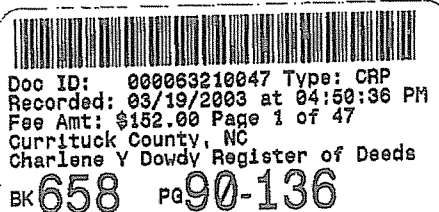


Prepared by and
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DECLARATION
OF
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS

KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION

MADE BY: KILMARLIC RESIDENTIAL, L.L.C.,
and FORTUNE BAY GOLF CLUB, L.L.C.

DATED: MARCH 12, 2003

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION

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**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION

THIS DECLARATION is made this 12th day of March, 2003, by KILMARLIC RESIDENTIAL, L.L.C., a Virginia limited liability company (the "Developer"), having an office at 1435 Crossways Boulevard, Suite 300, Chesapeake, Virginia, 23320, and FORTUNE BAY GOLF CLUB, L.L.C., a Virginia limited liability company ("Fortune Bay").

WITNESSETH:

WHEREAS, the Developer and Fortune Bay are the owners of the real property described in Article II of this Declaration which the Developer desires to develop into a residential community ("the "Community") known or to be known as "KILMARLIC RESIDENTIAL COMMUNITY" with open spaces and other common facilities for the benefit of the Community; and

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in the community and for the maintenance of said open spaces and other common facilities; and, to this end, desires to subject the real property described in Article II (the "Property") to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each Owner thereof; and

WHEREAS, the Developer desires that the Property be subdivided into lots upon which are or will be constructed residential Structures, which lots and structures will be individually owned, and the Developer desires that such open spaces and other common facilities shall remain available for the benefit of all Members of the Community; and

WHEREAS, the Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Community to create an agency or association to which should be delegated and assigned the powers of maintaining and administering the Community property and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer has incorporated the Association for the purpose of exercising the aforesaid functions.

NOW THEREFORE, the Developer, for itself, its successors and assigns, declares that the real property described in Section 2.01 and such additional property described in Section 2.02 as may be brought under the scope of this Declaration from time to time, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth (the "Restrictions").

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. The following words, phrases or terms when used in this Declaration or in any instrument supplemental to this Declaration shall, unless the context otherwise prohibits, have the following meanings:

1.01.1. "Association" shall mean and refer to the KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION, a non-stock, not-for-profit corporation, organized under the laws of the State of North Carolina.

1.01.2. "Association Property" shall mean all land, improvements and other properties heretofore or hereafter owned by or in possession of the Association.

1.01.3. "Board of Directors" shall mean the Board of Directors of the Association.

1.01.4. "Builder" shall mean a builder, contractor, investor, or other Person who purchases a Lot for the purpose of constructing a Structure thereon for sale to a third Person.

1.01.5. "By-laws" shall mean the By-laws of the Association in effect from time to time.

1.01.6. "Common Areas" shall mean those portions of the Association Property designated or established for the common use and benefit of all Owners.

1.01.7. "County" shall mean Currituck County, North Carolina.

1.01.8. "Declaration" shall mean this Declaration of Protective Covenants, Conditions, Restrictions and Easements as it may from time to time be supplemented, extended, or amended in the manner provided for herein.

1.01.9. "Developer" shall mean Kilmarlic Residential, L.L.C., its successors and assigns, and in the event of a foreclosure or deed-in-lieu of foreclosure related to any deed of trust securing Developer's acquisition, construction and/or development financing for the Property, shall include the purchaser at such foreclosure or the grantee of such deed-in-lieu of foreclosure.

1.01.10. "Dwelling" shall mean and refer to any improved Property intended for use and occupancy as one (1) single family Dwelling, irrespective of the number of owners thereof (or the form of ownership) located within the Property or any Additional Property and, unless otherwise specified, shall include within its meaning (by way of illustration, and not limitation) single family detached homes, single family attached homes such as townhouses and condominium units, and patio or zero lot line homes.

1.01.11. "Golf Course" shall mean the Kilmarlic Golf Club located adjacent to the Property.

1.01.12. "Lot" shall mean any portion of the Property (with the exception of Association Property) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the County, or (ii) shown as a separate Lot upon any recorded or filed subdivision map of the Property.

1.01.13. "Member" shall mean each holder of a membership interest in the Association, as such interests are set forth in Article III of this Declaration.

1.01.14. "Owner" shall mean the record Owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot or Dwelling, including the Developer and all Builders. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include one who has merely contracted to purchase any Lot or a lessee or tenant of any apartment, association, single family residence or other improvement located upon any Lot. For the purpose of the enforcement of the provisions of this Declaration and the By-laws, including but not limited to, the rules and regulations of the Association, "Owner" shall also include the family members, invitees, licensees, and lessees of any Owner, together with any other Person or parties holding any possessory interest granted by such Owner in any Lot or the improvements thereon.

1.01.15. "Period of Developer Control" shall mean the period of time prior to conversion of the Class B membership to Class A membership as set forth in Section 3.02.

1.01.16. "Person" shall mean individual, trust, estate, partnership, corporation, limited liability company, business trust or other entity.

1.01.17. "Property" shall mean all Lots and other properties subject to this Declaration.

1.01.18. "Structure" shall mean each completed Dwelling (as evidenced by issuance of a Certificate of Occupancy issued by the County) including garage, situated upon the Property or any Dwelling structure on the Property that has been occupied as a residence.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 2.01. Property. Initially, the real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is described in Schedule A attached hereto.

Section 2.02. Additional Property. Other lands ("Additional Property") in addition to the lands described in Schedule A, if any, may become subject to this Declaration in the following manner:

2.02.1. During the Period of Developer Control, the Developer may add Additional Property to this Declaration without the consent of any other Owner by an amendment to this Declaration. After the Period of Developer Control, the owner of any lands who desires to add such lands to the scope of this Declaration and to subject them to the jurisdiction of the Association may do so upon (i) approval in writing of the Association pursuant to a vote of its Members as provided in the By-laws and (ii) an amendment to this Declaration in accordance with Section 2.02.2.

2.02.2. The Additional Property shall be added to this Declaration by the recording of an amendment to this Declaration which shall extend the scope of the covenants and restrictions of this Declaration to the Additional Property and thereby subject the Additional Property and the owners of the Additional Property to assessments for their fair share of the expenses of the Association. The amendment to this Declaration may also contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as maybe necessary to reflect the different character, if any, of the Additional Property provided same are not inconsistent with the provisions of this Declaration.

2.02.3. Any buildings or other improvements on the Additional Property or to be constructed on the Additional Property must be harmonious in style to those improvements on the Property initially covered by this Declaration.

Section 2.03. Mergers. Upon a merger or consolidation of the Association with another association as provided in the Articles of Incorporation of the Association or the By-laws, its properties, rights and obligations may be transferred to another surviving or consolidated association by operation of law or, alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation by operation of law pursuant to a merger. The surviving or consolidated association may administer the Restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however, shall affect any revocation, change or addition to the Restrictions established by this Declaration within the Property except as hereinafter provided.

ARTICLE III

THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01. Formation of the Association. Pursuant to the laws of the State of North Carolina, the Developer has formed the Association to own, operate, and maintain the Association Property, enforce the Restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Articles of Incorporation of the Association and the By-laws, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Articles of

Incorporation of the Association, the Association shall have all the powers and be subject to the limitations of a non-stock, not-for-profit corporation as contained in the applicable laws of the State of North Carolina, as the same may be amended from time to time.

Section 3.02. Membership. The Association shall have as Members only Owners and the Developer. Upon becoming such, all Owners shall be deemed to have become Members automatically, and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of a Lot.

3.02.1. The Association shall have two (2) classes of voting membership:

Class A. The Class A Members shall be all Owners (other than the Class B Member) who shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any Lot, all such persons shall be Members, but the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Developer, its successors and assigns. The Class B Member shall be entitled to ten (10) votes for each Lot owned by the Class B Member. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier (a) when the total votes outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership, or (b) at the expiration of three (3) years after the date of this Declaration, provided, that if an amendment to this Declaration is filed adding Additional Property pursuant to this Declaration at any time or times prior to the expiration of said three (3) years (as same may have been extended by the filing of any such amendment), such period shall be extended each time until the expiration of three (3) years from the date of filing of the last such amendment, and the number of votes for each platted Lot will be adjusted so that the conversion of Class B membership to Class A membership shall occur at such time as the Developer no longer owns at least ten percent (10%) of the total number of Lots subject to this Declaration. Notwithstanding the foregoing, the Class B membership shall permanently terminate after eight (8) years from the date of the recording of this Declaration and shall not be reactivated thereafter. Upon the conversion of the Class B membership to Class A membership, no action may be taken by the Association which would serve to impede the installation of Common Area facilities substantially represented in plans of public record particularly as they may have been required and/or approved by public agencies except with the assent of such principal parties including the Developer, the Federal Housing Administration, the Veterans Administration, and the County.

Section 3.03. Voting and Mortgagee's Control of Votes. Each Owner, including the Developer, shall be entitled to vote(s) for each Lot owned in any portion of the Property covered by this Declaration in accordance with Section 3.02. Initially, there are 143 Lots on the Property covered by this Declaration. Accordingly, there shall initially be 1,430 votes in the Association. Owners of each Lot on any Additional Property added by amendment to this Declaration pursuant to Section 2.02 shall be entitled to one (1) vote for each Lot owned. Notwithstanding

anything to the contrary which may be contained in this Declaration, if a mortgage lender whose name appears on the records of the Association (i) holds a mortgage on a Lot which prohibits the mortgagor from voting contrary to the interest of the mortgagee, and (ii) notifies the Association in writing at least ten (10) days prior to the date of the vote to be taken of its position on the matter being voted upon, a vote of the subject Lot Owner contrary to the position of such mortgage lender shall not be counted in such vote tabulation.

Section 3.04. Interest in More than One Lot. If any Person owns or holds more than one Lot, such Owner shall be entitled to the appropriate number of votes for each Lot owned.

Section 3.05. Lots Owned or Held by More than One Person or by an Entity. If only one of the multiple Owners of a Lot is present at a meeting of the Association, the Owner who is present is entitled to cast all the votes allocated to that Lot. If more than one of the multiple Owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority of interests of the multiple Owners. Majority agreement shall be conclusively presumed if any one of the multiple Owners casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot

In the case of an Owner that is a trust, estate, partnership, corporation, limited liability company, business trust or other entity, any duly authorized representative of such trust, estate, partnership, corporation, limited liability company, business trust or other entity may cast the vote for such Owner.

Section 3.06. Holder of Security Interest not a Member. Any Person holding an interest in a Lot merely as security for the performance of an obligation shall not be a Member.

Section 3.07. Assigning Right to Vote. Subject to the filing of an amendment to any offering plan pursuant to which the Developer has offered interests in the Association, the Developer may assign its membership in the Association to any Person, and the assignee of such membership may make successive like assignments. Any other Owner shall be entitled to assign his right to vote, by power of Attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-laws. The By-laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.08. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Articles of Incorporation of the Association and the By-laws and the applicable laws of the State of North Carolina, as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.09. Selection of Directors. The By-laws shall govern the nomination and election of Directors and the filling of vacancies on the Board of Directors. Notwithstanding the preceding

sentence, during the Period of Developer Control, the Developer may appoint and remove the officers and members of the Board of Directors. Additionally, at all times, the owner(s) of the Golf Course shall be entitled to appoint one member of the Board of Directors having the same authority as all other members of the Board of Directors.

Section 3.10. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-laws and the laws of the State of North Carolina.

Section 3.11. Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or, any settlement thereof, whether or not such Person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the board approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

Section 3.12. Developer's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, so long as the Developer owns Lots equal in number to ten percent (10%) or more of the number of Lots to which title has been transferred to purchasers for occupancy, but in no event more than three (3) years from the date of recording of this Declaration, without the Developer's prior written consent, the Board of Directors may not (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to any Association Property, (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the relevant phase or phases of the development; (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance, (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. Until three (3) years from the date of recording of this Declaration, if the Developer owns Lots equal in number to ten percent (10%) or more of the number of Lots to which title has been transferred to purchasers for occupancy, this Section shall not be amended without the prior written consent of the Developer.

ARTICLE IV

PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The Developer intends to convey to the Association, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Members. The Association must accept any such conveyance made by the Developer provided such conveyance is made without consideration.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Member (and such Member's guests, licensees, tenants and invitees) shall have a right and non-exclusive easement of enjoyment, in common with all other Members, in and to all Association Property, subject to the rights of the Association as set forth in Section 4.03 and the rights of the Developer as set forth in Sections 4.04 and 4.05. Such easements shall be appurtenant to and shall pass with the interests of each Owner.

Every Member shall also have a non-exclusive easement for ingress and egress, in common with all other Members, as described in Section 4.06 hereof and the common utility and conduit easements described in Section 4.05. These easements will be subject to the rights of the Association as set forth in Section 4.03; provided, however, that any conveyance or encumbrance referred to in Section 4.03(c) shall be subject to said easements of each Member for ingress and egress, if applicable.

Section 4.03. Rights of Association. With respect to the Association Property, the Association shall have the right to:

4.03.1. Promulgate rules and regulations relating to (i) the use, operation and maintenance of the Association Property, (ii) the safety and convenience of the users thereof, (iii) the enhancement or preservation of the Association Property and (iv) the promotion of the best interests of the Members in the discretion of the Association.

4.03.2. Grant easements, licenses and rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration.

4.03.3. Dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of all of the Members) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the affirmative vote or written consent of at least eighty percent (80%) of the total votes of all Members voting after notice which shall be sent to all Members whose names appear on the records of the Association not less than ten (10) days nor more than sixty (60) days in advance of the date set for voting thereon.

4.03.4. Enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, associations and cooperatives for the use of or sharing of facilities. Such agreements shall require the affirmative vote or written consent of at least two-thirds (2/3) of the total votes of all Members voting after notice which shall be sent to every Member not less than ten (10) days nor more than sixty (60) days in advance of the date or initial date set for voting thereon.

4.03.5. Exercise all other rights of the Association set forth in this Declaration or permitted under the laws of the State of North Carolina.

Section 4.04. Rights of Developer. With respect to the Property, including the Association Property, and in addition to the rights reserved in Section 4.05 below, the Developer shall have the right until the completion of the construction, marketing and initial sale of all Structures to be constructed on the Lots to:

4.04.1. Grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not necessarily limited to, water, gas, electric, telephone, cable TV and sewer to service any Additional Property as referred to in Section 2.02 of this Declaration.

4.04.2. Connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of any Additional Property.

4.04.3. Use the Association Property for ingress and egress to the Property and any Additional Property.

4.04.4. Operate a sales center and have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not necessarily limited to, parking spaces.

4.04.5. Grant to itself or to others such easements and rights of way as may be reasonably needed for the Golf Course and/or the orderly development of the Property or any portions thereof and/or any Additional Property.

4.05.6. Remove or reconfigure Lots or portions of the Property owned by the Developer by filing a Supplemental or Amended Declaration pursuant to Section 10.07 below.

With respect to its exercise of the above rights, the Developer agrees (i) to repair any damages resulting within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs, and (ii) until development has been completed, to hold the Association harmless from all liabilities which are a direct result of the Developer's exercise of its rights hereunder. This Section shall not be amended without the written consent of the Developer.

Section 4.05. Common Utility and Conduit Easement. Every Owner shall have a non-exclusive easement, in common with all other Owners, to maintain and use all pipes, wires, conduits, drainage areas and public utility lines servicing such Owner's Lot and located on other Lots or on Association Property. Each Lot shall be subject to an easement in favor of the Owners of other Lots to maintain and use the pipes, wires, conduits, drainage areas and public utility lines servicing, but not located on, such other Lots. The Association shall have the right of access to each Lot for maintenance, repair or replacement of any pipes, wires, conduits, drainage areas or public utility lines located on any Lot and servicing the Association Property, Additional Property or any other Lot. The cost of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessment, except that, if occasioned by a negligent or willful act or omission of a specific Owner or Owners, such cost shall be considered a special expense allocable to the specific Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Owner or Owners and, as part of that Maintenance Assessment, shall constitute a lien on the Lot or Lots of such Owner or Owners to secure the payment thereof as set forth in Article V.

Section 4.06. Common Access Easement. The Developer and all Owners and their guests, mortgagees, licensees and invitees shall have a non-exclusive easement for vehicular and pedestrian (as appropriate) ingress and egress, in common with one another, over all walkways, driveways, and roadways located on the Association Property, and the Association shall have an easement of access over each Lot for the maintenance, repair and replacement of walkways, driveways and roadways or any property or facilities located on such Lot which are owned by the Association or which exist for the common benefit of all Owners.

Section 4.07. Maintenance of Association Facilities. In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities of the Association in good repair and condition and shall operate such facilities in accordance with high standards.

Section 4.08. Right of Association to Contract Duties and Functions. The Association may contract with any Person for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations and cooperatives.

Any decision to discontinue independent professional management of certain Association duties and functions and establish self-management therefor shall require the affirmative vote or written consent of at least two-thirds (2/3) of the total votes of all Members voting after notice which shall be sent to all Members whose names appear on the records of the Association not less than forty (40) days nor more than sixty (60) days in advance of the date set for voting thereon.

Section 4.09. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles VII and IX, the Association and the Architectural Standards Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse

environmental impact of its activities or take affirmative action to improve the quality of the environment.

Section 4.10. Rights and Easements Reserved to Developer for Benefit of Additional Property. The following rights and non-exclusive easements are reserved herein by the Developer over applicable portions of the Property for the benefit of Additional Property for the following purposes:

4.10.1. Ingress and egress over roadways.

4.10.2. Use and connection with utility lines and related facilities including, but not necessarily limited to: telephone, water, gas, electric, telephone, cable TV and sewer. This easement shall not include the right to consume any water, gas, or electricity for which any Owner is billed directly without the consent of the Owner affected.

4.10.3. Ingress, egress and access to Additional Property across any Lots or portions of the Property owned by the Developer.

Upon the connection of lines and/or facilities servicing such lands comprising the Additional Property, should such lands not be added to the scope of this Declaration, such lands shall be responsible for the payment to the Association of a fair share of the cost of operation, maintenance, repair and replacement of those lines and facilities servicing such lands.

Section 4.11. Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award in the same manner as insurance proceeds, in accordance with Article VIII.

Section 4.12. Easements and Rights Binding. The easements, rights-of-way and other rights reserved in this Article IV shall be permanent, shall run with the land and shall be binding upon and for the benefit of the Association, the Developer, the Owners and their respective successors and assigns.

ARTICLE V

ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

Section 5.01. Imposition, Personal Obligation, Lien. Each Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

5.01.1. Annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments").

5.01.2. Special assessments for capital improvements to Association Property ("Special Assessments"). Maintenance Assessments and Special Assessments together are hereinafter referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Members, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty, liability and other insurance covering the Association Property, any Property or Lots which the Association has the responsibility to maintain and the Association's officers, directors, Members and employees obtained pursuant to Article VIII of this Declaration, for the maintenance, repair and replacement of all facilities commonly servicing the Members, such as roadways and landscaped areas, the cost of labor, equipment, materials, management and supervision thereof, and for all other similar needs as may arise. The amount of any reserves shall be not less than the reasonable requirements of existing or proposed lenders, holders and insurers of first mortgages of the Lots or, if less, the requirements under the laws of the State of North Carolina.

Section 5.03. Date of Commencement and Notice of Assessments and Changes in Annual Assessments. The Assessments provided for herein shall commence on the day on which the first Lot is conveyed or on such date thereafter as may be determined by the Developer. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full fiscal year basis. The amount of the Assessment against each Lot shall be fixed at least thirty (30) days in advance of the beginning of each fiscal year. The Assessments shall be due and payable monthly unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least thirty (30) days before the due dates thereof. The procedure for adoption of each annual budget, including the Assessments, shall comply with the requirements of the Act (defined in Section 10.15 below).

Notwithstanding anything else contained herein, the first Owner who acquires any Lot from the Developer (or from Fortune Bay other than the Developer), shall be obligated at the time of closing to pay a Special Assessment to the Association, in the amount of \$500.00 as an initial funding fee for the Association. This Special Assessment shall be in addition to and not in lieu of any other Assessments provided for herein.

Section 5.04. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any.

Section 5.05. Basis for Maintenance Assessment. Subject to Section 5.04 above, the annual Maintenance Assessment shall be the same for all Lots subject to this Declaration so that the number of assessed Lots divided into the total amount which the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained) shall determine the annual Maintenance Assessment for each Lot.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment by obtaining the affirmative vote or written consent of at least two-thirds (2/3) of the total votes of all Members voting after notice which shall be sent to all Members whose names appear on the records of the Association not less than ten (10) days nor more than sixty (60) days in advance of the date set for voting thereon, except that: (i) during the Period of Developer Control, any change in the basis of assessment which adversely affects a substantial interest or right of the Developer with respect to unsold Lots shall require the specific consent of the Developer in writing, which consent shall not be unreasonably withheld. A written certification of any such change shall be by an amendment to this Declaration executed by the appropriate officers of the Association and recorded in the Register of Deeds for the County.

Section 5.07. Special Assessments for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property or to any Property or Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, the affirmative vote or written consent is obtained of at least two-thirds (2/3) of the total votes of all Members voting after notice which shall be sent to all Members whose names appear on the records of the Association not less than ten (10) days nor more than sixty (60) days in advance of the date set for voting thereon. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner in writing at least thirty (30) days prior to the first such due date.

Section 5.08. Non-Payment of Assessment. If an annual Assessment, or installment thereof, is not paid by any Owner on the due date established pursuant to Section 5.03 hereof, then the balance of the annual Assessment shall be deemed delinquent. Any delinquent Assessment payment, together with such interest thereon, accelerated future installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on such Owner's Lot which shall bind such Lot and the then Owner of such Lot and such Owner's heirs, devisees,

personal representatives, successors and assigns. In addition to the lien rights provided herein, the personal obligation of the then Owner to pay such assessment shall remain such Owner's personal obligation and shall not become the personal obligation of such Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed the limit imposed by the laws of the State of North Carolina, provided such late charges are equitably and uniformly applied.

If the Assessment or any installment thereof is not paid within thirty (30) days after the due date, (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law; (ii) the Association may accelerate the remaining installments, if any, of such annual Assessment upon notice thereof to the Owner, (iii) the Association may suspend privileges of, or services provided by the Association to, any delinquent Member during any period that such Member's account remains delinquent and (iv) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: attorney's fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Under no circumstances shall dissatisfaction with the quantity or quality of maintenance services furnished by the Association entitle any Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

There is hereby created a lien, with power of sale, on each and every Lot to secure payment to the Association of any and all Assessments levied against any and all Lots under this Declaration, together with attorney's fees, other costs of collection, late charges and interest. If any Assessment remains delinquent for thirty (30) days, the Association may elect to file a claim of lien in the Office of the Clerk of Superior Court of the County on behalf of the Association against the Lot of the delinquent Owner. Such a claim of lien shall be executed by any officer or managing agent of the Association and shall contain substantially the following information:

5.08. 1. The name of the delinquent Owner and the name and address of the Association;

5.08.2. A brief legal description or the street address of the Lot against which the claim of lien is made;

5.08.3. The total amount claimed to be due and owing for the amount of the delinquency and all accrued and accruing interest thereon, collection costs and reasonable attorney's fees (with any proper offset thereof);

5.08.4. That the claim of lien is made by the Association pursuant to this Declaration; and

5.08.5. That a lien is claimed against said Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner at the address of the Lot or such other address as may appear on the records of the Association, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Such a lien shall have priority over all liens, encumbrances and claims except (i) liens and encumbrances recorded prior to the recordation of the claim of lien thereof, and (ii) tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal, county or other governmental body assessing the Lot, and the liens, which are specifically described hereinafter. Any such lien may be foreclosed by appropriate court action or in a like manner as a mortgage on real estate under power of sale under Article 2(A) of Chapter 45 of the North Carolina General Statutes, as amended, or in any manner provided by the laws of the State of North Carolina, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey such Lot. In the event of foreclosure, reasonable attorney's fees, court costs, title search fees, interest, and all other costs and expenses shall be subject to recovery by the Association to the extent permitted by law. Each Owner, by becoming an Owner, hereby expressly waives any objection to the enforcement and foreclosure of this lien in the manner provided herein.

Section 5.09. Notice of Default. The Board of Directors, when giving notice to a Owner of a default in paying Assessments, may, at its option, or shall, at the written request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Lot whose name and address appears on the Board's records. The mortgagee shall have the right to cure the Owner's default with respect to the payment of said Assessments.

Section 5.10. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining, nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.11. Assessment Certificates. Upon written demand of an Owner or lessee with respect to a Lot which he or she owns or leases, or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot, the Association shall, within the time required by law, or if

no such requirement, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to each Lot as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee or title insurer of, or lender on the Lot or Lot on which such certificate has been furnished.

Section 5.12. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage of record now or hereafter placed upon any Lot (unless a claim of lien has been filed pursuant to Section 5.08 prior to the filing of such first mortgage), provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot or Lot pursuant to a decree or deed of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.13. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith, and subject to the provisions of Section 4.03.3 of this Declaration, mortgage any Association Property. Subject to the provisions of Section 4.03.3 of this Declaration, the amount, terms, rate or rates of all borrowing and the provisions of all agreements with noteholders shall be subject solely to the discretion of the Board of Directors, except that after the Period of Developer Control, any consent of the Developer as required by Section 3.12 of this Declaration must be obtained.

Section 5.14. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power to:

5.14.1. Assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the maintenance assessments hereunder;

5.14.2. Enter into agreements with noteholders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:

- (a) Assess the maintenance assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.04, to assess the same at a particular rate or rates;
- (b) Establish sinking funds and/or other security deposits;

- (c) Apply all funds received by it first to the payment of all principal and interest on such when due, or to apply the same to such purpose after providing for costs of collection;
- (d) Establish such collection, payment and lien enforcement procedures as may be required by the noteholders; and/or
- (e) Provide for the custody and safeguarding of all funds received by it.

ARTICLE VI

MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. Except as specifically otherwise provided in this Section 6.01, (i) all maintenance, repair and replacement of the improvements on Association Property, (ii) the maintenance, repair and replacement of all parking areas, driveways and walkways on the Association Property, (iii) the maintenance of all landscaped areas on Association Property, including any landscaped areas located within the bounds of any public roadway, and (iv) the maintenance, repair and replacement of any identification or directional signs installed by or at the direction of the Developer or the Association shall be the responsibility of, and at the cost and expense of the Association.

The Association shall be responsible for the maintenance of all shrubbery and other plantings installed by or at the direction of the Developer or the Association on Association Property but not for shrubbery or other plantings installed by or at the direction of any Owner or Lot occupant. With respect to the Lots, the Association shall not be responsible for any repairs or replacements to any portion of a Lot. However, this shall not restrict the right of the Association to repair or replace any portion of a Lot or Lots as provided for in Section 6.02.

Upon the affirmative vote of at least three-fourths (3/4) of the entire Board of Directors and the affirmative vote of at least two-thirds (2/3) of the Owners, the Board of Directors may provide for additional maintenance with respect to the Lots or other improvements to the Lots to be undertaken by the Association or discontinuing the performance of some or all of the maintenance responsibilities of the Association with respect to the Lots or other improvements to the Lots.

Subject to the provisions of Section 6.02, the cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

Section 6.02. Repairs and Maintenance not the Responsibility of the Association. Except as provided in Section 6.01, the Association shall not be responsible for (i) the maintenance, repair or replacement of any buildings or structures not owned by the Association; or (ii) the maintenance, repair or replacement of any sewer lines, water lines or other utility lines which are

maintained, repaired and replaced by a municipality, public authority, special district or utility company.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 but which is occasioned by a negligent or willful act or omission of an Owner (including (i) any family member, tenant, guest or invitee of such Owner; (ii) any family member, guest or invitee of the tenant of such Owner; and (iii) any guest or invitee of (a) any member of such Owner's family, or (b) any family member of the tenant of such Owner) may be made at the cost and expense of such Owner. If such maintenance, repair or replacement is performed by the Association at the cost and expense of such Owner, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Lot or Lots and such cost shall be added to that Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot or Lots, as the case may be, to secure the payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property.

Section 6.04. Access for Repairs. Upon reasonable notice to the Owner(s), the Association (and its employees, contractors and agents) shall have the right to enter upon any portion of the Property and into and upon any Lot at any reasonable hour to carry out its functions as provided for in this Article, except that in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into and upon any Lot to make necessary repairs or to prevent damage to any Lot or any portion of the Property. The repair of any damage caused in gaining access in an emergency shall be an expense of the Association.

ARTICLE VII

ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. After transfer of title by the Developer of any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property shall be the responsibility of the Association, acting through the Architectural Standards Committee as provided in Section 7.02.

Section 7.02. Composition and Function of Architectural Standards Committee.

7.02.1. Committee Composition. The Architectural Standards Committee shall consist of three (3) regular members and two alternate members. None of such committee members shall be required to be an architect or to meet any other particular qualifications for membership. A committee member may be, but need not be, a member of the Board of

Directors or an officer of the Association. At least one regular member of the Architectural Standards Committee shall be a representative of the owner of the Golf Course, unless the Golf Course owner declines to name a representative.

7.02.2. Alternative Members. In the event of the absence or disability of one or two regular committee members, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

7.02.3. Initial Members. The Developer shall name three persons who will be designated as the initial members of the Architectural Standards Committee and two persons who will be designated as the alternate members.

7.02.4. Terms of Office. Unless the initial members of the Architectural Standards Committee have resigned or been removed, their initial terms of office shall be for three (3) years and until the appointment of their respective successors. Thereafter, the term of each Architectural Standards Committee member appointed shall be for the period of three (3) years and until the appointment of such member's successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed.

7.02.5. Appointment and Removal. Subject to Section 7.02.1, during the Period of Developer Control, the right to appoint and remove all regular and alternate members of the Architectural Standards Committee at any time, shall be and is hereby vested solely in the Developer. Subject to Section 7.02.1, after the Period of Developer Control, the right to appoint and remove all regular and alternate members of the Architectural Standards Committee at any time, shall be and is hereby vested solely in the Board of Directors, provided, however that no regular or alternate member may be removed from the Architectural Standards Committee by the Board of Directors except by the vote or written consent of two-thirds (2/3) of all the members of the Board of Directors. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by minutes of a meeting of the Board of Directors identifying each new regular or alternate member appointed to the Architectural Standards Committee and each regular or alternate member replaced or removed therefrom.

7.02.6. Resignations. Any regular or alternate member of the Architectural Standards Committee may at any time resign from the Committee by giving written notice thereof to Developer or to the Board of Directors, whichever then has the right to appoint Committee Members.

7.02.7. Vacancies. The Developer or the Board of Directors shall fill vacancies on the Architectural Standards Committee, however caused, whichever then has the power to appoint Committee Members. A vacancy or vacancies on the Architectural Standards

Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

7.02.8. Duties. It shall be the duty of the Architectural Standards Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Standards Committee Rules, to perform other duties imposed upon it by the Restrictions. Developer shall not be subject to the Committee's decisions

7.02.9. Meetings and Compensation. The Architectural Standards Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of the Section above, the vote or written consent of any two regular Members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of the Restrictions. The Architectural Standards Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Standards Committee shall not be entitled to compensation for their services.

7.02.10. Waiver. The approval of the Architectural Standards Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring Architectural Standards Committee under the Restrictions, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 7.03. Submission of Plans to Architectural Standards Committee. After transfer of title to any Lot or other portion of the Property by the Developer, no exterior addition, modification or alteration shall be made on or to such Lot or other portion of the Property or to the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Standards Committee requires, has/have been submitted to, and reviewed and approved by, the Architectural Standards Committee. The Architectural Standards Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 7.04. Basis for Disapproval of Plans by Architectural Standards Committee. The Architectural Standards Committee may disapprove any plans submitted pursuant to Section 7.03 above for any of the following reasons

7.04.1. Failure of such plans to comply with any of the Restrictions;

7.04.2. Failure to include information in such plans as requested;

7.04.3. Objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture and proposed parking;

7.04.4. Incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;

7.04.5. Failure of proposed improvements to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules and regulations;

7.04.6. Failure of such plans to comply with any design guidelines or construction requirements adopted from time to time by the Architectural Standards Committee, provided same are uniformly applied to all Lots subsequent to the date of adoption; or

7.04.7. Any other matter which in the judgment and sole discretion of the Architectural Standards Committee would render the proposed improvements, use or uses, inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity.

Section 7.05. Approval of Architectural Standards Committee. Upon approval or qualified approval by the Architectural Standards Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Standards Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property, and such approval may not be revoked or rescinded thereafter, provided (i) the improvements or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any of the Restrictions; and (iii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable zoning, building, health or other governmental laws, codes, ordinances, rules and regulations. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Standards Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 7.06. Written Notification of Disapproval. In any case where the Architectural Standards Committee disapproves any plans submitted hereunder, the Architectural Standards Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.04. In any such case, the Architectural Standards Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Standards Committee approving or disapproving any plans within 35 days after submission thereof, said applicant may notify the Architectural Standards Committee in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. Unless the

Architectural Standards Committee disapproves the plans, the plans shall be deemed approved by the Architectural Standards Committee on the date which is the later of:

7.07.1. 15 days after the date of receipt by the Architectural Standards Committee of such notice, if such notice is given; or

7.07.2. 70 days after the date the plans were originally submitted.

Section 7.08. Committee's Right to Promulgate Rules and Regulations. Subject to the provisions of Section 7.12, the Architectural Standards Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Standards Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Architectural Standards Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of this Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.09. Delegation of Functions. The Architectural Standards Committee may authorize its staff, subcommittees, or individual members of the Architectural Standards Committee to perform any or all of the functions of the Architectural Standards Committee as long as the number and identity of such staff or members, the functions and scope of authority have been established by a resolution of the entire Architectural Standards Committee. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Standards Committee, in accordance with procedures to be established by the Architectural Standards Committee.

Section 7.10. Liability of Architectural Standards Committee. No action taken by the Architectural Standards Committee or any member, subcommittee, employee or agent hereof, shall entitle any Person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Architectural Standards Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other Person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. By submission of such plans, every Owner and other Person submitting plans on behalf of an Owner to the Architectural Standards Committee agrees that no action or suit will be brought against the Association, the Architectural Standards Committee or any member, subcommittee, employee or agent of the Architectural Standards Committee in connection with such submission.

Section 7.11. Architectural Standards Committee Certificate. Upon written request of any Owner, lessee or occupant (or any prospective Owner, lessee, mortgagee, or title insurer) of a Lot or other portion of the Property, title to which has been previously transferred from the

Developer, within a reasonable period of time, the Architectural Standards Committee shall issue and furnish to the Owner or other Person making the request a certificate in writing ("Architectural Standards Committee Certificate") signed by a member of the Architectural Standards Committee confirming whether or not the improvements constructed on such Lot or other portion of the Property received the approval of the Architectural Standards Committee at the time such improvements were made. A reasonable charge, as determined by the Architectural Standards Committee, may be imposed for issuance of such Architectural Standards Committee Certificate. Any such Architectural Standards Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

Section 7.12. Restrictions on Change of Architectural Controls. The controls set forth in this Article VII shall not be changed, waived or abandoned, by act or omission, without the affirmative vote or written consent of at least two-thirds (2/3) of the total votes of all Members voting after notice which shall be sent to all Members whose names appear on the records of the Association not less than forty (40) days nor more than sixty (60) days in advance of the date set for voting thereon.

ARTICLE VIII

INSURANCE AND RECONSTRUCTION

Section 8.01. Insurance to be Carried. To the extent obtainable at a reasonable cost (as determined by the Board of Directors in its reasonable commercial judgment), and in such amounts as the Board of Directors shall determine to be appropriate, unless otherwise required herein, the Board of Directors shall obtain and maintain (1) fire and casualty insurance, if required, (2) liability insurance, (3) directors' and officer's liability insurance, (4) fidelity bond, and (5) worker's compensation insurance, if required, with coverage's to be as follows:

8.01.1. Fire and Casualty. The policy, if required, shall cover the interests of the Association, the Board of Directors and all Owners and mortgagees, as their interests may appear. Coverage shall be for the full replacement cost without deduction for depreciation of all improvements on the Property under the "single entity concept, i.e. covering any common facilities constituting Association Property.

The policy shall have the following provisions, endorsements and coverage's, if obtainable at a reasonable cost (as determined by the Board of Directors in its reasonable commercial judgment): (i) extended coverage, including sprinkler leakage (if applicable), debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage, (ii) inflation guard; (iii) waiver of any right to claim by way of subrogation against individual Owners and the members of their households and families, the Association, the officers and directors of the Association and the managing agent, if any, for the Association; (iv) an exclusion from the "no other insurance" clause of individual Owners' policies; (v) a provision that the policy cannot be canceled, invalidated or suspended because of the act or neglect of someone over whom the insured has no control; (vi) a

provision that the policy may not be canceled (including cancellation for non-payment of premium), substantially modified, invalidated or suspended, without at least thirty (30) days prior written notice to all of the insureds, including all mortgagees of Lots to whom certificates or memoranda of insurance have been issued by the insurance carrier or its agent at their respective last known addresses reported to the insurance carrier or its agent; (vii) a provision requiring periodic review at least every two years to assure the sufficiency of coverage; and (viii) a provision that adjustment of loss shall be made by the Board of Directors.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an appraisal from an insurance company or from such other source as the Board of Directors shall determine to be acceptable as to the full replacement cost (without deduction for depreciation) of the improvements on the Association Property (exclusive of land and foundations) for the purpose of determining the amount of fire and casualty insurance to be effected pursuant to this Section.

The proceeds of all policies of physical damage insurance, if \$50,000.00 or less, shall be payable to the Association, and if \$50,000.00 or more, to an insurance trustee (bank, trust company or law firm) selected by the Board of Directors to be applied for the purpose of repairing, restoring, or rebuilding. This \$50,000.00 limitation shall increase automatically by 5% each calendar year after the year in which this Declaration is recorded and may be further raised or lowered from time to time upon approval of not less than two-thirds (2/3) of the entire Board of Directors. All fees and disbursements of the insurance trustee shall be paid by the Association and shall be a common expense of all Owners.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to a mortgagee as its interest shall appear, subject, however, to the loss payment provisions in favor of the Association. . The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

The Association and each Owner shall be a named insured on the policy, as their interests may appear. At the time of purchase, and thereafter if requested, at the time a new policy is obtained or an existing policy renewed, the Association shall provide a copy of a certificate evidencing proof of insurance coverage.

8.01.2. Flood Insurance. If any improvements on any portion of the Association Property is located in an area identified by the federal Secretary of Housing and Urban Development as having special flood hazards, the Board of Directors shall obtain, if obtainable at a reasonable cost (as determined by the Board of Directors in its reasonable commercial judgment), a policy of flood insurance covering the insurable improvements on the Property or portion thereof located entirely or partially in the flood hazard area. Such coverage shall be the maximum coverage available under the National Flood Insurance Program or 100%

of the current replacement cost of all such improvements and other insurable property, whichever is less.

8.01.3. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners, but not the liability of Owners arising from occurrences within or on such Owner's Lot. The policy shall include the following endorsements, if obtainable at a reasonable cost (as determined by the Board of Directors in its reasonable commercial judgment): (i) comprehensive general liability (including libel, slander, false arrest and invasion of privacy), (ii) personal injury; (iii) medical payments, (iv) cross liability under which the rights of a named insurer under the policy shall not be prejudiced with respect to such insured's action against another named insured; (v) "severability of interest" precluding the insurer from denying coverage to an Owner because of negligent acts of the Association or any other Owner, (vi) contractual liability; (vii) water damage liability; (viii) hired and non-owned vehicle coverage; (ix) liability for the property of others; (x) host liquor liability coverage with respect to events sponsored by the Association; (xi) deletion of the normal products exclusion with respect to events sponsored by the Association; and (xii) if applicable, garage keeper's liability and watercraft liability.

Coverage may not be canceled or suspended (including cancellation for nonpayment of premium) or substantially modified without at least thirty (30) days written notice to the Association. Any deductible provision shall apply only to each occurrence rather than to each item of damage. The Board of Directors shall review such coverage at least once each year.

Until the first meeting of the Board of Directors elected by the Owner, this liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence.

8.01.4. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful acts of a director or officer of the Association. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors, and any deductible provision shall apply only to each occurrence and not to each item of damage. If obtainable at reasonable cost (as determined by the Board of Directors in its reasonable commercial judgment), the policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the directors' and officers' liability coverage shall be in the amount of at least \$250,000.00.

8.01.5. Fidelity Bond. The fidelity bond or its equivalent shall cover all directors, officers and employees of the Association and the Association's managing agent, if any, who handle Association funds. The bond shall name the Association as Obligee and be in an amount not less than the estimated maximum of funds, including reserves, in the custody of the Association or managing agent at any given time, but in no event less than a sum equal to

three months' aggregate assessments on all Lots, plus the amount of reserves and other funds on hand. It shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and shall provide that the bond may not be canceled or substantially modified (including cancellation for non payment of premium) without at least thirty (30) days' prior written notice to the Association.

Until the first meeting of the Board of Directors elected by the Owners, the coverage shall be at least \$10,000.00 for dishonest acts and \$5,000.00 for forgery. Notwithstanding the above, the Board of Directors may, at the request of any Owner, Lot mortgagee, or prospective Owner or Lot mortgagee, increase the amount of such bond to meet the reasonable requirements of any existing or proposed holder or insured of any mortgage made or to be made on any Lot.

8.01.6. Worker's Compensation. To the extent deemed reasonable and necessary by the Board of Directors (as determined by the Board of Directors in its reasonable commercial judgment), worker's compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other Person performing work on behalf of the Association, if required by law, and shall be in the amount required by law.

8.01.7. Other Insurance. The Board of Directors may also obtain such other insurance, as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

8.01.8. No Liability for Failure to Obtain Above Coverages. The Board of Directors shall not be liable for failure to obtain any of the coverage's required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage's from reputable insurance companies, or if such coverage's are so available only at unreasonable cost (as determined by the Board of Directors in its reasonable commercial judgment).

8.01.9. Deductible. The deductible, if any, on insurance policy purchased by the Board of Directors shall be a common expense, provided, however that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon such Owner's Lot, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

Section 8.02. Restoration or Reconstruction after Fire or other Casualty. In the event of damage to or destruction of any improvements on any Association Property or facility of the Association insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall promptly send written notice to the insurance trustee,

if required by Section 8.01.1, and the Board of Directors or the insurance trustee, as the case may be, shall (i) arrange for the prompt repair and restoration of the damaged property and (ii) disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

Any repair or restoration as hereinabove described shall be in substantial accordance with the plans and specifications of the damaged improvements as originally built unless otherwise required by applicable laws, codes or regulations. Any proposed substantial deviation therefrom not otherwise required by applicable laws, codes or regulations shall require the affirmative vote or written consent of at least 51% of the total votes of all Members voting after notice which shall be sent to all Members whose names appear on the records of the Association not less than ten (10) days nor more than sixty (60) days in advance of the date set for voting thereon.

Section 8.03. Insurance Carried by Owners. Each Owner has the right, at such Owner's expense, to obtain insurance for such Owner's benefit.

Section 8.04. Right of Mortgagees to Pay and be Reimbursed for Insurance and Property Taxes on Association Property. In the event the Association falls to obtain or maintain fire, casualty and liability insurance for Association Property as required under this Article VIII, such insurance may be obtained by one or more mortgagees of Lots, singly or jointly. The Association shall reimburse such mortgagee or mortgagees for any amount expended for such insurance, real property taxes or any other charges with respect to Association Property which are in default and which may become or have become a charge against the Association Property.

ARTICLE IX

GENERAL COVENANTS AND RESTRICTIONS

Section 9.01. Advertising and Signs. Except for signs erected by or with the permission of the Developer in connection with the initial development, lease or sale of Lots, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portions of the Property (including temporary signs advertising property for sale or rent) except with the consent of the Architectural Standards Committee. In connection with the initial construction of Structures and sale of improved Lots, the Developer shall provide standardized signage for each Builder at such Builder's expense.

Section 9.02. Protective Screening and Fences. Any screen planting, fence enclosures or walls initially developed on a Lot or other portion of the Property shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Standards Committee. Except for the foregoing, no fence, wall, or screen planting of any kind shall be planted, installed or erected upon said parcel or other portion of the Property unless approved by the Architectural Standards Committee. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 9.03. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Architectural Standards Committee so as to provide access to persons making such pick-up. The Architectural Standards Committee may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property. All incinerators or other facilities for the storage or disposal of Trash, shall be kept in a clean and sanitary condition.

Section 9.04. No Above Surface Utilities without Approval. No facilities, including without limitation, poles and wires for the transmission of electricity, telephone, cable television, water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of the Architectural Standards Committee.

Section 9.05. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance in the area to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electro-magnetic radiation disturbances, shall be controlled so as not to (i) be detrimental to or endanger the public health, safety, comfort or welfare; (ii) be injurious to property, vegetation or animals; (iii) adversely affect property values or otherwise produce a public nuisance or hazard; or (iv) violate any applicable zoning regulation or other governmental law, ordinance or code.

Section 9.06. Oil and Mining Operations. No portion of the Property shall be used for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth (except soil borings, in connection with the improvement of said portion of the Property) and no derrick or other structure designed for use in boring for oil or natural gas or any other mineral shall be erected, maintained or permitted on any portion of the Property, except with the consent of the Architectural Standards Committee.

Section 9.07. Dwelling in other than Residential Lots. No temporary building, trailer, basement, tent, shack, barn outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a Dwelling, on any Lot or other portion of the Property except with the consent of the Architectural Standards Committee.

Section 9.08. Television and Radio Antennas. No outside television antenna shall be erected on any Lot or other portion of the Property except with the consent of the Architectural Standards Committee, except for antennas as permitted by FCC regulations and rules.

Section 9.09. Trees and other Natural Features. After the transfer of title by the Developer to a Lot or other portion of the Property, no trees shall be removed from any such transferred Lot or other portion of the Property except with the permission of the Architectural Standards Committee. The Architectural Standards Committee may require mitigation for the unauthorized removal of trees at a 2:1 ratio. The Architectural Standards Committee may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Architectural Standards Committee may designate certain trees, regardless of size, as not removable without written authorization.

Section 9.10. Use and Maintenance of Slope Control Areas. Within any slope control or wetlands area shown on any filed map or plat, no improvements, planting or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, or change the direction of flow of drainage channels. The slope control areas of any Lot or other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property, and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property, except in those cases where the Association or a governmental agency or other public entity or utility company is responsible for such maintenance.

Section 9.11. Motorcycles. No motorcycle, ATV or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Board of Directors and except in connection with the operations of the Golf Course. This does not preclude the lawful use of said vehicles on driveways and public and private streets.

Section 9.12. Residential Use Only. Except as otherwise provided in this Article IX, and subject to Article IV of this Declaration, the Lots shall be used only for residential purposes and purposes incidental and accessory thereto except that, prior to transfer of title by the Developer to all of the Property, the Developer may use one or more Lots or other portions of the Property for model homes and/or a real estate office. Unless prior written approval is obtained from the Developer, no Lot shall be used for a model home and/or a real estate office.

Section 9.13. Commercial and Professional Activity on Property. No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the Property without the consent of the Architectural Standards Committee, except (i) by the Developer in conjunction with the initial construction, development, lease and sale of Lots; (ii) the conducting of business by telephone; and (iii) until such time as a permanent clubhouse facility is constructed on the Golf Course property, the construction and use by the owner of the Golf Course of improvements on one or more Lots for the operation of a temporary clubhouse facility. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

Section 9.14. Outside Storage. Outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers shall be prohibited except as may be permitted by the

Architectural Standards Committee (unless prohibited altogether by the applicable zoning requirements).

Section 9.15. Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Developer, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Architectural Standards Committee.

Section 9.16. Oversized, Commercial and Unlicensed Vehicles. Unless used in connection with the construction or sale of Lots by the Developer or maintenance of the Property, the following shall not be permitted to remain overnight on the Property.

9.16.1. Any vehicle that cannot fit into a garage of the size constructed on the Lot.

9.16.2. Commercial vehicles of a weight of two (2) tons or more, unless garaged.

9.16.3. Unlicensed motor vehicles of any type, unless garaged.

9.16.4. Boats, jet ski(s) and trailers.

Section 9.17. Clotheslines. Outdoor clotheslines or other outdoor facilities for the drying or airing of any clothing or bedding are prohibited

Section 9.18. Construction Requirements.

9.18.1. Area Requirements: Minimum size of each Structure exclusive of garage, porches, decks and outbuildings shall be 2,200 square feet for a two story Structure and 1,800 square feet for a single story Structure.

9.18.2. Duplication of Styles: To maintain diversity of architecture within the development, essentially complete duplication of exterior design will not normally be permitted.

9.18.3. Public View: Exterior elevations should be designed to respect views from neighboring home sites.

9.18.4. Roofing: Roof materials are limited to the following: Wood, slate, metal and architectural grade composition shingles. The height and slope of the roof should be appropriate to the design of the Structure. Builders are encouraged to provide a metal drip edge on roofs to prevent sagging shingles. Exceptions MUST be reviewed and approved by the Architectural Standards Committee.

9.18.5. Siding and Trim: Siding materials are limited to the following: Brick, stucco, wood, stone or fibrous cement board. Vinyl, plywood and aluminum siding shall NOT be used. Soffit and porch ceiling materials are limited to the following: wood, fibrous cement

board or plywood. Facia and exterior trim materials are limited to the following: wood and fibrous cement board.

9.18.6. Exterior Colors: No more than three exterior finish colors shall be used. All exterior wood shall be painted or stained. Bright colors on exterior surfaces will not normally be approved. White as a primary color of the Structure will not be approved. Also, white fences will NOT be permitted.

9.18.7. Chimneys: Chimneys shall be clad in brick, stone or stucco and consistent with the style of the house. Sheet metal flue must be capped with like siding.

9.18.8. Roof Penetrations: All plumbing vents, gas flues, fan exhausts, and other necessary equipment shall be restricted to rear roof planes or roof planes which are not exposed to public view. All vents should be painted to match roofing. Ornamental or non-functional elements such as weather vanes and cupolas attached to the roof are discouraged, and in any event, are subject to review and approval by the Architectural Standards Committee.

9.18.9. Other Appurtenances: Exterior solar panels, radio antennas (short wave, citizen band, etc.) and satellite dishes, either roof mounted or otherwise, are prohibited with the exception of those permitted under FCC guidelines. Exceptions MUST be reviewed and approved by the Architectural Standards Committee. Television antennas including dishes not to exceed one meter in diameter shall be placed to minimize their view from the street.

9.18.10. Fences: Fences shall be of brick, stone or wood. All fences shall be restricted to no more than four feet (4') in height, shall be made of an open type construction, shall comply with all applicable laws, ordinances and regulations of the County and shall be subject to approval by the Architectural Standards Committee as to style, materials and color. Any in-ground or above-ground swimming pool shall be fenced with approved fencing, hedging or other landscaping material. Fences made of white materials or painted white are prohibited. No fences, signs, stakes, posts or other above-ground structures (other than underground stakes or pins set to mark the boundary corners of the affected Lots) shall be permitted within any "35' WIDE BALL RETRIEVAL EASEMENT" or "VARIABLE WIDTH BALL RETRIEVAL EASEMENT" designated on the recorded subdivision plat of the Property or any other "Buffer Easement Areas" established in that certain Amended and Restated Declaration of Easements dated of even date herewith, made by Fortune Bay and the Developer, recorded prior hereto (the "Declaration of Easements"), on any Lot subject to such easement, and the owner(s) and operator(s) of the Golf Course shall be entitled to enforce this restriction by removal of any such fence, sign, stake, post or other above-ground structure without liability for such removal. There shall be no grading or clearing of underbrush or removal of timber located on any Lot within any "35' WIDE BALL RETRIEVAL EASEMENT" or "VARIABLE WIDTH BALL RETRIEVAL EASEMENT" designated on the recorded subdivision plat of the Property or any other "Buffer Easement Areas" established in the Declaration of Easements without the prior written consent of the owner(s) of the Golf Course.

9.18.11. Windows: Window openings and heights should relate to other design features of the Structure. The symmetry and location of window placement should be considered when designing the Structure and should be consistent with the overall architectural design. Windows must be wood or clad wood. Solid vinyl and aluminum windows shall NOT be used. The use of operating traditional storm shutters is encouraged.

9.18.12. Foundations: Foundations must not be of exposed cinder block, but may be enclosed with brick, stone or other materials approved by the Architectural Standards Committee. Foundations must be on pilings or a crawl space not to exceed four feet (4') above the finished grade of the Lot and must be compatible with the exterior finish materials and color of the Structure.

9.18.13. Outbuildings: All outbuildings and sheds shall be compatible with the main Structure in materials, style and finish and shall be subject to review by the Architectural Standards Committee.

9.18.14. Garages: All garages shall be "side-loading", unless at the discretion of the developer or Architectural Standards Committee said lot may not be suitable for a side-loading garage. This means that the door openings may not face any public street. Special consideration will be given in the consideration of Structures constructed on corner lots.

9.18.15. Landscaping Plan: A landscaping plan must be submitted to the Architectural Standards Committee with submission of the plans pursuant to Section 7.03 for approval.

9.18.16. Site Work: No earth moving, clearing, site work or construction may be commenced on any Lot without the prior approval of the Architectural Standards Committee. The outside perimeter of the Structure must be staked prior to the Owner's submission of the plans pursuant to Section 7.03 so that the Architectural Standards Committee can make a visit to the Lot to evaluate the placement of the Structure on the Lot and assess conservation impacts.

9.18.17. Bulkheads: Bulkheads, piers, docks and other structures are prohibited in all of the lakes and serving as drainage facilities for the Golf Course without the prior written consent of the owner(s) and operator(s) of the Golf Course and the Architectural Standards Committee. The construction of any such facilities on any of the Lots fronting on the Albemarle Sound shall be coordinated with and approved by the Architectural Standards Committee.

Section 9.19. Lots Abutting Golf Course. The Owner(s) of any Lot which abuts the Golf Course (a "Golf Course Lot"), by accepting and recording the deed to such Golf Course Lot, acknowledge(s) and agrees that (a) such Golf Course Lot abuts the Golf Course; (b) the Owner(s) of such Golf Course Lot assume(s) any and all risks related to owning and/or being present on a lot which abuts a golf course (collectively, the "Assumed Risks"), including, but not limited to,

(i) irrigation and chemical overspray and the use of chemicals and fertilizers in normal golf course operations, (ii) noise from equipment, participants and spectators, (iii) the presence of golf balls over and upon such Golf Course Lot and (iv) damage to property or personal injury caused by golf balls; (c) the Owner(s) waive(s) and release(s) any and all claims against the owner(s) and operator(s) of the Golf Course and the employees, principals, heirs, successors and assigns of the owner(s) and operator(s) of the Golf Course and lessee's thereof, and their respective invitees, members, guests and patrons participating in golfing activities on the Golf Course (collectively, the "Golf Course Parties") for the Assumed Risks and agree(s) that the Golf Course Parties shall have no responsibility or liability for or resulting from the Assumed Risks; (d) the Golf Course Lot is subject to certain conditions, restrictions and easements more particularly described in the Declaration of Easements; and (e) the provisions of this Section (i) run to the benefit of, and may be invoked or raised as an absolute defense by, any or all of the Golf Course Parties and (ii) may not be terminated, modified or amended without the written agreement of the owner(s) of the Golf Course affixed to such termination, modification or amendment. Certain other Lots and portions of the Property, other than Golf Course Lots, may be subject to certain of the conditions, restrictions and easements set forth in the Declaration of Easements, and to the extent such Lots or portions of the Property are so subject, the Owner(s) of such Lots or portions of the Property acknowledge(s) and agree(s) to items (b) through (e) set forth in the preceding sentence.

Section 9.20. Setbacks. All lots shall be subject to a front yard setback of twenty-five feet (25') from the front lot line, a rear yard setback of twenty-five feet (25') from the rear lot line and side yard setbacks of fifteen feet (15') from the side lot lines, except when a side lot line is adjacent to a street, the side yard setback shall be twenty feet (20') from the side lot line adjacent to the street. In addition to the requirements of Section 9.18.10, (i) for any Lot subject to any "35' WIDE BALL RETRIEVAL EASEMENT" or "VARIABLE WIDTH BALL RETRIEVAL EASEMENT" designated on the recorded subdivision plat of the Property or any other "Buffer Easement Areas" established in the Declaration of Easements adjacent to the rear lot line, all portion(s) of the rear yard setback and/or side yard setback located within any "35' WIDE BALL RETRIEVAL EASEMENT" or "VARIABLE WIDTH BALL RETRIEVAL EASEMENT" or any other "Buffer Easement Areas" established in the Declaration of Easements along the rear lot line shall be adjusted to thirty-five feet (35') from the rear lot line and/or side lot line, as applicable, and (ii) for any Lot subject to any other "Buffer Easement Areas" established in the Declaration of Easements along the side lot line, all portion(s) of the side yard setback located within any "Buffer Easement Areas" established in the Declaration of Easements adjacent to the side lot line shall be adjusted to twenty feet (20') from the side lot line.

Section 9.21. Manufactured Housing. Notwithstanding anything else contained herein, no mobile home, modular home, or any "Manufactured Home", whether single wide, double wide, triple wide, or of any other width, may be placed upon any of the Lots. "Manufactured Home" shall have the same definition as set forth in NCGS Section 143-145(7).

ARTICLE X

ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 10.01. Declaration Runs with the Land. Each Person acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to this Declaration) covenants and agrees for himself, herself, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of this Declaration including personal responsibility for the payment of all charges that may become liens against his, her or its property and which become due while he, she or it is the Owner thereof.

Section 10.02. Enforceability.

10.02.1. Actions at Law or Suits in Equity. The provisions of this Declaration shall bind the Property, shall run with the land and shall inure to the benefit of and be enforceable by the Developer and the Association (being hereby deemed the agent for all Members), and by any Member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages that may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

10.02.2. Penalties and Fines. The procedures for the imposition of fines or suspension of privileges or services shall be in accordance with and shall be subject to the provisions of Section 47F-3-107.1 of the Act (defined in Section 10.15 below). Monetary fines or penalties imposed against an Owner or occupant shall be deemed a Special Assessment against the Lot of such Owner or against the Lot occupied by such occupant and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Owner of such Lot, and shall be collectible in the same manner as Assessments under Article V.

Section 10.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of this Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation, occurring prior or subsequent thereto. No liability shall attach to the Developer, the Association (or any officer, director, employee, Member, agent, committee or committee member) or to any other Person or organization for failure to enforce the provisions of this Declaration.

Section 10.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration, or the rules and regulations promulgated pursuant hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (1) an Owner, or (2) any family member, tenant, guest or

invitee of an Owner, or (3) a family member or guest or invitee of the tenant of an Owner, or (4) a guest or invitee of (i) any member of such Owner's family; or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot, the Structure and other portion of the Property owned by such Owner, if any.

Section 10.05. Inspection and Entry Rights. Any agent of the Association (or the Architectural Standards Committee) may at any reasonable time or times, upon not less than 24 hours notice to the Owner thereof, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with this Declaration, or with rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Architectural Standards Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of this Declaration, the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within thirty (30) days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 10.06. [INTENTIONALLY OMITTED]

Section 10.07. Amendment or Termination. During the time the Developer owns any Lots, the Developer may make amendments to this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Owner without such Owner's written consent. All other amendments of this Declaration, unless otherwise specifically provided for herein, may be made only by the affirmative vote or written agreement signed by the Owners of not less than sixty-seven percent (67%) of all Lots which are subject to this Declaration, including those Lots Owned by the Developer. In addition, and notwithstanding the above, during the Period of Developer Control, the written consent of the Developer will be required for any amendment which adversely affects a substantial interest or right of the Developer, which consent must not be withheld unreasonably.

Except in the case of a taking of all of the Lots by eminent domain, this Declaration may be terminated only by agreement of the Owners of at least eighty percent (80%) of all Lots which are subject to this Declaration including those Lots owned by the Developer. Termination shall take place in accordance with the laws of the State of North Carolina.

In voting for such amendment or termination, Owners shall have one (1) vote for each Lot owned. The Owners of every Lot shall receive written notice of every proposed amendment or termination at least thirty (30) days prior to the date or initial date set for voting on said proposed amendment or termination.

Notwithstanding anything else contained herein, Developer shall have the right, without the joinder of the Association, at any time during the Period of Developer Control, to file an Amended or Supplemental Declaration, adding Additional Property, or exercising Developer's rights under Section 4.04.6. Any Supplemental Declaration or Amended Declaration may specify such specific use restrictions and other covenants, conditions and restrictions to be applicable to the property subject to the Supplemental or Amended Declaration and may contain complimentary additions and modifications of this Declaration as may be necessary or convenient, in the sole judgment of the Developer, to reflect and adopt any difference in character of any Additional Property or Sub-Community (defined in Section 11.07 below). In no event, however, shall any such Supplemental or Amended Declaration modify or add to the covenants and restrictions established by this Declaration so as to negatively affect the Property; however, this proviso shall not be interpreted to prohibit or prevent any properly instituted change in the amount of the Assessments payable by a Member by means of any such additions.

Section 10.08. Owner Responsible for Tenants. Any lease of a Lot shall provide that the tenant shall comply in all respects with the terms of this Declaration, the By-laws and rules and regulations, if any, of the Association. If a tenant is in violation of this Declaration, the By-laws or rules and regulations, the Board of Directors shall so notify the Owner of the Lot which such tenant occupies in writing by certified mail, return receipt requested. If the violation is not cured within fourteen (14) days after the Owner has received notice of such violation, the Association may pursue any or all remedies which it may have under this Declaration.

Section 10.09. When Amendment or Termination Becomes Effective. Any amendment or termination of this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Register of Deeds for the County. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the appropriate officers of the Association that the affirmative vote or written consents required for such amendment have been received and filed with the Board of Directors.

Section 10.10. Duration. The provisions of this Declaration, as amended or unless terminated as provided in Section 10.07, shall continue with full force and effect against both the Property and the Owners thereof for a period of twenty (20) years, and without further notice, as then in force or subsequently amended, shall be automatically extended for successive periods of 10 years each until terminated as provided in Section 10.07.

Section 10.11. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited by the provisions hereof

Any conflict in construction or interpretation between the Association and any other Person entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of

this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interests of the Owners and residents of the Property to the end that the Property shall be preserved and maintained as a high quality community.

In granting any permit, authorization, or approval, as herein provided, the Association may impose any conditions or limitations thereon as it shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

Section 10.12. Conflict with Laws. This Declaration shall not be taken as permitting any action or thing prohibited by applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict between this Declaration and the By-laws, this Declaration shall prevail.

Section 10.13. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 10.14. Invalidity of Agreement or Declaration. The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

Section 10.15. Governing Law. This Declaration shall be subject to, governed by and construed in accordance with the North Carolina Planned Community Act, Sections 47F-1-101, et seq, of the North Carolina General Statutes, as amended (the "Act"). To the extent any provision of this Declaration is determined to violate the Act, such provision shall be deemed to be modified to the extent necessary to comply with the Act. To the extent not expressly set forth herein, the Developer reserves all special declarant rights (as defined in the Act) and all other rights of a declarant provided in the Act. To the extent not expressly set forth herein, the Association shall have all other rights of an association under the Act and such duties as are required by the Act.

ARTICLE X1

GENERAL

Section 11.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretations of the content thereof.

Section 11.02. Right Reserved to Impose Additional or Amend Restrictions. The Developer reserves the right to record additional protective covenants and restrictions or to amend this Declaration prior to the conveyance of the first Lot.

Section 11.03. Notice. Any notice required to be sent to the Developer or to any Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the Person who appears as the Developer, Owner or mortgagee on the records of the Association at the time of such mailing,

Section 11.04. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust and, upon such assignment, the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors shall refer to the Board of Directors (or Trustees) of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition a court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibilities of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 11.05. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or the By-laws, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners' or residents' association or similar entity.

Section 11.06. Rights of Mortgagees, etc. The holder, insurer, or guarantor of the mortgage of any Lot whose last known address appears on the records of the Association at the time of such mailing shall be entitled to timely written notice of:

11.06.1. Any condemnation or casualty loss that effects either a material portion of the Association Property; and

11.06.2. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

The Association shall have no duty to provide the foregoing unless such parties keep the Association advised in writing as to their mailing address(es) and the address(es) of the Lot(s) in which they have an interest.

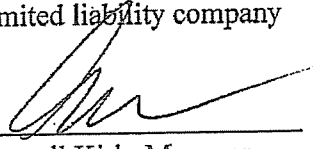
Section 11.07. Sub-Community. It is anticipated that the Developer may add Additional Property and/or may potentially convert a portion of the Property, including contiguous Lots contained therein, into a type of "Sub-Community". Any such Sub-Community shall be limited to single family homes, patio homes or zero lot line homes, or multi-family tracts, on which Dwellings are constructed for use and occupancy as residences.

Section 11.08. Management of the Association. The Association has the responsibility of establishing budgets, administering the collection of Assessments, enforcing rights and responsibilities, and maintaining the Association Property. The Developer deems it prudent that one professional management organization administer the affairs of the Association, which will administratively serve all Sub-Communities, if any, created after the date of this Declaration with respect to any portion of the Property and Additional Property, if any. After the first five (5) years of the Association's existence, a Sub-Community may elect to self-manage or to contract with another professional organization, provided the Owners of at least fifty-one percent (51%) of the lots of that Sub-Community shall have voted for same at a meeting called especially for such purpose by written notice by first class certified return receipt mail. However, nothing herein shall be construed to limit the formation and administration of an association for such Sub-Community. During the first five (5) years of the Association's existence, no change in management shall be made except at the direction of or with the written approval of the Developer.

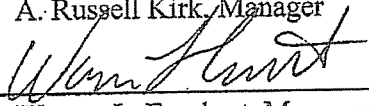
Section 11.09. Acknowledgement by Fortune Bay. By its execution of this Declaration, Fortune Bay acknowledges and agrees that the Property and its interests therein are subject to all of the terms, conditions and the Restrictions set forth in this Declaration, and that except as otherwise provided in this Declaration, without the consent or joinder of Fortune Bay, the Developer and/or the Association shall be entitled to enforce the terms, conditions and the Restrictions set forth in this Declaration.

DEVELOPER:

KILMARLIC RESIDENTIAL, L.L.C.,
a Virginia limited liability company

By: 

A. Russell Kirk, Manager

By: 

Warren L. Everhart, Manager

STATE OF VIRGINIA,
CITY OF CHESAPEAKE to-wit:

Subscribed and sworn to before me this 19th day of March, 2003, by A. Russell Kirk as Manager of KILMARLIC RESIDENTIAL, L.L.C., a Virginia limited liability company, on behalf of said limited liability company.


Notary Public

My commission expires: 12/31/2004

STATE OF VIRGINIA,
CITY OF CHESAPEAKE to-wit:

Subscribed and sworn to before me this 19th day of March, 2003, by Warren L. Everhart as Manager of KILMARLIC RESIDENTIAL, L.L.C., a Virginia limited liability company, on behalf of said limited liability company.


Notary Public

My commission expires: 12/31/2004

FORTUNE BAY:

FORTUNE BAY GOLF CLUB, L.L.C.,
a Virginia limited liability company

By: [Signature]
A. Russell Kirk, Manager

By: [Signature]
Bryan T. Sullivan, Manager

STATE OF VIRGINIA,
CITY OF CHESAPEAKE to-wit:

Subscribed and sworn to before me this 12th day of March, 2003, by A. Russell Kirk as Manager of FORTUNE BAY GOLF CLUB, L.L.C., a Virginia limited liability company, on behalf of said limited liability company.

[Signature]
Notary Public

My commission expires: 4-30-03

STATE OF VIRGINIA,
CITY OF CHESAPEAKE to-wit:

Subscribed and sworn to before me this 12th day of March, 2003, by Bryan T. Sullivan as Manager of FORTUNE BAY GOLF CLUB, L.L.C., a Virginia limited liability company, on behalf of said limited liability company.

[Signature]
Notary Public

My commission expires: 4-30-03

NORTH CAROLINA, CURRITUCK COUNTY

The foregoing certificate(s) of Marlene R. Axelson & Vicki L. Scott, Notaries of
the Commonwealth of VA is (are) certified

to be correct. This instrument was presented for registration at 4:50:30 o'clock PM, on March 19
20 03, and recorded in Book 658, Page 90.

[Signature]
Register of Deeds
By [Signature]
Assistant Deputy Register of Deeds

SCHEDULE A

[LEGAL DESCRIPTION]

All those certain lots or parcels of land situated in Poplar Branch Township, Currituck County, North Carolina, and more particularly described as follows:

Lots 1 through 143, and those parcels designated as "RESERVE UTILITY OPEN SPACE, TOTAL AREA = 2.11 AC.", "RESERVE COUNTY FACILITIES AREA, AREA = 1.43 AC.", "COMMUNITY RESERVE AREA (FOR SOUND ACCESS), AREA = 112,272 SF", and that certain private road known and designated as "Captain's Way", as shown on that certain plat entitled "THE KILMARLIC CLUB RESIDENTIAL GOLF COMMUNITY, POPLAR BRANCH TWSP, CURRITUCK COUNTY, NORTH CAROLINA, FINAL PLAT", dated December 20, 2002, prepared by Bissell Professional Group, which plat is recorded in the Currituck County Registry in Plat Cabinet H, Slides 84-91.

Doc ID: 001366900002 Type: CRP
 Recorded: 12/30/2005 at 09:59:32 AM
 Fee Amt: \$17.00 Page 1 of 2
 Currituck County, NC
 Charlene V Dowdy Register of Deeds
 SK 920 PG 505-506

Prepared by and Return to:
 E. Crouse Gray, Jr., Attorney at Law
 GRAY & LLOYD, L.L.P.
 3120 North Croatan Highway, Ste. 101
 Kill Devil Hills, North Carolina 27948
 My File No. 9101-103

**FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS,
 CONDITIONS, RESTRICTIONS AND EASEMENTS, KILMARLIC RESIDENTIAL
 COMMUNITY**

THIS FIRST AMENDMENT to Declaration of Protective Covenants, Conditions, Restrictions and Easements, Kilmarlic Residential Community, made this the 29th day of December, 2005, by Kilmarlic Residential, LLC, a Virginia limited liability company, the ("Developer")

WITNESSETH:

WHEREAS, Developer has previously recorded a Declaration of Protective Covenants, Conditions, Restrictions and Easements, Kilmarlic Residential Community, as recorded in Deed Book 658, Page 90, Currituck County Public Registry, and

WHEREAS, Section 10.07 of the aforementioned Declaration of Protective Covenants, Conditions, Restrictions and Easements, provides in part "During the time Developer owns any Lots, the Developer may make amendments to this Declaration to correct omissions or errors, which amendment shall not adversely modify substantial rights of any owner with out such owners written consent."; and

WHEREAS, the map or plat of the Kilmarlic Club, Residential Golf Community, as recorded in Plat Cabinet H, Slides 84 through 91, Currituck County Public Registry, and in particular, in Plat Cabinet H, Slide 84, provides in part under Note 1: "20 foot drainage and utility easement hereby reserved along all side property lines. 15 foot drainage and utility easement hereby reserved along all rear property lines."; and

WHEREAS, the Declaration of Protective Covenants, Conditions, Restrictions and Easements, as recorded in Deed Book 658, Page 90 provides in part in Section 9.20 as follows:

"All Lots shall be subject to front yard setback of twenty-five (25) feet from the front lot line, a rear set back of twenty-five (25) feet from the rear lot line and side yard setbacks are fifteen (15) feet from the side lot lines, except when a side lot line is adjacent to a street, the side yard set backs shall be twenty (20) feet from the side lot line adjacent to the street..."; and

WHEREAS, Developer desires to correct the conflicting provisions regarding the side set back.

NOW, THEREFORE, the Developer, for itself, its successors and assigns, declares that it is the intent of the language as contained upon the plat of the Kilmarlic Club, as recorded in Plat Cabinet H, Slides 84 through 96, that the provisions regarding drainage and utility easement are to be interpreted as follows:

1. The twenty (20) foot drainage and utility easement reserved along all side property lines is to be interpreted as a total width of twenty (20) feet with ten (10) feet on each lot.
2. All other utility, drainage, pond maintenance and ball retrieval easements are to be measured from the property line for the full width as delineated whether the width is fifteen (15) feet, twenty (20) feet or thirty-five (35) feet.

IN WITNESS WHEREOF, Developer executes this First Amendment of Declaration of Protective Covenants, Conditions, Restrictions and Easements the day and year first above written.

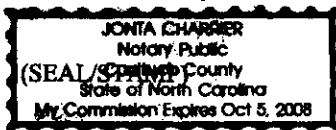
KILMARLIC RESIDENTIAL, LLC

By: Warren Everhart (SEAL)
Warren Everhart, Member/Manager

STATE OF North Carolina
CITY/COUNTY OF CURRITUCK

I, JONTA CHARRIER, a Notary Public, hereby certify that Warren Everhart personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of, Kilmarlic Residential, LLC, a limited liability company organized under the laws of the State of Virginia.

Witness my hand and official seal this the 22 day of September, 2008.



Jonta ChARRIER
Notary Public
My Commission Expires: 10/5/08

Doc ID: 001590240004 Type: CRP
 Recorded: 03/06/2006 at 04:13:38 PM
 Fee Amt: \$23.00 Page 1 of 4
 Currituck County, NC
 Charlene Y Dowdy Register of Deeds
 BK 931 PG 470-473

Prepared by and Return to:
 E. Crouse Gray, Jr., Attorney at Law
 GRAY & LLOYD, L.L.P.
 3120 North Croatan Highway, Ste. 101
 Kill Devil Hills, North Carolina 27948
 My File No. 9101-103

**SECOND AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS,
 CONDITIONS, RESTRICTIONS AND EASEMENTS
 KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION**

THIS SECOND AMENDMENT to Declaration of Protective Covenants, Conditions, Restrictions and Easements, Kilmarlic Residential Community, made this the 6 day of MARCH, 2006, by KILMARLIC RESIDENTIAL, LLC, a Virginia limited liability company, hereinafter referred to as ("Developer") and SEAGRASS, LLC, a North Carolina limited liability company, hereinafter referred to as ("Seagrass").

WITNESSETH:

WHEREAS, Developer and Fortune Bay Golf Club, LLC, a Virginia limited liability company ("Fortune Bay") heretofore executed and recorded a Declaration of Protective Covenants, Conditions, Restrictions and Easements, as recorded in Deed Book 658, Page 90, Currituck County Public Registry, for the residential community known as "Kilmarlic Residential Community"; and

WHEREAS, Fortune Bay, conveyed the real property constituting the Kilmarlic Residential Community to Developer; and

WHEREAS, the Declaration of Protective Covenants, Conditions, Restrictions and Easements, as recorded in Deed Book 658, Page 90, hereinafter referred to as ("Declaration"), provides in part in Section 2.02, a mechanism wherein Developer may add additional properties to the benefits, rights, duties and obligations of the Declaration; and

WHEREAS, the Declaration in Section 3.07, authorizes the Developer to assign its membership in the Kilmarlic Residential Community Association to any individual, trust, estate, partnership, corporation, limited liability company, a business trust or other entity; and

WHEREAS, Developer desires to assign its rights, duties and obligations pursuant to the Declaration to Seagrass; and

WHEREAS, Developer and Seagrass desire to add additional properties as set forth herein to become subject to the rights, duties and obligations of the Declaration.

NOW, THEREFORE, Developer and Seagrass, for itself, its successors and assigns, hereby amend the Declaration and assign certain rights as follows:

1. Kilmarlic Residential, LLC does hereby assign all its right, title and interest as Developer to Seagrass. Seagrass hereby accepts such assignment and agrees to be bound by all of the terms, conditions, rights, duties and obligations and benefits of Developer as set forth in the Declaration. Seagrass hereby further agrees to hold harmless, protect and indemnify Kilmarlic Residential, LLC and/or its Members and Managers from any and all litigation, damages, expenses and charges, including, but not limited to, attorney's fees and expenses of litigation which, are sustained or incurred by Kilmarlic Residential, LLC and/or its Member and Managers under or arising directly or indirectly out of Kilmarlic Residential, LLC acts or actions or inactions as Developer or the assignment of the rights, duties, benefits and obligations of Developer as contained herein.
2. Developer does hereby assign its membership interest in the Kilmarlic Residential Community Association to Seagrass, including the right to vote the Class B Membership. This assignment of rights as Class B Membership, including the right to vote such Class B Membership, shall be effective for each and every lot who's title is still retained by Developer as of the date this Second Amendment to Declaration is recorded in the Currituck County Registry of Deeds until the Class B Membership for such lot shall be terminated pursuant to Section 3.02.1 of the Declaration.
3. Developer and Seagrass do hereby declare that the properties set forth on Exhibit "B" shall, effective as of the date of recording of the Subdivision Plat thereof, be subject to all of the rights, duties and obligations as set forth within the Declaration including, but not limited to, rights of either Class B or Class A Membership and the obligation to pay assessments as set forth within such Declaration.

IN WITNESS WHEREOF, Kilmarlic Residential, LLC and Seagrass, LLC, have executed this Second Amendment to Declaration of Protective Covenants, Conditions, Restrictions and Easements the day and year first above written.

KILMARLIC RESIDENTIAL, LLC

By: [Signature] (SEAL)
A. Russell Kirk, Manager

By: [Signature] (SEAL)
Alfred E. Abiouness, Manager

SEAGRASS, LLC

By: [Signature] (SEAL)
Bryan Sullivan, Manager

By: [Signature] (SEAL)
Jim Geraghty, Manager

By: [Signature] (SEAL)
Lorimer J. White, Manager

STATE OF Virginia
CITY/COUNTY OF Virginia Beach

I, Vicki L. Scott, a Notary Public, hereby certify that A. Russell Kirk personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of, Kilmarlic Residential, LLC, a limited liability company organized under the laws of the State of Virginia.

Witness my hand and official seal this the 6th day of March, 2006.

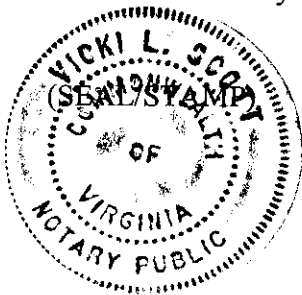
Vicki L. Scott
Notary Public
My Commission Expires: 4-30-07

STATE OF Virginia
CITY/COUNTY OF Virginia Beach

I, Vicki L. Scott, a Notary Public, hereby certify that Alfred E. Abiouness personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of, Kilmarlic Residential, LLC, a limited liability company organized under the laws of the State of Virginia.

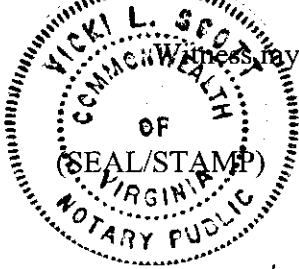
Witness my hand and official seal this the 6th day of March, 2006.

Vicki L. Scott
Notary Public
My Commission Expires: 4-30-07



STATE OF Virginia
CITY/COUNTY OF Virginia Beach

I, Vicki L. Scott, a Notary Public, hereby certify that Bryan Sullivan personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of, Seagrass, LLC, a limited liability company organized under the laws of the State of North Carolina.

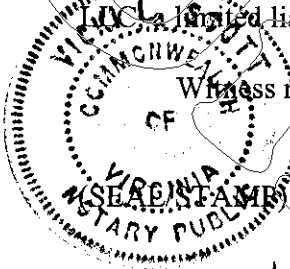


Witness my hand and official seal this the 6th day of March, 2006.

Vicki L. Scott
Notary Public
My Commission Expires: 4-30-07

STATE OF Virginia
CITY/COUNTY OF Virginia Beach

I, Vicki L. Scott, a Notary Public, hereby certify that Jim Geraghty personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of, Seagrass, LLC, a limited liability company organized under the laws of the State of North Carolina.



Witness my hand and official seal this the 6th day of March, 2006.

Vicki L. Scott
Notary Public
My Commission Expires: 4-30-07

STATE OF Virginia
CITY/COUNTY OF Virginia Beach

I, Vicki L. Scott, a Notary Public, hereby certify that Lorimer J. White, personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of, Seagrass, LLC, a limited liability company organized under the laws of the State of North Carolina.



Witness my hand and official seal this the 6th day of March, 2006.

Vicki L. Scott
Notary Public
My Commission Expires: 4-30-07



Doc ID: 002205570004 Type: CRP
 Recorded: 01/06/2010 at 04:17:52 PM
 Fee Amt: \$23.00 Page 1 of 4
 Currituck County, NC
 Charlene Y Dowdy Register of Deeds

BK 1112 PG 326-329

54

Prepared by and Return to:

E. Crouse Gray, Jr., Attorney at Law
 GRAY & LLOYD, L.L.P.
 3120 North Croatan Highway, Ste. 101
 Kill Devil Hills, North Carolina 27948
 My File No. 9101-103

**THIRD AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS,
 CONDITIONS, RESTRICTIONS AND EASEMENTS
 KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION**

THIS THIRD AMENDMENT to Declaration of Protective Covenants, Conditions, Restrictions and Easements, Kilmarlic Residential Community, made this the 5th day of JANUARY, 20 10, by KILMARLIC RESIDENTIAL, LLC, a Virginia limited liability company, hereinafter referred to as ("Developer") and SEAGRASS, LLC, a North Carolina limited liability company, hereinafter referred to as ("Seagrass").

WITNESSETH:

WHEREAS, Developer and Fortune Bay Golf Club, LLC, a Virginia limited liability company ("Fortune Bay") heretofore executed and recorded a Declaration of Protective Covenants, Conditions, Restrictions and Easements, as recorded in Deed Book 658, Page 90, Currituck County Public Registry, for the residential community known as "Kilmarlic Residential Community"; and

WHEREAS, Fortune Bay, conveyed the real property constituting the Kilmarlic Residential Community to Developer; and

WHEREAS, the Declaration of Protective Covenants, Conditions, Restrictions and Easements, as recorded in Deed Book 658, Page 90, hereinafter referred to as ("Declaration"), provides in part in Section 2.02, a mechanism wherein Developer may add additional properties to the benefits, rights, duties and obligations of the Declaration; and

WHEREAS, the Declaration in Section 3.07, authorizes the Developer to assign its membership in the Kilmarlic Residential Community Association to any individual, trust, estate, partnership, corporation, limited liability company, a business trust or other entity; and

WHEREAS, Developer, pursuant to Second Amendment to Declaration of Protective Covenants, Conditions, Restrictions and Easements, Kilmarlic Residential Community Association

as recorded in Deed Book _____, Page _____, Currituck County Public Registry, assigned its rights, duties and obligations pursuant to the Declaration to Seagrass; and

WHEREAS, Seagrass now desires to assign rights, duties and obligations pursuant to the Declaration back to Developer.

NOW, THEREFORE, Developer and Seagrass, for themselves, their successors and assigns, hereby amend the Declaration and assign certain rights as follows:

1. Seagrass does hereby assign all its right, title and interest as Developer to Kilmarlic Residential, LLC. Kilmarlic Residential, LLC hereby accepts such assignment and agrees that effective as of the date of recording of this document in the Currituck County Registry of Deeds, to be bound by all of the terms, conditions, rights, duties and obligations and benefits of Developer as set forth in the Declaration.
2. Seagrass does hereby assign its membership interest in the Kilmarlic Residential Community Association to Kilmarlic Residential, LLC, including the right to vote the Class B Membership. This assignment of rights as Class B Membership, including the right to vote such Class B Membership, shall be effective for each and every lot who's title is still retained by Developer or Seagrass as of the date this Third Amendment to Declaration is recorded in the Currituck County Registry of Deeds until the Class B Membership for such lot shall be terminated pursuant to Section 3.02.1 of the Declaration.

IN WITNESS WHEREOF, Kilmarlic Residential, LLC and Seagrass, LLC, have executed this Third Amendment to Declaration of Protective Covenants, Conditions, Restrictions and Easements the day and year first above written.

KILMARLIC RESIDENTIAL, LLC

By: _____ (SEAL)
A. Russell Kirk, Manager

By: _____ (SEAL)
Alfred E. Abiouness, Manager

SEAGRASS, LLC

By: _____ (SEAL)
Bryan Sullivan, Manager

By: _____ (SEAL)
Jim Geraghty, Manager

By: _____ (SEAL)
Lorimer J. White, Manager

GRAY & LLOYD, L.L.P. • ATTORNEYS AT LAW • 3120 N. Croatan Hwy. • Suite 101 • Kill Devil Hills, NC 27948 • (252) 441-4338

STATE OF Virginia
CITY/COUNTY OF Virginia Beach

BOOK 1112 PAGE 0328

I, Victi L. Scott, a Notary Public, hereby certify that A. Russell Kirk personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of, Kilmarlic Residential, LLC, a limited liability company organized under the laws of the State of Virginia.

Witness my hand and official seal this the 6th day of January, 2000 2010.
Victi L. Scott
Notary Public
My Commission Expires: 4/30/2011

STATE OF Virginia
CITY/COUNTY OF Virginia Beach

I, Victi L. Scott, a Notary Public, hereby certify that Alfred E. Abiouness personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of, Kilmarlic Residential, LLC, a limited liability company organized under the laws of the State of Virginia.

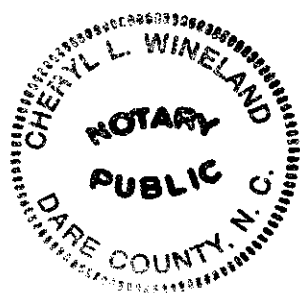
Witness my hand and official seal this the 6th day of January, 2000 2010.
Victi L. Scott
Notary Public
My Commission Expires: 4/30/2011

STATE OF North Carolina
CITY/COUNTY OF Dare

I, Cheryl L. Wineland, a Notary Public, hereby certify that Bryan Sullivan personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of, Seagrass, LLC, a limited liability company organized under the laws of the State of North Carolina.

Witness my hand and official seal this the 5th day of January, 2000 2010.
Cheryl L. Wineland
Notary Public
My Commission Expires: 9-23-2014

(SEAL/STAMP)

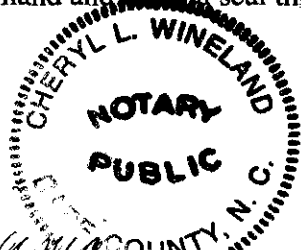


STATE OF North Carolina
CITY/COUNTY OF Dare

I, Cheryl L. Wineland, a Notary Public, hereby certify that Jim Geraghty personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of, Seagrass, LLC, a limited liability company organized under the laws of the State of North Carolina.

Witness my hand and official seal this the 5th day of January, 2010.

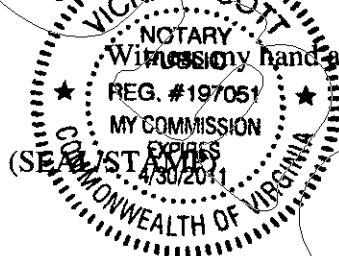
(SEAL/STAMP)



Cheryl L. Wineland
Notary Public
My Commission Expires: 9-23-2014

STATE OF Virginia
CITY/COUNTY OF Virginia Beach

I, Licki L. Scott, a Notary Public, hereby certify that Lorimer J. White, personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of, Seagrass, LLC, a limited liability company organized under the laws of the State of North Carolina.



Witness my hand and official seal this the 6th day of January, 2010.

Licki L. Scott
Notary Public
My Commission Expires: 4/30/2011

N:\WORD\clients\KILMARLIC RESIDENTIAL\9101-104 (Amend. Rest. Cov. - Add Phase II)\3rd Amendment to Declaration.wpd

Prepared by and return to:
 Robert L. Outten
 Sharp, Michael, Outten & Graham L.L.P.
 P.O. Drawer 1027
 Kitty Hawk, NC 27949

Doc ID: 001983490010 Type: CRP
 Recorded: 06/11/2007 at 04:49:16 PM
 Fee Amt: \$41.00 Page 1 of 10
 Currituck County, NC
 Charlene Y Dowdy Register of Deeds
 BK 1007 PG 241-250

NORTH CAROLINA
 CURRITUCK COUNTY

THIRD AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS,
 CONDITIONS, RESTRICTIONS AND EASEMENTS
 KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION

THIS THIRD AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this "Amendment") is made this 11th day of June, 2007 by and between SEAGRASS, LLC, a North Carolina limited liability company (the "Successor Developer"), successor developer to Kilmarlic Residential, LLC, a Virginia limited liability company (the "Original Developer"); FORTUNE BAY GOLF CLUB, L.L.C., a Virginia limited liability company ("Fortune Bay"); and KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION, a North Carolina non-stock, non-profit corporation (the "Association").

WHEREAS, the Original Developer and Fortune Bay executed that certain Declaration of Protective Covenants, Conditions, Restriction and Easements (the "Declaration"), dated March 12, 2003, recorded in the Office of the Register of Deeds of Currituck County, North Carolina (the "Registry"), in Book 658, at Page 90, as amended by that by that certain First Amendment to Declaration of Protective Covenants, Conditions Restrictions and Easements (the "First Amendment"), dated July 23, 2004, recorded in the Registry in Book 799, at Page 651, applicable to certain real property more particularly described therein (the "Original Property");

WHEREAS, by that certain Second Amendment to Declaration of Protective Covenants, Conditions Restrictions and Easements (the "Second Amendment", with the Second Amendment together with the Declaration and the First Amendment being collectively referred to hereinafter as the "Declaration"), dated March 6, 2006, recorded in the Registry in Book 931, at page 470, the Original Developer assigned all of its right, title and interest as Developer under the Declaration to the Successor Developer and submitted certain other real property to be subject to the Declaration (such other real property and the Original Property, excluding any portions thereof that have been released from the operation and effect of the Declaration, being collectively referred to hereinafter as the "Phase I Property");

WHEREAS, the development on the Phase I Property shall be hereinafter referred to as the "Original Development";

WHEREAS, the Successor Developer is the owner of the property depicted as Lots 145 – 175, inclusive, and including the private streets named "Brae Burn Drive" and "Hillock Drive", the areas designated as "OPEN SPACE 404 JURISDICTIONAL WETLANDS" and the areas designated as "UPLAND OPEN SPACE" on that certain plat (the "Phase II Plat") entitled "THE KILMARLIC CLUB - PHASE II, COMMON OPEN SPACE RESIDENTIAL SUBDIVISION, POPLAR BRANCH TOWNSHIP, CURRITUCK COUNTY, NORTH CAROLINA" prepared by Bissell Professional Group, dated the 23rd day of August, 2006, and recorded in Plat Cabinet K at Slides 5-7 of the Registry (hereinafter the "Phase II Property");

WHEREAS, Fortune Bay is the owner of the property depicted as Lot 144 on the Phase II Plat (the "Fortune Bay Lot", with the Fortune Bay Lot and the Phase II Property being collectively referred to hereinafter as the "Additional Property");

WHEREAS, the development on the Additional Property shall be hereinafter referred to as the "Phase II Development";

WHEREAS, the Successor Developer desires to add and subject the Phase II Property, and Fortune Bay desires to add and subject the Fortune Bay Lot, to the terms and conditions of the Declaration;

WHEREAS, all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Declaration; and

WHEREAS, pursuant to the provisions of Article 2 of the Declaration, the Association has approved subjecting the Additional Property to the terms and conditions of the Declaration and further consents to the terms and conditions applicable only to the Additional Property as contained herein as evidenced by its execution of this Amendment.

NOW, THEREFORE, Successor Developer for itself, its successors and assigns (as to the Phase II Property"), and Fortune Bay for itself, its successors and assigns (as to

WHEREAS, by that certain Second Amendment to Declaration of Protective Covenants, Conditions Restrictions and Easements (the "Second Amendment", with the Second Amendment together with the Declaration and the First Amendment being collectively referred to hereinafter as the "Declaration"), dated March 6, 2006, recorded in the Registry in Book 931, at page 470, the Original Developer assigned all of its right, title and interest as Developer under the Declaration to the Successor Developer and submitted certain other real property to be subject to the Declaration (such other real property and the Original Property, excluding any portions thereof that have been released from the operation and effect of the Declaration, being collectively referred to hereinafter as the "Phase I Property");

WHEREAS, the development on the Phase I Property shall be hereinafter referred to as the "Original Development";

WHEREAS, the Successor Developer is the owner of the property depicted as Lots 145 – 175, inclusive, and including the private streets named "Brae Burn Drive" and "Hillock Drive", the areas designated as "OPEN SPACE 404 JURISDICTIONAL WETLANDS" and the areas designated as "UPLAND OPEN SPACE" on that certain plat (the "Phase II Plat") entitled "THE KILMARLIC CLUB - PHASE II, COMMON OPEN SPACE RESIDENTIAL SUBDIVISION, POPLAR BRANCH TOWNSHIP, CURRITUCK COUNTY, NORTH CAROLINA" prepared by Bissell Professional Group, dated the 23rd day of August, 2006, and recorded in Plat Cabinet J at Slides 178-180 of the Registry (hereinafter the "Phase II Property");

WHEREAS, Fortune Bay is the owner of the property depicted as Lot 144 on the Phase II Plat (the "Fortune Bay Lot", with the Fortune Bay Lot and the Phase II Property being collectively referred to hereinafter as the "Additional Property");

WHEREAS, the development on the Additional Property shall be hereinafter referred to as the "Phase II Development";

WHEREAS, the Successor Developer desires to add and subject the Phase II Property, and Fortune Bay desires to add and subject the Fortune Bay Lot, to the terms and conditions of the Declaration;

WHEREAS, all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Declaration; and

WHEREAS, pursuant to the provisions of Article 2 of the Declaration, the Association has approved subjecting the Additional Property to the terms and conditions of the Declaration and further consents to the terms and conditions applicable only to the Additional Property as contained herein as evidenced by its execution of this Amendment.

NOW, THEREFORE, Successor Developer for itself, its successors and assigns (as to the Phase II Property), and Fortune Bay for itself, its successors and assigns (as to

the Fortune Bay Lot), each declare, acknowledge and agree that their respective portions of the Additional Property are hereby brought under the scope of and shall be transferred, sold, conveyed and occupied subject to the Declaration and the following covenants, conditions, restrictions, easements, charges, liens, terms and conditions which shall be applicable only to the Additional Property (the "Additional Property Restrictions"):

1. The Phase II Plat is incorporated herein by reference as if fully set out and all easements, restrictions, terms, conditions and information contained on the Phase II Plat are made a part hereof and imposed upon the Lots depicted thereon (the "Phase II Lots"), and the Phase II Lots shall be conveyed subject to the easements, restrictions, terms, conditions and information set forth on the Phase II Plat.

2. From and after the date of recordation of this Amendment, the Additional Property shall constitute a part of the Property, and the Owners of the Phase II Lots (the "Phase II Lot Owners") shall be Members of the Association and shall each enjoy the use of all common areas located in the Phase II Development (the "Phase II Common Areas") as well as the Common Areas located in the Original Development.

3. The Phase II Lot Owners shall have all membership rights, voting rights and authority to serve as members of all boards and committees of the Association; shall have all property rights and easements provided in the Declaration; shall be responsible for and obligated to pay all assessments and financial obligations of Members of the Association; shall be subject to all architectural controls of the Association; and shall comply with all covenants and restrictions contained in the Declaration.

4. The Association agrees that upon recording of this Declaration, the Association shall assume the maintenance responsibility for all private streets (until such time as they may come under the maintenance responsibility of NCDOT) and the drainage easements within the Phase II Development, and the cost thereof shall be paid as provided in Paragraph 8 below. The Association agrees that upon recordation of this Declaration, the Association shall assume the maintenance responsibility for all other Phase II Common Areas as a portion of its overall budget, and the cost therefore shall be paid equally by all Members of the Association.

5. Upon recordation of this Declaration, the Phase II Development shall be treated as a part of the Original Development for all purposes as if it was a part of the Original Development and shall be subject to all terms and conditions of the Declaration.

6. The Phase II Lot Owners shall have all rights, privileges, obligations and liabilities of Members of the Association as if such Lots were original Lots within the Original Development.

7. Portions of the Additional Property have been determined to meet the requirements for designation as wetlands, streams or protected stream buffers. Any subsequent fill or alteration of these areas shall conform to the requirements of the state rules adopted by the State of North Carolina in force at the time of the proposed

alteration. The intent of this provision is to prevent additional wetland, stream or buffer filling or draining, so the Phase II Lot Owners should not assume that a future application for filling or draining would be approved. The Phase II Lot Owners shall report the name of the subdivision (The Kilmarlic Club – Phase II) in any application pertaining to said rules. This covenant is intended to ensure continued compliance with all rules adopted by the State of North Carolina and therefore the State of North Carolina may enforce benefits. This covenant is to run with the land and shall be binding on all parties and all persons claiming under or through the Successor Developer and/or Fortune Bay.

8. In addition to all other Assessments, each Phase II Lot Owner, by becoming a Phase II Lot Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association annual and special assessments or charges (the "Phase II Maintenance Assessments") for the maintenance of the private streets within the Phase II Development alone (the "Private Streets") and the maintenance of the drainage easements located outside of the street rights-of-way and within the easement areas shown on the Phase II Plat (the "Phase II Drainage Easements"). The Association shall have the right to place a claim of lien against any of the Lots within the Phase II Development to collect unpaid Phase II Maintenance Assessments and to maintain a civil action for collection of such sums. The following paragraphs set forth the guidelines, rules and regulations for the purpose of allocating the Phase II Maintenance Assessments and the collection thereof.

(a). The Phase II Maintenance Assessments shall constitute Assessments under the Declaration applicable only to the Phase II Lots and the Owners thereof. In all other respects (except as set forth in subparagraphs (b) – (f) below), the Phase II Maintenance Assessments shall be governed by the applicable provisions of Article V of the Declaration, collectible and enforceable by the Association in the manner provided in the Declaration.

(b) The Phase II Maintenance Assessments shall be used exclusively for the purposes of maintaining the Private Streets in the Phase II Development and maintaining the Phase II Drainage Easements.

(c) The Phase II Maintenance Assessments shall be in an amount determined by Successor Developer until the Board of Directors fixes the amount for any year at an amount it deems necessary to meet the maintenance needs for the Private Streets and the Phase II Drainage Easements, including reserves for future maintenance.

(d) In addition to the annual Phase II Maintenance Assessments authorized herein, the Association may levy in any year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Private Streets or the Phase II Drainage Easements, provided any such Special Assessment shall have the assent of three-fifths (3/5) of the votes of all Phase II

Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Phase II Lot Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

(e) The quorum required for any action authorized by subparagraph (d) shall be as follows: At the first meeting called, the presence at the meeting of Members or of proxies, entitled to cast sixty percent (60%) of all the votes of the Phase II Lot Owners shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above and the required quorum at any such subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting, provided that no such meeting shall be held more than sixty (60) days following the preceding meeting.

(f) The Phase II Maintenance Assessments shall commence on a date to be determined by Successor Developer, and subject to subparagraph (c) above, shall be subject to adjustment by Successor Developer on the same date in each successive year. The due date of the Phase II Maintenance Assessments shall be thirty (30) days after notice of the commencement of the Phase II Maintenance Assessments is mailed to all Phase II Lot Owners by the Association unless the Board of Directors determines the due date to be the same as other Assessments. Subject to subparagraph (c) above, no adjustment or prorations of the Phase II Maintenance Assessments established by the Successor Developer shall be made by the Association.

9. All references in the Declaration to "35' WIDE BALL RETRIEVAL EASEMENT" and "VARIABLE WIDTH BALL RETRIEVAL EASEMENT" (the "Original Ball Retrieval Easements") shall be deemed to include those areas designated as "35' REAR BALL RETRIEVAL EASEMENT" (followed by references to specific Phase II Lots in each instance) as shown on the Phase II Plat and all other ball retrieval easements affecting any Phase II Lot, however designated or created (the "Phase II Ball Retrieval Easements"), and the provisions of the Declaration applicable to the Original Ball Retrieval Easements shall apply to the Phase II Ball Retrieval Easements.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

SEAGRASS, LLC,
A North Carolina Limited Liability Company

By: [Signature] (SEAL)
James M. Geraghty, Member

By: [Signature] (SEAL)
Bryan T. Sullivan, Member

By: [Signature] (SEAL)
Lorimer J. White, Member

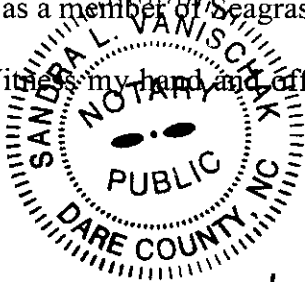
KILMARLIC RESIDENTIAL
COMMUNITY ASSOCIATION,
A North Carolina corporation

By: [Signature] (SEAL)
, President

STATE OF NORTH CAROLINA
DARE COUNTY

I, Sandra L. Vanischuk, a Notary Public for the state and county aforesaid, certify that James M. Geraghty, Bryan T. Sullivan, and Lorimer J. White, Members; each personally appeared before me this day, each acknowledging that he or she voluntarily signed the foregoing instrument for the purpose stated therein and in the capacity indicated as a member of Seagrass, LLC, a North Carolina limited liability company.

Witness my hand and official stamp or seal this the 9th day of June, 2007.



[Signature]
Notary Public

My commission expires: 10/31/2009

NORTH CAROLINA, DARE COUNTY.

I, a Notary Public of the County and State aforesaid, certify that personally came before me this day and acknowledged that he/she is PRESIDENT of Kilmarlic Residential Community Association, a North Carolina corporation, and being authorized to do so, executed the foregoing on behalf of the corporation.

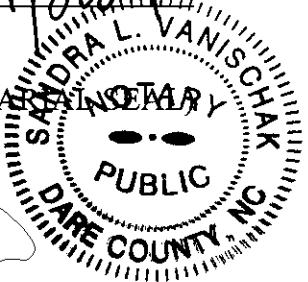
BRYAN
SULLIVAN

WITNESS my hand and notarial seal, this 21st day of June, 2007.

My commission expires:

10/31/2009

Sandra L. Vanischak
Notary Public



Unofficial

FORTUNE BAY GOLF CLUB, L.L.C.,
a Virginia limited liability company

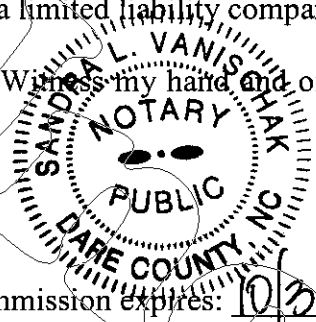
By: [Signature] (SEAL)
Thomas J. Steele, Manager

By: [Signature] (SEAL)
Bryan T. Sullivan, Manager

COMMONWEALTH OF VIRGINIA
STATE OF NORTH CAROLINA
DARE COUNTY

I, Sandra L. Vanischaak, a Notary Public for the state and county aforesaid, certify that Thomas J. Steele, Manager, personally appeared before me this day, acknowledging that he voluntarily signed the foregoing instrument for the purpose stated therein and in the capacity indicated as a manager of Fortune Bay Golf Club, L.L.C., a Virginia limited liability company.

Witness my hand and official stamp or seal this the 9th day of June, 2007.



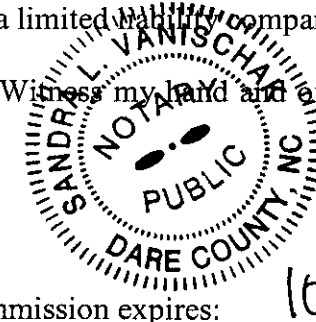
[Signature]
Notary Public

My commission expires: 10/31/2009

STATE OF NORTH CAROLINA
DARE COUNTY

I, Sandra L. Vanischaak, a Notary Public for the state and county aforesaid, certify that Bryan T. Sullivan, Manager, personally appeared before me this day, acknowledging that he voluntarily signed the foregoing instrument for the purpose stated therein and in the capacity indicated as a manager of Fortune Bay Golf Club, L.L.C., a Virginia limited liability company.

Witness my hand and official stamp or seal this the 9th day of June, 2007.



[Signature]
Notary Public

My commission expires: 10/31/2009

NORTH CAROLINA, CURRITUCK COUNTY

The foregoing certificate of _____,
a Notary Public of _____, is certified to be
correct.

This instrument and this certificate are duly registered at the date and time and in the
book and page shown on the first page hereof.

REGISTER OF DEEDS BY: _____
ASST. REGISTER OF DEED



Doc No: 356126
Recorded: 10/14/2020 11:58:42 AM
Fee Amt: \$26.00 Page 1 of 3

Currituck County North Carolina
Denise A. Hall, Register of Deeds
BK **1567** PG **942 - 944 (3)**

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DECLARATION AMENDMENT (Kilmarlic)

Prepared by and return to:
Robert B. Hobbs, Jr., Attorney
Hornthal, Riley, Ellis & Maland, L.L.P.
2502 South Croatan Highway
Nags Head, North Carolina 27959

**NORTH CAROLINA
CURRITUCK COUNTY**

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS and EASEMENTS, effective as of June 22, 2020, by **KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION**, a North Carolina Nonprofit Corporation, hereinafter referred to as "Association";

Premises

- A. Kilmarlic Residential, L.L.C. and Fortune Bay Golf Club, L.L.C. ("Declarant"), recorded a Declaration of Covenants, Conditions, Restrictions and Easements for Kilmarlic Residential Community (the "Community") dated March 12, 2003 in Book 658, Page 90, Currituck County Registry (the "Original Declaration").
- B. Declarant or their successors or assigns recorded various amendments to the Original Declaration as follows: Amendment dated July 23, 2004 and recorded in Book 799, Page 651; Amendment dated December 29, 2005 and recorded in Book 920, Page 505; Amendment dated March 6, 2006 and recorded in Book 931, page 470; Amendment dated June 11, 2007 and recorded in Book 1007, Page 241, and Amendment dated January 5, 2010 and recorded in Book 1112, Page 326, all in the Currituck County Registry (collectively the "Amendments").
- C. The Original Declaration and the Amendments may be collectively referred to herein as the "Declaration."

D. Section 10.07 of the Original Declaration provides the procedure for the adoption of additional amendments to the Declaration (the "Amendment Procedure").

E. The Association has the sole power and authority to adopt amendments to the Declaration using the Amendment Procedure.

F. At the Annual Meeting of the Association's membership on November 16, 2019, convened after due notice, and upon the affirmative vote of owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, as required by the Amendment Procedure, it was resolved that the Declaration shall be amended.

NOW, THEREFORE, the Association does hereby designate, declare, make known and publish the following amendments to the Declaration:

1. Section 4 of the Amendment to the Declaration dated June 11, 2007 and recorded in Book 1007, Page 241, Currituck County Registry shall be amended and restated to provide as follows:

4. The Association agrees that upon recording of this Declaration, the Association shall assume the maintenance responsibility for all streets in the Phase I and Phase II Developments (until such time as they may come under the maintenance responsibility of NCDOT), the drainage easements within the Phase I and Phase II Developments, and all other Phase I and Phase II Common Areas, all as a portion of the Association's overall budget, and the cost for the same shall be paid equally by all Members of the Association.

2. Section 8 of the Amendment to the Declaration dated June 11, 2007 and recorded in Book 1007, Page 241, Currituck County Registry shall be deleted in its entirety.

3. Except as otherwise amended herein, the Declaration remains in full force and effect. In the event of a conflict between this Amendment and the Declaration, this Amendment shall control.

(continued on the following page)

IN WITNESS WHEREOF, the Association has caused this instrument to be signed in its corporate name by its duly authorized officer, the day and year first above written.

KILMARLIC RESIDENTIAL COMMUNITY
ASSOCIATION, a North Carolina Nonprofit
Corporation

BY: Thomas G Voorhees

Name: THOMAS G VOORHEES

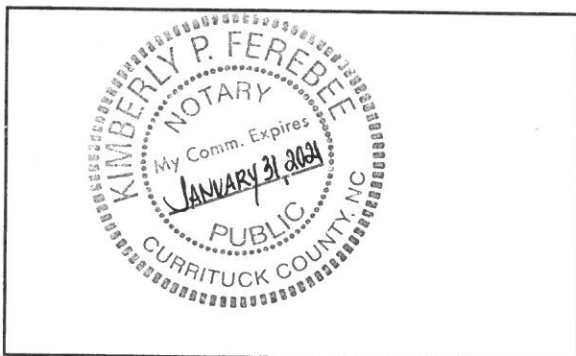
Title: PRESIDENT KILMARLIC HOA

STATE OF NORTH CAROLINA

(COUNTY) (CITY) OF CURRITUCK

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: THOMAS G VOORHEES (name), the PRESIDENT (title) of KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION, a North Carolina Nonprofit Corporation.

Witness my hand and seal this 22 day of JUNE, 20 20.



Affix Notary Seal Inside This Box

Kimberly P. Ferebee
Signature of Notary Public

KIMBERLY P FEREBEE
Typed or printed name of Notary Public

My commission expires: JANUARY 31, 2021