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FOR REGISTRATION REGISTER OF DEEDS  
JENNIFER LEGGETT WHITEHURST  
BEAUFORT COUNTY, NC  
2006 JUL 24 03:21:08 PM  
BK: 1534 PG: 485-545 FEE: \$191.00  
INSTRUMENT # 2006006474

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
BEAUFORT POINTE

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DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
BEAUFORT POINTE

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- EXHIBIT "B" - Initial Use Restrictions and Rules
- EXHIBIT "C" - Maximum Built-Upon Area Per Lot

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
BEAUFORT POINTE

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BEAUFORT POINTE** ("Declaration") is made this 24<sup>th</sup> day of July, 2006, by NC LAND PARTNERS, LLC, a Delaware limited liability company (herein referred to as the "Declarant"); WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association ("First Lender"); PPM BROKERAGE SERVICES, INC., a Florida corporation ("Second Lender"); and ALL PROSPECTIVE PURCHASERS AND OWNERS of real property within the planned community generally known as "Beaufort Pointe."

WHEREAS, Declarant is the owner in fee simple of the real property described in Exhibit "A", which is attached hereto and incorporated herein by reference, and desires to create a planned community pursuant to the provisions of Chapter 47F (the "Act") of the General Statutes of North Carolina and impose upon the Property (as defined in Article 1) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property; and,

WHEREAS, Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article 1) shall be held, sold, used and conveyed subject the Act and to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the desirability of, and which shall run with, the real property subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns.

**Article 1.     Definitions.**

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

1.1     "Act": Chapter 47F of the General Statutes of North Carolina designated as the North Carolina Planned Community Act.

1.2     "Area of Common Responsibility": The Common Elements, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract become the responsibility of the Association, including by way of illustration but not limitation, public rights-of-way and perimeter walls as provided in Section 5.1.

EXHIBIT "A"

THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING IN CHOCOWINITY TOWNSHIP, BEAUFORT COUNTY, NORTH CAROLINA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING the Beaufort Pointe Subdivision as the same is shown on those six maps of the Revised Plat of the Beaufort Pointe Subdivision recorded in Plat Cabinet G, Slide 75-2, 75-3, 75-4, 75-5, 75-6, and 75-7 of the Beaufort County Registry with reference being made to said map and the same being incorporated herein for a more complete and adequate description.



**EXHIBIT "B"****Initial Use Restrictions**

The following restrictions shall apply to all of the Property until such time as they are amended, modified, repealed or limited pursuant to the Declaration.

1. Use. No Lot shall be used for any purpose other than as a single family residence. Except as otherwise provided herein, only one (1) single family dwelling designated for use as, and used as, a single family residential dwelling may be constructed, erected, used or allowed to remain on any Lot. Notwithstanding the language included in this Paragraph 1, one (1) additional guest house may be constructed on Lot 14 and Lot 15 ("Guest House") provided that the same shall be subject to the use restrictions included herein and the Guest House may only be used for accommodating family and guests of the Owner of the subject Lot and may not be used as a separate residence for an additional family.

Nothing in the Association Documents shall be construed to prohibit the Declarant or its assignees from using any Lot owned by the Declarant (or any other Lot with the permission of the Owner thereof) or any portion of the Common Elements for promotional, marketing, display or customer service purposes (such as a visitors' center) or for the settlement of sales of Lots. Further, the Declarant specifically reserves the right to operate a construction office or a rental, brokerage and management office at any time on Lots owned by the Declarant (or any other Lot with the permission of the Owner thereof) and on any portion of the Common Elements. The Declarant may assign its rights under this subsection to or share such rights with one or more other Persons, exclusively, simultaneously or consecutively with respect to the Common Elements and Lots owned by the Declarant or such Persons.

2. Restricted Activities. The following activities are prohibited within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

- (a) Any activity which tends to cause an unclean, unhealthy or unsafe condition to exist outside of enclosed structures on the Lot;
- (b) Any activity which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Unit or which creates noise, unreasonable risk of fire or explosion, or other conditions which are a nuisance provided, nothing herein shall preclude normal and customary operation of any restaurant;
- (c) Any activity which violates local, state or federal laws or regulations;
- (d) Outside burning of trash, leaves, debris or other materials;
- (e) Outdoor storage of goods, materials, or equipment, except that outdoor storage of building materials shall be permitted during construction on the Lot on which such materials are being stored;
- (f) Any activity which would constitute a public or private nuisance;

(g) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(h) Use and discharge of firecrackers and other fireworks;

(i) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any storm sewer, drainage ditch, or other component of the storm drainage system serving the Property, any stream, pond, or lake, or elsewhere within the Property, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant may dump and bury rocks and trees removed from a building site on such building site;

(j) Subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and recorded, except that Declarant shall be permitted to subdivide or replat Lots which it owns;

(k) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years;

(l) On-site storage of gasoline, heating, or other fuels on Lots, except that a reasonable amount of propane gas and other fuel may be stored on each Unit for emergency purposes and operation of gas cooking grills, lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article 11;

(m) Use of any Unit for a commercial purpose, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of residents of the Property; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Property which is noticeably greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

Leasing of a Unit shall not be considered Business and Trade. This subsection shall not apply to any activity conducted by Declarant with respect to its development and sale of the Property or its use of any Units which it owns within the Property;

(n) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Property or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(o) Vehicles and Parking.

- (1) The term "vehicles," as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.
- (2) No vehicle may be left upon any portion of the Property except in a garage, driveway, parking pad, or other area designated by the Board. Commercial vehicles, recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles, and unlicensed vehicles or inoperable vehicles shall not be parked within the Property other than in enclosed garages; provided however, that one recreational vehicle, one camper, or one boat or other watercraft may be temporarily kept or stored completely in a driveway or completely on a parking pad on a Lot for not more than 24 hours within each seven day period.

(p) Any construction, erection, placement, or modification of any thing, permanently or temporarily, upon a Lot or on the outside portions of the Unit, whether such portion is improved or unimproved, except as specifically authorized in Paragraph 4(d) of this Exhibit and otherwise in strict compliance with the provisions of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind.

(q) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporary or permanently. No trailer, mobile home, camper or like vehicle shall be allowed on the property at any time, or any other structure which is finished or partially finished at a manufacturing unit or plat and transported for quick assembly and which is designed to be disassembled and relocated shall be allowed. It is specifically the intention and purpose of this covenant to prohibit the location of any manufactured home as defined in NCGS 143-145 and any structure for which a "Label of Compliance" as defined in NCGS 143-145 is issued, including but not limited to those structures which are generally referred to as mobile homes, trailers, relocatable houses, or similar type structures on the property.

(r) Removal, alteration, damage or change to any of the Stormwater Management Facilities.

(s) Placing or permitting to remain garbage or trash on any Lot excepting in covered containers of a type, size and style which are approved in accordance with Article 11 or as required by applicable governing authority. Except during construction activities upon the Lot, any such containers shall be kept inside garages or other structures on Lots except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection.

(t) Pets. The Association may adopt reasonable rules regarding household pets designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits

based on size and facilities of the Lot and fair share use of the Common Elements. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed or keep mammals, birds, fish, or reptiles of any kind for commercial purposes.

3. Prohibited Uses. In addition to uses which are inconsistent with applicable zoning or are prohibited or restricted by other recorded covenants, conditions, restrictions or easements, the following uses are prohibited within the Property:

- (a) trailer courts, mobile home parks, and recreation vehicle campgrounds;
- (b) oil, gas or mineral exploration; drilling, boring, excavation, development, refining, quarrying, or mining operations, and all construction and equipment incident thereto; and oil or gas wells or related equipment or facilities;
- (c) commercial excavation of building or construction materials, except in the usual course of construction of improvements;
- (d) dumping, storage, disposal, incineration, treatment, processing or reduction of garbage, or refuse of any nature, except as is incidental to the use, operation and ownership of any property (or a portion thereof) in accordance with this Declaration and in a manner which is not unsightly and does not result in noxious odors emitting from the subject property;

4. Prohibited Conditions. The following shall be prohibited at the Property:

- (a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property;
- (b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair; and
- (c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Property, except that Declarant and the Association shall have the right to draw water from such sources and the Reviewing Body pursuant to Article 11 may, in its discretion, approve a private water well on certain Units which the Reviewing Body determines to be of sufficient size to accommodate a well without adversely impacting neighboring property;
- (d) Satellite dishes, antennae and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that (i) Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Property, and (ii) antennae or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennae or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennae or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Lot in

which an acceptable quality signal can be received and is screened from the view of adjacent Units, streets and Common Elements in a manner consistent with the Community-Wide Standard and the Architectural Guidelines.

5. Leasing of Units. Nothing contained herein shall prohibit the leasing or subleasing of a Unit; provided, however, that:

(a) No Unit shall be leased for a period of less than one hundred eighty (180) consecutive calendar days without the prior written consent of the Board.

(b) All leases for any Unit shall be in writing signed by the Owner and the tenant.

(c) All leases shall be in such form, and contain such provisions, as approved by the Board, including provisions (a) requiring the tenant to comply with the Association Documents, (b) providing that the failure of any tenant under a lease to comply with the Association Documents shall constitute an event of default under the lease, and (c) providing that the Board may exercise any and all remedies for a default under the Association Documents against the Owner and the tenant under the lease including, without limitation, the right to remove a tenant from possession of a Unit by judicial process or otherwise.

(d) No structure on any Lot other than the Unit may be leased or otherwise occupied, and no fraction or portion of any Unit may be leased separately from any other portion of the Unit.

(e) A true executed copy of any lease for a Unit shall be provided to the Association prior to the occupancy by the tenant of such Unit.

The Board may also adopt reasonable rules and regulations regarding leasing which may include, but are not limited to, (a) the imposition of a fee to the Owner leasing the Unit equal to the costs of administration and ensuring compliance incurred by the Association with the restrictions and rules and regulations relating to leasing and (b) prohibiting or restricting the leasing of more than twenty percent (20%) of the Units at any one time within the Property.

"Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person other than the Owner, or the Immediate Family of the Owner, for which the Owner receives, or the tenant provides, any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. As used in these Initial Use Restrictions, "Immediate Family" shall mean the parents, grandparents and children of such Owner.

Notwithstanding the above Declarant retains the right to lease any Unit it owns for period of less than thirty (30) days.

## EXHIBIT "C"

**Maximum Built-Up Area Per Lot**

THE MAXIMUM ALLOWABLE BUILT-UPON AREA PER LOT IS AS FOLLOWS:

| Lot No. | Allowable Built-Upon Area |      | Lot No. | Allowable Built-Upon Area |      |
|---------|---------------------------|------|---------|---------------------------|------|
|         | AC                        | SF   |         | AC                        | SF   |
| 1       | 0.09                      | 3883 | 29      | 0.09                      | 3883 |
| 2       | 0.09                      | 3883 | 30      | 0.09                      | 3883 |
| 3       | 0.09                      | 3883 | 31      | 0.09                      | 3883 |
| 4       | 0.09                      | 3883 | 32      | 0.09                      | 3883 |
| 5       | 0.09                      | 3883 | 33      | 0.09                      | 3883 |
| 6       | 0.09                      | 3883 | 34      | 0.09                      | 3883 |
| 7       | 0.09                      | 3883 | 35      | 0.09                      | 3883 |
| 8       | 0.09                      | 3883 | 36      | 0.09                      | 3883 |
| 9       | 0.09                      | 3883 | 37      | 0.09                      | 3883 |
| 10      | 0.09                      | 3883 | 38      | 0.09                      | 3883 |
| 11      | 0.09                      | 3883 | 39      | 0.09                      | 3883 |
| 12      | 0.09                      | 3883 | 40      | 0.09                      | 3883 |
| 13      | 0.09                      | 3883 | 41      | 0.09                      | 3883 |
| 14      | 0.09                      | 3883 | 42      | 0.09                      | 3883 |
| 15      | 0.09                      | 3883 | 43      | 0.09                      | 3883 |
| 16      | 0.05                      | 2000 | 44      | 0.09                      | 3883 |
| 17      | 0.05                      | 2000 | 45      | 0.09                      | 3883 |
| 18      | 0.05                      | 2000 | 46      | 0.09                      | 3883 |
| 19      | 0.05                      | 2000 | 47      | 0.09                      | 3883 |
| 20      | 0.05                      | 2000 | 48      | 0.09                      | 3883 |
| 21      | 0.05                      | 2000 | 49      | 0.09                      | 3883 |
| 22      | 0.09                      | 3883 | 50      | 0.09                      | 3883 |
| 23      | 0.09                      | 3883 | 51      | 0.09                      | 3883 |
| 24      | 0.09                      | 3883 | 52      | 0.09                      | 3883 |
| 25      | 0.09                      | 3883 | 53      | 0.09                      | 3883 |
| 26      | 0.09                      | 3883 | 54      | 0.09                      | 3883 |
| 27      | 0.09                      | 3883 | 55      | 0.09                      | 3883 |
| 28      | 0.09                      | 3883 |         |                           |      |

1.3 "Articles": The Articles of Incorporation of Beaufort Pointe Owners Association, Inc., as filed with the North Carolina Secretary of State and recorded in the Register of Deeds.

1.4 "Association": Beaufort Pointe Owners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

1.5 "Association Documents": Collectively the Articles of Incorporation of the Association, the Bylaws of the Association, this Declaration, any Supplemental Declaration as may be applicable to separate portions of the Property, the Rules and Regulations, the Design Guidelines adopted by the Association, and any resolutions adopted by the Board, all as may be amended, restated and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

1.6 "Base Assessment": Assessments levied on all Lots to fund the Common Expenses. The Base Assessment for all Lots owned by Declarant shall be one-third (1/3) of the Base Assessment established for all Lots pursuant to Section 10.3.

1.7 "Benefited Assessment": Assessments levied under Section 10.6.

1.8 "Board of Directors" or "Board": The body responsible for administration of the Association selected as provided in the Bylaws.

1.9 "Business and Trade": Shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.10 "Bylaws": The Bylaws of the Association as they may be amended from time to time.

1.11 "Common Elements": All real and personal property in which the Association now or hereafter owns, leases or otherwise holds possessory or use rights for the common use and enjoyment of the Owners, including easements held by the Association for those purposes. The term shall include, without limitation, any Recreational Facilities (hereinafter defined) (if constructed by Declarant and transferred to the Association as provided in Section 2.2), signage and/or landscape easements as the same may be depicted on the Map, as that term is defined in Section 2.3 herein, landscape medians, roads, cul de sacs, lakes, ponds, rivers, streams, wetlands and preservation areas. The term shall also include any utilities facilities owned or operated by the Association as described in Article 18 herein. The term shall also include any and all permits and other such intangible property including, but not limited to, the Stormwater Management Permit.

1.12 "Common Expenses": Any and all expenditures made by or financial liabilities and obligations of the Association, together with any allocations to reserves.

1.13 "Community-Wide Standard": The standard of conduct, upkeep, or other activity generally prevailing throughout the Property. The standard shall be established initially by Declarant thereafter shall be determined by the Board of Directors and the Architectural Committee. The standard may contain both objective and subjective elements, and may evolve and change as development progresses and as the needs and desires within the Property change.

1.14 "Contiguous Property": Any property of which a portion adjoins or borders the Property or which is separated from the Property only by roads, rights-of-way, waterways, or natural boundaries.

1.15 "Covenant to Share Costs": Any declaration of easements and covenant to share costs executed by Declarant and recorded in the Register of Deeds which creates easements for the benefit of the Association and the present and future owners of the real property subject to the Declaration and which obligates the Association and such owners to share the costs of maintaining certain property described therein.

1.16 "Declarant": NC Land Partners, LLC, a Delaware limited liability company, or any successor, successor-in-title, or assignee thereof, which has or takes title to any portion of the Property described on Exhibit "A" or any Contiguous Property made subject to this Declaration for the purpose of development and/or resale in the ordinary course of business and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.17 "Declaration": This Declaration, any Supplemental Declaration as may be applicable to separate portions of the Property, any exhibit, schedule or amendment thereto, all as may be amended, restated and revised from time to time.

1.18 "Design Guidelines": The architectural, design, development, and other guidelines, standards, controls, and procedures including but not limited to, application and review procedures, adopted pursuant to Article 11 and applicable to the Property.

1.19 "Development Period": The period ending on the earliest of (a) twenty-five (25) years from the date this Declaration is recorded in the Register of Deeds; provided, that if Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond Declarant's control, then the aforesaid period shall be extended for the length of the delay plus an additional two (2) years upon written notice to the Association of such extension; or (b) the date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date so stated.



1.20 "Landscaping": Living plants, shrubs, trees, vegetation, ground coverings (including grass and sod) and appurtenant live/growing vegetative materials, straw, mulches, composting materials, pools (other than swimming pools), ornamental ponds, ornamental structures and any other living or non-living material or structure reasonably constituting a part of any or all of the foregoing installed upon a Lot.

1.21 "Limited Common Elements": A portion of the Common Elements allocated by this Declaration or by operation of law for the exclusive use of one (1) or more but fewer than all of the Lots. Limited Common Elements may also be shown on any map of the Project recorded in the Register of Deeds.

1.22 "Lot": A portion of the Property, whether improved or unimproved, other than Common Elements and property dedicated to the public, which may be independently owned and conveyed and which is separately identified on a map of all or any portion of the Property recorded in the Register of Deeds. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Unit, thereon. In the case of any structure containing multiple Units, each Unit shall be deemed to be a separate Lot.

For all purposes set forth in the Association Documents, a Lot comes into existence on the later of recordation in the Register of Deeds of (i) a map or plat depicting said Lot or (ii) a Supplemental Declaration defining and subjecting the proposed Lot to the same and this Declaration.

The lots identified on the Map, as that term is defined in Section 2.3 herein, as 39-51 and 39A-51A shall be conveyed with the corresponding counterpart. For example, Lots 39 and 39A shall be conveyed together. After the initial conveyance by Declarant each such lot pair (sometimes described herein as "39/39A", or equivalent) shall be treated as a single Lot for all purposes under this Declaration. Furthermore no such lot pair may be separately conveyed or divided.

1.23 "Member": A Person having membership in the Association consistent with Section 3.2 of this Declaration.

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

1.25 "Mortgagee": A beneficiary or holder of a Mortgage.

1.26 "Owner": One or more Persons who hold the record title to any Lot, except Persons holding an interest merely as security for the performance of an obligation in which case the equitable owner will be considered the Owner.

1.27 "Permit": The North Carolina Stormwater Management Permits issued for the real property described in Exhibit "A", and any additional North Carolina Stormwater

Management Permits, applicable to the Property, and any amendments, additions or replacements thereof.

1.28 "Person": A natural person, corporation, limited liability company, partnership, trustee, or any other legal entity.

1.29 "Private Access Easements": Easements provided for the exclusive benefit of some but not all Owners for the purpose of access to portions of the benefited Owners' Lots. The Private Access Easements are more specifically described in Section 2.3 herein.

1.30 "Private Amenities": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of or within the Property designated by Declarant and which are owned and operated, in whole or in part, by Persons other than the Association for recreational or other purposes on a club membership, daily fee, use fee, public, private basis or otherwise, and may include, without limitation, any golf course and/or marina and all related and supporting facilities and improvements.

**DECLARANT HAS NO OBLIGATION TO CONSTRUCT  
OR MAKE AVAILABLE ANY PRIVATE AMENITIES TO  
OWNERS.**

1.31 "Project": The Beaufort Pointe development located on the Property.

1.32 "Property": The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article 9.

1.33 "Register of Deeds": The office of the Register of Deeds of Beaufort County, North Carolina.

1.34 "Special Assessment": Assessments levied under Section 10.5.

1.35 "Stormwater Management Facilities": All areas consisting of ditches and swells, retention ponds and other improvements which are constructed pursuant to, and regulated by, the Permit.

1.36 "Supplemental Declaration": An amendment or supplement to this Declaration filed pursuant to Article 9 which subjects additional property to this Declaration and identifies the Common Elements within the additional property, if any, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein

1.37 "Subsidiary Association": In addition to the Association, there may be created subsidiary associations pertinent to distinct neighborhoods or sections of the Property. Owners of Lots subject to the jurisdiction of any Subsidiary Association within the Property shall also be Members of the Association and shall be entitled to all rights and subject to all obligations granted and created pursuant to the Association.

1.38 "Unit": Any building or structure or portion of a building or structure situated upon a Lot which is intended for use and occupancy as an attached or detached residence for a single family, including by way of illustration but not limitation, condominium units, cluster homes, patio or zero lot line homes, and single family detached houses. In the event that the Owner of Lot 14 and Lot 15 elects to construct a Guest House (as defined in Exhibit "B" hereto) on the Lot in addition to the primary home, the Guest House and primary home shall be collectively deemed a single Unit.

1.39 "Upkeep": Care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

1.40 "Use Restrictions": The rules and use restrictions are more fully defined as set forth in Section 12.

1.41 "Utility Company": A public or private company or entity duly licensed and authorized by the North Carolina Utilities Commission to provide utility services within a specified franchise area and any entity providing utility services on behalf of a body politic, municipality or other governmental body or entity.

## **Article 2. Property Rights.**

2.1 Common Elements: Every Owner shall have a right and nonexclusive easement, in common with all other Owners, of use, access, and enjoyment in and to the Common Elements, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) All applicable provisions of the Act including, but not limited to, the following:

- (i) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Elements, including rules restricting use of Recreational Facilities (as hereinafter defined) within the Common Elements to Owners, their families, lessees and guests, and rules limiting the number of occupants and guests who may use the Common Elements;
- (ii) The right of the Association to dedicate or transfer all or any part of the Common Elements to governmental entities pursuant to Section 4.3;

- (iii) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission, or other fees for the use of any Recreational Facility or other improvements situated upon the Common Elements;
  - (iv) The right of the Board to permit use of any Recreational Facilities situated on the Common Elements by Persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
  - (v) The right of the Board to create, enter agreements with, grant easements to and transfer portions of the Common Elements to tax-exempt organizations under Section 4.9;
  - (vi) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred by the Association; and
  - (vii) The right of the Association to convey or encumber portions of the Common Elements as provided in the Act.
- (d) The right of the Board to suspend the privilege of an Owner to use Recreational Facilities within the Common Elements.
- (e) The right of the Association to rent or lease Recreational Facilities within the Common Elements on a short-term basis to any Owner for the exclusive use of such Owner and such Owner's family and guests.

2.2 Recreational Facilities. Declarant may, but has no obligation to, construct community center/clubhouses, tennis courts, beach accesses, and other recreational improvements and facilities within the Common Elements (the "Recreational Facilities"). If constructed, the Recreational Facilities will be provided for the benefit of Owners of Lots, their families, tenants and guests within the Property described on Exhibit A. The Recreational Facilities shall be maintained as part of the Common Elements out of assessments imposed on all Owners who have the right of access to and the use of the present Recreational Facilities in accordance with the provisions of Section 2.1. The Association may impose reasonable regulations regarding the use of any such Recreational Facilities to insure accessibility, safety, harmony and preservation of any such Recreational Facilities. The cost of the management, operation, maintenance, repair, servicing, replacement and renewal of the Recreational Facilities shall be deemed Common Expenses as to all Owners who have the right of access to and use of said Recreational Facilities.

**DECLARANT HAS NO OBLIGATION TO CONSTRUCT ANY RECREATIONAL FACILITIES, THE CONSTRUCTION OF THE SAME BEING IN THE SOLE DISCRETION OF DECLARANT.**

2.3 Private Access Easements. The following perpetual easements are hereby granted, the same being depicted on that certain map recorded in the Register of Deeds and identified in Exhibit "A" (the "Map"):

(a) The Owners of the Lots identified as Lots 4 through 25 are hereby granted an easement for pedestrian and vehicular access over the fifty (50) foot wide "access easement" identified and depicted on the Map across portions of Lots 3 through 25.

(b) The Owners of the Lots identified as Lots 39/39A, 40/40A, 41/41A, 42/42A, 43/43A, 44/44A, 45/45A, 46/46A, 47/47A, 48/48A, 49/49A, 50/50A, and 51/51A are hereby granted an easement for pedestrian access and vehicular access, which vehicle access may be limited to certain types or classes of vehicles by rules established by the Board in its reasonable discretion, over the fifty (50) foot wide "access easement" identified and depicted on the Map across portions of Lots 39/39A, 40/40A, 41/41A, 42/42A, 43/43A, 44/44A, 45/45A, 46/46A, 47/47A, 48/48A, 49/49A, and 50/50A.

Any improvements or betterments that may be constructed or installed across the easements described above shall be Limited Common Elements for the benefit of the Owners to whom said easements are granted. In the event any such improvements or betterments are installed or constructed, including, without limitation, a boardwalk, gravel or paved road, or other driveway or walkway, the costs and expenses of maintenance of such improvements shall be borne by the benefited Owners in accordance with Section 10.6 herein.

**Article 3. Association Function, Membership and Voting Rights.**

3.1 Function of Association. The Association shall be the entity responsible for management, Upkeep, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of the Association Documents. The Association shall perform its functions in accordance with the Association Documents and North Carolina law. The Association shall have all powers reasonably necessary to perform its functions and obligations described in the Association Documents including, but not limited to, all powers set forth in N.C. Gen. Stat. Chapter 55A and the Act.

3.2 Membership. Every Owner shall be a Member of the Association. If a Lot is owned by more than one Person, all co-Owners shall be Members and share the privileges of such membership, subject to reasonable Board regulation, such reasonable fees as may be established under Section 2.1, and the restrictions on voting set forth in Section 3.3 and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or

by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3 Voting. All Owners shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 3.2; provided, there shall be only one (1) vote per Lot.

Declarant may, by Supplemental Declaration, create additional classes of membership for the Owners of Lots within any additional property made subject to this Declaration, with such rights, privileges and obligations as may be specified in such Supplemental Declaration in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

Except as otherwise specified in this Declaration or the Bylaws or as required by law, the vote for each Lot shall be exercised by the Owner. In any situation in which there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such notice to the Association, the Lot vote shall be suspended if more than one Person seeks to exercise it. If the co-Owners are unable to agree on how the vote should be cast, it will be disregarded.

**Article 4. Association Rights, Obligations and Services.**

4.1 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Property, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Elements by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed, including but not limited to restrictions governing the use of such property.

4.2 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Association Documents or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in the Association Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.3 Dedication of Common Elements. The Association may dedicate or grant easements over portions of the Common Elements to any local, state, or federal governmental entity or any Utility Company.

4.4 Disclaimer of Liability. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote the health, safety and welfare of Owners and occupants of any Lot.

(a) Notwithstanding anything contained herein or in the Association Documents or the Act, neither the Association, the Board, the management company of the Association, Declarant nor any successor Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Property, including all Recreational Facilities.

(b) Neither the Association, the Board, the management company of the Association, Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Property. Each Owner and occupant of a Lot and each family member, tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that the Association, the Board, the management company of the Association, Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any family member, tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

(c) No provision of the Association Documents shall be interpreted as creating a duty of the Association, the Board, the management company of the Association, Declarant nor any successor Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the management company of the Association, if any, Declarant and any successor Declarant, their directors, officers, committee and Board members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

4.5 Safety. The Association may maintain or support certain activities within the Property designed to provide a greater level of safety than exists within the Property.

(a) Neither the Association, any management company of the Association, Declarant, nor any successor declarant shall in any way be considered insurers or guarantors of safety within the Property. Neither the Association, any management company of the Association, Declarant, nor any successor declarant shall be held liable for any loss or damage for failure to provide adequate safety or ineffectiveness of safety measures undertaken.

(b) All Owners and occupants of any Lot, and all family members, tenants, guests, and invitees of any Owner, acknowledge that the Association, its Board of Directors, and Association committees, the management company of the Association, Declarant, any successor declarant, and the Architectural Committee and the MC (as defined in Section 11.2(b) hereof) do not represent or warrant that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any safety system designated by or installed according to guidelines established by Declarant or the Architectural Committee or the MC may not be compromised or circumvented; nor that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems will in all cases provide the detection or protection for which the system is designed or intended.

(c) All Owners and occupants of any Lot, and all family members, tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board and committees, the management company of the Association, Declarant, or any successor declarant are not insurers of safety within the Property. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants of its Lot that the Association, its Board and committees, and Declarant not guarantors of security or safety and that each person using Property within the Project assumes all risks of personal injury and loss or damage to property including Lots, improvements thereon and the contents thereof, resulting from acts of third parties.

(d) All Owners and occupants of any Lot and all family members, tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board and committees, the management company of the Association, Declarant, or any successor declarant have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems recommended or installed or any safety measures undertaken within the Property.

4.6 Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be



relied upon as a representation as to what services and facilities, if any, will be provided by the Association. This paragraph shall be specifically construed to allow the Association to enter into a contract for the overall management of the Association with any individual or corporation. The Association or its managing agent shall also be permitted to provide services to any Subsidiary Association or Owners where it deems it to be in the interest of the Association to do so.

4.7 Change of Use of Common Elements. Upon (a) adoption of a resolution by the Board stating that, in the Board's opinion, a service provided by the Association pursuant to Section 4.6 or the then present use of a designated part of the Common Elements is no longer in the best interest of the Owners or is no longer necessary or appropriate for the purposes intended, and (b) the consent of Declarant during the Development Period, the Board shall have the power and right to terminate such service or change the use of any Common Elements (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided that any such new use (i) shall be for the benefit of the Owners, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Elements.

4.8 View Impairment. Neither Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. Neither Declarant nor the Association shall have the obligation to prune or thin Landscaping except as set forth in Article 5. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

4.9 Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Elements to, or transfer portions of the Common Elements to non-profit, tax-exempt organizations, including but not limited to organizations that provide facilities or services designed to meet the physical or social needs of a particular group or class of persons, for the benefit of the Property, the Association, its Members and residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

#### **Article 5. Maintenance.**

5.1 Association's Responsibility. The Association shall provide Upkeep for the Area of Common Responsibility, which shall include, but need not be limited to:

(a) all Common Elements, all improvements upon the Common Elements, and the Stormwater Management Facilities;

(b) all Landscaping, signage, and improvements, including any parks, structures, bike, pathways and trails, situated upon the Common Elements;

(c) all private streets, including any asphalt repairs thereto, situated upon the Common Elements which are not subject to the jurisdiction of any Subsidiary Association;

(d) all walls and fences constructed by Declarant on any Lots which serve as perimeter walls for the Property or which separate any Lot from Common Elements or Private Amenities;

(e) Landscaping, sidewalks, street lights, irrigation systems, and signage within public streets or other rights-of-way abutting the Property;

(f) Landscaping within any public utility easements and scenic or access easements within the Common Elements (subject to the terms of any easement agreement relating thereto);

(g) access easements for the benefit of enumerated Lot owners as depicted on the map of the Project in the Register of Deeds, provided, however, that the cost and expenses of such Upkeep shall be levied as a Benefited Assessment to the benefited Owners;

(h) any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, any plat of any portion of the Property, or any contract or agreement for maintenance thereof entered into by the Association; and

(i) any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members and identified by written notice from Declarant to the Association until Declarant revokes such privilege of use and enjoyment by written notice to the Association.

All areas designated on any recorded plat as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. If approved, the Association may maintain boardwalks, docks and piers, over, around, and in such wetlands. Notwithstanding anything contained in this section, Declarant, its successors, assigns, affiliates and designees may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

The Association may also maintain and improve other property which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law.

Except as otherwise specifically provided herein, all costs for Upkeep of the Area of Common Responsibility shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for, such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

5.2 Owner's Responsibility. Each Owner shall provide for the Upkeep of his or her Lot (with the exception of those areas designated as common maintenance responsibility on the recorded maps), and Unit, and all other structures, parking areas, Landscaping, and other improvements upon the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such responsibility for Upkeep is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her Upkeep responsibility, the Association may perform such work for Upkeep and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 10.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Standard of Performance. Upkeep may include irrigation as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All Upkeep shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board.

Portions of the Property are environmentally sensitive and/or may provide greater aesthetic value than other portions of the Property. The Board may establish a higher Community-Wide Standard for such areas and require additional Upkeep for such areas to reflect the nature of such property.

Notwithstanding anything to the contrary contained herein, neither the Association, nor any Owner shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

**Article 6. Insurance and Casualty Losses.**

6.1 Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect if reasonably available the following types of insurance:

(a) Blanket property insurance covering risks of physical loss on an "all-risk" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Elements and on other portions of the Area of Common

Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at a reasonable cost, then "broad form named perils" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property. This provision for Blanket property insurance shall not be construed to require the Association to obtain coverage for any structure owned by any party other than the Association. The Association may elect to provide insurance for said structures with the approval of a majority of the Owners or if such individual coverage is not available,

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf and including coverage for non-owned automobile liability. If generally available at reasonable cost, the commercial general liability insurance shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(c) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(d) Directors and officers' liability insurance or equivalent association liability insurance;

(e) Commercial crime insurance, including employee fidelity insurance, in an amount determined by its best business judgment which shall not be less than one-sixth of the annual Base Assessments on all Lots plus reserves on hand for employee fidelity insurance. Such commercial crime insurance shall cover funds held by the Association's management company, unless such management company's insurance insures the Association against crimes committed by or against such management company. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation;

(f) Such additional insurance, including but not limited to flood, earthquake and hurricane insurance, as the Board in its best business judgment determines advisable; and

(g) The Association shall have no insurance responsibility for any portion of any Private Amenities or any Lot except as stated in paragraph 6.1(a).

If the insurance described in subsection (a) of this Section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners.

6.2 Association Policy Requirements. Prior to the renewal of any insurance policy, the Association shall arrange for a review of the sufficiency of insurance coverage by one

or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the Beaufort County, North Carolina, area.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

The policies may contain a reasonable deductible as determined by the Board and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners, their family members, guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots in accordance with Section 10.6.

- (a) All insurance coverage obtained by the Board shall
  - (i) Be written with a company authorized to do business in the State of North Carolina which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board requires;
  - (ii) Be written in the name of the Association as trustee for the benefited parties. Policies on the Common Elements shall be for the benefit of the Association and its Members;
  - (iii) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;
  - (iv) Include an agreed amount endorsement if the policy contains a co-insurance clause; and
  - (v) Contain replacement cost coverage.
  - (vi) Contain a waiver of subrogation as to any claims against the Association's Board, officers, committees, employees, and its manager and the Owners;
  - (vii) Make the Lot Owners as additional insured's under the policy.
  - (viii) Contain an endorsement preventing the Association's insurance carrier from invoking its "other insurance" clause

to obtain any contribution from any insurance maintained by individual Owners;

- (ix) Provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy.
- (x) Provide that if, at the time of a loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides the primary insurance coverage.

(b) In addition, the Board shall secure, if reasonably available and as applicable, insurance policies providing the following:

- (i) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (ii) An endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (iii) A cross liability provision;
- (iv) A provision vesting the Board with exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited *from* participating in the settlement negotiations, if any, related to the loss; and

6.3 Owner's Insurance. By virtue of owning a Unit upon a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance covering risks of physical loss for both the Unit and any other insurable improvements on the Lot for the full insurable replacement cost thereof, less a reasonable deductible, unless any Subsidiary Association having jurisdiction over such Owner's Unit and Lot carries such insurance pursuant to any Supplemental Declaration or otherwise. Such property insurance shall include windstorm and hail coverage, and, if full insurable replacement cost is not reasonably available for such coverage, actual cash value may be substituted. Each Owner shall, upon request from the Association, provide evidence of insurance coverage to the Association.

Each Owner further covenants and agrees that in the event of damage to or destruction of the Unit or any other structures on or comprising his or her Lot, he or she shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 11 of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the

Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

6.4 Loss Adjustment, Repair and Proceeds. With respect to any loss covered by the policy (or policies) of the Association, it shall be adjusted by the Association and matters pertaining to the disbursement of proceeds of such insurance and the repair or replacement, including termination of the Project, shall be governed by the provisions of Chapter 47F-3-113(d) and (g) of the Act.

**Article 7. No Partition.**

Except as permitted in this Declaration, the Common Elements shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

**Article 8. Permit: Transfer, Responsibilities and Covenants.**

8.1 Transfer to and Acceptance by Association. Declarant shall, at its sole cost and expense, initially construct all Stormwater Management Facilities required to be located upon the Property or upon any property annexed into the Property by Declarant to the standards required by the Permit. Upon completion of the initial construction of the Stormwater Management Facilities, Declarant shall transfer the Permit and Declarant's responsibilities under the Permit to the Association and the Association shall accept such transfer. Thereafter, upon completion of the initial construction of the Stormwater Management Facilities required by the applicable Permit for any additional property annexed by Declarant into the Property pursuant to this Declaration, Declarant shall transfer the applicable Permit and Declarant's responsibilities under the Permit applicable to the property annexed by Declarant into the Property to the Association. The Association shall accept the transfer from Declarant of the applicable Permit and responsibilities under the Permit. Transfers of any such Permit shall occur upon the earlier to occur of (i) the date the North Carolina Department of Environment and Natural Resources allows the transfer of the Permit to occur; or, (ii) the date after which at least fifty percent (50%) of the Lots therein are conveyed to Owners other than Declarant; and, in the case of property hereinafter annexed into the Property by Declarant as provided herein, the date after which at least fifty percent (50%) of the annexed Lots are conveyed to Owners other than Declarant.

Prior to any such transfer of the Permit, the Stormwater Management Facilities for the Property, including any property annexed by Declarant into the Property, shall be certified to the Association and the State of North Carolina, either by state inspection or by a licensed engineer, as being in compliance with the applicable Permit prior to such assignment or transfer.

8.2 Association Indemnification. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as the responsible party under the Permit and any Permit applicable to any property annexed into

the Property from and after the date Declarant tenders transfer of its responsibilities under the Permit. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as holder of the Permit from and after the date Declarant tenders transfer of the Permit to the Association following the approval of such transfer by the North Carolina Department of Environment and Natural Resources and the certification of compliance as set forth above. Further, Declarant may bring an action for specific performance of the obligations of the Association pursuant to this Section 8.2.

8.3 Administration of Permit. From and after the transfer of Declarant's responsibilities under the Permit applicable to the property annexed into the Property and from and after transfer of the Permit from Declarant to the Association, the oversight, supervision, management and administration of the Permit shall be the sole responsibility of the Association. The Association's duties with respect to the Permit shall be carried out in accordance with the terms and conditions of the Association Documents, and the Permit.

8.4 Easement for Upkeep and Enforcement. The Association hereby is granted and conveyed an easement over, under and upon each Lot for the purpose of access to and Upkeep of all Stormwater Management Facilities and to enforce all requirements of the Permit. In the event Declarant annexes additional property into the Property and transfers the applicable Permit and Declarant's responsibilities under the Permit to the Association, the Association shall have, and hereby is granted and conveyed, an easement over, under and upon each annexed Lot for the purpose of access to and Upkeep of all Stormwater Management Facilities located upon such additional property and to enforce all requirements of the Permit.

8.5 Permit Covenants. To ensure ongoing compliance with the Permit as issued by the Division of Water Quality under NCAC 2H.1000 the following covenants and restrictions are hereby imposed upon the Property:

(a) The maximum allowable built-upon area per Lot is identified on Exhibit "C" attached hereto. The allotted amount includes any built-upon area constructed within the property boundaries of a Lot and that portion of the right-of-way between the front Lot line and the edge of the pavement of any street abutting such Lot. Built-upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools. Built-upon area in excess of the permitted amount above-stated will require a modification of the Permit.

(b) No Person may pipe, fill in or alter any vegetated drainage swells constituting a part of the Stormwater Management Facilities constructed pursuant to the Permit.

(c) Lots located within an Area of Environmental Concern as designated by CAMA may be subject to a reduction in the allowable built-upon area due to such CAMA regulations.



(d) No alteration of the drainage for the Stormwater Management Facilities designated in the Permit and shown on any accompanying approved plans shall occur without the prior written consent of the Division of Water Quality.

The covenants set forth herein pertaining to stormwater management may not be altered, rescinded, or modified without the express written consent of the State of North Carolina, Division of Water Quality. The State of North Carolina is made a beneficiary of the covenants above-stated to the extent necessary to maintain compliance with the Permit, and such covenants run with the Property and shall be binding on all Persons and parties claiming under them.

**Article 9. Annexation and Withdrawal of Property.**

**9.1 Annexation Without Approval of Membership.**

(a) During the Development Period, Declarant may unilaterally subject any Contiguous Property to the provisions of this Declaration. Nothing in this Declaration or otherwise shall be construed to require Declarant, or any successor, to develop any Contiguous Property in any manner whatsoever.

(b) Declarant may transfer or assign this right to annex property, provided that such transfer is memorialized in a written, recorded instrument executed by Declarant and recorded in the Register of Deeds. Nothing in this Declaration shall be construed to require Declarant or any successor to annex or develop any Contiguous Property in any manner whatsoever.

(c) Such annexation shall be accomplished by filing a Supplemental Declaration in the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the recording of such Supplemental Declaration in the Register of Deeds unless otherwise provided therein.

**9.2 Annexation With Approval of Membership.** The Association or Declarant may subject any Contiguous Property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Owners representing 67% of the votes of the Association represented at a meeting duly called for such purpose, and the consent of Declarant during the Development Period.

Such annexation shall be accomplished by recording a Supplemental Declaration in the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon the recording unless otherwise provided therein.

9.3 Withdrawal of Property. Declarant reserves the right to amend this Declaration without prior notice and without the consent of any Person, for the purpose of removing property then owned by Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Property, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property.

9.4 Additional Covenants and Easements. Declarant may unilaterally subject any portion of the Property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property and shall require the written consent of the owner( s) of such property, if other than Declarant.

9.5 Amendment. This Article shall not be amended without the prior written consent of Declarant during the Development Period.

9.6 Additional Members. Any property annexed into the Association by the provisions of this Declaration shall be subject to all conditions and privileges of the Association and Owners of any such annexed property shall be members of the Association.

#### **Article 10. Assessments.**

10.1 Creation of Assessments. The Association shall levy assessments against each Lot for Common Expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 10.5; and (c) Benefited Assessments as described in Section 10.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Lot within any portion of the Property is deemed to covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Association (not to exceed the highest rate allowed by North Carolina law), late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is levied until paid, as more particularly provided in Section 10.8. Each such assessment, together with interest, late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment was levied. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance. No first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, the Base Assessment for each Lot shall be due and payable in advance each year on the first day of the fiscal year of the Association. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request by an Owner, furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether assessments for such Owner's Lot have been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself or herself from liability for assessments, by non-use of Common Elements, abandonment of his or her Lot or Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it or for inconvenience or discomfort arising from repairs or improvements or other action taken by it.

10.2 Declarant's Obligation for Assessments. During the Development Period, Declarant may annually elect either to pay (i) the Base Assessment on all of its unsold Lots or (ii) the shortage for such fiscal year. The "shortage" shall be the difference between

(a) the amount of all income and revenue of any kind received by the Association, including but not limited to, assessments collected on all other Lots, use fees, advances made by Declarant, and income from all other sources, and

(b) the amount of all actual expenditures incurred by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds. Calculation of the shortage shall be performed on a cash basis of accounting. Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities for payment of Common Expenses. After termination of the Development Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

10.3 Computation of Base Assessment. Not less than sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the Common Expenses

estimated to be incurred during the coming year. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.4, but shall not include expenses incurred during the Development Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Owners representing a majority of the votes of the Association and Declarant. In determining the budget, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under Section 10.7 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

Within thirty (30) days after adoption of any proposed budget by the Board, the Board shall provide to all Owners a summary of the budget and notice of a meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board 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 the summary of the budget and notice of the meeting. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless, at that meeting, a majority of all the Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

The Base Assessment for the fiscal year shall be determined based upon the budget adopted by the Board and ratified by the Owners. The amount of Base Assessment shall be levied equally against all Lots, subject to the provisions of Section 1.6.

10.4 Reserve Budget and Special Reserve Assessment. The Board shall prepare, on an annual basis, reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. Such reserve budgets may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in the Base Assessments reserve contributions in amounts sufficient to meet these projected needs, if any.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes. So long as Declarant owns any portion of the Property or has the right to annex property pursuant to Section 9.1, neither the Association nor the Board shall adopt, modify, limit or expand such policies without Declarant's prior written consent.

10.5 Special Assessments. In addition to other authorized assessments, the Board may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessments shall be approved at a meeting of the Board and shall become effective upon approval by the Board, unless disapproved by

Declarant, as long as Declarant owns any portion of the Property or has the right to annex property pursuant to Section 9.1. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

10.6 Benefited Assessments. The Board may levy Benefited Assessments against particular Lots for expenses incurred or to be incurred by the Association, as follows:

(a) to cover the costs, including overhead and administrative costs, of Upkeep and replacement of any Limited Common Elements;

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

(c) to cover costs incurred in bringing the Lot into compliance with the terms of the Association Documents and the Act or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their family members, tenants, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying a Benefited Assessment under this subsection (c).

10.7 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day of the month following (a) the date the Lot is made subject to this Declaration, or (b) the date the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessments against each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

10.8 Lien for Assessments. All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied, as provided in N.C. Gen. Stat. § 47F-3-116, until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of interest (subject to the limitations of North Carolina law), late charges, and costs of collection (including attorneys' fees, lien fees and administrative costs). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when any assessment or other charge is delinquent, by suit, judgment, and foreclosure.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied

on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, a Mortgagee holding a first Mortgage of record or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 10.7, including such acquirer, its successors and assigns.

10.9 Acceleration. In any case where an assessment against the Owner is payable in installments, upon a default by such Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Board, and the entire balance of the assessment may be declared due and payable in full by the service of such notice to such effect upon the defaulting Owner.

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

10.11 Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) all Common Elements; and
- (b) all property dedicated to and accepted by any governmental authority or Utility Company.

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for Section 501(c) status under the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

10.12 Initial Working Capital Fund. Upon the initial conveyance of a Lot by Declarant to an Owner, such Owner shall contribute at the closing of said Lot an amount equal to one-sixth (1/6th) of the Base Assessment levied for the current fiscal year against such Lot, said sum to be paid to the Association. The sum is not an advance payment of any installment of the Base Assessment, but shall be utilized to establish the initial working capital fund for the

Association. Such sum may also be utilized to reimburse Declarant the exact cost of any premiums or insurance policies purchased for the benefit of the Association by Declarant.

**Article 11. Architectural and Design Standards.**

11.1 General. No improvements (including staking, clearing, excavation, grading and other site work), exterior alteration of existing improvements (including painting), placement or posting of any object or thing on the exterior of any Lot, Unit, other structure or the Common Elements (e.g., signs, antennae, clotheslines, playground equipment, temporarily or permanently installed basketball goals, pools, propane tanks, lighting, temporary structures, and artificial vegetation), planting or removal of Landscaping, construction or installation of any pier, dock, boat lift, boat house, or the like, or installation or removal of an irrigation system shall take place except in compliance with this Article, this Declaration, including the Use Restrictions, and the Design Guidelines and with the approval of the appropriate committee under Section 11.2.

Any Owner may remodel, paint or redecorate the interior of structures, including the Unit on his or her Lot, without approval. However, modification of the exterior and modifications to the interior of screened porches, patios, and similar portions of a Lot visible from other Lots, Units, Common Elements or streets (public or private) within the Property shall be subject to this Article and approval as set forth below.

This Article shall not apply to the activities of Declarant or to improvements to the Common Elements by or on behalf of the Association.

This Article may not be amended during the Development Period or without Declarant's written consent so long as Declarant owns any Private Amenities.

11.2 Architectural and Design Review.

(a) New Construction. Declarant shall have exclusive authority to administer and enforce architectural standards under this Article and to review and act upon all applications for original construction within the Property. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board may, at its option, either create and appoint an Architectural Committee ("AC") or assign such duties to the MC (as defined below). The AC, if established, shall consist of at least three (3), but not more than five (5), Persons who shall serve and may be removed in the Board's discretion. The AC shall have no rights or authority until Declarant's authority under this Article is surrendered.

(b) Modifications. The Board shall establish a Modifications Committee ("MC") which shall consist of at least three (3), but not more than five (5), Persons who shall be appointed and shall serve at the discretion of the Board. The MC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures on Lots or containing Units and the adjacent open space. Declarant shall have the

right to disapprove any action taken by the MC which Declarant determines, in its sole discretion, to be inconsistent with the Design Guidelines. (For purposes of this Article, "Reviewing Body" shall refer to either Declarant, the MC, or the AC, as appropriate under the circumstances.)

(c) Fees. The Reviewing Body 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 in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

(d) Security. The Reviewing Body may also require posting of security by any Owner, or such Owner's contractor or builder to be utilized for the repair of any damage to any Common Elements or providing Upkeep of such Common Elements in excess of normal Upkeep as may occur during the construction of any permitted improvements within the Property. The amount and type of security, as required by the Reviewing Body, may be changed from time to time and does not necessarily have to be consistent as to all Owners, contractors or builders.

11.3 Guidelines and Procedures. Declarant shall prepare Design Guidelines which shall apply to all construction activities within the Property, except as provided in Section 11.1. Declarant shall have sole and full authority to amend the Design Guidelines during the Development Period. Thereafter, the AC, or if the AC is not established, the MC, shall have the authority to amend the Design Guidelines subject to ratification by the Owners as described herein. Within thirty (30) days after the adoption of any amended Design Guidelines by the AC or the MC, the AC or the MC shall provide a copy or summary of the amended Design Guidelines to all Owners, and shall set a date and give notice for a meeting of the Owners to consider ratification of the amended Design Guidelines, with such notice to include a statement that the amended Design Guidelines may be ratified without a quorum. The date of the meeting of the Owners to consider ratification of the amended Design Guidelines shall be not less than ten (10) nor more than sixty (60) days after the mailing of the copy or summary and notice. There shall be no requirement that a quorum be present at the meeting. The amended Design Guidelines are ratified unless at the meeting a majority of all the Owners of the Association reject the amended Design Guidelines. In the event the proposed amended Design Guidelines are rejected, the Design Guidelines immediately prior to the amendment shall be continued.

The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, intended use, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern in considering applications hereunder. The Design



Guidelines are not the exclusive basis for decisions of the Reviewing Body and compliance with the Design Guidelines does not guarantee approval of any application.

Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; Declarant or, upon its formation, the AC, or the MC, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The Association shall make the Design Guidelines available to Owners, builders and contractors who seek to engage in development or construction within the Property and all such Persons shall conduct their activities in accordance with such Design Guidelines. In Declarant's discretion, such Design Guidelines may be recorded in the Register of Deeds, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the Reviewing Body, unless the Reviewing Body has granted a variance in writing pursuant to Section 11.6. So long as the Reviewing Body has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

#### 11.4 Submission of Plans and Specifications.

(a) No activities within the scope of Section 11.1 shall commence on any Lot until an application for approval of the proposed work has been submitted to and approved by the Reviewing Body. Such application shall be in the form required by the Reviewing Body and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefore and other features of proposed construction, as applicable. The Design Guidelines shall set forth the procedure and any additional information for submission of the Plans.

(b) In reviewing each submission, the Reviewing Body may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. The Reviewing Body may require relocation of native plants within the construction site or the installation of an irrigation system for the landscaping including the natural plant life on the Lot as a condition of approval of any submission.

The Reviewing Body shall, within the period specified in the Design Guidelines, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the Reviewing Body fails to advise the submitting party by written notice within the period specified in the Design Guidelines of either the approval or disapproval and suggestions for curing the objections of the committee of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

(c) If construction does not commence on a project for which Plans have been approved within 60 days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Reviewing Body for reconsideration. If construction is not completed on a project for which plans have been approved within the period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

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

11.6 Variances. The Reviewing Body may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the MC may not authorize variances without the written consent of Declarant, as long as it owns any portion of the Property or has a right to annex any property pursuant to Section 9.1, and the AC, if established.

11.7 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither Declarant, the Association, the Board, the AC or the MC shall bear any responsibility for ensuring the structural

integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board, the AC or the MC, or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the AC and the MC and their members shall be defended and indemnified by the Association as provided in the Bylaws.

11.8 Enforcement. Any construction, alteration or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from Declarant, the AC, the MC, or the Board, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the property, Lot and/or Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant, the Association or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, Declarant or the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Property, subject to the notice and hearing procedures contained in the Declaration. In such event, neither Declarant, the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this section.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewing Body.

**Article 12. Plan of Development and Use Restrictions.**

12.1 Plan of Development: Applicability: Effect. Declarant has established a general plan of development and occupancy for the Property under this Declaration in order to protect all Owners' quality of life and collective interests, the aesthetic and environment quality

within the Property, and the vitality of and sense of community within the Property, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the community.

The Property is subject to Design Guidelines as set forth in Article 11 and other restrictions governing land development, architectural and design control, individual conduct and uses of or actions upon the Property. This Declaration, including the Initial Use Restrictions attached hereto as Exhibit "B," and the rules and resolutions adopted by the Board or the Members establish affirmative and negative covenants, easements, and restrictions on the Property.

All provisions of this Declaration and any rules shall apply to all Owners, their contractors, family members, occupants, tenants, guests and invitees of any Lot.

#### 12.2 Authority to Promulgate Rules.

(a) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may adopt rules not inconsistent with the Use Restrictions set forth in Section 12.4 hereof, and other such rules and regulations permitted by, and not inconsistent with, the Act, including such rules and regulations relating to the use of, and parking and traffic, on public and private streets located within the Property.

(b) The Owners, at a meeting duly called for such purpose, may adopt rules which modify, cancel, limit, create exceptions to, adopted rules by a vote of Owners representing 67% of the total vote and the approval of Declarant during the Development Period.

(c) At least fifteen (15) days prior to the effective date of any action under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner specifying the effective date of such rule. The Association shall provide, without cost, a copy of the rules then in effect to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Owners to modify, repeal or expand the Declaration, the Bylaws, the Articles, or the Design Guidelines. Such documents may be amended as provided therein.

12.3 Owners' Acknowledgment. All Owners are subject to the Use Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Owners may adopt, delete, modify, create exceptions to, or amend the rules.

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

12.4 Use Restrictions. The property described in Exhibit "A" shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for Declarant or the Association consistent with this Declaration and any Supplemental Declaration), subject to applicable laws. Any Supplemental Declaration or additional covenants imposed on property annexed into the Property may provide for different uses (i.e. commercial uses) and impose standards and restrictions other than those contained in this Declaration and the Association shall have standing and the power to enforce such standards and restrictions.

12.5 Rights of Owners. Except as may be specifically set forth in the Use Restrictions (Section 12.4), neither the Board nor the Owners may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Flags/Speech. The rights of Owners and occupants to display on their Lots flags, political signs, signs and symbols of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods in individually owned property shall not be abridged; provided, however, the Board may adopt reasonable time, place, size and manner of display restrictions regulating flags, political signs, signs and symbols which are visible from outside the Lots.

(c) Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions regulating displays which are visible from outside the Lot.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair share use of the Common Elements.

(e) Activities Within Units. No rule shall interfere with the activities carried on within the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. The initial allocation of financial burdens and rights to use Common Elements among the various Lots shall not be

changed to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Elements as provided in Section 4.7, from adopting generally applicable rules for use of Common Elements, or from denying use privileges to those who abuse the Common Elements, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article 10.

(g) Rights to Develop. No rule or action by the Association or Board shall impede Declarant's right to develop the Property, including, but not limited to, the rights of Declarant as set forth in Article 15.

(h) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only and shall not require the removal of any property which was being kept on the Property prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law.

The limitations in this Section 12.5 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 16.2(b).

### **Article 13. Easements.**

13.1 Easements of Encroachment. During the Development Period, Declarant reserves unto itself, easements of encroachment, and for Upkeep and use of any permitted encroachment, between each Lot and any adjacent Common Elements and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary.

13.2 Easements for Utilities, Etc. Declarant reserves unto itself, and grants to the Association perpetual easements for the purpose of access and Upkeep upon, across, over, and under all of the Property to the extent reasonably necessary to install and provide Upkeep for cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. Declarant and/or the Association may assign these easements and rights to any utility supplier, cable company, security company or other company providing a service or utility to Beaufort Pointe subject to the limitations herein.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Unit on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall

not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the utility suppliers easements across the Property for ingress, egress, installation, reading, and providing Upkeep of meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Unit on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Board or Declarant.

13.3 Easements to Serve Contiguous Property. Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, a perpetual easement over the Lots and the Common Elements for the purposes of enjoyment, use, access, and development of any Contiguous Property whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Elements as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

13.4 Development and Other Easements. Declarant specifically reserves all of the easements identified as being so reserved in this Declaration including, but not limited to, those set forth in Article 15.

13.5 Easements for Cross-Drainage. Every Lot and the Common Elements shall be burdened with easements for natural drainage of stormwater runoff from other portions of the Property; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Property without the consent of the Owner(s) of the affected property and the Board.

13.6 Right of Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Lot to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any Unit without permission of the Owner, except by emergency personnel acting in their official capacities.

13.7 Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot to (a) perform its Upkeep responsibilities under Article 5, and (b) make inspections to ensure compliance with the Association Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

The Association also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, any Supplemental Declaration, the Bylaws, the Design Guidelines, or the rules. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefited Assessment.

The Property is hereby burdened with perpetual, non-exclusive easements in favor of the Association for overspray of water from any irrigation system serving the Area of Common Responsibility. The Association may use treated effluent in the irrigation of any Area of Common Responsibility. Under no circumstances shall the Association be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

13.8 Rights to Storm Water Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees, including but not limited to the owner of any Private Amenities, all rights to ground water, surface water, water within ponds, lakes, rivers, streams and wetlands located with the Property, storm water runoff, and effluent located or produced within the Property, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such right shall include perpetual easements over the Property for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

13.9 Easements for Private Amenities. Declarant reserves for itself, and its successors and assigns, non-exclusive perpetual easements of access and for the installation and maintenance of utility services to serve any Private Amenities, said easements being located over, upon, under and across all roads and streets and Common Elements within the Property.

#### **Article 14. Mortgage Provisions.**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

14.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage which 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 Lot to which its



Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

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

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of ninety (90) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within ninety (90) 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 Lot of any obligation under the Declaration or Bylaws which is not cured within ninety (90) days; or

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

14.2 No Priority. No provision of this Declaration 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 Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

14.3 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 Lot.

**Article 15. Declarant's Rights.**

15.1 Declarant's Rights. Declarant's Rights are those rights reserved for the benefit of Declarant as provided for in the Act and the Association Documents which shall include, without limitation, the following rights:

- (a) To complete improvements on the Property;
- (b) To maintain models, management offices, construction offices, sales offices, customer service offices, and signs advertising the Property;
- (c) Those rights set forth in Article 9 of this Declaration;
- (d) To designate any portion of the Property as Common Elements or Limited Common Elements;
- (e) To exercise all rights of architectural review and establishment of Design Guidelines and all other rights as set forth in Article 11 of this Declaration;

(f) To construct improvements and Private Amenities within portions of the Property and to operate the same as public or private facilities in the sole discretion of Declarant;

(g) To disapprove actions of the Board or any committee during the Development Period;

(h) To disapprove any amendment or change in any Association Documents during the Development Period; and

(i) To enforce any covenants, restrictions and other provisions of the Association Documents during the Development Period.

(j) To amend this Declaration as set forth in Section 17.2(a).

15.2 Transfer of Declarant's Rights. Any or all of Declarant's Rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall neither reduce an obligation nor enlarge a right. No such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Register of Deeds.

15.3 Modification of Development Plan. Each Owner, by accepting title to a Lot and becoming an Owner, and each other Person, by acquiring any interest in the Property, acknowledges awareness that Beaufort Pointe is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Property, or (b) changes in any conceptual or master plan for the Property, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time).

15.4 Development Easements. Declarant, its employees, agents and designees, specifically reserve a non-exclusive easement over, upon, under and above the Common Elements and other portions of the Property (expressly excluding a Unit) for any all purposes deemed reasonably necessary or desirable by Declarant for the development of the Property, any Contiguous Property and any Private Amenities including, but not limited to, easements of access, the installation and maintenance of utilities and easements as may be required from time to time by any governmental agency or pursuant to the Permit. Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Elements for the purpose of making, constructing, installing, modifying, expanding, replacing, and removing such improvements to the Common Elements as it deems appropriate in its sole discretion.

15.5 Marketing and Sales. During the Development Period or so long as Declarant owns any Private Amenities, Declarant and its designees may maintain and carry on upon the Common Elements and any property owned by Declarant such facilities and activities

as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, sales offices, and storage of building materials. Declarant and its designees shall have easements for access to and use of such facilities. Declarant's or any designee's unilateral right to use the Common Elements for purposes stated in this section shall not be exclusive and shall not unreasonably interfere with use of such Common Elements by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent.

15.6 Declarant Approval to Changes in Association Documents. During the Development Period or so long as Declarant owns any Private Amenities, the Association shall not, without the prior written approval of Declarant, adopt any policy, rule or procedure that:

- (a) Limits the access of Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Elements of the Association or to any property owned by any of them;
- (b) Limits or prevents Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Elements or any property owned by any of them in promotional materials;
- (c) Limits or prevents new Owners from becoming members of the Association or enjoying full use of its Common Elements and Recreational Facilities, subject to the membership provisions of the Association Documents;
- (d) Discriminates against or singles out any group of Members or prospective Members or Declarant. This provision shall expressly prohibit the establishment of a fee structure (i.e., assessments, special assessments and other mandatory fees or charges) that discriminates against or singles out any group of Members or Declarant, but shall not prohibit the establishment of Benefited Assessments;
- (e) Impacts the ability of Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for Beaufort Pointe, as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete Beaufort Pointe shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or
- (f) Impacts the ability of Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

15.7 Unimpeded Access. The Association shall not exercise its authority over the Common Elements (including, but not limited to, any gated entrances and other means of

access to the Property or any Private Amenities) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Property, or any Private Amenities over the streets and other Common Elements within the Property.

15.8 Additional Declarations/Restrictions. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent during the Development Period. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

15.9 Governmental Interests. During the Development Period, Declarant may designate sites within the Property for fire, police and utility facilities, and parks, and other public facilities in accordance with applicable laws. The sites may include Common Elements.

#### Article 16. Compliance and Enforcement.

16.1 General Remedies. Every Owner and occupant of any Lot shall comply with the Association Documents and the Act. Failure to comply shall be grounds for an action by the Association to recover sums due, for damages, injunctive relief or any other remedy available at law and equity or under the Act.

16.2 Enforcement/Sanctions. The Board or such other Association agent with the Board's approval, may impose sanctions for violations of Association Documents after notice and a hearing in accordance with the procedures set forth in the Declaration. Such sanctions may include, without limitation:

(a) Imposing reasonable monetary fines which shall constitute a lien upon the Lot of the violator;

(b) Suspending an Owner's right to vote;

(c) Suspending any Person's right to use any Recreational Facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the Lot;

(d) Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association; and

(e) Levying Benefited Assessments to cover costs incurred in bringing a Lot into compliance in accordance with Section 10.6(b).

16.3 Self-Help Remedies. The Board or such other Association agent with the Board's approval, may elect to enforce any provision of the Association Documents by self-help

(specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations in accordance with any applicable ordinance(s) of Beaufort County, North Carolina) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in Article 17 or in the Bylaws.

16.4 Cumulative Remedies/Attorneys' Fees. The Association shall have all powers and remedies under the Act and the Association Documents which shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Association Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

16.5 Association's Right Not to Take Action. The Association shall not be obligated to pursue enforcement action in any particular case, such decisions to be within the discretion of the Board, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (a) the Association's position is not strong enough to justify taking any or further action; or (b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or justify expending Association funds; or, (d) it is not in the best interest of the Association, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such covenant, restriction, rule or provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, rule or provision, nor shall it preclude any Owner from taking action at law or in equity to enforce the Association Documents.

16.6 Enforcement by Owner. Nothing set forth in this Article 16 shall prevent any aggrieved Owner from instituting any available remedy in law or in equity for a violation of the Association Documents.

#### **Article 17. General Provisions.**

17.1 Term. This Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

## 17.2 Amendment.

(a) By Declarant. During the Development Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) 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 it to make or purchase Mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration. However, any such amendment shall not adversely affect the title to any Lot unless the affected Owner shall consent thereto in writing.

(b) By Owners. Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing 67% of the total votes in the Association, and the consent of Declarant, so long as Declarant owns any Private Amenities or during the Development Period.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Register of Deeds unless a later effective date is specified therein. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege as long as Declarant owns any Private Amenities or during the Development Period.

17.3 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 67% of the Members and the consent of Declarant during the Development Period. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Association Documents (including, without limitation, the foreclosure of liens); (b) the

imposition and collection of assessments as provided in Article 10; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

No judicial, quasi-judicial, administrative or governmental proceeding shall be commenced or prosecuted by the Association against or involving Declarant unless approved by a vote of seventy-five percent (75%) of the Members.

17.4 Hearing Procedures. Except as may be otherwise specifically authorized by the Association Documents, and permitted by the Association Documents, the Board shall not (i) impose a fine or penalty, (ii) undertake permitted remedial action, or (iii) suspend voting or infringe upon other rights of a Member or other occupant of a Lot or Unit for violations of the Association Documents, or for assessments or other amounts due and owing to the Association remaining unpaid for a period of thirty (30) days, or longer, unless and until the following procedure is completed:

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the Responsible Person (hereinafter defined) specifying (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than five (5) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation may result in the imposition of a sanction after notice and hearing if the violation is not continuing. For purposes of this Section 17.4, the "Responsible Person" shall be any Member, Owner, or occupant of a Lot or Unit.

(b) Notice. At any time within twelve (12) months following such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board, or an adjudicatory panel appointed by the Board, shall serve the Responsible Person with a written notice of a hearing to be held by the Board of the Association in executive session or an adjudicatory panel appointed by the Board; provided, however, any adjudicatory panel appointed by the Board shall be composed of members of the Association who are not officers of the Association or members of the Board. The notice shall contain: (i) the nature of the alleged violation; (ii) the time and place of the hearing, which shall not be less than ten (10) days from the giving of the notice; (iii) an invitation to attend the meeting and produce any statement, evidence and witness on his or her behalf; and (iv) the proposed sanction to be imposed. The notice prescribed herein may be served by mailing a copy of said notice to the alleged violator by placing said notice in the United States mail, postage prepaid, by any method as permitted for the service of summons as set forth in Rule 4 of the North Carolina Rules of Civil Procedure or by the delivery of said notice by an officer, director or agent of the Association to the Responsible Person or to any person who may be served on the Responsible Person's behalf as provided in said Rule 4.

(c) Hearing. The hearing shall be held in executive session of the Board or an adjudicatory panel appointed by the Board pursuant to the notice affording the member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of deliver, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the Responsible Person appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. In addition, a written statement of the results of the hearing and the sanction, if any, imposed shall be mailed by the United States mail, postage prepaid, by the Association to the violator.

(d) Appeal. If the hearing is held before an adjudicatory panel, following such hearing and notice of a decision adverse to the violator, the Responsible Person shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the managing agent of the Association, President or Secretary of the Association within fifteen (15) days after the date of the decision, said written notice to contain information by which the Board may notify the Responsible Person of the date of the appeal hearing. If no adjudicatory panel is appointed by the Board, no right of appeal shall exist.

(e) Sanction as Assessment. Pursuant to the provisions of this Section, a fine may be imposed by the Association is an amount not exceeding One Hundred and No/100 Dollars (\$100.00) (or any greater amount as may be provided otherwise by law or the Act) per violation of the Association Documents and without further hearing, for each day after the decision to impose such fine that the violation occurs. Any such fine shall be an assessment as set forth in this Declaration and the Act. If it is decided pursuant to the provisions of this Section that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

17.5 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

17.6 Use of the Words "Beaufort Pointe". No Person shall use the words "Beaufort Pointe" or any derivative, or any other term which Declarant may select as the name of this development or any component thereof, in any printed or promotional material without Declarant's prior written consent. However, Owners may use the words "Beaufort Pointe" in printed or promotional matter solely to specify that a particular property is located within the Property and the Association shall be entitled to use the words "Beaufort Pointe" in its name.

17.7 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the



Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. The Association may require the payment of a reasonable administration or registration fee by the transferee.

17.8 Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in the Association Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefited Assessment with respect to the Lot(s) involved in the action.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this \_\_\_ day of July, 2006.

NC LAND PARTNERS, LLC (SEAL)  
a Delaware limited Liability Company

By: National Land Partners, LLC  
a Delaware limited liability company  
Title: Sole Member

By: American Land Partners, Inc.  
a Delaware corporation  
Title: Manager

By:   
Name: Timothy D. Smith  
Title: Treasurer

Massachusetts  
STATE OF NORTH CAROLINA  
COUNTY OF Berkshire

I, Michelle K Manners, a Notary Public in and for said County and State, do hereby certify that TIMOTHY D. SMITH personally came before me this day and acknowledged that he is Treasurer of AMERICAN LAND PARTNERS, INC., a corporation which is a manager of NATIONAL LAND PARTNERS, LLC, a limited liability company which is the sole member of NC LAND PARTNERS, LLC, that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Treasurer, sealed with its corporate seal, and attested by him as its Treasurer; that the act of the Manager is the act of the limited liability company; and that the typewritten word "SEAL" appearing beside the name of the limited liability company has been adopted by the limited liability company as its seal.

Date 7-20-06

Michelle K Manners  
Signature of Notary Public

Michelle K Manners, Notary Public  
Printed or typed name  
My commission expires: 7-4-2008



CONSENT OF LIEN HOLDER

Wachovia Bank, National Association, a national banking association ("First Lender") is the holder of the beneficial interest under that certain deed of trust dated May 2, 2006 given by Declarant for the use and benefit of Lender, covering all or portions of the Property and the Contiguous Property, and recorded on May 4, 2006, in Book 1519, at Page 648 in the office of the Register of Deeds of Beaufort County, North Carolina (said deed of trust, together with all amendments, modifications, extensions and supplements thereto and any and all other documents given to or made by the Declarant in connection with said deed of trust are hereinafter collectively called the "First Security Agreement"). Lender hereby joins in the execution of this Declaration to consent to the terms hereof, and to all restrictions, covenants, terms, easements, obligations and other matters set forth in this Declaration, as the same may hereafter be amended, modified, supplemented, or changed.

IN TESTIMONY WHEREOF, the parties have properly executed and sealed this Declaration, this the 21<sup>st</sup> day of July, 2006.

WACHOVIA BANK, NATIONAL ASSOCIATION,  
a national banking association

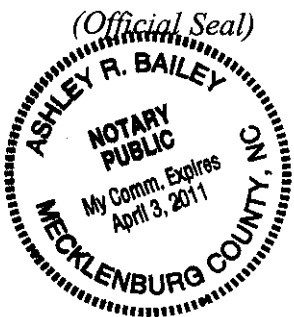
By: [Signature]  
Name: Robert T. Dickson Jr.  
Title: Vice President

STATE OF NC  
COUNTY OF Mecklenburg

I, Ashley R Bailey, a Notary Public in and for said County and State, do hereby certify that Robert T. Dickson Jr. personally came before me this day and acknowledged that he is Vice President of Wachovia Bank, National Association, a national banking association, and that he, as Vice President being authorized to do so, executed the foregoing on behalf of the corporation.

Date 7/21/06

[Signature]  
Signature of Notary Public



Ashley Bailey, Notary Public  
Printed or typed name  
My commission expires: 4/3/11

CONSENT OF LIEN HOLDER

PPM Brokerage Services, Inc., a Florida corporation ("Second Lender") is the holder of the beneficial interest under that certain deed of trust dated May 2, 2006 given by Declarant for the use and benefit of Lender, covering all or portions of the Property and the Contiguous Property, and recorded on May 4, 2006, in Book 1519, at Page 660 in the office of the Register of Deeds of Beaufort County, North Carolina (said deed of trust, together with all amendments, modifications, extensions and supplements thereto and any and all other documents given to or made by the Declarant in connection with said deed of trust are hereinafter collectively called the "Second Security Agreement"). Lender hereby joins in the execution of this Declaration to consent to the terms hereof, and to all restrictions, covenants, terms, easements, obligations and other matters set forth in this Declaration, as the same may hereafter be amended, modified, supplemented, or changed.

IN TESTIMONY WHEREOF, the parties have properly executed and sealed this Declaration, this the 19<sup>th</sup> day of July, 2006.

PPM BROKERAGE SERVICES, INC.,  
a Florida corporation

By: [Signature]  
Name: MARC J. Landau  
Title: Vice President

STATE OF Florida  
COUNTY OF Broward

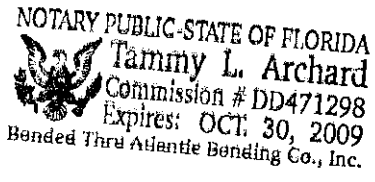
I, Tammy Lee Archard, a Notary Public in and for said County and State, do hereby certify that MARC J. Landau personally came before me this day and acknowledged that he is Vice President of PPM Brokerage Services, Inc., a Florida corporation, and that he, as Vice President being authorized to do so, executed the foregoing on behalf of the corporation.

Date 7-19-06  
  
(Official Seal)

[Signature]  
Signature of Notary Public

TAMMY L. ARCHARD, Notary Public  
Printed or typed name  
My commission expires: \_\_\_\_\_

060576-00001-001  
WLM\MAIN\145549\3





BK 1534 PG 545

JENNIFER LEGGETT WHITEHURST  
BEAUFORT COUNTY REGISTER OF DEEDS  
COURTHOUSE BUILDING  
112 W. 2ND STREET  
WASHINGTON, NC 27889

\*\*\*\*\*

**Filed For Registration:** 07/24/2006 03:21:08 PM  
**Book:** RE 1534 Page: 485-545  
**Document No.:** 2006006474  
RESTR COV 61 PGS \$191.00  
**Recorder:** BARBARA TAYLOR

*Fred Holscher*

**\*2006006474\***

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