



SFOR REGISTRATION REGISTER OF DEED
TAMMY THEUSCH BEASLEY
NEW HANOVER COUNTY, NC
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INSTRUMENT # 2014006183

AGREEMENT AND PLAN OF MERGER

BETWEEN

THE VILLAGE AT SUMMERSET HOA, INC ("Village")

AND

POINTE SUMMERSET HOME OWNERS' ASSOCIATION ("Pointe")

March 4, 2014

RETURN TO

* Ward + Smith

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER ("Agreement") is entered into as of 4th day of March, 2014 by and between THE VILLAGE AT SUMMERSET HOA, INC., a nonprofit corporation incorporated under the laws of the State of North Carolina ("Village"), and POINTE SUMMERSET HOME OWNERS' ASSOCIATION, a nonprofit corporation incorporated under the laws of the State of North Carolina ("Pointe") Village and Pointe are referred to collectively herein as the "Parties "

W I T N E S S E T H

WHEREAS, Village and Pointe are both North Carolina nonprofit corporations which act as the homeowners associations for the planned communities The Village at Summerset and Pointe Summerset subdivisions, respectively, and

WHEREAS, after careful consideration, the Board of Directors of the Parties have concluded it would be in the best interests of their members to consolidate into a single planned community.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties agree as follows

1 Definitions.

a. "*Acquired Assets*" means all of the right, title and interest of Pointe in and to all tangible and intangible personal property, real estate, intellectual property and any other form or type of property owned or used by Pointe in the Ordinary Course as of the Effective Date.

b. "*Articles*" means the Articles of Incorporation of The Village at Summerset HOA, Inc , as amended

c. "*Assumed Liabilities*" means all liabilities and obligations of Pointe as of the Effective Date

d. "*Bylaws*" means the Bylaws of The Village at Summerset HOA, Inc , as amended

e. "*Declaration*" means the Declaration of Covenants, Conditions, Easements and Restrictions for Village at Summerset, as amended.

f. "*Effective Date*" has the meaning set forth in Section 3 below

g. "*Knowledge*" means actual knowledge without independent investigation.

h. "*Material Adverse Effect*" with respect to each Party shall mean (a) a material adverse effect on the business, operations, properties or condition (financial or otherwise) of the Party, (b) a material adverse effect on the ability of the Party to perform its respective obligations hereunder and under the agreements referred to herein to which it is a party; or (c) the invalidity or unenforceability of this Agreement or such other agreements or an assertion by the Party that this Agreement or such other agreement is invalid or unenforceable or has an adverse effect on the rights or remedies of the Parties under this Agreement or such other agreements.

i. "*Merger*" has the meaning set forth in Section 4 below.

j. "*Ordinary Course*" means the ordinary course of operations, consistent with past custom and practice (including with respect to quantity and frequency).

k. "*Party*" has the meaning set forth in the preface above.

l. "*Security Interest*" means any mortgage, pledge, security interest, encumbrance, charge or other lien, other than (a) mechanic's, materialmen's and similar liens; (b) liens for Taxes not yet due and payable; (c) liens arising under worker's compensation, unemployment insurance, social security, retirement and similar legislation; (d) liens arising in connection with sales of foreign receivables, (e) liens on goods in transit incurred pursuant to documentary letters of credit; (f) purchase money liens and liens securing rental payments under capital lease arrangements; and (g) other liens arising in the Ordinary Course and not incurred in connection with the borrowing of money.

m. "*Surviving Corporation*" shall mean Village.

n. "*Tax*" means any federal, state, local or foreign income, property, sales, use, excise, transfer or other tax, including any interest, penalty or addition thereto, whether disputed or not

o. "Tax Return" means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto

p. "Members" means the members of Pointe.

2 Plan of Merger. In accordance with North Carolina General Statutes Sections 55A-11-01 and 47F-2-121:

a The name of each merging corporation is (i) The Village at Summerset HOA, Inc. and (ii) Pointe Summerset Home Owners' Association

b. The name of the Surviving Corporation is The Village at Summerset HOA, Inc

c The mailing address and principal office of Village is 5129 Oleander Drive, Suite 101, Wilmington, New Hanover County, North Carolina 28403.

d. Effective as of the merger's effective date, the members of Pointe Summerset Home Owners' Association will become members of The Village at Summerset HOA, Inc. automatically upon the filing/recording of the documents listed in subsection f. of this Section 2.

e. Changes to Governing Documents of Village. Upon approval of this Agreement

i The Articles shall be amended pursuant to the terms of the Amended and Restated Articles of Incorporation of The Village at Summerset HOA, Inc. attached hereto and incorporated herein by reference as Schedule 1

ii The Bylaws shall be amended pursuant to the terms of the Amended and Restated Bylaws for The Village at Summerset HOA, Inc. attached hereto and incorporated herein by reference as Schedule 2.

iii. The Declaration shall be amended pursuant to the terms of the Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Village at Summerset attached hereto and incorporated by reference herein by reference as Schedule 3

f. After approval by the Board of each corporation at any time prior to the merger becoming effective, the board of The Village at Summerset HOA, Inc. may abandon the merger.

3 Articles of Merger. The time at which the merger shall become effective is immediately upon the filing of the Articles of Merger by the North Carolina Secretary of State (the "Effective Date").

4. Effect of Merger. On the Effective Date, Pointe shall merge with and into Village (the "Merger"); the corporate existence of Pointe shall cease and the corporate existence of Village shall continue. The corporate identity, existence, name, purposes, franchises, powers, rights and immunities of Village shall continue unaffected and unimpaired by the Merger; and the corporate identity, existence, name, purposes, franchises, powers, rights and immunities of Pointe shall vest in Village. As a result of the Merger, the title to all the Acquired Assets shall be vested in Village without reversion or impairment and Village shall be subject to all of the Assumed Liabilities, as if Village had itself incurred them, and all rights of creditors and all liens upon the property of each of Village and Pointe shall be preserved unimpaired, provided that liens, if any, upon the Acquired Assets shall be limited to the property affected by those liens immediately prior to the Effective Date.

5 Officers and Directors. The officers and directors of the Village in office on the Effective Date of the merger shall be Carol Rosborough, Gary Fisher, Rich Vena, George Miller, Meg Morrison, Steve Parrott, Sara Burke. They continue to constitute the officers and directors of the Village for the terms elected and until their respective successors shall be elected and qualified

6. Representations and Warranties of Pointe. Pointe represents and warrants to Village that the statements contained in this Section 6 are correct and complete as of the date of this Agreement, and will be correct and complete as of the Effective Date (as though made then and as though the Effective Date were substituted for the date of this Agreement throughout this Section 6).

a. Organization Pointe is a nonprofit corporation duly organized,

validly existing and in good standing under the laws of the State of North Carolina.

b. Authorization. Pointe has full power and authority (including full corporate power and authority) to execute and deliver this Agreement, and to perform its obligations hereunder. Without limiting the generality of the foregoing, the Board of Directors of Pointe has duly authorized the execution, delivery and performance of this Agreement by Pointe. This Agreement constitutes the valid and legally binding obligation of Pointe, enforceable in accordance with its terms and conditions.

c. Events Subsequent to Most Recent Fiscal Year-End. Since December 31, 2013, there has not been (a) any material adverse change in the financial condition of Pointe or (b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction outside the Ordinary Course, the primary purpose or effect of which has been to generate or preserve cash.

d. Tax Matters Pointe has filed all Tax Returns that it was required to file, and has paid all Taxes shown thereon as owing, except where the failure to file or to pay Taxes would not have a Material Adverse Effect on Pointe. Pointe has not waived any statute of limitations with respect to Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency and, to its Knowledge, is not under examination by any tax authorities

e. Real Property. All real property owned by Pointe shall be transferred to Village within thirty (30) days after the Effective Date via quitclaim deed executed by the President of Pointe

f. Litigation. Pointe is not subject to any unsatisfied judgment, order, decree, stipulation, injunction or charge and is not a party to any charge, complaint, action, suit, proceeding, hearing or investigation of or in any court or quasi-judicial or administrative agency of any federal, state, local or foreign jurisdiction, except where the judgment, order, decree, stipulation, injunction, charge, complaint, action, suit, proceeding, hearing or investigation would not have a Material Adverse Effect on Pointe.

g. Compliance To the Knowledge of Pointe, it has complied with all

applicable laws (including rules and regulations thereunder) of federal, state, local and foreign governments (and all agencies thereof), except where the failure to comply would not have a Material Adverse Effect

7. Representations and Warranties of Village. Village represents and warrants to Pointe that the statements contained in this Section 9 are correct and complete as of the date of this Agreement, and will be correct and complete as of the Effective Date (as though made then and as though the Effective Date were substituted for the date of this Agreement throughout this Section 7)

a Organization. Village is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina

b Authorization Village has full power and authority (including full corporate power and authority) to execute and deliver this Agreement, and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of Village, enforceable in accordance with its terms and conditions

c. Compliance. To the Knowledge of Pointe, it has complied with all applicable laws (including rules and regulations thereunder) of federal, state, local and foreign governments (and all agencies thereof), except where the failure to comply would not have a Material Adverse Effect

8 Pre-Closing Covenants. The Parties agree as follows with respect to the period between the execution of this Agreement and the Effective Date:

a General Each Party will use its reasonable best efforts to take all action and to do all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement.

b Notices and Consents Each Party will give any notices to third parties and will use its reasonable best efforts to obtain any third party consents that any Party hereto reasonably may request in connection with the matters pertaining to be disclosed or required to be disclosed. Each Party will take any additional action that may be necessary, proper or advisable in connection with any other notices to, filings with, and authorizations, consents and approvals of governments, governmental agencies and third

parties that it may be required to give, make or obtain.

c. Operations No Party will engage in any practice, take any action, embark on any course of inaction, or enter into any transaction outside the Ordinary Course.

9. Conditions to Obligation to Close

a. Conditions to Obligation of Village The obligation of Village to consummate the transactions to be performed by it in connection with the Merger is subject to satisfaction of the following conditions:

i. The representations and warranties set forth in Section 6 above shall be true and correct in all material respects at and as of the Effective Date, except as would not have a Material Adverse Effect,

ii. Pointe shall have performed and complied with all of its covenants hereunder in all material respects through the Effective Date,

iii. The owners of lots in the Village to which at least eighty percent (80%) of the votes in the Village are allocated vote to approve the Agreement;

iv. There shall not be any judgment, order, decree, stipulation, injunction or charge in effect, preventing consummation of any of the transactions contemplated by this Agreement,

Village may waive any condition specified in this Section 9 a in writing, at or prior to the Effective Date

b. Conditions to Obligation of Pointe. The obligation of Pointe to consummate the transactions to be performed by it in connection with the Merger is subject to satisfaction of the following conditions

i. The representations and warranties set forth in Section 9 above shall be true and correct in all material respects at and as of the Effective Date, except as would not have a Material Adverse Effect,

ii. Village shall have performed and complied with all of its covenants hereunder, in all material respects, through the Effective Date,

iii. The owners of lots in Pointe to which at least eighty

percent (80%) of the votes in the Pointe are allocated vote to approve the Agreement;

iv. There shall not be any judgment, order, decree, stipulation, injunction or charge in effect, preventing consummation of any of the transactions contemplated by this Agreement, and,

Pointe may waive any condition specified in this Section 9.b. in writing, at or prior to the Effective Date.

10. Miscellaneous.

a. Survival. All of the representations, warranties and covenants of the Parties contained in this Agreement shall survive the Merger hereunder

b. Entire Agreement This Agreement (including any Schedules hereto and the documents referred to herein) constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements or representations by or between the Parties, written or oral, that may have related in any way to the subject matter hereof

c. Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests or obligations hereunder, without the prior written approval of the other Party

d. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, will constitute one and the same instrument.

e. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect, in any way, the meaning or interpretation of this Agreement

f. Notices Any and all notices, demands or other communications permitted or required to be made under this Agreement shall be in writing, and shall be deemed to have been properly given when either delivered personally or deposited with a reputable overnight delivery service and addressed to the party to be notified at the address listed beneath its signature on the signature page of this Agreement (or at such other address within the Continental United States of America, as shall be specified by subsequent notice given pursuant

to this Section), the effective date of any notice so given shall be the day of personal service or one (1) business day after delivery to such overnight delivery service, whichever is applicable. Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

g. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of North Carolina. The parties hereto agree that any action relating to this Agreement shall be instituted and prosecuted in the Courts of the County of New Hanover, State of North Carolina, and each party hereto hereby does waive any and all defenses relating to venue and jurisdiction over the person.

h. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Village and Pointe with the prior authorization of its Board of directors. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

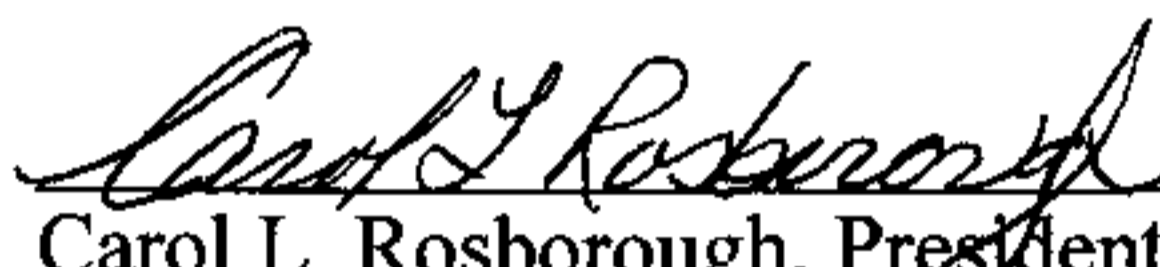
1. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof, or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

j. Expenses Each of the Parties will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby

k Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise

IN WITNESS WHEREOF, each of the Parties hereto has caused this instrument to be executed in its corporate name by its President and its corporate seal to be affixed hereto, all by order of its Board of Directors duly given, as of the day and year first above written

THE VILLAGE AT SUMMERSET HOA, INC.

By  _____
Carol L. Rosborough, President

Address for Notice:

5129 Oleander Drive, Suite 101
Wilmington, NC 28403

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

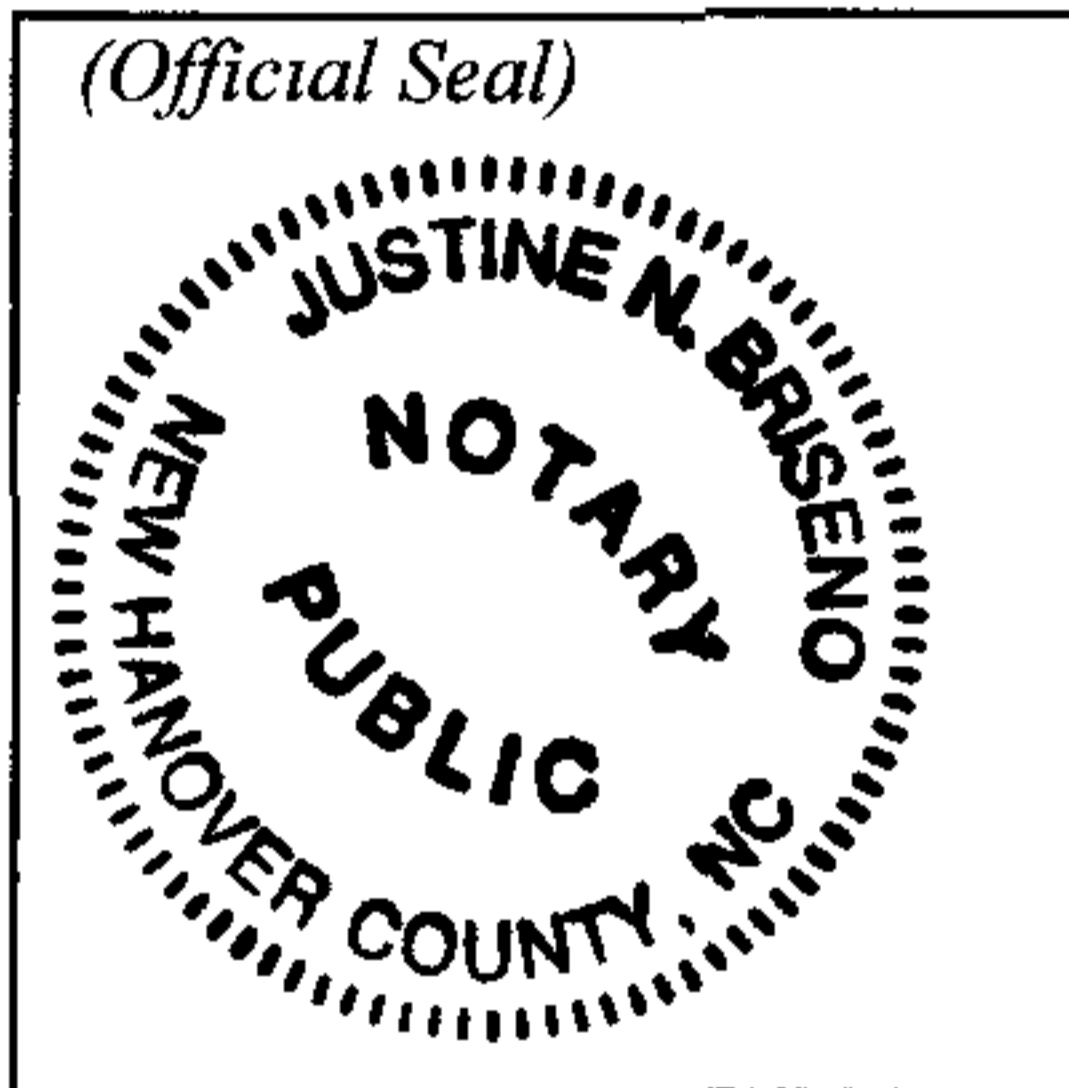
I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: Carol L Rosborough, President of THE VILLAGE AT SUMMERSET HOA, INC

Date. 3-4-14

Justine N. Briseno
Signature of Notary Public

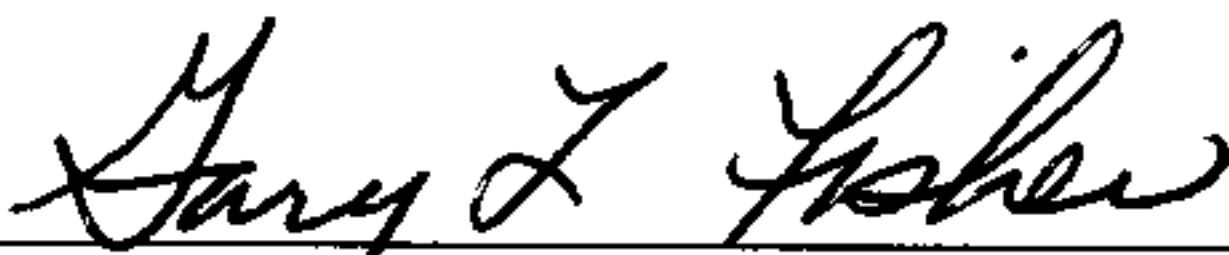
Justine N Briseno
Notary's printed or typed name

My commission expires: 7-30-17



Notary seal or stamp must appear within this box.

POINTE SUMMERSET HOME OWNERS' ASSOCIATION

By. 
Gary L. Fisher, President

Address for Notice:

1606 Quail Roost Circle
Wilmington, NC 28403

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

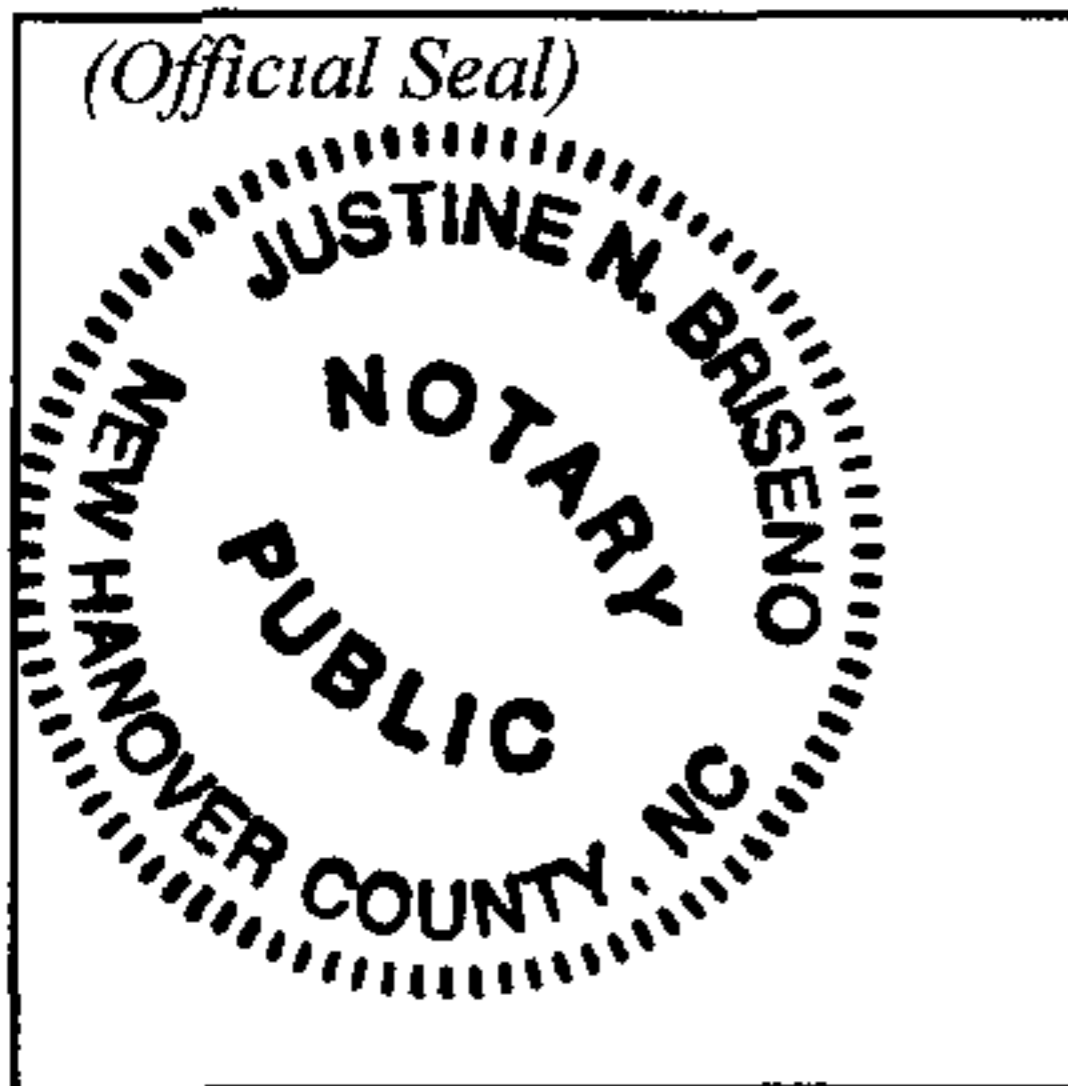
I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein. Gary L Fisher, President of POINTE SUMMERSET HOME OWNERS' ASSOCIATION.

Date: 3-4-14

Justine N. Briseno
Signature of Notary Public

Justine N. Briseno
Notary's printed or typed name

My commission expires 7-30-17



Notary seal or stamp must appear within this box

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SCHEDULE 1

Amended and Restated Articles of Incorporation

ARTICLES OF RESTATEMENT

Pursuant to §55-10-07 of the General Statutes of North Carolina, the undersigned corporation hereby submits the following for the purpose of restating its Articles of Incorporation

- 1 The name of the corporation is: The Village at Summerset HOA, Inc
2. The text of the Restated Articles of Incorporation is attached.
- 3 These Amended and Restated Articles of Incorporation were adopted by the Board of Directors and contain an amendment not requiring member approval.
- 4 These Amended and Restated Articles of Incorporation contain an amendment requiring approval by a person whose approval is required pursuant to N C.G.S §55A-10-30, and such approval was obtained.
- 5 These Amended and Restated Articles will be effective upon filing.

This the 4th day of March, 2014.

THE VILLAGE AT SUMMERSET HOA, INC

By

Carol L Rosborough, President

Prepared by and return to:

Adam M Beaudoin
For the firm of
Ward and Smith, P A
University Corporate Center
127 Racine Drive
PO Box 7068
Wilmington, NC 28406-7068
Telephone. (910) 794-4800
Facsimile: (910) 794-4877

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
THE VILLAGE AT SUMMERSET HOA, INC.
(A NONPROFIT CORPORATION)

I, the undersigned individual, hereby do make and acknowledge these Articles of Incorporation ("Articles") for the purpose of forming a nonprofit corporation under and by virtue of the laws of the State of North Carolina as contained in Chapter 55A of the General Statutes of North Carolina, entitled "North Carolina Nonprofit Corporation Act," and the several amendments thereto, and to that end do hereby set forth:

1 Name: The name of the Corporation is The Village at Summerset HOA, Inc (the "Association").

2 Duration: The period of duration of the Association shall be perpetual.

3 Definitions: As used in these Articles, the following definitions shall apply

(a) Capitalized terms shall have the same meaning specified for such terms as more particularly set forth in the Declaration of Covenants, Conditions, Easements, and Restrictions for the Village at Summerset, and any amendments thereto (collectively, the "Declaration") recorded in the Register of Deeds of New Hanover County, North Carolina, unless such terms otherwise are specifically defined herein, and,

(b) References to the "North Carolina Nonprofit Corporation Act" shall mean Chapter 55A of the General Statutes of North Carolina, and,

(c) References to the "North Carolina Planned Community Act" shall mean Chapter 47F of the General Statutes of North Carolina; and,

(d) References to the "Code" shall mean the Internal Revenue Code of 1986, as amended

4. Purpose The Association is organized and will be operated consistent with the North Carolina Planned Community Act ("Act") to undertake and perform any and all activities, responsibilities, and obligations applicable to the Association set forth in the Act and the Association Documents.

In order to achieve the foregoing purposes, the Association shall have the following powers and authorities.

(a) To exercise all powers and rights and perform all of the acts and duties and obligations of the Association as more particularly described in the Act and the Association Documents; and,

(b) To undertake any activity whatsoever that is in furtherance, directly or indirectly, of the purposes of the Association set forth above; and

(c) To take any and all action necessary and appropriate to qualify the Association under Code Section 528 and to elect that the Association be taxed under Code Section 528, if such qualification and election is determined by the directors of the Association to be in the best interests of the Association, and,

(d) To take any and all action necessary and appropriate to qualify the Association under Sections 105-125(a)(8) and 105-130 11(a)(11) of the General Statutes of North Carolina, if such Sections are applicable

Provided, however, and notwithstanding any power or authority set forth above in this Article, the Association shall have the power and authority to engage only in activities that meet each of the following requirements

(aa) Such activities are not broader than those activities that may be undertaken by a nonprofit corporation pursuant to the North Carolina Nonprofit Corporation Act, and,

(bb) Such activities are not broader than those activities that may be undertaken by the Association pursuant to the Declaration, and,

(cc) Such activities are not broader than those activities that may be undertaken by a planned community pursuant to the Act.

The number of directors, their terms of office, and the method of their selection shall be provided for and determined as is set forth in the Bylaws of the Association

5 Nonprofit Issues: The Association is not organized and shall not be operated for pecuniary gain or profit. No part of the net earnings of the Association shall inure to the benefit of, or be distributable to, its members, directors, officers, or any other individuals, other than (a) reasonable compensation paid by the Association for services actually rendered or

other value received, (b) by acquiring or providing management, maintenance, and care of any property as may be set forth in the Declaration and by undertaking any other responsibilities of the Association as set forth in the Association Documents, and (c) by rebating excess membership dues, fees, or assessments, if applicable, pursuant to Section 55A-13-02(b)(3) of the North Carolina Nonprofit Corporation Act.

6. Members The Association shall have members, and the qualifications and rights of members shall be set forth in the Bylaws of the Association.

7. Dissolution: In the event of dissolution of the Association, any net assets remaining after the satisfaction of the Association's liabilities shall be transferred and delivered (a) to one (1) or more nonprofit corporations formed under the North Carolina Nonprofit Corporation Act, as shall be selected by the Board of Directors of the Association, that are organized generally for purposes similar or related to those set forth in Article 4 hereof, or (b) as otherwise permitted or required by law

8. Registered Office and Agent The street and mailing address of the initial registered office of the Association is 5129 Oleander Drive, Suite 101, Wilmington, New Hanover County, North Carolina 28403, and the name of the initial registered agent at such address is Thomas K. Bissette

9. Principal Office The street and mailing address of the Association's principal office is 5129 Oleander Drive, Suite 101, Wilmington, New Hanover County, North Carolina 28403.

10. Limitation on Personal Liability To the fullest extent provided by law, no director of the Association shall be personally liable for monetary damages arising out of an action, whether by or in the right of the Association or otherwise, for breach of any duty as a director

11. Architectural Control Committee: The Declaration sets forth the appointment and the members of the Architectural Control Committee of the Association ("ACC"). The ACC shall have the powers as set forth in the Declaration. Amendment of the provisions of the Declaration dealing with the ACC shall be made as provided in the Declaration

12 Amendments to Articles of Incorporation. Amendment of these Articles may only be undertaken consistent with the applicable provisions of the North Carolina Nonprofit Corporation Act, and with the required affirmative consent of not less than a fifty-one percent (51%) vote of all of the members of the Association entitled to vote

IN TESTIMONY WHEREOF, I have hereunto set my hand, this the 4th day of March, 2014

THE VILLAGE AT SUMMERSET HOA, INC

By

Carol L Rosborough, President

Prepared by and return to

Adam M. Beaudoin
For the firm of
Ward and Smith, P A.
127 Racine Drive
PO Box 7068
Wilmington, NC 28406-7068
Telephone: (910) 794-4800
Facsimile: (910) 794-4877

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SCHEDULE 2

Amended and Restated Bylaws

AMENDED AND RESTATED BYLAWS
FOR
THE VILLAGE AT SUMMERSET HOA, INC.

ADOPTED AS OF

ARTICLE 1

Names and Definitions

- Section 1.1 Name
- Section 1.2 Definitions

ARTICLE 2

Membership and Voting

- Section 2.1 Membership
- Section 2.2 Application for Membership
- Section 2.3 Transfer of Membership
- Section 2.4 Suspension or Termination of Membership
- Section 2.5 Vote/Voting Rights
- Section 2.6 Additional Provisions Governing Voting
- Section 2.7 Manner of Voting
- Section 2.8 Proxies

ARTICLE 3

Meetings of Members

- Section 3.1 Place of Meetings
- Section 3.2 Annual Meetings
- Section 3.3 Special Meetings
- Section 3.4 Notice of Meetings
- Section 3.5 Waiver of Notice of Meetings
- Section 3.6 Quorum
- Section 3.7 Record Date to Determine Members and Lists of Members
- Section 3.8 Conduct of Meetings
- Section 3.9 Action by Written Ballot

ARTICLE 4

Board of Directors

- Section 4.1 Number, Election of Directors, and Terms of Office of Directors
- Section 4.2 Election Procedures and Qualifications
- Section 4.3 Voting, Quorum, and Manner of Acting
- Section 4.4 Removal or Resignation of Directors and Filling of Vacancies
- Section 4.5 Powers and Duties of the Board of Directors

- Section 9.3 Accounting Report
- Section 9.4 Fiscal Year
- Section 9.5 Seal

- Section 4.6 Meetings of Directors
- Section 4 7 Action by Directors Without Meeting

ARTICLE 5

Managing Agent

- Section 5.1 Compensation
- Section 5 2 Duties

ARTICLE 6

Officers

- Section 6.1 Designation and Duties of Officers
- Section 6 2 Election of Officers
- Section 6.3 Removal and Resignation
- Section 6 4 Vacancies
- Section 6 5 President
- Section 6.6 Vice President
- Section 6.7 Secretary
- Section 6.8 Assistant Secretary
- Section 6.9 Treasurer
- Section 6 10 Assistant Treasurer

ARTICLE 7

Committees

- Section 7.1 Nominations Committee
- Section 7 2 Architectural Control Committee
- Section 7.3 Committees of the Board of Directors
- Section 7 4 Other Committees

ARTICLE 8

Indemnification and Other Officer and Director Issues

- Section 8.1 Execution of Documents
- Section 8.2 Indemnification
- Section 8 3 Compensation of Directors and Officers

ARTICLE 9

Books and Records

- Section 9 1 Maintenance of Books and Records and Financial Review
- Section 9 2 Availability
- Section 9 3 Accounting Report
- Section 9 4 Fiscal Year
- Section 9 5 Seal

ARTICLE 10

Notices

ARTICLE 11

Amendments to Bylaws

ARTICLE 12

Priority

AMENDED AND RESTATED BYLAWS
FOR
THE VILLAGE AT SUMMERSET HOA, INC

ARTICLE 1

NAME AND DEFINITIONS

Section 1.1. Name The name of the association shall be The Village at Summerset HOA, Inc (the "Association").

Section 1.2. Definitions. Terms specifically defined in the Amended and Restated Declaration for The Village at Summerset, as same may be amended from time to time, and including all attachments (hereinafter referred to as the "Declaration") shall have the same meaning in these Bylaws, unless the context shall otherwise prohibit

ARTICLE 2

MEMBERSHIP AND VOTING

Section 2 1. Membership. The Owner or Owners automatically shall become members of the Association upon such Person's acquisition of an ownership interest in title to any Lot and may become a member in no other manner. No Person holding a lien, mortgage or other encumbrance upon any Lot shall be entitled, by virtue of such lien, mortgage, or encumbrance, to membership in the Association or to any of the rights or privileges of such membership. (The term "Bylaws" as used herein shall include any amendments made, from time to time, to the Bylaws)

Section 2.2. Application for Membership Application for membership shall consist of notice to the Association that the applicant has acquired title to a Lot

Section 2 3. Transfer of Membership. Memberships are not transferable Membership occurs only upon the occurrence of those events set out in this Article and the Declaration

Section 2 4. Suspension or Termination of Membership. The membership rights of a member shall not be suspended so long as the Person continues to hold title to a Lot, is not in violation of any provision of the Declaration, these Bylaws and any rule or regulation adopted by the Association, and is not in arrears in the payment of any assessment The membership of any Owner or Owners in the Association shall terminate automatically upon such Owner or Owners being divested of such Person's ownership interest in the title to a Lot, regardless of the means by which such ownership may be divested

Section 2.5. Vote/Voting Rights. Each Owner(s) (collectively, if applicable) shall have the vote specified in the Declaration. Members shall each be entitled to one (1) vote for each Lot owned; provided, however, when more than one Person holds an interest in any Lot, then all such Persons collectively shall be entitled to one (1) vote for each Lot collectively owned. The vote of such multiple Owners of a Lot shall be exercised as they, among themselves, shall determine (subject to the provisions of Section 2.6(b) below), but in no event shall any fractional vote be counted with respect to any Lot. Members shall be entitled to vote on all matters as to which members may be entitled to vote under the North Carolina Nonprofit Corporation Act and the North Carolina Planned Community Act, unless specifically provided otherwise in these Bylaws, the Articles of Incorporation, or the Declaration. In addition, members shall have any voting rights as may be specified in the Declaration. Except as specifically stated in Section 2.6 of these Bylaws, the voting rights of members of the Association shall be as set forth in N C Gen Stat. § 47F-3-110.

Section 2.6. Additional Provisions Governing Voting.

(a) Association Votes If the Association is an owner of a Lot, the Association shall not cast the vote appurtenant to such Lot, nor shall any such vote be counted for the purpose of establishing a quorum

(b) Multiple-Person Owners. In the event that any Lot is owned by more than one Person, and if only one of such Person is present at a meeting of the Association, that Person so present shall be entitled to cast the vote for that Lot. If more than one of such Persons is present, the vote appurtenant to that Lot shall be cast only in accordance with unanimous agreement of such Persons who are present at the meeting and such agreement shall be conclusively presumed if any of them purports to cast the vote appurtenant to that Lot without protests being made forthwith to the individual presiding over the meeting by any of the other Persons having an ownership interest in the Lot

(c) Voting Certificate If a member is not a natural person, the vote by such member may be cast by any natural person authorized by such member. Such natural person must be named and a certificate signed by an authorized officer, partner, member, or trustee of such Person and filed with the Secretary; provided, however, that any vote cast by a natural person on behalf of such member shall be deemed valid unless successfully challenged prior to the adjournment of the meeting at which the vote is cast. Such certificate shall be valid until revoked by a subsequent certificate similarly executed and filed with the Secretary. Wherever the approval or disapproval of a member is required by the Association Documents, such approval or disapproval may be made by any person who would be entitled to cast the vote of such member at any meeting of the Association

(d) Delinquency No member may vote at any meeting of the Association or be elected to serve on the Board or be appointed to serve on any committee if payment by such member of any financial obligation to the Association is

delinquent more than thirty (30) days and the amount necessary to bring the account current has not been paid by the record date set pursuant to Section 3.7 hereof for the applicable members' meeting (in the case of a member voting or being elected to serve on the Board) or has not been paid by the date of appointment, in the case of appointment to serve on any committee

Section 2.7. Manner of Voting Voting by members at a meeting, except for the election of directors which shall be by written ballot, shall be by voice vote or a show of hands unless any member present at the meeting requests, and by an affirmative vote of a majority of the votes cast the members consent to, a vote by written ballots. Except for the election of directors as provided in Section 4.1 herein, if a quorum is present, action on a matter at a meeting of members shall be deemed approved if approved by the affirmative vote of a majority of the votes cast, unless a greater vote is required by the North Carolina Nonprofit Corporation Act, the Association's Articles of Incorporation, the Bylaws, or the Declaration.

Section 2.8. Proxies Members may vote either in person or by an agent authorized by written proxy signed by the Owner of a Lot. If a Lot is owned by more than one Person, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. A proxy is void if not dated. A proxy shall be valid for eleven (11) months unless a shorter term is provided therein. All proxies shall be filed with the Secretary of the Association. A proxy given by a member may be revoked by such member by giving actual notice of its revocation to the person presiding over a meeting of the Association in oral or written form.

ARTICLE 3

MEETING OF MEMBERS

Section 3.1 Place of Meeting All meetings of members shall be held at the principal office of the Association or at such other place within New Hanover County, North Carolina as shall be designated in the notice of the meeting.

Section 3.2 Annual Meetings The annual meetings of members of the Association shall be held at least once a year. The annual meeting of members shall be held at such date and time as may be determined on an annual basis by the Board of Directors and stated in the notice of such members' meeting. The annual meeting of members shall be held for the purpose of electing directors of the Association, and for such other purposes as may be included in the notice of such meeting.

Section 3.3 Special Meetings. Special meetings of the members may be called at any time by (a) the President, (b) the Board of Directors of the Association, or (c) the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed in such request to be considered at the meeting, and in which case shall be noticed by the Secretary of the Association and the meeting shall be held within thirty (30) days of receipt of a written request signed, dated, and received by the Secretary. The

signatures on a petition requesting a special meeting shall be valid for a period of ninety (90) days after the date of the first signature. The member written request for a special meeting shall: (1) specify the purposes for which the meeting is to be held; (2) the purposes listed must be items upon which the members have the right to vote; and (3) be delivered to the Secretary in writing.

Section 3.4 Notice of Meetings Notice of meetings of members shall be given by the President, Secretary, or other person calling the meeting by any means that is fair and reasonable, and for this purpose, written or printed notice stating the time, place, and date of the meeting shall be delivered by hand-delivery, electronic mail, or by United States mail (postage prepaid) not less than ten (10) nor more than sixty (60) days before the date thereof, to each member of record entitled to vote at such meeting, unless the North Carolina Nonprofit Corporation Act or the Association's Articles of Incorporation require that such notice be given to all members with respect to such meeting. If mailed, such notice shall be deemed to be effective when deposited in the United States mail, correctly addressed to the member at the member's address as it appears on the current record of members of the Association, with postage thereon prepaid. For this purpose, a member's address shall be the mailing address of each Lot or to any other mailing address designated in writing by the Owner to the Secretary of the Association. If sent electronically, such notice shall be deemed effective when sent to the recipient, correctly addressed to the member at the member's email address as it appears on the current record of the members of the Association, without the sender receiving a failed email delivery return notice.

Notwithstanding the foregoing, if the notice provided for the above clearly would not be fair and reasonable under the circumstances then existing, then notice appropriate for the circumstances shall be given; PROVIDED, HOWEVER, THAT notice of a meeting where any of the following matters are to be voted on in all events shall be given as provided in the first paragraph of this Section. (i) director conflict of interest or indemnification, (ii) amendment to the Association's Articles of Incorporation, Bylaws, or Declaration, PROVIDED, HOWEVER, THAT the Declaration shall only be amended pursuant to the Declaration, (iii) plan of merger or dissolution, or (iv) a sale of assets other than in the regular course of the Association's activities, and PROVIDED, FURTHER, HOWEVER, THAT any special notice procedure set forth in the Declaration for any of the foregoing or any other matter shall be followed in addition to the notice provisions set forth herein.

The notice of any meeting shall state the items on the agenda, including a summary or copy of any proposed amendment to the Declaration, the Bylaws or Articles of Incorporation, any budget changes, and any proposal to remove a director or officer, and shall include any other matters and a copy or summary of any proposed action that expressly is required by the provisions of the North Carolina Nonprofit Corporation Act or the North Carolina Planned Community Act. Only those matters which are stated in the notice may be acted upon at a meeting of members.

Also, notice of an annual, regular, or special meeting of members shall

give notice of any matter a member intends to raise at the meeting if the Association receives a written request of any matter the members intends to raise by members entitled to call a special meeting pursuant to Section 3 3 ("Special Meetings") of this Article, and such written request is received by the Secretary or President of the Association at least ten (10) days before the Association gives notice of such meeting.

If any meeting of members is adjourned by the vote of a majority of votes cast on the motion to adjourn to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment and if a new record date is not fixed for the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed pursuant to North Carolina law, notice of the adjourned meeting must be given as provided in this Section to the members of record entitled to vote at the meeting as of the new record date

Section 3.5. Waiver of Notice of Meetings Any member may waive notice of any meeting before or after the meeting. The waiver must be in writing, signed by the member, and delivered to the Association for inclusion in the minutes or filing with the corporate records. A member's attendance, in person or by proxy, at a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the member or the member's proxy at the beginning of the meeting objects to holding the meeting or transacting business thereat, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member or the member's proxy objects to considering the matter before it is voted upon

Section 3 6. Quorum Unless provided otherwise by the Association's Articles of Incorporation or these Bylaws, a majority of the votes entitled to be cast on a matter, represented in person or by proxy, shall constitute a quorum on that matter at the opening of a meeting of members. Once a member is present or represented by proxy for any purpose at a meeting, such member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date (set forth in Section 3 7 below) is or must be set for that adjourned meeting under the North Carolina Nonprofit Corporation Act

Section 3 7 Record Date to Determine Members and List of Members. The record date for determining which Persons are members and therefore entitled to vote shall be the close of business on the seventieth (70th) day prior to the date of the meeting, unless the Board of Directors shall determine a record date closer to the meeting date. The Board of Directors is not permitted to set a record date retroactively. The membership list shall be current as of the record date. Before each meeting of members, the Association shall prepare an alphabetical list of the members entitled to notice of the meeting and entitled to vote at the meeting, showing each such member's address and the number of votes each such member is entitled to cast at the meeting. As a part of the aforementioned membership list and prepared on the same basis, the Association shall list, current through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. The list shall

be kept on file at the principal office of the Association for the period beginning two (2) business days after notice of the meeting is given and continuing through the meeting, and shall be available for inspection by any member, personally or by or with such member's representative, at any time prior to the meeting. A determination of members entitled to notice of, or to vote at, a membership meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new date for determining the right to notice or the right to vote, which the Board of Directors shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting

Section 3 8 Conduct of Meetings The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meetings and record all resolutions adopted at the meetings and proceedings occurring at such meetings The President may appoint a parliamentarian at any meeting of the Association. The President shall, in his sole discretion, determine the procedural manner in which each meeting shall be conducted and it shall be according to Robert's Rules of Order Newly Revised unless a specific determination is made by the President at the beginning of the meeting otherwise

Section 3 9 Action by Written Ballot Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter A written ballot shall: (a) set forth each proposed action, (b) provide an opportunity to vote for or against each proposed action, and (c) indicate the time by which a ballot shall be received by the Association in order to be counted. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast. A written ballot may not be revoked

ARTICLE 4

BOARD OF DIRECTORS

Section 4 1 Number, Election of Directors, and Terms of Office of Directors

(a) Election of Directors. The number of directors of the Association shall be not less than three (3) and not more than seven (7) as from time to time may be fixed or changed within said minimum and maximum by the members or the Board of Directors Except as provided in Section 4.4 hereof, the directors shall be elected at the annual meeting of members, those persons who receive the highest number of votes by the members entitled to vote in the election at a meeting at which a quorum is present shall be deemed to have been elected. All ties shall be broken by coin-toss. The Board of Directors of the Association shall be referred to herein from time to time as the "Board"

(b) Terms of Directors. Each director shall hold office for a term of two (2) years or until such director's death, resignation, retirement, removal or disqualification. Despite the expiration of a director's term, the director continues to serve as such until the director's successor is elected and qualifies, or there is a decrease in the number of directors. Directors elected to fill a vacancy shall hold the directorship until the expiration of the term of the person they are replacing.

Section 4 2. Election Procedures and Qualifications.

(a) Nominations Committee. Nominations for election to the Board of Directors of the directors may be made by a Nominations Committee. If appointed by the Board of Directors, the Nominations Committee shall develop election procedures and administer such procedures as are approved by the Board of Directors providing for election of directors by members at the annual meetings, and, where appropriate, at special meetings. If appointed, the Nominations Committee shall serve from the date of their appointment through the close of the annual meeting or, where appropriate, the special meeting, at which the election for members of the Board of Directors is to be held.

(b) Nominations Persons qualified to be directors may be nominated for election by the Nominations Committee and the names of such persons nominated shall be submitted in writing to the President of the Association and the Board of Directors sixty (60) days before the meeting at which the election is to be held. The Nominations Committee may make as many nominations for election to the Board of Directors as it shall in its discretion determine but in no event less than the number of vacancies or terms to be filled. Any written nominations presented by the Nominations Committee shall be accompanied by a statement signed by the nominees indicating the willingness of such nominees to serve as directors. Additional nominations may be made from the floor at the meeting at which the election is held for each vacancy on the Board of Directors for which no more than one person has been nominated by the Nominations Committee. If no Nominations Committee is appointed, nominations for directors may be made by the Board of Directors and/or may be made from the floor by any member at the meeting at which the election is held for any vacancy on the Board of Directors. Any nominee must either be present at said meeting, and consent to the nomination or have indicated in writing his or her willingness to serve as a director.

(c) Qualifications. No person shall be eligible for election by the members of the Association as a director unless such person is an Owner or is the individual nominee of an Owner which is other than an individual. No Owner or representative of such Owner shall be elected as a director or continue to serve as a director if such Owner is more than thirty (30) days delinquent in meeting any financial obligation owed to the Association, if such delinquency is not cured by the record date set pursuant to Section 3 7 hereof for such members' meeting in the case of an election of directors.

Section 4.3. Voting, Quorum, and Manner of Acting Each director shall be entitled to one (1) vote on all matters that come before the Association. A majority of the directors in office immediately before a meeting begins shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. Unless a vote of greater percentage is required by the Association's Articles of Incorporation, these Bylaws, the North Carolina Nonprofit Corporation Act, or the Declaration, the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. A director who participates in a meeting by any means of communication by which all directors may simultaneously hear each other during the meeting shall be deemed present at a meeting for all purposes.

Section 4.4. Removal or Resignation of Directors and Filling of Vacancies

(a) Any director may be removed from office at any time with or without cause by at least a fifty (51%) vote of all members present and entitled to vote at any meeting of members at which a quorum is present. A director may not be removed by the members at a meeting unless the notice of the meeting states that the purpose or one of the purposes, of the meeting is the removal of the director so removed. If any directors are so removed, new directors may be elected at the same meeting.

(b) A vacancy in the Board of Directors caused by a removal of a director by the members shall be filled by a vote of the members. A vacancy among the directors caused by any reason other than the removal of a director by the members shall be filled by the remaining directors at a meeting of the Board of Directors held for such purpose promptly after the occurrence of such vacancy. If the directors remaining in office do not constitute a quorum of the Board of Directors, the directors may fill the vacancy by the affirmative vote of a majority of the remaining directors, or by the sole remaining director, as the case may be. The term of a director elected to fill a vacancy in a directorship elected by members expires at the next election of directors by members, and the term of the director filling any other vacancy expires at the end of the unexpired term that such director is filling.

(c) A director may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Unless otherwise specified, such resignation shall take effect upon the receipt thereof and the acceptance of such resignation shall not be necessary to make it effective. A director shall be deemed conclusively to have resigned upon disposition by the Owner of the Lot which made such individual eligible to be a director or upon any other event of disqualification set forth in these Bylaws.

Section 4.5. Powers and Duties of the Board of Directors The business and affairs of the Association shall be managed and directed by the Board of Directors Except as provided below, the Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association, including, but not by way of limitation, all powers as set forth in Article 3 of Chapter 55A of the North Carolina General Statutes (North Carolina Nonprofit Corporation Act) and Section-47F-3-102 of the North Carolina Planned Community Act but may not do any such acts and things which are required by the Declaration, the Bylaws, or the Articles to be exercised and done by the members; provided, however, that all such powers, duties, acts, and things shall be exercised consistent with the provisions of the Declaration, the Bylaws, and Articles of Incorporation. The Board of Directors may delegate to one of its members or to a Person employed for such purpose the authority to act on behalf of the Board on such matters relating to the duties of the managing agent (as defined in Section 5 2 hereof), if any, which may arise between the meetings of the Board of Directors as the Board of Directors deems appropriate In addition to the duties imposed by any other provision of the Declaration or by any resolution of the Association that hereafter may be adopted, the Board of Directors shall perform the following duties and take the following actions on behalf of the Association, subject to any voting rights or the members provide by the Declaration, these Bylaws, and the Articles, or by law

(a) Provide goods and services to the members in accordance with the Declaration, and shall administer the operation and management of the Association pursuant to the Declaration

(b) Designate, hire, dismiss and, where appropriate, compensate the personnel necessary to operate and manage the Common Element as provided in the Declaration, and provide goods and services to the Owners, as provided for in the Declaration, as well as purchase equipment, supplies, and materials to be used by such personnel in the performance of their duties

(c) Collect the assessments specified in the Declaration, deposit the proceeds thereof in depositories designated by the Board of Directors and use the proceeds to administer the operation and management of the Common Element to the extent the Association is so authorized by the Declaration.

(d) Adopt, amend and repeal any reasonable rules and regulations not inconsistent with the Declaration and these Bylaws

(e) Open bank accounts on behalf of the Association and designate the signatories thereon

(f) Enforce by legal means the provisions of the Association Documents as are in effect from time to time.

(g) Act with respect to all matters arising out of any eminent domain proceeding affecting the Common Elements, Area of Common Responsibility

(h) Notify the members of any litigation against the Association involving a claim in excess of ten percent (10%) of the amount of the annual budget

(i) Obtain and carry insurance pursuant to the Declaration and pay the premiums therefor and adjust and settle any claims thereunder.

(j) Pay the cost of all authorized goods and services rendered to the Association and not billed to Owners of individual Lots or otherwise provided for in the Declaration

(k) Acquire, hold and dispose of Lots and mortgage the same without the prior approval of the Association if such expenditures and hypothecations are included in the budget.

(l) Suspend the right of any Owner or other user of a Lot, and the right of such Person's household, guests, employees, customers, tenants, agents and invitees to use the Common Element, pursuant to the hearing procedure provided in these Bylaws.

(m) In advance of each fiscal year, the Board of Directors shall cause to be prepared and adopt a proposed budget in compliance with the Declaration Within thirty (30) days after the adoption of any proposed budget for the Association, the Board shall provide a copy or summary of the budget to all Owners, and shall set a date and give notice for a meeting of the Owners to consider ratification of the budget. The date of the meeting of the Owners to consider ratification of the budget 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 budget is ratified unless at the meeting a majority of all of the Owners of 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

(n) Adopt an annual budget and make assessments (general or special) against the Owners to defray the Common Expenses of the Association pursuant to the Declaration, establish the means and methods of collecting such assessments from the Owners and establish the period of the installment payment, if any, of the assessments for Common Expenses

(o) Borrow money on behalf of the Association when required for any valid purpose

(p) Enter into contracts to carry out the business and activities of the Association

(q) Purchase tools and equipment for maintenance, repair, and replacement of the Common Elements.

(r) Grant easements, rights-of-ways or licenses over and through the Common Elements pursuant to N C Gen. Stat § 47F-3-102(9)

Section 4 6. Meeting of Directors

(a) Types of Meetings Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors; provided, however, such meetings shall be held at least quarterly during each fiscal year. Special meetings of the Board of Directors may be called by the President, and shall be called by the President or Secretary upon the written request of at least two (2) directors. At regular intervals, the Board shall provide the Owners an opportunity to attend a portion of a Board Meeting and to address the Board at such meeting. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak. The President or presiding officer may call the Board of Directors into closed session on sensitive matters such as personnel, legal strategy, or hearings with respect to violations of the Declaration or Rules and Regulation. Any final action taken by the Board of Directors in executive session shall be recorded in the minutes

(b) Notice. Regular meetings of the Board of Directors may be held without notice. The Chairperson, if any, the President, or any two (2) directors may call and call and give notice of a meeting of the Board of Directors. The person or persons calling a special meeting of the Board of Directors, at least two (2) days before the meeting, shall give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called. Any duly convened regular or special meeting may be adjourned by the directors to a later time without further notice

(c) Waiver of Notice Any director may waive notice of any meeting before or after the meeting. The waiver must be in writing, signed by the director entitled to the notice, and delivered to the Association for inclusion in the minutes or filing with the corporate records. The attendance by a director at, or the participation of a director in, a meeting shall constitute a waiver of any required notice of such meeting, unless the director, at the beginning of the meeting (or promptly upon the director's arrival thereat), objects to holding the meeting or to transacting any business at the meeting and does not thereafter vote for or assent to action taken at the meeting

(d) Conduct of Meetings The President shall preside over meetings of the Board of Directors and the Secretary shall keep the minutes of the meeting and record all resolutions adopted at the meetings and proceedings occurring at the meetings

Section 4 7 Action by Directors Without Meeting. Action required or

permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if the action is taken by all members of the Board of Directors and evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and delivered to the Secretary of the Association for inclusion in the minutes or filing with the corporate records.

ARTICLE 5

MANAGING AGENT

Section 5.1 Compensation The Board of Directors may employ for the purpose of administering the Association a "managing agent" at a compensation to be established by the Board of Directors. The managing agent shall be a bona fide business enterprise or individual which manages common interest communities. Otherwise, the managing agent may be a full-time employee of the Association who shall organize, staff, train and administer the in-house personnel solely to perform the managing agent duties set forth below. The Board of Directors shall impose appropriate standards of performance upon the managing agent.

Section 5.2 Duties The managing agent shall perform such duties and services as the Board of Directors shall direct. Such duties and services may include, without limitation, the duties listed in Section 4.5(a), (b), (c), and (j). However, the Board of Directors may not delegate to the managing agent the powers and duties set forth in Section 4.5(d), (e), (f), (g), (h), (i), (k), (l), (m), (n), (o), (p), (q) and (r). In addition and generally, the managing agent shall perform the obligations, duties and services relating to the management of the Association in compliance with the provisions of these Bylaws, the Association's Articles of Incorporation, and the Declaration.

ARTICLE 6

OFFICERS

Section 6.1. Designation and Duties of Officers The principal officers of the Association shall be the President (who shall also serve as Chairman of the Board of Directors), the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may also elect an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. All officers shall be Owners, officers of corporate Owners, partners of partnership Owners, or members of limited liability company Owners and shall be members of the Board of Directors. Each officer shall perform such duties as are normally associated with such office in parliamentary organizations, except to the extent, if any, inconsistent with the Declaration and these Bylaws, and shall perform such other duties as may be assigned to such office by resolution of the Board of Directors. If any officer is unable for any reason to perform the duties of the office, the President (or the Board of Directors if the President fails to do so) may appoint another qualified individual to act in such officer's stead on an interim basis.

Section 6 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors Any officer may hold more than one position, provided, however, that the offices of President, Vice President and Secretary shall be held by three different individuals. Each officer shall hold office for a term one (1) year or until such officer's death, resignation, retirement, removal or disqualification, or until the election and qualification of such officer's successor

Section 6 3 Removal and Resignation Any officer or agent may be removed by the Board of Directors at any time with or without cause; but such removal shall be without prejudice to the contract rights, if any, of the person so removed. An officer may resign at any time by notifying the Association in writing of such resignation. A resignation shall be effective upon receipt by the Association unless it specifies in writing a later effective date In the event a resignation so specifies a later effective date, the Board of Directors may fill the pending vacancy prior to such date, however, the successor to the resigning officer may not take office until the effective date An officer's resignation does not affect the Association's contract rights, if any, with such officer

Section 6 4 Vacancies A vacancy in any office may be filled by appointment by the Board of Directors The individual appointed to fill a vacancy shall serve for the remainder of the term of the officer such individual replaces

Section 6.5. President The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall supervise and control the management of the Association in accordance with these Bylaws The President, when present, shall preside at all meetings of members The President, with any other proper officer, may sign any deeds, leases, mortgages, bonds, contracts or other instruments which lawfully may be executed on behalf of the Association, except where required or permitted by law otherwise to be signed and executed and except where the signing and execution thereof shall be delegated by the Board of Directors to some other officer or agent In addition, the President shall prepare, execute, certify, and record amendments to the Declaration on behalf of the Association. In general, the President shall perform all duties incident to the office of President and such other duties as from time to time may be assigned by the Board of Directors

Section 6 6 Vice President. In the absence of the President or in the event of the President's death, inability or refusal to act, the Vice President, unless otherwise determined by the Board of Directors, shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President Any Vice President shall perform such other duties as from time to time may be assigned by the President or by the Board of Directors

Section 6 7 Secretary The Secretary shall keep the minutes of all

meetings of the Association and of the Board of Directors, have charge of such books and papers as the Board of Directors may direct and as may be required by Article 16 of the North Carolina Nonprofit Corporation Act and Article 3 of the North Carolina Planned Community Act, give or cause to be given all notices required to be given by the Association; give each Owner notice of each assessment against such Owner's Lot as soon as practicable after assessment is made; provide for each Owner, upon request, a copy of the rules and regulations of the Association, maintain a register setting forth the place to which all notices to members and First Mortgagees hereunder shall be delivered; make it possible for any member to inspect and copy at reasonable times and by appointment the records of the Association in accordance with and as required by the North Carolina Nonprofit Corporation Act; and, in general, perform all the duties incident to the office of Secretary

Section 6.8. Assistant Secretary In the absence of the Secretary or in the event of the Secretary's death, inability or refusal to act, the Assistant Secretary, unless otherwise determined by the Board of Directors, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. The Assistant Secretary shall perform such other duties as from time to time may be assigned by the Secretary, by the President, or by the Board of Directors

Section 6 9 Treasurer The Treasurer shall have custody of all funds and securities belonging to the Association and shall receive, deposit or disburse the same under the direction of the Board of Directors The Treasurer shall maintain appropriate accounting records as may be required by law and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or by the Board of Directors

Section 6 10 Assistant Treasurer. In the absence of the Treasurer or in the event of the Treasurer's death, inability or refusal to act, the Assistant Treasurer, unless otherwise determined by the Board of Directors, shall perform the duties of the Treasurer, and when so acting shall have all the powers of and be subject to all the restrictions upon the Treasurer The Assistant Treasurer shall perform such other duties as from time to time may be assigned by the Treasurer, by the President, or by the Board of Directors

ARTICLE 7

COMMITTEES

Section 7.1. Nominations Committee. The Board of Directors may establish a Nominations Committee as set forth in Section 4.2(a) of these Bylaws.

Section 7 2. Architectural Control Committee. The Declaration sets forth the appointment and the members of the Architectural Control Committee of the Association ("ACC") The ACC shall have the powers as set forth in the Declaration.

Section 7.3. Committees of the Board of Directors The Board of Directors, by resolution of a majority of the number of directors in office, may designate two or more directors to constitute an Executive Committee and such other committees as the Board of Directors shall deem advisable, each of which, to the extent authorized by the North Carolina Nonprofit Corporation Act and provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the management of the Association. Each committee member serves at the pleasure of the Board of Directors. The provisions of these Bylaws governing meetings, action without meeting, notice and waiver of notice, and quorum and voting requirements of the Board of Directors apply to any committees of the Board of Directors established pursuant to this Section. The designation of any committee of the Board of Directors and the delegation thereto of the Board of Directors' authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon him or her by law.

Section 7.4. Other Committees Other committees not having and exercising the authority of the Board of Directors in the management of the Association may be designated by resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Such committee shall have such duties and responsibilities as may be set forth in the resolution designating the committee. For committees set up under this Section 7.4 to which decision making authority is delegated by the Board of Directors or in any Association Documents, the provisions of these Bylaws governing meetings, action without meeting, notice and waiver of notice, quorum and voting requirements of the Board of Directors shall apply to any such committees. Further, such committees shall keep a written record of actions taken by such committees. It is provided, however, that the authority of any such committees shall not exceed the power granted to the Association in the Declaration.

ARTICLE 8

INDEMNIFICATION AND OTHER DIRECTOR AND OFFICER ISSUES

Section 8.1. Execution of Documents. Unless as may otherwise be provided in a resolution of the Board of Directors, all agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations for Common Expenses and all checks drawn upon reserve accounts, shall be executed by any two (2) individuals designated by the Board of Directors. Any officer of the Association may be designated by Board of Directors resolution to sign a statement of Common Expenses on behalf of the Association.

Section 8.2. Indemnification The Association shall indemnify, to the fullest extent permitted by law and this Article, any person who is or was a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding (and any appeal therein), whether civil, criminal, administrative, arbitral, or investigative and whether or not brought by or on behalf of the Association, by reason of the fact that such person is or was a director, officer, or committee member of the Association, or is or was serving at the request of the Association as a director, officer,

partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise or as a trustee or administrator under an employee benefit plan, or arising out of such party's activities in any of the foregoing capacities, against all liability and litigation expense, including reasonable attorneys' fees, PROVIDED, HOWEVER, THAT the Association shall not indemnify any such person against liability or expense incurred on account of such person's activities which were at the time taken known or believed by such person to be clearly in conflict with the best interests of the Association or if such person received an improper personal benefit from such activities. The Association likewise shall indemnify any such person for all reasonable costs and expenses (including attorneys' fees) incurred by such person in connection with the enforcement of such person's right to indemnification granted herein.

The Association shall pay all expenses incurred by any claimant hereunder in defending a civil or criminal action, suit, or proceeding as set forth above in advance of the final disposition of such action, suit, or proceeding upon receipt of and undertaking by or on behalf of such claimant to repay such amount unless it ultimately shall be determined that such claimant is entitled to be indemnified by the Association against such expenses

The Board of Directors of the Association shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by this Bylaw, including without limitation, (a) a determination by a majority vote of disinterested directors (i) that the activities giving rise to the liability or expense for which indemnification is requested were not, at the time taken, known or believed by the person requesting indemnification to be clearly in conflict with the best interests of the Association and (ii) that the person requesting indemnification did not receive an improper personal benefit from the activities giving rise to the liability or expense for which indemnification is requested, and (b) to the extent needed, giving notice to the members of the Association.

Any person who at any time after the adoption of this Bylaw serves or has served in any of the aforesaid capacities for or on behalf of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this Bylaw

Section 8 3 Compensation of Directors and Officers. No salary or other compensation shall be paid by the Association to any director or officer of the Association for serving or acting as such, but this shall not preclude the payment of salary or other compensation for the performance by any person serving as a director or officer for services provided to the Association in a capacity other than that of director or officer nor shall it preclude the reimbursement of reasonable, ordinary and necessary expenses incurred in serving or acting as a director or officer

ARTICLE 9

BOOKS AND RECORDS

Section 9.1. Maintenance of Books and Records and Financial Review

The Association shall keep books and records as required by Article 16 of the North Carolina Nonprofit Corporation Act. The Association may cause to be adopted procedures for such level of financial review and compilation of the Association as the Board of Directors may determine appropriate, which may include an audit or some lesser level of review. The cost of any such financial review shall be a Common Expense

Section 9.2. Availability

The books and records of the Association shall be available for inspection by the members and their attorneys and accountants pursuant to the terms and conditions of Article 16 of the North Carolina Nonprofit Corporation Act and Article 3 of the North Carolina Planned Community Act.

Section 9.3. Accounting Report

Within one hundred twenty (120) days after the end of each fiscal year, the Board of Directors shall make available to members an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves

In addition, the Board of Directors, in its sole discretion, may authorize an audit of the Association or any other level of financial review of the books and records of the Association, and if authorized, such service shall be a Common Expense of the Association. In the event that an Owner or Owners request an audit of the Association and the Board of Directors does not authorize an audit, an audit may be conducted and paid for by the requesting Owner or Owners

Section 9.4. Fiscal Year

The fiscal year of the Association shall be fixed by the Board of Directors

Section 9.5. Seal

The corporate seal of the Association shall consist of two concentric circles between which is the name of the Association and in the center of which is inscribed "SEAL", and such seal, in the form approved by the Board of Directors, shall be adopted by the Board as the corporate seal of the Association.

ARTICLE 10

NOTICES

Except as specifically provided otherwise in the Declaration, these Bylaws, or the North Carolina Nonprofit Corporation Act, all notices, demands, bills, statements or other communications shall be in writing and shall be deemed to have been duly given if delivered personally, electronically, or sent by United States mail, postage prepaid, or if notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid: (a) if to an Owner, at the physical or email address which the Owner shall designate in writing and file with the Secretary or, if not such address is designated, at the address of the Lot of such Owner, and (b) if to the managing agent, at the principal office of the managing agent or at such other address as shall be designated by notice in writing to the Association. If a Lot is owned by more than one Person, each such Person who so designates an address in writing to the Secretary shall be entitled to receive all notices hereunder, otherwise the Person receiving the notice shall have the responsibility for notifying the other Persons comprising the Owner.

ARTICLE 11

AMENDMENTS TO BYLAWS

These Bylaws may be amended or repealed and new Bylaws may be altered, amended, or repealed at any time by the members and by the Board of Directors pursuant to the applicable provisions of the North Carolina Nonprofit Corporation Act.

ARTICLE 12

PRIORITY

In the event that any of the provisions of these Bylaws conflict with the provisions of the North Carolina Nonprofit Corporation Act, the provisions of the North Carolina Nonprofit Corporation Act shall control. In the event of any inconsistency between the Bylaws and the Declaration, the Declaration shall control, in the event of any inconsistency between the Bylaws and the Articles of Incorporation, the Articles shall control.

The Board of Directors of the Association hereby certifies that the foregoing Bylaws of the Association were duly approved and adopted at the organizational meeting of the Board of Directors.

IN WITNESS WHEREOF, the undersigned have executed this certificate as of the _____ day of _____, 20__

Carol L. Rosborough, Director

Gary L. Fisher, Director

George Miller, Director

Meg Morrison, Director

Sara Burke, Director

Steve Parrott, Director

Rich Vena, Director

ND: 4852-3216-5398, v 1

SCHEDULE 3

Amended and Restated Declaration

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR
VILLAGE AT SUMMERSET

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL
SIGNS.**

Prepared by Ward and Smith, P A., University Corporate Center, 127 Racine Drive,
Wilmington, NC 28403-8705
Please return to Ward and Smith, P A , University Corporate Center, 127 Racine Drive,
Wilmington, NC 28403-8705

Table of Contents

Article 1: Amendment and Restatement of Original Declaration	2
Article 2: Adoption of the North Carolina Planned Community Act	2
Article 3: Definitions	2
3 1 Act	2
3 2 Articles	2
3 3 Assessment	2
3 4 Association	2
3 5 Association Documents	3
3 6 Benefited Assessment	3
3 7 Board of Directors or Board	3
3 8 Business and Trade	3
3 9 Bylaws	3
3.10 Common Elements	3
3 11 Common Expenses	3
3 12 Community-Wide Standard	3
3 13 Declaration	4
3 14 Design Guidelines	4
3 15 Dwelling Unit	4
3 16 Landscaping	4
3 17 Limited Common Elements	4
3 18 Lot	4
3 19 Member	4
3 20 Mortgage	4
3.21 Mortgagee	4
3 22 Owner	4
3 23 Permit	5
3 24 Person	5
3 25 Property	5
3 26 Register of Deeds	5
3 27 Stormwater Management Facilities	5
3 28 Upkeep	5
3 29 Use Restrictions	5
3 30 Utility Company	5
Article 4: Property Rights	5
4 1 Easements in Original Declaration	5
4 2 Common Elements	5

Article 5: Association Function, Membership and Voting Rights	6
5 1 Function of Association	6
5 2 Membership	6
5 3 Voting	7
Article 6: Association Rights, Obligations and Services	7
6 1 Personal Property and Real Property for Common Use	7
6.2 Implied Rights; Board Authority	7
6 3 Dedication of Common Elements	7
6 4 Disclaimer of Liability	7
6 5 Safety	8
6 6 Change of Use of Common Elements	8
6 7 View Impairment	8
6.8 Relationship with Tax-Exempt Organizations	8
Article 7: Maintenance	8
7 1 Association's Responsibility	8
7.2 Owner's Responsibility	9
7 3 Standard of Performance	9
Article 8: Insurance and Casualty Losses	10
8 1 Association Insurance	10
8 2 Association Policy Requirements	11
8 3 Owner's Insurance	11
8 4 Loss Adjustment, Repair and Proceeds	11
Article 9: No Partition, Subdivision	12
Article 10: Permit Transfer, Responsibilities and Covenants	12
10 1 Administration of Permit	12
10 2 Easement for Upkeep and Enforcement	12
10 3 Permit Covenants	12
Article 11: Annexation of Property With Approval of Membership	13
Article 12: Assessments	13
12 1 Creation of Assessments	13
12 2 Computation of Annual Assessment	14
12 3 Reserve Budget and Special Reserve Assessment	15
12 4 Benefited Assessments	15
12 5 Special Assessments	15
12 6 Lien for Assessments	16

12 7	Acceleration	16
12 8	Failure to Assess	16
12 9	Exempt Property	17
12.10	Working Capital Contribution	17
Article 13: Architectural and Design Standards		17
13 1	General	17
13 2	Architectural and Design Review	17
13.3	Guidelines and Procedures	18
13 4	Submission of Plans and Specifications	18
13 5	No Waiver of Future Approvals	19
13 6	Variances	20
13 7	Limitation of Liability	20
13 8	Enforcement	20
Article 14: Use Restrictions		21
14 1	Applicability Effect	21
14 2	Authority to Promulgate Rules	21
14 3	Owners' Acknowledgment	22
14 4	Use Restrictions	22
14 5	Rights of Owners	22
Article 15: Easements		23
15 1	Easements for Utilities, Etc	23
15 2	Easements for Cross-Drainage	24
15 3	Right of Entry	24
15 4	Easements for Maintenance and Enforcement	24
Article 16: Mortgage Provisions		25
16 1	Notices of Action	25
16 2	No Priority	25
16 3	Notice to Association	25
Article 17: Compliance and Enforcement		26
17 1	General Remedies	26
17.2	Enforcement/Sanctions	26
17 3	Self-Help Remedies	26
17 4	Cumulative Remedies/Attorneys' Fees	26
17 5	Association's Right Not to Take Action	26
17 6	Enforcement by Owner	27
Article 18: General Provisions		27
18 1	Term	27

18 2 Amendment 27
18 3 Hearing Procedures 28
18 4 Severability 29
18 5 Notice of Sale or Transfer of Title 29
18 6 Attorneys' Fees 29

EXHIBIT A - Property
EXHIBIT B - Use Restrictions

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR
VILLAGE AT SUMMERSET

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR VILLAGE AT SUMMERSET ("Declaration") is made and entered into as of the 4th day of March, 2014, by **THE VILLAGE AT SUMMERSET HOA, INC.**, a North Carolina non-profit corporation (herein referred to as the "Association")

WHEREAS, Summerset at Wrightsville, LLC, recorded the Declaration of Covenants, Conditions and Restrictions of Phase IA, Pointe Summerset at Wrightsville in Book 2397, at Page 181 in the office of the Register of Deeds of New Hanover County (as amended and supplemented, the "Pointe Summerset Declaration"), encumbering a portion of the Property, as defined herein, described as "Pointe Summerset Property" on Exhibit A attached hereto and incorporated herein by reference, and

WHEREAS, Edith H Patelos recorded the Declaration of Covenants, Conditions and Restrictions of Phase I, The Village at Summerset in Book 3993, at Page 400 in the office of the Register of Deeds of New Hanover County (as amended and supplemented, the "Village Summerset Declaration"), encumbering a portion of the Property, as defined herein, described as "Village Summerset Property" on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Pointe Summerset Declaration and the Village Summerset Declaration shall hereinafter be collectively referred to as the "Original Declarations"; and

WHEREAS, all owners of Pointe Summerset Property were members of Pointe Summerset Home Owners' Association pursuant to the terms of the Pointe Summerset Declaration, and

WHEREAS, all owners of Village Summerset Property were members of The Village at Summerset HOA, Inc. pursuant to the terms of the Village Summerset Declaration; and

WHEREAS, the owners of lots in Pointe Summerset Property to which at least eighty percent (80%) of the votes in Pointe Summerset Home Owners' Association were allocated and the owners of lots in Village Summerset Property to which at least eighty percent (80%) of the votes in The Village at Summerset HOA, Inc. were allocated voted to approve the plan of merger which was adopted on February 20, 2014 ("Plan of Merger"); and

WHEREAS, pursuant to the Plan of Merger, The Village at Summerset HOA, Inc. and Pointe Summerset Home Owners' Association shall merge and The Village at Summerset HOA, Inc shall be the surviving corporation, all owners of Village Summerset Property.

Pointe Summerset Property shall be members of the Association, and the Original Declarations shall be amended and restated as set forth in this Declaration.

NOW, THEREFORE, the Association hereby covenants and declares on behalf of itself and its successors and assigns that the Original Declarations are hereby amended and restated in their entirety. The real estate previously made subject to the Original Declaration from the date this Declaration is recorded in the office of the Register of Deeds of New Hanover County shall be held, conveyed, acquired and encumbered subject to the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all current owners and perspective purchasers and parties who have or may acquire any right, title, estate or interest in or to any of such real estate or who have or may acquire any right or occupancy of or interest upon any portion thereof, all subject to the right of the Association to amend this Declaration according to its terms.

Article 1. Amendment and Restatement of Original Declaration.

The Original Declarations are hereby amended to delete and rescind the Original Declarations in their entirety, subject to Article 4 herein, and adopt in their place instead this Declaration

Article 2. Adoption of the North Carolina Planned Community Act.

Chapter 47F of the North Carolina General Statutes, and any subsequent amendments thereto, which is commonly known as the North Carolina Planned Community Act, applies to the Association, the Property, the Lots and all other aspects of the planned community

Article 3. 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

3.1 "Act" Chapter 47F of the General Statutes of North Carolina designated as the North Carolina Planned Community Act

3.2 "Articles" The Articles of Incorporation of The Village at Summerset HOA, Inc., as filed with the North Carolina Secretary of State.

3.3 "Assessment". Assessments levied on all Lots to fund the Common Expenses.

3.4 "Association". The Village at Summerset HOA, Inc., a North Carolina nonprofit corporation, its successors and assigns

3 5 "Association Documents": Collectively the Articles of Incorporation, the Bylaws, this Declaration, the Rules and Regulations, the Design Guidelines adopted by the Association, if any, the Community-Wide Standard adopted by the Board and the Architectural Committee, 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.

3 6 "Benefited Assessment" Assessments levied under Section 12.4.

3 7 "Board of Directors" or "Board" The body responsible for administration of the Association selected as provided in the Bylaws.

3 8 "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.

3 9 "Bylaws" The Bylaws of the Association as they may be amended from time to time

3 10 "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, signage, landscaping, lawns, drainage or other easements as the same may be depicted on recorded plats of the Property, as that term is defined herein, landscape medians, roads, alleys, cul-de-sacs, ponds, wetlands and preservation areas. The term shall also include any and all permits issued or transferred to the Association and other such intangible property. Notwithstanding this definition to the extent that the provisions of the Act apply to "Common Elements," including without limitation, the provisions of the N C Gen. Stat. § 47F-3-112, those provisions shall only apply to Common Elements as defined in the Act

3 11 "Common Expenses": Any and all expenditures made by or financial liabilities and obligations of the Association, together with any allocations to reserves

3.12 "Community-Wide Standard": The standard of conduct, upkeep, or other activity generally prevailing throughout the Property. The standard shall be determined by the Board of Directors and the Architectural Control Committee (as defined in Section 13.2(a)). 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

3 13 "Declaration" This Declaration and any exhibit, schedule or amendment thereto, all as may be amended, restated and revised from time to time.

3 14 "Design Guidelines": The architectural, design, development, and other guidelines, standards, controls, and procedures including but not limited to, application and review procedures, set forth in Article 13 and applicable to the Property.

3 15 "Dwelling 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

3 16 "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

3 17 "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 Property recorded in the Register of Deeds Limited Common Elements shall include driveways, walkways, sidewalks and fenced portions of lawns as depicted on recorded plats of the Property

3 18 "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 thereon, including but not limited to the Dwelling Unit.

3 19 "Member". A Person having membership in the Association consistent with Section 5.2 of this Declaration.

3 20 "Mortgage" A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed

3 21 "Mortgagee" A beneficiary or holder of a Mortgage

3 22 "Owner": One (1) 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

3 23 "Permit": North Carolina Stormwater Management Permit Nos SW8 950841 and SW8 981109 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

3 24 "Person": A natural person, corporation, limited liability company, partnership, trust, or any other legal entity

3 25 "Property" The real property described in Exhibit A

3 26 "Register of Deeds": The office of the Register of Deeds of New Hanover County, North Carolina

3 27 "Stormwater Management Facilities": All areas consisting of ditches and swales, retention ponds and other improvements which are constructed pursuant to, and regulated by, any of the Permits.

3 28 "Upkeep" Care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

3.29 "Use Restrictions": The rules and use restrictions are more fully defined as set forth in Article 14

3 30 "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 4. Property Rights

4 1 Easements in Original Declaration: Notwithstanding the replacement of the Original Declarations with this Declaration, all easements created and described in the Original Declarations shall be easements appurtenant to, and shall run with, the land by whomsoever owned, whether or not the same shall be contained or referred to in any future deed or conveyance, and shall at all times inure to the benefit and be binding upon the Association and the Owners, all their grantees and their respective heirs, successors, personal representatives or assigns.

4.2 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, subject to Article 14, to adopt rules, regulations or policies regulating the use and enjoyment of 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 6.3,

(iii) 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

(iv) 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 the Common Elements.

Article 5. Association Function, Membership and Voting Rights.

5.1 Function of Association The Association shall be the entity responsible for management, Upkeep, operation and control of the Common Elements. 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. Unless otherwise specifically provided in the Association Documents, all rights, powers, easements, obligations, and duties of the Association may be performed by the Board on behalf of the Association and the Board shall have the authority to delegate to Persons of its choice such duties as may be determined by the Board to be expedient.

5.2 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 regulations, and the restrictions on voting set forth in Section 5.3 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, limited liability company, partnership or other legal entity may be exercised by any officer, director, manager, 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

5.3 Voting All Owners shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 5.2, provided, there shall be only one (1) vote per Lot. 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 (1) 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 6. Association Rights, Obligations and Services

6.1 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property

6.2 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

6.3 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

6.4 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. Notwithstanding anything contained herein or in the Association Documents or the Act, neither the Association, the Board, nor the management company of the Association 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

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

6.6 Change of Use of Common Elements. Upon adoption of a resolution by the Board stating that, in the Board's opinion the 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, the Board shall have the power and right to 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.

6.7 View Impairment. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

6.8 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.

Article 7. Maintenance

7.1 Association's Responsibility. The Association shall provide Upkeep for the Common Elements (with the exception of Limited Common Elements which shall be maintained pursuant to Section 7.2 herein), which shall include, but need not be limited to:

(a) all Common Elements and all improvements upon the Common Elements,

(b) all Landscaping, signage, and improvements, including any entrances, structures, bike paths, pathways and trails, situated upon the Common Elements; provided, however, each Owner shall be responsible for the costs of irrigating that portion of the Common Elements, the irrigation of which is allocated to their Lot;

(c) all private streets and alleys, including any asphalt repairs thereto, situated upon the Common Elements,

(d) all walls and fences constructed as Common Elements,

(e) 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),

(f) The well and associated irrigation system used to water the Common Elements.

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 Common Elements shall be a Common Expense allocated among all Lots as part of an 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

7.2 Owner's Responsibility. Each Owner shall provide for the Upkeep of his or her Lot and Dwelling Unit and all other structures and other improvements upon the Lot, and all Limited Common Elements, including all improvements constructed thereon, allocated to his or her 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. Each Owner shall also be responsible for maintaining the irrigation system allocated to his or her Lot, shall operate the irrigation system pursuant to the standards in the rules and regulations to assure the continuing good health and appearance of the grass and other Landscaping consistent with the Community Wide Standard, and shall be responsible for the costs of operating the irrigation system

In addition to any other enforcement rights, if an Owner fails properly to perform his or her Upkeep responsibility, the Association may enter the Owner's Lot and perform such work for Upkeep and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 12.4. 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

7.3 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

Some portions of the Property may be 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 8. Insurance and Casualty Losses.

8 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 to the extent that the Association is responsible 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 Common Elements, 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 One Million and No/100 Dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage;

(c) Directors and officers liability insurance or equivalent association liability insurance;

(d) Such additional insurance, including but not limited to workers compensation, commercial crime, fidelity, flood, earthquake and hurricane insurance, as the Board in its best business judgment determines advisable, and

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

8 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 New Hanover County, North Carolina, area.

Premiums for all insurance on the Common Elements shall be Common Expenses and shall be included in an Assessment. In the event that insurance costs increase during the fiscal year, the Board may levy an Assessment for the increased costs pursuant to Section 12.5 herein, and such Assessments shall become effective upon approval by the Board.

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, 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 12.4.

All insurance coverage obtained by the Board shall comply with the provisions of Gen. Stat. § 47F-3-113.

8 3 Owner's Insurance. The Association shall have no responsibility to provide insurance for any portion of any Lot except as stated in Section 8 1(a) or any Limited Common Element. Owners may carry property insurance covering risks of physical loss for both the Dwelling Unit and for any other insurable improvements on their Lot and those Limited Common Elements allocated to their Lot. Each Owner covenants and agrees that in the event of damage to or destruction of the Dwelling Unit or other structures on or comprising his or her Lot or Limited Common Elements, 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 13 of this Declaration. Alternatively, the Owner shall clear the Lot and Limited Common Elements 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.

8 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 planned community, shall be governed by the provisions of Chapter 47F-3-113(d) and (g) of the Act.

Article 9. No Partition, Subdivision.

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. No Lot may be subdivided without the written consent of the Board.

Article 10. Permit Transfer, Responsibilities and Covenants

10.1 Administration of Permit. From and after the date of transfer of a Permit 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.

10.2 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 Permits. All Owners, and all employees, tenants, guests, and invitees of any Owner shall comply with and abide by the terms and provisions of any and all Permits applicable to the Property, including maximum built-upon area limits.

10.3 Permit Covenants. To ensure ongoing compliance with State Stormwater Management Permit Number SW8 981109, 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 State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Permit.

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

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

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

(e) The maximum built-upon area per lot is 7,000 square feet. The maximum built-upon area limits set forth in this subsection (g) shall only apply to lots in Cavalier Woods, a neighboring community that is also subject to Stormwater Management Permit Number SW8 981109. The maximum built-upon area for Lots within the Property shall be as set forth in the applicable Permit. This allotted amount

includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.

(f) All runoff on the Lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the Lot to drain toward the street, or grading perimeter swales and directing them into the pond or street. Lots that will naturally drain into the system are not required to provide these measures

(g) Built-upon area in excess of the permitted amount will require a Permit modification

Article 11. Annexation of Property With Approval of Membership.

(a) The Association may subject any contiguous property to the provisions of this Declaration with the consent of the owner of such property and the affirmative vote of Owners representing sixty-seven percent (67%) of the votes of the Association

(b) 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.

Article 12. Assessments

12.1 Creation of Assessments.

(a) 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) Assessments to fund Common Expenses for the general benefit of all Lots; (b) Benefited Assessments as described in Section 12.4, and (c) Special Assessments as described in Section 12.5. 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

(b) 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 12.6. 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 not be personally liable for any assessments which accrued prior to such acquisition of title. No first Mortgagee which 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.

(c) All assessments shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, an Assessment for each Lot shall be due and payable in advance each year on the first day of the fiscal year of the Association

(d) 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.

(e) No Owner may exempt himself or herself from liability for assessments, by non-use of Common Elements, abandonment of his or her Lot or Dwelling 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.

12.2 Computation of Annual 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 12.3.

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 Assessment for the fiscal year shall be determined based upon the budget adopted by the Board and ratified by the Owners.

12.3 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 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.

12.4 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 providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner which benefits items, or services are not provided to all Lots; and

(b) to cover costs incurred in bringing the Lot or Limited Common Elements 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 (b); and

(c) to cover the costs (operating, maintenance, repair, and replacement) of irrigating lawns through the use of wells maintained and operated by the Association; provided, however, such amount shall be determined based upon each Owner's time of usage of the well. For example, if the monthly electric bill for running the well is \$100.00 and 80% of the time was used to water Common Elements not allocated to a Lot for said month, the Owner or Owners would be responsible for 20% of the electric bill.

12.5 Special Assessments. In addition to other authorized assessments, the Board may levy Special Assessments equally against all Lots from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the cost of any construction, repair, replacement or repaving of capital improvements, including the roads. The Board may, without Member approval, levy Special Assessments that are: (i) not in excess of \$100.00 per Lot or (ii) necessary to comply with any law or requirement of a governmental entity. The Board may levy Special Assessments in excess of \$100.00 per Lot for any reason provided that such Special Assessments are approved by the vote of a majority of the Members present in person or by proxy at a meeting duly called for such purpose. 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.

12.6 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, as amended, 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) those superior by law, 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, including such acquirer, its successors and assigns.

12.7 Acceleration In any case where an assessment or other charge 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 or other charge may be accelerated, at the option of the Board, and the entire balance of the assessment or other charge may be declared due and payable in full by the service of such notice to such effect upon the defaulting Owner.

12.8 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 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.

12.9 Exempt Property The following property shall be exempt from payment of Assessments: (i) all Common Elements; and (ii) all property dedicated to and accepted by any governmental authority or Utility Company.

12.10 Working Capital Contribution Upon the conveyance of a Lot by an Owner, the new Owner shall contribute at the closing of said Lot an amount equal to one-sixth (1/6) of the annual Assessment levied for the current fiscal year against such Lot, said sum to be paid to the Association. Such funds will be used solely for deposit into the reserve fund described in Section 12.3. Amounts paid into the reserve fund pursuant to this Section 12.10 shall not be considered advanced payment of Assessments.

Article 13. Architectural and Design Standards

13.1 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, Dwelling Unit, other structure or the Common Elements (e.g., signs, mailboxes, mailbox posts, accessory buildings, antennae, satellite dishes, clotheslines, playground equipment, temporarily or permanently installed basketball goals, pools, propane tanks, lighting, temporary structures, and artificial vegetation), planting or removal of Landscaping, or installation or removal of a well or 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 described in Section 13.2.

Any Owner may remodel, paint or redecorate the interior of structures including the Dwelling 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, Dwelling Units, Common Elements or streets (public or private) within the Property shall be subject to this Article and approval as set forth below.

13.2 Architectural and Design Review

(a) New Construction The Board may create and appoint an Architectural Control Committee ("ACC"). The ACC shall consist of at least three (3), but not more than five (5), Persons, who must be Owners, who shall serve and may be removed in the Board's discretion.

(b) Fees. The ACC 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. 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.

(c) Security Deposit The ACC may require posting of a security deposit by an Owner to be utilized for the payment of any fines and costs of enforcement in accordance with Section 13.8, or 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 construction on the Lot. The amount and type of security may be changed from time to time by the ACC.

13.3 Guidelines and Procedures. The ACC shall prepare Design Guidelines which shall apply to all construction activities within the Property, except as provided in Section 13.1 The ACC shall have authority to amend the Design Guidelines, with the Board's consent. Within thirty (30) days after the adoption of any amended Design Guidelines, the ACC shall provide a copy or summary of the amended Design Guidelines to all Owners.

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 ACC 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. The ACC is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive, subject to the Board's consent.

The Association shall make the Design Guidelines available to Owners (including 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.

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 ACC, unless the ACC has granted a variance in writing pursuant to Section 13.6. So long as the ACC 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.

13.4 Submission of Plans and Specifications.

(a) No activities within the scope of Section 13.1 shall commence on any Lot until an application for approval of the proposed work has been submitted to and

approved by the ACC. Such application shall be in the form required by the ACC and shall include plans and specifications ("Plans") showing layout, size, 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 Plans shall also include all applicable permits and approvals and any other information requested by the ACC.

(b) In reviewing each submission, the ACC 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 ACC shall also review the installation or modification of irrigation systems.

The ACC shall, within thirty (30) days of receipt of the Plans, 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 ACC fails to advise the submitting party by written notice within thirty (30) days 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 sixty (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 ACC for reconsideration provided that the ACC may grant a longer time period for expiration of the approval at the time the approval is granted. If construction is not completed on a project for which plans have been approved within six (6) months or as otherwise set forth in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

13.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the ACC 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.

13.6 Variations The ACC may authorize variations 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.

13.7 Limitation of Liability Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Association, the Board, nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, governmental requirements, and any other restrictions. Neither the Association, the Board, nor the ACC 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 ACC and their members shall be defended and indemnified by the Association as provided in the Bylaws.

13.8 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 the ACC 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 Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association 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, 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, the Association, its officers, or directors shall not be held liable to any Person for exercising the rights granted by this section.

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

Article 14. Use Restrictions

14.1 Applicability; Effect The Property is subject to Design Guidelines as set forth in Article 13 and other restrictions governing land development, architectural and design control, individual conduct and uses of or actions upon the Property. This Declaration, including the 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.

14.2 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 propose rules not inconsistent with the Use Restrictions set forth in Section 14.4 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, provided, however, no rules shall become effective until approved by the membership as set forth in subsection (b) of this section.

(b) The Owners, at a meeting duly called for such purpose, shall vote to adopt rules which are proposed by the Board. The rules are successfully adopted by the affirmative vote of Owners representing a majority of votes in attendance (in person and by proxy) at such meeting.

(c) Once approved by the Owners the Board shall send a copy of the rule to each Owner specifying the effective date of Owner approval. 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.

14.3 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, with the approval of the Owners as set forth herein, 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.

14.4 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 of the Association consistent with this Declaration), subject to applicable laws. The Property is also subject to the Use Restrictions described on Exhibit B

14.5 Rights of Owners Except as may be specifically set forth in the Use Restrictions, 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, number and manner of display restrictions regulating flags, political signs, signs (including "For Sale" signs) and symbols which are visible from outside the Lots Notwithstanding any provision of this Declaration, including without limitation the provisions of this Article 14, Owners shall be permitted to display the flag of the United States of America and/or the flag of the State of North Carolina on their Lots and no rule or regulation adopted by the Board of Directors nor any amendment to the Declaration adopted by the Association shall regulate or prohibit the display of the flag of the United States of America and/or the flag of the State of North Carolina, of a size no greater than four (4) feet by six (6) feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U S C §§ 5-10, as amended.

(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 Dwelling 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 Dwelling Unit on the basis of the size and facilities of the Dwelling Unit and its fair share use of the Common Elements

(e) Activities Within Dwelling Units. No rule shall interfere with the activities carried on within the confines of Dwelling 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 Dwelling Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling 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 6.6, from adopting generally applicable rules, with the approval of the Owners as set forth herein, 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 12

(g) 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 14.5 shall apply to rules only, they shall not apply to amendments to this Declaration adopted in accordance with Section 18 2

Article 15. Easements.

15 1 Easements for Utilities, Etc The Association shall have 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 The Association may assign these easements and rights to any Utility Company providing a service or utility to the Subdivision 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 Dwelling Unit on a Lot, and any damage to a Dwelling Unit 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.

The Utility Companies shall have 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 Dwelling Units on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Board

15.2 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.

15.3 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, firefighters, ambulance personnel, and similar emergency personnel in the performance of their duties. 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 Dwelling Unit without permission of the Owner, except by emergency personnel acting in their official capacities

15.4 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 7, and (b) make inspections to ensure compliance with the Association Documents. 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, 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 Common Elements. The Association may use treated effluent in the irrigation of any Common Elements. Under no circumstances shall the Association be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

Article 16. 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.

16.1 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 sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws which is not cured within sixty (60) days; or

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

16.2 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.

16.3 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 17. Compliance and Enforcement.

17.1 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.

17.2 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 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, and

(e) Levying Benefited Assessments to cover costs incurred in bringing a Lot into compliance in accordance with Section 12.4(b).

17.3 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 New Hanover 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 18 or in the Bylaws.

17.4 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.

17.5 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

17.6 Enforcement by Owner Nothing set forth in this Article 17 shall prevent any aggrieved Owner from instituting any available remedy in law or in equity for a violation of the Association Documents

Article 18. General Provisions

18.1 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 the Owners of Lots to which at least eighty percent (80%) of the votes in the Association are allocated agree to terminate this Declaration pursuant to N C Gen Stat § 47F-2-118.

18.2 Amendment

(a) 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 to which at least sixty-seven percent (67%) of the total votes in the Association are allocated

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

(b) 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.

18.3 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 Dwelling 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:

Written demand to cease and desist from an alleged violation shall be served upon the Responsible Person (for purposes of this Section 18.3, the "Responsible Person" shall be any Member, Owner, or occupant of a Lot or Dwelling Unit) 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

(a) Notice At any time within twelve (12) months following receipt of notice of the alleged violation, 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 possible 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 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.

(b) 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 delivery, 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.

(c) 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.

(d) Sanction as Assessment. Pursuant to the provisions of this Section, a fine may be imposed by the Association in 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 five (5) days 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.

18.4 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.

18.5 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.

18.6 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 Village at Somerset HOA, Inc and Pointe Somerset Home Owners' Association have caused this Declaration to be executed under seal and in such form as to be legally binding, effective the day and year upon recording this Declaration in the office of the Register of Deeds of New Hanover County, North Carolina.

THE VILLAGE AT SUMMERSET HOA, INC.

By: _____(SEAL)
Carol L. Rosborough, President

POINTE SUMMERSET HOME OWNERS'
ASSOCIATION

By. _____(SEAL)
Gary L. Fisher, President

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

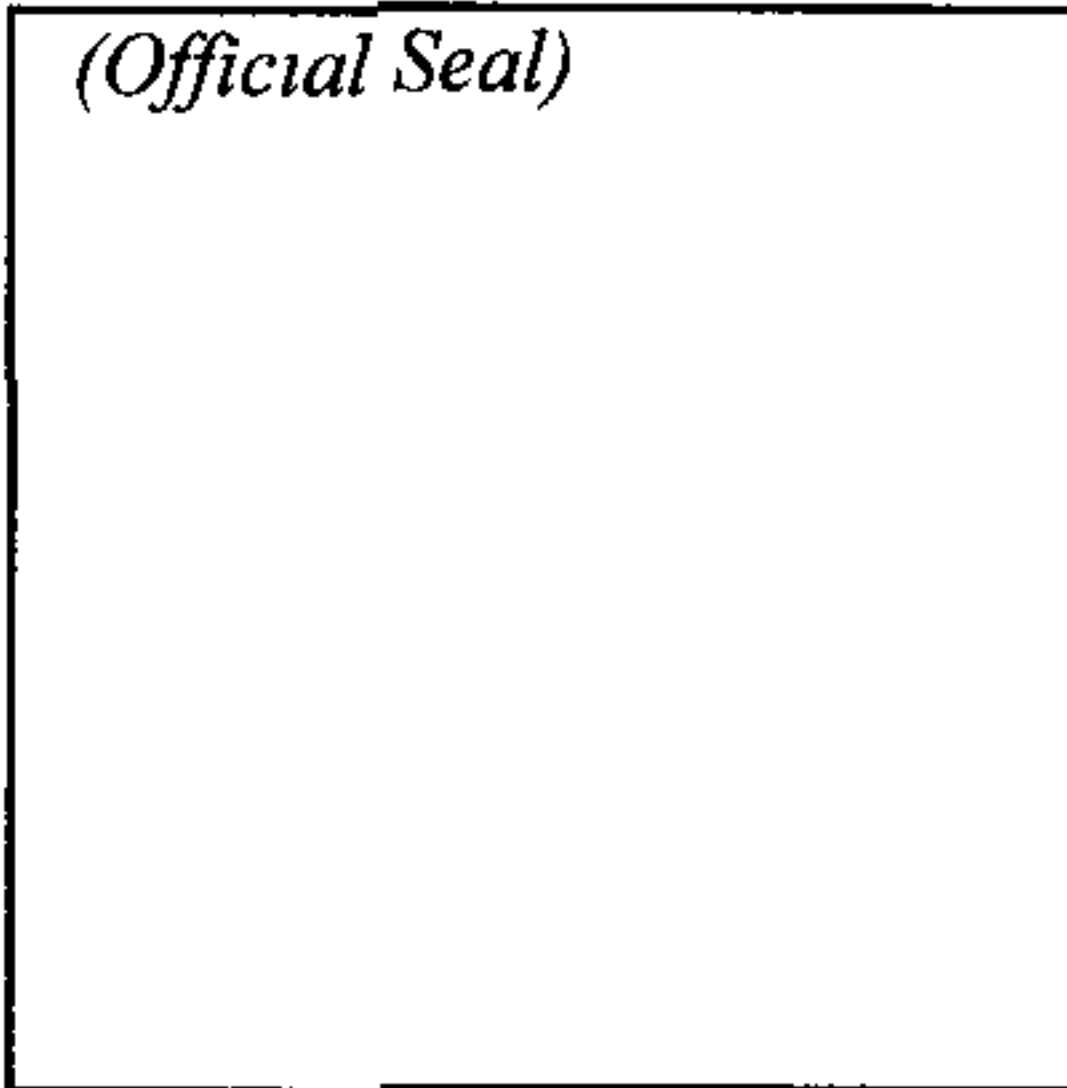
I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein: Carol L. Rosborough, President of THE VILLAGE AT SUMMERSET HOA, INC

Date. _____

Signature of Notary Public

Notary's printed or typed name

My commission expires: _____



Notary seal or stamp must appear within this box

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

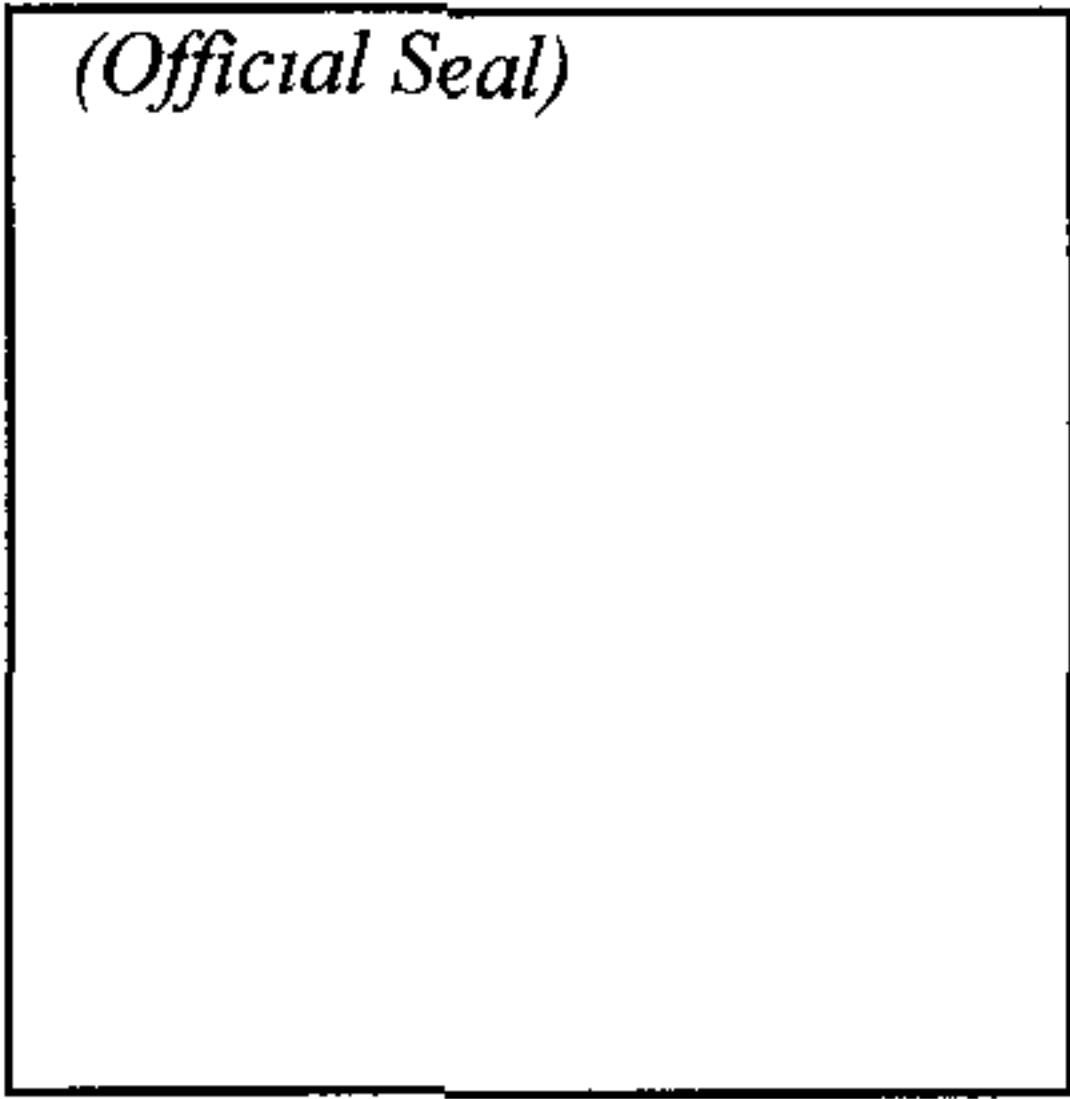
I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein: Gary L. Fisher, President of POINTE SUMMERSET HOME OWNERS' ASSOCIATION

Date _____

Signature of Notary Public

Notary's printed or typed name

My commission expires. _____



Notary seal or stamp must appear within this box.

131098-00001
ND 4819-6998-9399, v. 3

EXHIBITA

Property

Pointe Summerset Property

Those tracts or parcels of land lying and being situate in New Hanover County, North Carolina, and being more particularly shown and described on the plats recorded in Map Book 37, Page 279, Map Book 38, Page 64, Map Book 38, Page 168, Map Book 38, Page 335, Map Book 40, Page 392, Map Book 42, Page 152, Map Book 42, Page 268, Map Book 43, Page 65, Map Book 43, Page 151, and Map Book 44, Page 175, all in the office of the Register of Deeds of New Hanover County, North Carolina

Village Summerset Property

Those tracts or parcels of land lying and being situate in New Hanover County, North Carolina, and being more particularly shown and described on the plats recorded in Map Book 44, Page 283, Map Book 46, Page 126, Map Book 46, Page 282, Map Book 46, Page 353, Map Book 47, Page 140, Map Book 48, Page 335, Map Book 49, Page 73, Map Book 51, Page 72, Map Book 53, Page 51, and Map Book 58, at Page 320, all in the office of the Register of Deeds of New Hanover County, North Carolina

EXHIBIT B

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

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, unsightly, 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 Dwelling Unit or which creates noise, unreasonable risk of fire or explosion, or other conditions which are a nuisance;

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

(d) Any activity which violates local, state or federal laws or regulations;

(e) Outside burning of trash, leaves, debris or other materials,

(f) 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;

(g) Any activity which would constitute a public or private nuisance,

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

(i) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, cleaning materials, soaps, 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 Lots provided care is taken to minimize runoff;

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

(k) 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 Lot 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, provided said fuel tanks shall be screened from view from other Lots, Common Elements or streets

(l) Use of any Dwelling Unit for a Business or Trade, yard sale, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling 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 Dwelling 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 Lots 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 Dwelling Unit shall not be considered Business and Trade

(m) 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.

(n) Vehicles and Parking. Vehicles, including without limitation, automobiles, trucks, boats, boat trailers, personal watercraft, trailers, motorcycles, campers, vans, and recreational vehicles, shall be parked and stored on Lots in accordance with rules and procedures determined by the Board. The Board may, pursuant to Articles 14 and 15, remove vehicles, trailer, boats, inoperable vehicles, commercial vehicles, and any other vehicles which are stored on a Lot in violation of the rules promulgated by the Board

(o) Any construction, erection, placement, or modification of anything, permanently or temporarily, upon a Lot or on the outside portions of the improvements on the

Lot, whether such portion is improved or unimproved, except as specifically authorized in Paragraph 4(d) of this Exhibit or after approval of the thing by ACC in writing, 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, decks; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, storage sheds, or fences of any kind.

(p) 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, modular 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 plant and transported for quick assembly and which is designed to be disassembled and relocated shall be allowed.

(q) Removal, alteration, damage or change to any of the drainage facilities unless approved by the NC Division of Water Quality and the ACC.

(r) Placing or permitting to remain garbage or trash on any Lot except in covered containers of a type, size and style which are approved in accordance with Article 13 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 or otherwise screened from view from other Lots or streets except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection.

(s) 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.

(t) No signs may be displayed on Lots except as provided for in the rules promulgated by the Board.

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 Dwelling Unit which have become rusty, dilapidated or otherwise fallen into disrepair;

(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 the Association shall have the right to draw water from such sources and the ACC pursuant to Article 13 may, in its discretion, approve a private water well on certain Lots which the ACC 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 with ACC approval. Notwithstanding the foregoing, (i) antennae or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) 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 (iii) antennae or satellite dishes designed to receive television broadcast signals which are less than one meter in diameter ("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 Lots, streets and Common Elements in a manner consistent with the Community-Wide Standard and the Design Guidelines.

5 Leasing of Lots Nothing contained herein shall prohibit the leasing or subleasing of a Lot; provided, however, that effective as to all leases entered into or renewed after the date of this Declaration:

(a) No structure on any Lot other than the Dwelling Unit may be leased or otherwise occupied.

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

(c) All leases for any Lot shall be in writing signed by the Owner and the tenant

(d) 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) upon the occurrence of three (3) or more violations of the Association documents by a tenant within any four (4) month period, which goes uncorrected by the Owner, 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 Lot by judicial process or otherwise

(e) A true executed copy of any lease for a Lot shall be provided to the Association prior to the occupancy by the tenant of such Lot; provided, however, the amount of rent may be redacted from the lease.

The Board may also adopt reasonable rules and regulations regarding leasing which may include, but are not limited to, the imposition of a fee to the Owner leasing the Lot equal to the costs of administration and ensuring compliance incurred by the Association with the restrictions and rules and regulations relating to leasing.

"Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Dwelling 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 Use Restrictions, "Immediate Family" shall mean the parents, grandparents, siblings and children of such Owner



TAMMY THEUSCH BEASLEY
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration. 03/17/2014 09:45:32 AM
Book RE 5802 Page: 2472-2559
Document No.: 2014006183
88 PGS \$314.00
Recorder. JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

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