of the initial term of office of each respective Alderman, his successor shall be elected to serve for a term of two (2) years. Unless vacated sooner, each Alderman shall hold office until the Alderman's term expires and a successor is elected.

Section 3. Removal; Vacancies.

The Founder may only be remove an Alderman appointed by the Founder; otherwise, a Director may be removed from office, with or without cause, at any regular or special meeting of the Members by a majority of the votes of the Members voting in person or by proxy at a meeting at which a quorum is present. A successor to any removed Alderman may be elected at the same meeting at which the vacancy is created by the removal of the Alderman. An Alderman whose removal is proposed to be voted upon at any meeting shall be given notice of the proposed removal not less than ten (10) days prior to the date of the meeting and shall be given an opportunity to be heard at the meeting. In the event of death or resignation of an Alderman, the vacancy shall be filled by majority vote of the Board at a duly held meeting, or by the sole remaining Alderman. A successor Alderman shall serve for the unexpired term of his or her predecessor. The Members may elect an Alderman at any time to fill any vacancy not filled by the Aldermen.

Section 4. Compensation.

No Alderman shall receive compensation for any service rendered to the Association. However, any Alderman may be reimbursed for his actual expenses, if reasonable, that are incurred in the performance of his or her duties, including, but not limited to, travel expenses.

Section 5. Indemnification of Corporate Agents.

The Association shall indemnify any present or former Alderman, officer, employee or other agent of the Association to the fullest extent authorized under the North Carolina Nonprofit Corporation Act, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was not entitled to indemnification under this provision.

Article V

Nomination And Election Of Aldermen

Section 1. Nomination.

A Nominating Committee shall make nomination for election to the Board of Aldermen. Notice to the Members of the meeting shall include the names of all those who are nominees at the time the notice is sent. Nominations to be placed on the ballot may also be solicited by the Nominating Committee or the Board from the membership, and if the election is to take place at a meeting and not solely by written ballot, nominations may also be made from the floor at the meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Aldermen, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Aldermen not less than sixty (60) days prior to the meeting of the Members at which the election is to be held, or if the election is to take place solely by written ballot not less than sixty (60) days prior to the date set on the ballot as the election date when ballots are to be counted, and shall serve until the close of the election. The Nominating Committee shall make as many nominations for election to the Board of Aldermen as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

Section 2. Election.

The first election of the Board shall be conducted as set forth in Section 4.1. At such election the Members or their proxies may cast as many votes as they are entitled to exercise under the provisions of the Proclamation. The persons receiving the largest number of votes shall be elected. No cumulative voting shall be permitted. Voting for Aldermen at a meeting shall be by secret written ballot. Voting for Aldermen may also be conducted by written ballot pursuant to Section 3.5(a).

Article VI

Meetings Of Aldermen

Section 1. Regular Meetings.

Regular meetings of the Board of Aldermen shall be held at least annually at such place within the Development, and at such hour as may be fixed from time to time by resolution of the Board. If a larger meeting room is required than exists within the Development, the Board shall select a room as close as possible to the Development. Should a regularly scheduled meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, excluding Saturday and Sunday.

Section 2. Special Meetings.

Special meetings of the Board of Aldermen shall be held when called by written notice signed by the President, Vice President or Secretary of the Association, or by any two (2) Aldermen. Notice of the special meeting shall specify the time and place of the meeting and the nature of the special business to be considered.

Section 3. Quorum.

A majority of the Aldermen then in office (but not less than two (2)) shall constitute a quorum for the transaction of business. Every act performed or decisions made by a majority of the Aldermen present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Aldermen, if any action taken is approved by a majority of the required quorum for that meeting.

Section 4. Executive Session.

The Board may, with approval of a majority of the Aldermen present at a meeting in which a quorum for the transaction of business has been established, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel and matters involving contracts of which the Association is a party, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 5. Telephone Meetings.

Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Aldermen participating in the meeting can hear one another, and all such Aldermen shall be deemed to be present in person at such meeting. An explanation of the action shall be filed with the minutes of the proceedings of the Board.

Section 6. Waiver of Notice.

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

Section 7. Notice of Adjourned Meeting.

Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Aldermen who were not present at the time of the adjournment.

Section 8. Action Without Meeting.

Any action required or permitted to be taken by the Board of Aldermen may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Aldermen. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 9. Notices Generally.

Notice of any meeting of the Board of Aldermen, whether regular or special, shall be given to each Alderman by one (1) of the following methods; (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Alderman or to a person at the

Alderman's office who would reasonably be expected to communicate such notice promptly to the Alderman; (d) by telegram, charges prepaid; or (e) by facsimile transmission to the fax number of the Aldermen or to e-mail address of the Aldermen, with proof of transmission and receipt thereof being retained in the minutes of the meeting. All such notices shall be given or sent to the Alderman's address, telephone number, fax number or e-mail address as shown on the records of the Association. Such notice shall be sent to all Aldermen not less than seventy-two (72) hours prior to the scheduled time of the meeting, provided, however, notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, telegraph, facsimile transmission or e-mail shall be delivered, telephoned, given to the telegraph company, faxed or e-mailed, as the case may be, at least seventy-two (72) hours before the time set for the meeting. Notice of any meeting need not be given to any Alderman who has signed a waiver of notice or written consent to holding of the meeting.

Article VII

POWERS AND DUTIES OF THE BOARD OF ALDERMEN

Section 1. Duties.

It shall be the duty of the Board of Aldermen to:

- (a) Maintenance. Perform the maintenance described in the Proclamation;
- (b) Insurance. Maintain insurance as required by the Proclamation;
- (c) Discharge of Liens: Discharge by payment, if necessary, any lien against the Common Areas and assess the cost thereof to the Member or Members responsible for the existence of the lien (after notice and hearing as required by these Bylaws);
- (d) Assessments: Fix, levy, collect and enforce Assessments as set forth in the Proclamation;
- (e) Expenses and Obligations: Pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association;
- (f) Records: Cause to be kept minutes of annual meetings of Members and to present such minutes to the Members at the next annual meeting of the Members; minutes of any special meeting when such statement is requested in writing by one-fourth (3) of the Class "A" Members; and to keep adequate and correct books and records of account, minutes of proceedings of its Board and committees, and a roll of its Members giving their names and addresses and classes of membership;
- (g) Supervision: Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;
- (h) Review of Financial Records: Review on at least a quarterly basis a current reconciliation of the Association's operating and reserve accounts, the current year's actual reserve revenues and expenses compared to the current year's budget, and an income and expense statement for the Association's operating and reserve accounts. In addition, the Board shall review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts. For purposes herein, "reserve accounts" shall mean monies that the Association's Board has identified for use to defray the future repair or replacement of, or additions to, these major components that the Association is obligated to maintain.
- (i) Reserve Account Withdrawal Restrictions: Require that at least two (2) signatures are needed for the withdrawal of monies from the Association's reserve accounts, at least one (1) of whom shall be a member of the Board. One (1) signature may be that of the Association's manager or such manager's designee.

(j) Reserve Account Fund Management: The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

(k) Reserve Studies. At least every five (5) years the Board shall cause an independent analysis of the reserve component of the operating budget to be conducted to confirm that component replacement costs and useful lives are accurately reflected in the reserve allocation.

Section 2. Powers.

The Board of Aldermen shall have power to:

- (a) Manager: Employ a manager as provided in the Proclamation;
- (b) Adoption of Rules: Adopt rules in accordance with the Proclamation, including rules setting aside Common Area parking spaces as handicap parking only, and adopt rules limiting the number of cars which will be permitted to be parked in the Common Area parking spaces;
- (c) Assessments, Liens and Fines: Levy and collect Assessments and impose fines as provided in the Proclamation.
- (d) Enforcement: Enforce these Bylaws and/or the Proclamation as provided in ARTICLE 12 of the Proclamation.
- (e) Contracts: Contract for goods and/or services in accordance with the Proclamation.
- (f) Delegation: Delegate its authority and powers to committees, officers or employees of the Association or to a manager employed by the Association. The Board may not delegate the authority to procure insurance, make capital expenditures for additions or improvements chargeable against the reserve funds; to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Proclamation or rules and regulation promulgated by the Board, or to make a decision to levy monetary fines, impose special Assessments against individual Units, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline following any such hearing; to make a decision to levy Annual or Special Assessments; or to make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of Assessments. Any such delegation shall be revocable by the Board at any time. The members of the Board, individually or collectively, shall not be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board.
- (g) Appointment of Trustee: Appoint a trustee as provided in the Proclamation.
- (h) Borrowings. Borrow money (i) for the purpose of improving the Development, or any portion thereof, (ii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Development, (iii) for providing services authorized herein, and, (iv) to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Founder, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.
- (i) Other Powers: In addition to any other power contained herein or in the Proclamation or the North Carolina Planned Community Act, the Association may exercise the powers granted to a nonprofit mutual benefit corporation as enumerated in the North Carolina Nonprofit Corporation Act.

Section 3. Prohibited Acts.

The Board shall not take any of actions prohibited of it under the Proclamation except with the vote or written consent of a majority of the Members other than Founder.

Article VIII

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers.

The officers of this Association shall be a President and Secretary, who shall at all times be members of the Board of Aldermen, a Vice President, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers.

The Founder shall have the sole right to appoint and remove officers during the Founder Control Period. Thereafter, all officers shall hold office at the pleasure of the Board.

Section 3. Term.

The Board shall elect the officers of this Association annually and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments.

The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal.

Any officer may be removed from office (but not from the Board, if the officer is also a Board member) by the Board with or without cause. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies.

A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Duties.

The duties of the officers are as follows:

(a) President.

The President shall preside at all meetings of the Board of Aldermen; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes. The President shall have the general powers and duties of management usually vested in the office of the President of a North Carolina Nonprofit Corporation, and shall have such powers and duties as may be prescribed by the Board or by these Bylaws.

(b) Vice President.

The Vice President shall act in the place of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

(c) Secretary.

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with the addresses, and shall perform such other duties as required by the Board. The ministerial functions of the Secretary in recording votes, keeping minutes, sending notices, and keeping the records of names and addresses of Members may be delegated to an Association manager.

(d) Treasurer.

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Aldermen; shall sign all promissory notes of the Association; shall keep proper books of account; and shall prepare and shall distribute budgets and statements. The ministerial functions of the Treasurer in sending Assessment notices, receiving and depositing Assessments, keeping books and ledgers of account, and preparing and distributing budgets and statements may be delegated to a Association manager.

Article IX

COMMITTEES

Section 1. Appointment.

An Architectural Review Committee may be appointed as provided in the Proclamation, and a Nominating Committee shall be appointed as provided in these Bylaws. In addition, the Board of Aldermen may appoint other committees as deemed appropriate in carrying out its purpose. No committee, regardless of Board resolution, may: (a) take any final action on matters which, under the North Carolina Nonprofit Corporation Act also requires Members' approval; (b) fill vacancies on the Board of Aldermen or in any committee; (c) amend or repeal Bylaws or adopt new Bylaws; (d) amend or repeal any resolution of the Board of Aldermen; (e) appoint any other committees of the Board of Aldermen or the members of those committees; (f) approve any transaction to which the Association is a party and in which one (1) or more Aldermen or committee members have a material financial interest.

Article X

BOOKS AND RECORDS

Section 1. Inspection by Members.

The membership register (including names, mailing addresses, telephone numbers and voting rights), books of account and minutes of meetings of the Members, of the Board (including drafts and summaries), and of committees shall be made available for inspection and copying by any Member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a Member, at the office of the Association or at such other place within the Development as the Board shall prescribe. Board minutes shall be available to Members within thirty (30) days of the meeting, and shall be distributed to any Member upon request and upon reimbursement of the costs in making that distribution.

Section 2. Rules for Inspection.

The Board shall establish reasonable rules with respect to:

- inspection;
- (a) Notice to be given to the custodian of the records by the Member desiring to make the inspection;
 - (b) Hours and days of the week when such an inspection may be made;
 - (c) Payment of the cost of reproducing copies of documents requested by a Member.

Section 3. Inspection by Aldermen.

Every Alderman shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by an Alderman includes the right to make extracts and copies of documents, at the expense of the Association.

Section 4. Documents Provided by Board.

Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, provide an Owner with a copy of the governing documents of the Development, a copy of the most recent budget and statements of the Association, and a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Annual and Special Assessments and fees, as well as any Assessments levied upon the Owner's interest which, as of the date of the statement, are or may be made a lien upon the Owner's Units. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

Article XI

MISCELLANEOUS

Section 1. Amendments.

Prior to close of the sale of the first Unit, Founder may amend these Bylaws. After sale of the first Unit these Bylaws may be amended, only as provided in the Proclamation, the North Carolina Planned Community Act or in the North Carolina Nonprofit Corporation Act.

Section 2. Conflicts.

In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Proclamation and these Bylaws, the Proclamation shall control; and in the case of any conflict between the Bylaws and the North Carolina Planned Community Act, the North Carolina Planned Community Act shall control.

Section 3. Fiscal Year.

Unless directed otherwise by the Board, the fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

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EXHIBIT "C"ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

1. **Mandatory Procedures for Non-Exempt Claims.** Any Claimant with a Claim against a Respondent shall comply with the following procedures.

1.1 **Notice.** Within a reasonable time after the Claim in question has arisen, and in each event prior to the date when institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitation, Claimant will notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(a) the nature of the Claim, including applicable date, time, location, Persons involved, Respondent's role in the Claim and the provisions of the Proclamation or other authority out of which the Claim arises:

(b) what Claimant wants Respondent to do or not do to resolve the Claim; and

(c) that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss, in good faith, ways to resolve the Claim.

1.2 **Negotiation.**

(a) Each Claimant and Respondent (the "Parties") will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation, not later than 30 days following the Notice, unless otherwise agreed by the Parties.

(b) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint an attorney licensed to practice law in the State of North Carolina to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes his or her efforts will be beneficial to the Parties. Such an attorney will have been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments and will not have a conflict of interest with any of the Parties.

1.3 **Final and Binding Arbitration.**

(a) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiation"), a Claimant will have 30 days within which to submit the Claim to binding arbitration under the auspices and the Commercial Arbitration Rules of the American Arbitration Association; and in accordance with the substantive and procedural laws of the state of North Carolina, except as said rules, procedures and substantive laws are applied otherwise as follows:

(i) Unless the parties mutually set another date, within ten (10) days following Termination of Negotiation, Claimant and Respondent will jointly select one arbitrator, whose decision will be absolutely binding on all Parties; provided, however, if Claimant and Respondent are unable to jointly select one arbitrator within said ten (10) -day period, or on or before any later day set by them by which to select an arbitrator, the arbitrator will be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration will be conducted in Brunswick County, North Carolina before a neutral person who is a member of the Bar of the State of North Carolina, who has been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments, and who has no conflict of interest with any Party. The arbitrator may award any remedy or relief that a court of the State of North Carolina could order or grant, including, without limitation, specific performance of any obligation created under this Proclamation, or the issuance of an injunction, as well

as the imposition of sanctions for abuse or frustration of the arbitration process; provided, however, the arbitrator will have no authority to award punitive damages or any other damages not measured by the actual damages of the "Prevailing Party," as said term is hereinafter defined, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Proclamation.

(ii) In the event Claimant does not submit the Claim to binding arbitration as aforesaid, the Claim is deemed abandoned, and Respondent is released and discharged from any and all liability to Claimant arising out of the Claim; provided, nothing herein will release or discharge Respondent from any liability to a Person not a Party to the foregoing proceedings, or the mandatory requirements of this Paragraph 9.3 with respect to any subsequently arising new dispute or claim by the Claimant which is identical or similar to the Claim previously deemed abandoned under this Paragraph 1.3(a)(ii).

This Paragraph 1 is an agreement of the Bound Parties to arbitrate all Claims against Respondent, except Exempt Claims, and is specifically enforceable under North Carolina law. The arbitration award (the "Award") is final and binding on the Parties, and judgment upon the Award rendered by the arbitrator may be entered upon it in any court of competent jurisdiction.

2. Allocation of Costs of Resolving Claims.

2.1 Costs of Notice and Negotiation. Each Party will bear all of its own costs incurred prior to and during the proceedings described in Paragraphs 1.1 and 1.2, including the fees of its attorney or other representative. Claimant and Respondent will share equally the costs and expenses of any attorney appointed by the Board pursuant to Paragraph 1.2, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the Board is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses.

2.2 Arbitration Costs. In the event the Claim proceeds to arbitration pursuant to Paragraph 1.3, the "Prevailing Party," as hereinafter defined, will receive from the non-Prevailing Party, all of its costs and expenses, including reasonable expert and attorney's fees, incurred from commencement of selection of the arbitrator under Paragraph 1.3 to the issuance of the Award. Furthermore, the non-Prevailing Party will pay all costs and expenses of the arbitration, including the costs and expenses of any attorney appointed by American Arbitration Association pursuant to Paragraph 1.3, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the American Arbitration Association is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses. The "Prevailing Party" will be determined as follows:

(a) Not less than ten (10) days prior to the first day of the proceeding, a Party or Parties may file and serve on the other Party(ies) an offer of settlement, and within five (5) days thereafter the Party(ies) served may respond by filing and serving such Party(ies) its own offer of settlement. An offer of settlement will state that it is made under this paragraph and will specify the amount which the Party(ies) serving the settlement offer is/are willing to agree constitutes a settlement of all claims in dispute, including the Claim and all counterclaims.

(b) An offer of settlement is considered rejected by the recipient unless an acceptance, in writing, is served on the Party(ies) making the offer prior to the first day of the proceeding.

(c) If an offer of settlement is rejected, it may not be referred to for any purpose in the proceeding, but may be considered solely for the purpose of awarding fees, costs and expenses of the proceeding under Paragraph 1.3 and as provided in this Section.

(d) If the Claimant makes no written offer of settlement, the amount of the Claim made or asserted by the Claimant during the action is deemed to be such Claimant's final offer of settlement hereunder.

(e) If the Respondent makes no written offer of settlement, the final offer of settlement by the Respondent will be the amount asserted during the action to be due in satisfaction of the Claimant's claims, otherwise the Respondent's offer of settlement hereunder is deemed to be zero.

(f) If the respondent asserts a counterclaim, then offers of settlement shall take into consideration such counterclaim in the manner above provided. Furthermore, any Award shall also take into account such counterclaim.

(g) The Party(ies) whose offer, made or deemed made, is closer to the Award granted in the proceeding is considered the "Prevailing Party" hereunder. If the difference between Claimant's and Respondent's offers and the Award is equal, neither Claimant nor Respondent is considered to be the Prevailing Party for purposes of determining the award of fees, costs and expenses of arbitration.

3. **Enforcement of Resolution.** If the Parties agree to resolve any Claim through negotiation in accordance with Paragraph 1.2 and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party thereafter fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce the agreement or Award without the need to again comply with the procedures set forth in Section 14.3 of the Proclamation. In such event, the Party taking action to enforce the agreement or Award is entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all the Parties jointly and severally) all costs incurred in enforcing the agreement or Award, including, without limitation, attorney's fees and court costs.

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EXHIBIT “D”

SCHEDULE OF UTILITY DISTRICT DESIGNATIONS

Utility District	Assigned Units	Restrictions Book & Page(s)	Map Book & Page(s)
Hutton Heights Way One	58, 59, 60, 61, 62, 63	Book 1628, Page 740	Book 26, Page 520
Hutton Heights Way Two	64, 65, 66, 67, 68, 69	Book 1628, Page 742	Book 26, Page 521
Hutton Heights Way Three	91, 92, 93, 94	Book 1628, Page 744	Book 26, Page 522
River Terrace One	41, 42, 43, 44	Book 1628, Page 746	Book 26, Page 523
Whisper Park One	54, 55, 56, 57	Book 1628, Page 748	Book 26, Page 524

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EXHIBIT "E"

STORM WATER MANAGEMENT REGULATIONS

PURSUANT TO PERMIT NO. SW8 010828

- A. The allowable built-upon area per lot is listed below, in square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina, driveways, and parking areas, but does not include raised, open wood decking, or water surface of swimming pools.
- Lots 39 and 40 @ 4,000ft²; Lots 41-50, 57, 70, and 74 @ 3,000 ft²; Lots 51-56 @ 2,800 ft²; Lots 58-69, and 71-73 @ 2,700ft²; Lots 75-82 and 91-98 @ 2,000 ft²; and Lots 83-90 @ 1,900 ft².
- B. The covenants pertaining to stormwater regulations may not be changed or deleted without the concurrence of the Division of Water Quality.
- C. Filling in, piping or altering any 3:1 vegetated conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is prohibited by any persons.
- D. Lots within CAMA's Area of Environmental Concern may have the permitted built-upon area reduced due to CAMA jurisdiction within the AEC.
- E. Filling in, piping or altering any designated 5:1 curb outlet swale associated with the development is prohibited by any persons.
- F. A 30' vegetated buffer must be maintained between all built-upon area and the Mean High Water line of surface waters.
- G. All roof drains shall terminate at least 30' from the Mean High Water mark.

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