

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
BAY CREEK PRESERVE COMMUNITIES

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
BAY CREEK PRESERVE COMMUNITIES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this ____ day of _____, 2021, by **BAY CREEK DEVELOPMENT, L.L.C.**, a Virginia limited liability company ("**Declarant**") **GRANTOR** for indexing purposes and provides as follows:

WITNESSETH:

WHEREAS, the Declarant desires to subject certain property described in Exhibit A appended thereto, situate, lying, and being in the Town of Cape Charles, Northampton County, Virginia to the covenants, conditions and restrictions set forth in this Declaration: it being the intent of the Declarant that the property subjected to this Declaration, whether described herein or included within the scope hereof in the future, be a part of a residential community known as "Bay Creek Preserve Communities".

NOW THEREFORE, this Declaration of Covenants, Conditions and Restrictions for Bay Creek Preserve Communities provides:

PART ONE: INTRODUCTION TO THE COMMUNITY

Article I Creation of the Community

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A," intends by Recording this Declaration to continue the general plan of development for the planned community known as Bay Creek at Cape Charles.

1.2. Binding Effect.

All property described in Exhibit "A," and any additional property which is made a part of Bay Creek Preserve Communities—in the future by recording one or more supplemental declarations, shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Bay Creek Preserve Communities their heirs, successors, successors-in-title, and assigns.

This Declaration, as it may be amended, shall have perpetual duration and shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives,

heirs, successors, and assigns. Notwithstanding the above, this Declaration may be terminated by Recording an instrument signed by a Seventy-Five (75%) percent of the then Owners agreeing to terminate this Declaration and consented to by Declarant, in which case it shall terminate as of the date specified in such instrument. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the easement holder.

1.3. Governing Documents.

Bay Creek Preserve Communities' "Governing Documents" consist of:

- this Declaration and any Recorded Supplemental Declarations;
- Bay Creek Preserve Communities Association's Articles of Incorporation and By-Laws;
- Restrictions and Rules described in Article **III**;
- Architectural Guidelines described in Article **IV**; and
- the Association's Board of Directors' resolutions,

all as they may be amended.

Some Neighborhoods within Bay Creek Preserve Communities may be subject to additional covenants, restrictions, and easements, which a Neighborhood Association may administer. In such case, if there is a conflict between or among the Governing Documents and any such additional covenants or restrictions, or the governing documents or policies of any such Neighborhood Association, the Governing Documents shall control.

Nothing in this Section shall preclude any Supplemental Declaration or other Recorded covenants applicable to any portion of Bay Creek Preserve Communities from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control. The Association may, but shall not be required to, enforce any such covenants, restrictions, or other instruments applicable to any Neighborhood.

The Governing Documents apply to all Owners and occupants of property within Bay Creek Preserve Communities, as well as to their respective tenants, guests, and invitees. Any lease on a Unit shall provide that the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Throughout the Governing Documents, there are diagrams to illustrate the concepts discussed and to aid in the reader's comprehension. Such diagrams are for illustrative purposes

only. In the event of a conflict between any diagram and the text of the Governing Documents, the text shall control.

Diagram 1.1 identifies the various Governing Documents and their functions.

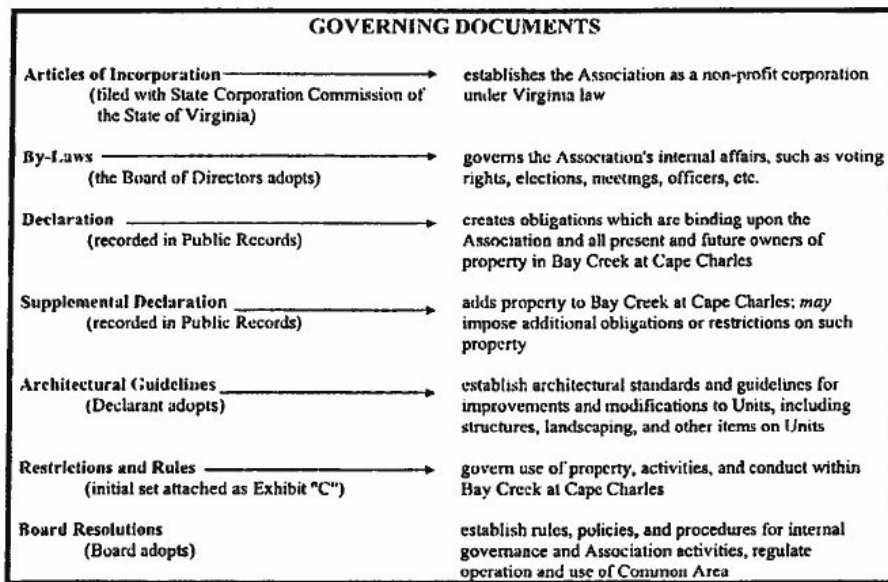


Diagram 1.1 - Governing Documents

Article II Concepts and Definitions

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Architectural Guidelines": The architectural, design, and construction guidelines and review procedures adopted pursuant to Article IV, as they may be amended.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles": Bay Creek Preserve Communities Association's Articles of Incorporation, filed with the State Corporation Commission of the State of Virginia, as they may be amended.

"Association": Bay Creek Preserve Communities Association, Inc., a Virginia nonprofit corporation, its successors or assigns.

"Base Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.1.

"Bay Creek Preserve Communities" or "Properties": The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article IX.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Virginia corporate law.

"Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within Bay Creek Preserve Communities for further subdivision, development, and/or resale in the ordinary course of its business.

"By-Laws": The By-Laws of Bay Creek Preserve Communities Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit "B."

"Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board as provided in Section 3.5 of the By-Laws. The Class "B" Control Period shall terminate on the first to occur of the following:

(a) when 95% of the total number of Units owned by the Declarant, or its designated successor, that are permitted by the Master Plan, have received certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders; or

(b) when, in its discretion, the Class "B" Member so determines.

"Club": The recreational membership club in which Club Members shall have access to and privileges at the Private Amenities pursuant to the Membership Documents.

"Club Member": A Person who holds a Club Membership.

"Club Membership": Club Membership which affords access to and privileges at the Private Amenities pursuant to the Membership Documents.

"Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Limited Common Area, as defined below.

"Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless Members representing a majority of the total Class "A" vote of the Association approve. Payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing at Bay Creek Preserve Communities, or the minimum standards established pursuant to the Architectural Guidelines, Restrictions and Rules, and Board resolutions, whichever is the highest standard. Declarant shall establish initially such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Bay Creek Preserve Communities change.

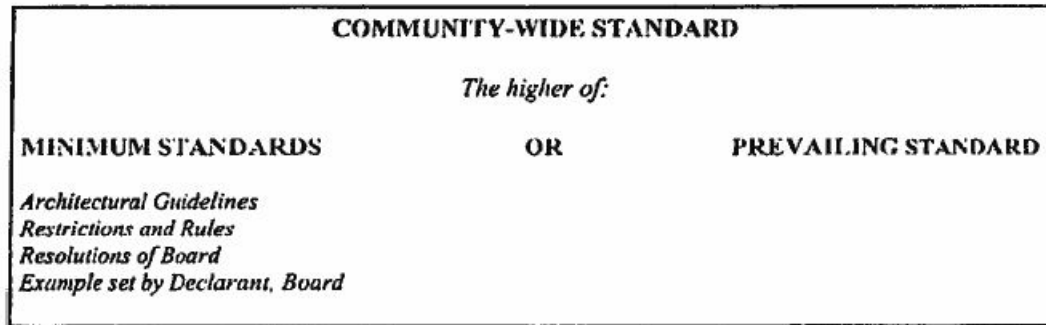


Diagram 2.1. Community-Wide Standard

"Covenant to Share Costs": A declaration of easements and covenant to share costs for Bay Creek Preserve Communities if any, which Declarant executes and Records and the Association administers, as may be amended from time to time, and which may create certain easements for the benefit of the Association and the present and future owners of other real property within Bay Creek Preserve Communities subject to such Covenant to Share Costs and may obligate the Association and such owners to share the costs of maintaining certain property described in such Covenant to Share Costs.

"Declarant": Bay Creek Development, LLC, a Virginia limited liability company, or any successor or assign who takes title to any portion of the property described in Exhibit "A" for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument the immediately preceding Declarant executes.

"Golf Course": The golf course(s) that are part of the Private Amenities.

"Limited Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Neighborhoods, as more particularly described in Article XIII.

"Master Plan": The land use plan for the development of the Properties prepared for, and approved by, the Town of Cape Charles, Virginia, as it may be amended, which includes all of the property described in Exhibit "A". Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property from the Master Plan, that is subsequently subjected to the terms of this Declaration, bar its later submission to this Declaration.

"Member": A Person subject to membership in the Association pursuant to Section

6.2.

"Membership Agreement", The agreement between a Club Member and the Private Amenities Owner.

"Membership Documents", The Membership Plan and Rules and Regulations of the Club and the Membership Agreement, as the same may be amended, supplemented or replaced from time to time, and any other documents which may govern the Club and Club Memberships.

"Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Neighborhood": A group of Units designated as a separate Neighborhood for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Units. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property. If the Association provides benefits or services to less than all Units within a particular Neighborhood, then the benefited Units shall constitute a sub Neighborhood for purposes of determining and levying Neighborhood Assessments for such benefits or services.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association, if any, having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 6.4.

"Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Section 8.2.

"Neighborhood Association": A condominium association or other owners association, if any, having jurisdiction over any Neighborhood concurrent with (but subject to) the jurisdiction of the Association. Nothing in this Declaration shall require the creation of any Neighborhood Associations.

"Neighborhood Expenses": The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s). The determination of whether expenses benefit Owners in a particular Neighborhood shall be made by the Board of Directors unless such expenses are identified as Neighborhood Expenses in a Supplemental Declaration for a Neighborhood.

"Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

"Private Amenities": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, and is not within the Properties, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, and shall include, without limitation, the golf course(s), if any, and clubhouse(s) which are so located and all related and supporting facilities and improvements.

"Private Amenities Owner": One or more Persons who hold the record title to the Private Amenities, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

"Record," "Recording," or "Recorded": The filing of a legal instrument in the Clerk's Office of the Circuit Court of Northampton County, Virginia, or such other place as may be designated as the official location for recording deeds, plats, and similar documents affecting title to real estate.

"Restrictions and Rules": The restrictions and rules set forth in Exhibit "C," consisting of the Initial Restrictions and Rules incorporated into the Declaration, as they may be further supplemented, Modified, and repealed pursuant to Article III.

"Shoreline(s)": The line of demarcation situated along the mean high water mark that separates the upland areas of the Properties from Waters of The United States as defined in the regulations promulgated pursuant to the Clean Water Act.

"Special Assessment": Assessments levied in accordance with Section 8.4.

"Specific Assessment": Assessments levied in accordance with Section 8.5.

"Supplemental Declaration": An instrument Recorded pursuant to Article IX which subjects additional property to this Declaration, designates Neighborhoods, and/or imposes additional restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument which Declarant Records pursuant to Section 6.4(c) designating Voting Groups.

"Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or Declarant's site plan, whichever is more recent. Thereafter, the portion encompassed on such plat shall contain the number of Units determined as set forth in the preceding paragraph. Any portion not encompassed on such plat shall continue to be treated in accordance with this paragraph.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

Article III Use and Conduct

3.1. Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for the Properties, a framework of affirmative and negative covenants, easements, and restrictions which govern the Properties. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. Therefore, this Article establishes procedures for modifying and expanding the Restrictions and Rules set forth in Exhibit "C." This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution pursuant to Section 7.1(c).

3.2. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall send notice to all owners concerning any proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

During Declarant Control Period, such action shall become effective, after compliance with subsection (c) below. After the expiration of the Declarant Control Period, such action shall become effective, after compliance with subsection (c) below unless Members representing more than 50% of the total Class "A" votes in the Association and the Class "B" Member, if any, disapprove. The Board shall have no obligation to call a meeting of the Class "A" Members to consider disapproval except upon receipt of a petition of the Class "A" Members as required for special meetings in the By-Laws. Upon such petition of the Class "A" Members prior to the effective date of any Board action under this Section 3.2(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, Members, representing more than 50% of the total Class "A" votes in the Association at an Association meeting duly called for such purpose, may vote to adopt rules which modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Such action shall require approval of the Class "B"

Member, if any.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Architectural Guidelines or any provision of this Declaration other than the Restrictions and Rules set forth in Exhibit "C." In the event of a conflict between the Architectural Guidelines and the Restrictions and Rules, the Architectural Guidelines shall control.

(e) The procedures required under this Section 3.2 shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times.

3.3. Owners' Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Units and the Common Area is limited by the Restrictions and Rules as amended, expanded, and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes. Copies of the current Restrictions and Rules may be obtained from the Association.

3.4. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the Restrictions and Rules set forth in Exhibit "C," all Restrictions and Rules shall comply with the following provisions:

(a) **Similar Treatment.** Similarly situated Owners shall be treated similarly; however, the Restrictions and Rules may vary by Neighborhood.

(b) **Displays.** The Rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in dwellings located in single family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

No rules shall regulate the content of political signs; however, rules may regulate the time, place, and manner of posting such signs (including design criteria).

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

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

(e) **Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of the Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(f) **Alienation.** No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided that sale, leasing and rental of Units shall be in accordance with the requirements of this Declaration and the Restrictions and Rules. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(g) **Abridging Existing Rights.** No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

(h) **Reasonable Rights to Development.** No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Properties.

(i) **Interference with Private Amenities.** No rule or action by the Association shall interfere with the ownership, transfer, use, or operation of any Private Amenity.

The limitations in subsections (a) through (g) of this Section 3.4 shall only limit

rulemaking authority exercised under Section 3.2; they shall not apply to amendments to this Amended and Restated Declaration adopted in accordance with Article XX.

Article IV Architecture and Landscaping

4.1. General.

No structure or thing shall be placed, erected, or installed upon any Unit and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, enacting or modifying fences, or planting or removal of landscaping) shall take place within the Properties, except in compliance with this Article and the Architectural Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion.

This Article shall not apply to Declarant's activities, nor to activities of the Association during the Class "B" Control Period.

4.2. Architectural Review.

(a) **By Declarant.** Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as the developer of the Properties and as an owner of portions of the Properties as well as other real estate within the vicinity of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in the Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of the Properties or any real property adjacent to the Properties, unless earlier terminated in a written instrument executed and Recorded by Declarant.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion

of its reserved rights under this Article to (i) an architectural review committee appointed by the Board of Directors (the "ARC"), or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated. It shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to it.

(b) **Architectural Review Committee.** Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ARC, shall assume jurisdiction over architectural matters. The ARC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) **Fees; Assistance.** For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, Engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

4.3. Guidelines and Procedures.

(a) **Architectural Guidelines.** Declarant may prepare the initial Architectural Guidelines, which may contain general provisions applicable to all of the Properties as well as specific provisions which vary from Neighborhood to Neighborhood. The Architectural Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Architectural Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Architectural Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it owns any portion of or has a right to expand the Properties pursuant to Section 9.1, notwithstanding a delegation of reviewing authority to the ARC, unless Declarant also delegates the power to amend to the ARC. Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Guidelines with the consent of the Board.

Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall make the Architectural Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In Declarant's discretion, such Architectural Guidelines may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

(b) **Procedures.** Except as otherwise specifically provided in the Architectural Guidelines, no activities shall commence on any portion of the Properties until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Until expiration of Declarant's rights under this Article, the ARC shall notify Declarant in writing within three business days after the ARC has approved any application within the scope of matters delegated to the ARC by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have 30 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC.

The Reviewer shall notify the applicant in writing of the final determination on any application within five days thereafter or, with respect to any determination by the ARC subject to Declarant's veto right, within five days after the earlier of: (i) receipt of

notice of Declarant's veto or waiver thereof; or (ii) expiration of the 30-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's right to veto pursuant to this Section. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a written variance has been granted pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which Plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed and, if the improvement constructed is a Unit, a certificate of occupancy shall issue to an Owner other than a Builder, within twelve (12) months of commencement of the work unless otherwise specified in the notice of approval or unless the Reviewer grants an extension of time in writing prior to the expiration of such twelve (12) month period, which it shall not be obligated to do. In the event that the Reviewer grants an extension of time the work shall be completed and a certificate of occupancy shall be issued within the extended period. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Owner. If the Association, or, during the Class B Control Period, the Declarant, determines, in its sole and absolute discretion, that any Project for which approval shall have been given is not proceeding diligently toward substantial completion, the Association may require the Owner to provide not less than monthly reports reflecting the percent (%) of progress made. If such reports or information are not provided as requested, the approval of the Plans may be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article; provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring

approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a builder in Virginia; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Board, the ARC, and the members of each shall be defended and indemnified by the Association as provided in Section 7.6.

4.7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Architectural Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

Article V Maintenance and Repair

5.1. **Maintenance of Units.**

(a) **General.** Each Owner shall maintain his or her Unit, and all landscaping and improvements comprising the Unit or Private Amenity in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants, unless, in the case of a Unit, such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

Each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common Area or public right-of-way within 10 feet of the Unit boundary; provided, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article IV.

(b) **Lake-Fronting or Pond-Fronting Units.** Each Owner of a lake-fronting or pond-fronting Unit, whether or not such Unit is adjacent to the golf course, shall maintain such Owner's Unit to the water's edge of the lake or pond, as it may vary from time to time. Declarant or the Association, acting in its sole discretion, shall resolve any disputes regarding the location of the water's edge of the lake or pond, and such determination shall be final and binding.

(c) **Enforcement.** In the event that any Owner fails to maintain his or her Unit in accordance with the Community-Wide Standard, the Association or any applicable Neighborhood Association may perform such maintenance on behalf of the Owner. Such maintenance costs shall be assessed against the benefited Unit Owner as a Specific Assessment.

5.2. **Maintenance of Neighborhood Property.**

Any Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Common Area or public right-of-way within 10 feet of its boundary; provided, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article IV.

Upon resolution of the Board, Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining, and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, rightof way, and greenspace between the Neighborhood and adjacent public roads, private streets

within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association provided, however, all Neighborhoods which are similarly situated shall be treated the same.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. AU costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.3. Responsibility for Repair and Replacement

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Neighborhood Association (if any) for the Neighborhood in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

This Section shall apply to any Neighborhood Association responsible for common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Unit. Additional Recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

Article VI The Association and its Members

6.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Virginia law.

6.2. Membership.

Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting.

The Association shall have two classes of membership, Class "A" and Class "B."

(a) **Class "A".** Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Unit. No vote shall be exercised for any property which is exempt from assessment under Section 8.9. All Class "A" votes shall be cast as provided in Section 6.3(c) below.

(b) **Class "B".** The sole Class "B" Member shall be the Declarant. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

The Class "B" membership shall terminate upon the earlier of;

- (i) two years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws; or
- (ii) when, in its discretion, Declarant so determines and declares in a Recorded instrument.

Upon termination of the Class "B" Membership, Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

In recognition of the different character and intended use of the property subject to such Supplemental Declaration, Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Units within any property made subject to this Declaration pursuant to Article IX. These classes shall have such rights, privileges, and obligations as specified in such Supplemental Declaration.

(c) **Exercise of Voting Rights.** In any situation where a Member is entitled personally to exercise the vote for his or her Unit, and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it. Notwithstanding the foregoing, if a Unit is owned jointly by spouses, either spouse may exercise the right to vote with respect to such Unit, but if both spouses submit different ballots or proxies, their vote shall be negated unless it can be determined that they voted in the same manner, in which event, the vote shall be counted as one vote associated with the Unit.

6.4. Neighborhoods.

(a) **Neighborhoods.** Any Neighborhood, acting either through a Neighborhood Committee elected as provided in Section 5.3 of the By-Laws or through a Neighborhood Association, if any, may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the Neighborhood, the Association shall provide the requested services.

The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment.

Exhibit "A" to this Declaration, and each Supplemental Declaration submitting additional property to this Declaration shall initially assign the submitted property to a specific Neighborhood (by name or other identifying designation), which Neighborhood may be then existing or newly created. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Neighborhood boundaries. However, two or more existing Neighborhoods shall not be combined without the consent of Owners of a majority of the Units in the affected Neighborhoods.

(b) Voting by Members.

The presence, in person or by proxy, of the filing of ballots by Class "A" Members representing at least 25% of the total Class "A" votes attributable to Units in the Neighborhood shall constitute a quorum at any meeting or election.

For any Neighborhood election, each Class "A" Member shall be entitled to one equal vote for each Unit which such Owner owns in the Neighborhood.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property.. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of owners, occupants, and residents of the Properties.

(b) Declarant and its designees may convey to the Association, and the Association shall accept "as is," personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described in Exhibit "A". Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area Declarant originally conveyed to the Association for no consideration.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2. Maintenance of Area of Common Responsibility.

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(a) all portions of and structures situated on the Common Area, including, but not limited to, gatehouses, private roads, trails, community open space, buffers, and natural preserve areas;

(b) landscaping within public rights-of-way within or abutting the Properties;

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

(d) all Shorelines within or bordering the Properties to include the implementation of beach replenishment measures and the installation of rip-rap and other protective structures seaward of the Shorelines.

(e) all lakes, ponds, streams, and/or wetlands located within the Properties which serve as part of the stormwater drainage system for the Properties, including improvements and equipment installed therein or used in connection therewith; and

(f) any property and facilities which Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced except with Declarant's prior written approval as long as Declarant owns any property described in Exhibit "A" of this Declaration.

The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any Covenant to Share Costs, other Recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair, and replacement of Limited Common Areas shall be a Neighborhood Expense assessed to the Neighborhood(s) to which the Limited Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

7.3. Insurance.

(a) **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits;

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

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Neighborhood, obtain and maintain property insurance on the insurable improvements within such Neighborhood which insurance shall comply with the requirements of Section 7.3(a)(i). Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (i) premiums for property insurance on Units within a Neighborhood shall be a Neighborhood Expense; and (ii) premiums for insurance on Limited Common Areas may be included in the Neighborhood Expenses of the Neighborhood(s) to which such Limited Common Areas are assigned unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) **Policy Requirements.** The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in Northampton County, Virginia. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in Virginia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners within the Neighborhood and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

(vii) provide a waiver of subrogation under the policy against any Owner or household member of an Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the: Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) **Restoring Damaged Improvements.** In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition

consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members or the Owners of Units within the insured Neighborhood, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

7.4 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in Section 3.24 of the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator, provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions

of Article IV and the Architectural Guidelines from continuing or performing any further activities in the Properties; and

(viii) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in Section 3.24 of the By-Laws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. If a Neighborhood Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Specific Assessment against all Units within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Association with reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship,

expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable town and county ordinances and permit Northampton County or the Town of Cape Charles to enforce ordinances within the Properties for the benefit of the Association and its Members.

7.5. Implied Rights: Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Section 3.25 of the By Laws.

7.6. Indemnification of Officers, Directors, and Others.

Subject to Virginia law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Virginia law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.7. Safety and Security.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Properties, nor shall either be held liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

7.8. Powers of the Association Relating to Neighborhood Associations.

The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable timeframe set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

7.9. Provision of Services.

The Association may provide, or provide for, services and facilities for the Members and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.10. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property or Private Amenity to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.11. Facilities and Services Open to the Public.

Certain facilities and areas within the Properties may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, and other neighborhood spots conducive to gathering and interaction, roads, sidewalks, and medians. Declarant may designate such facilities and areas as open to the public at the time Declarant makes such facilities and areas a part of the Area of Common Responsibility or the Board may so designate at any time thereafter.

Article VIII Association Finances

8.1. Budgeting and Allocating Common Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.3. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 8.6.

Diagram 8.1 illustrates the various funding sources available to the Association:

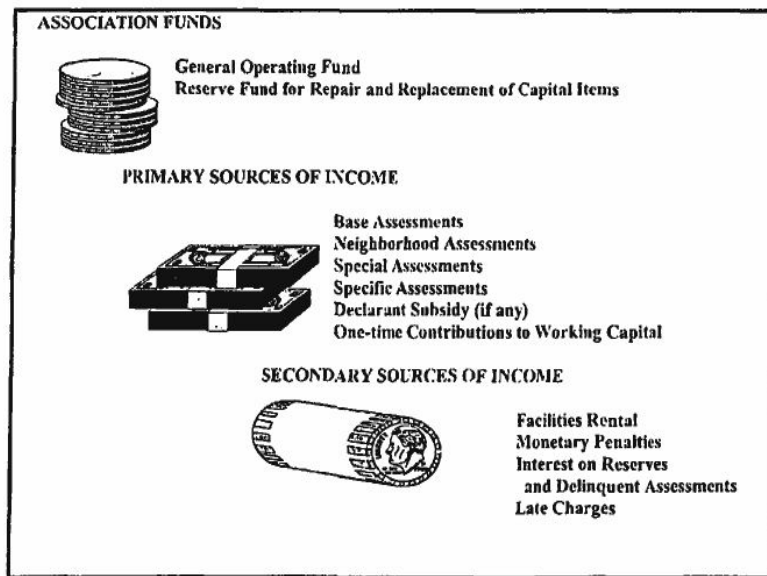


Diagram 8.1 - Funding Sources

The Association is authorized to levy Base Assessments equally against all Units subject to assessment under Section 8.6 to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.7(b)), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a

new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.2. Budgeting and Allocating Neighborhood Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Each such budget shall include any costs for additional services or a higher level of services which the Owners in such Neighborhood have approved pursuant to Section 6.4(a) and any contribution to be made to a reserve fund pursuant to Section 8.3. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount required to be generated through the levy of Neighborhood and Special Assessments against the Units in such Neighborhood.

The Association is hereby authorized to levy Neighborhood Assessments equally against all Units in the Neighborhood which are subject to assessment under Section 8.6 to fund Neighborhood Expenses; provided, if so specified in the applicable Supplemental Declaration or if so directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received.

The Board shall cause a copy of the Neighborhood budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner in the Neighborhood at least 30 days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Neighborhood by Owners of a majority of the Units in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition or Owners of at least 10% of the Units in such Neighborhood. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood and shall not apply to any item which the Governing Documents require to be assessed as a Neighborhood Assessment.

If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to the notice requirements and the right of the Owners of Units in the affected Neighborhood to disapprove the revised budget as set forth above.

All amounts collected by the Association as Neighborhood Assessments shall be held in trust for and expended solely for the benefit of the Neighborhood for which they were collected and shall be accounted for separately from the Association's general funds.

8.3. **Budgeting for Reserves.**

The Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility and for each Neighborhood for which the Association maintains capital items as a Neighborhood Expense. The budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to Section 8.1 or the Neighborhood Expense budgets adopted pursuant to Section 8.2, as appropriate, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect to both amount and timing by annual contributions over the budget period.

8.4. **Special Assessments.**

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Class "A" Members (if a Common Expense) or Owners (if a Neighborhood Expense) representing more than 50% of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

No director, officer, or committee member shall be liable for failure to perform his or her fiduciary duty if any Special Assessment for the funds necessary for the director, officer, or committee member to perform his or her fiduciary duty fails to be approved pursuant to this Section, and the Association shall indemnify such director, officer, or committee member against any damage resulting from any claimed breach of fiduciary duty arising therefrom.

8.5. **Specific Assessments.**

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in Section 7.9). Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives prior written notice to the Owners of Units in the Neighborhood and an opportunity for such Owners to be heard before levying any such assessment.

8.6. **Authority to Assess Owners: Time of Payment.**

Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

8.7. **Obligation for Assessments.**

(a) **Personal Obligation.** Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Virginia law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail to each

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

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

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) **Declarant's Option to Fund Budget Deficits.** During the Class "B" Control Period, Declarant may satisfy its obligation for assessments on Units which it owns either by paying such assessments in the same manner as any other Owner or by paying the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

8.8. **Lien for Assessments.**

The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Virginia law), and costs of collection (including attorneys' fees). Such lien shall have the priorities set forth in Section 55.1-1833 of the Virginia Code, as amended, and when delinquent, may be perfected and enforced by suit, judgment, and/or foreclosure in the manner provided in Section 55.1-1833 of the Virginia Code, as amended.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following

foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.6, including such acquirer, its successors and assigns.

8.9 Exempt Property.

The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;

(b) Any property dedicated to and accepted by any governmental authority or public utility; and

(c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

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

8.10. Capitalization of Association.

Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-fourth (1/4) of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

PART FOUR: COMMUNITY DEVELOPMENT

Article IX Expansion of the Community

9.1. Expansion by Declarant.

Declarant may from time to time subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property to be subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand the Properties pursuant to this Section shall expire two (2) years after expiration of the Class "B" Control Period. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property subject to the terms of this Declaration. Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor Declarant to subject additional property to this Declaration.

9.2. Expansion by the Association.

The Association may also subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Members representing more than 50% of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements.

Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Neighborhood Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording unless otherwise

specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

Article X Additional Rights Reserved to Declarant

10.1. Withdrawal of Property.

Declarant reserves the right to amend this Declaration, so long as it has a right to add additional property pursuant to Section 9.1, for the purpose of removing any portion of the Properties which has not yet been improved with structures from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Marketing and Sales Activities.

Declarant and Builders authorized by Declarant may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge.

10.3. Right to Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common area for the purpose of making, constructing, and installing such improvements to the Common Area and to facilitate development of any other property owned by Declarant or its successors and assigns as it deems appropriate in its sole discretion.

Every Person that acquires any interest in the Properties acknowledges that Bay Creek Preserve Communities is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property outside the Neighborhood in which such Person holds an interest, or (b) changes in the Master Plan as it relates to property outside the Neighborhood in which such Person holds an interest.

10.4. Rights to Stormwater Runoff and Water Reclamation: Use of Effluent.

Declarant, its designees, successors, or assigns shall have the exclusive right to develop and utilize the ground and surface water resources of the Properties for any legal purpose, including the distribution and use of such water beyond the Properties. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities

and equipment to capture and transport ground water, surface water, and stormwater runoff. Declarant's conveyance of any Unit to an Owner or parcel to a Builder does not include the Owner's or Builder's right to develop or utilize the ground, surface, or storm water resources within such Unit or parcel.

Declarant or its designee may establish programs for reclamation of stormwater runoff and wastewater for appropriate uses within or outside the Properties and may require Owners and occupants of Units to participate in such programs to the extent reasonably practical. No Owner or occupant shall have any right to compensation for water claimed or reclaimed from his or her Unit. Additionally, the Board may establish restrictions on or prohibit outside use of potable water within the Properties.

By the act of purchasing or occupying a Unit within the Properties, all Owners understand and irrevocably consent to the possibility of irrigation of the Common Area, other areas within the Properties, and areas adjacent to the Properties, including the privately owned golf courses, with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the appropriate governmental agency.

10.5. Right to Approve Additional Covenants.

No Person shall Record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

10.6. Right to Approve Changes in the Properties' Standards.

No amendment to or modification of any Restrictions and Rules or Architectural Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

10.7. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument which Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.8. Exclusive Rights To Use Name of Development.

No Person shall use the name "Bay Creek Preserve Communities" or any derivative of

such name or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Bay Creek Preserve Communities" in printed or promotional matter where such term is used solely to specify that particular property is located within the Properties and the Association shall be entitled to use the words "Bay Creek Preserve Communities" in its name.

10.9. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement or condition which may exist on any portion of the Properties, including Units, and a perpetual non-exclusive easement of access throughout the Properties to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise.

10.10. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Properties in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

10.11. Termination of Rights.

The rights contained in this Article shall not terminate until the earlier of (a) 40 years from the date this Declaration is Recorded, or (b) Recording by Declarant of a written statement that all sales activity has ceased.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

Article XI Easements

11.1. Easements in Common Area.

Declarant grants to each Owner a non-exclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:

(i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(ii) suspend the right of an Owner to use recreational facilities within the Common Area (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public;

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Sections 17.6 and 19.4; and

(d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XIII.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

11.2. Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit and any Private Amenity due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) **Installation and Maintenance.** Declarant reserves for itself, so long as Declarant owns any property subject to this Declaration, and reserves the right to grant to the Association and all utility providers, perpetual and exclusive easements throughout the Properties (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Properties, cable, internet and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights, and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

(b) **Specific Easements.** Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property subject to this Declaration. The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) **Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4. **Easements to Serve Additional Property.**

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property owned by the Declarant or its affiliates in Northampton County, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is

exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement (“Cost Sharing Agreement”) with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property. The Cost Sharing Agreement may include provisions for the Association and the Declarant, or its successors and assigns, including Bay Creek at Cape Charles Community Association, Inc. or any property owners association governing such property, to agree on a budget for shared costs each year.

11.5. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6. Easements for Lake and Pond Maintenance and Flood Water.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the non-exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any of the Properties abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 100 feet of bodies of water and wetlands within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

11.7. Easements for Golf Course.

(a) [Every Unit and the Common Area and the common property of any Neighborhood Association are burdened with an easement in favor of the Private Amenities Owner permitting golf balls unintentionally to come upon such areas from the Golf Course, and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: Declarant; the Association or its Members (in their capacities as such); the Private Amenities Owner and/or operator; any Builder or contractor (in their capacities as such); any successor, successor-in-title, assign, officer, director, or partner of any of the foregoing, or any officer or director of any partner.

(b) The Private Amenities Owner and/or operator of the Golf Course, its agents, successors, and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions or the Common Areas reasonably necessary for (i) the installation, operation, maintenance, repair, and replacement of Golf Course and other Private Amenities, including use of usual and customary equipment for irrigation, maintenance and landscaping thereof, and (ii) installation, service, repair and maintenance of the equipment and lines required to provide water, sewer, electricity and other utility services to the Private Amenities.

(c) Declarant hereby grants the following perpetual, alienable, and transferable non-exclusive easement over and across the Properties for the benefit of the Private Amenities Owner: (i) installation, service, repair and maintenance of the equipment and lines required to provide utility services to the Club Property, including, without limitation, power, lights, telephone, cable television, water, sewer and drainage, and (ii) governmental services, including, without limitation, police, fire, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental authorities.

(d) Declarant hereby grants the following perpetual, alienable, and transferable non-exclusive easement over and across the Property for the benefit of the Private Amenities Owner and its agents, employees, successors, and assigns: an easement for drainage, flowage and irrigation over, under and upon the Properties, in favor of the Club, including, without limitation, reasonable rights of access for persons and equipment to construct, install, maintain, operate, alter, inspect, remove, relocate, replace and repair the drainage system, flowage pipes and irrigation pipes; provided, however, that notwithstanding anything herein to the contrary, the Private Amenities Owner shall only exercise its right to enter onto any portion of the Properties pursuant to this Section 11.7(d) if the Private Amenities Owner has been assigned the responsibility to maintain the drainage system, and shall exercise any of such rights in a manner that does not disturb any Improvement or materially interfere with an Owner's ability to construct and occupy a Unit. Additionally, the Private Amenities Owner shall have a perpetual non-exclusive easement for drainage, stormwater collection, retention and detention over, upon and within all drainage easements shown on each plat or otherwise reserved, declared or created pursuant to this Declaration. No person shall alter the drainage flow of the drainage system without the prior written approval of all required governmental authorities.

(e) Any portion of the Properties immediately adjacent to any Golf Course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving Golf Course. Under no circumstances shall the Association or the Private Amenities Owner and/or operator of the Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(f) The Private Amenities Owner and/or operator of the Golf Course, its successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from the Golf Course.

(g) The Private Amenities Property is held and shall be hereafter subject to an easement (the "Club Easement of Enjoyment") for the use of the Private Amenities in accordance with the Membership Documents and all improvements now or hereafter located thereon, which Easement of Enjoyment shall be appurtenant to and shall run forever with the title to each Unit, for the benefit of the Owners. The rights conferred in this Section 11.7(g) need not be expressly provided in any deed for a Unit to be appurtenant to such Unit, it being the intent of Declarant that such rights shall run with the land. Exercise of the rights conferred by this Section 11.7(g) upon the Owners shall be limited to only those Owners who are and continue to be members of the Club in good standing in accordance with the Membership Documents and Article XVI.

11.8. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Properties, including Units, and a perpetual, non-exclusive easement of access throughout the Properties to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise.

Article XII Environmental Areas and Issues

12.1. Assignment of Responsibilities.

Within and adjacent to the Properties there are various types of property such as wetlands, drainage areas, conservation areas, preserves, open spaces, and buffers upon which restrictions, monitoring requirements, or other obligations may be imposed by governmental agencies. Declarant may from time to time and at any time deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to the Association, which shall accept, own, maintain, and preserve the foregoing areas in accordance with the requirements of such agencies. All such areas that are conveyed to the Association shall become a portion of the Common Area, and the costs of ownership, operation, and maintenance thereof shall be a Common Expense. Alternatively, Declarant may deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to another community association, a foundation, or similar type non-profit entity with which the

Association shall cooperate.

12.2. Surface Water Management System.

(a) No structure of any kind shall be constructed or erected, nor shall an Owner in any way change, alter, impede, revise, or otherwise interfere with the flow and the volume of water in any portion of the ponds, lakes, wetlands, creeks, retention areas, or other bodies of water or waterways reserved for, or intended by Declarant to be reserved for, drainage ways or for the accumulation of runoff waters, as reflected in any permits therefor, or plat or instrument of record, without the specific written permission of the Association and Declarant.

(b) An Owner or Neighborhood Association shall in no way deny or prevent ingress and egress by Declarant or the Association to such drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefor are hereby specifically reserved and created in favor of Declarant, the Association, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(c) No Unit shall be increased in size by filling in any water retention or drainage areas which it abuts. Owners shall not fill, dike, rip-rap, block, divert, or change the established drainage ways without the prior written consent of the Association and Declarant.

(d) Water management for any Unit or Neighborhood shall be provided in accordance with the overall drainage system for the Properties. Surface water drainage and management, including, but not limited to, storm water treatment and storage capacity, shall conform to the overall drainage system requirements and permits, if any, for the Properties and meet with the approval of Declarant and applicable governmental agencies. Water for landscape irrigation throughout the Community shall be derived from ground-water wells and no municipal source of water shall be used for such irrigation.

(e) Lakes, ponds, and spillways in any Neighborhood or Unit are part of a functioning water management system and any use by an Owner or Neighborhood Association shall be on a non-interfering basis only. Additional on-site stormwater treatment areas may be required and constructed in the future.

(f) The use of any lake, pond, or wetland within the boundary of a Neighborhood or Unit is managed by the Association. Owners shall cooperate in maintaining the same in a clean and aesthetically-pleasing condition.

(g) The use of pesticides in any lake, pond, or wetland is prohibited, excepting only any such use by the Association and Declarant.

(h) No wells may be drilled, dug, or installed within any Unit or Neighborhood except by the Declarant or with the Declarant's written consent.

12.3. Preserves and Conservation Areas.

Any portions of the Common Area designated as a preserve or conservation area shall

be maintained and preserved by the Association in accordance with the rules and regulations of all applicable governmental agencies. The Association shall not, and it shall not allow any Person to, undertake or perform any activity or improvements to a preserve or conservation area, or remove any native vegetation, without the prior approval of such agencies. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a preserve or conservation area.

12.4. Open Space and Buffers.

Any property conveyed or dedicated to the Association, which is designated as open space, landscape buffer, preserve area, or conservation area on any plat, permit, or other Recorded document, shall be owned and maintained by the Association in a natural open condition. The Association or any subsequent owner shall not do anything that diminishes or destroys the open space, buffer, preserve area, or conservation area, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space.

12.5. Shorelines and Water's Edge.

No Owner, by virtue of ownership of property adjacent to a shoreline shall have any right superior to that of other Owners (or the general public, to the extent that the public has a right of access) to use or control any shorelines within the Properties. All shorelines within the Properties shall be subject to the Association's control.

No Owner of a Unit bordering a lake, pond, or other body of water within the Properties shall construct, install, erect, or maintain any walls or other improvements along such lake, pond, or body of water.

12.6. Recycling Program.

The Board may, but shall not be obligated to, establish a recycling program for the Properties. In such event, all occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation. Any cost associated with the implementation or operation of a recycling program shall be a Common Expense and any income which the Association receives as a result of such recycling efforts shall be used to reduce Common Expenses.

Article XIII Limited Common Areas

13.1. Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, and other portions of the Common Area within a particular Neighborhood

or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Limited Common Areas are assigned.

13.2. Designation.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Units and/or Neighborhoods, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, any such assignment or reassignment shall also require Declarant's written consent.

13.3. Use by Others.

Upon approval of a majority of Owners of Units within the Neighborhood to which any Limited Common Area is assigned, the Association may permit Owners of Units in other Neighborhoods to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Common Area.

Article XIV Party Walls and Other Shared Structures

14.1. General Rules of Law to Apply.

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XV.

14.2. Maintenance: Damage and Destruction.

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the

structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Article XV Dispute Resolution and Limitation on Litigation

15.1. Agreement to Encourage Resolution Of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Properties without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 15.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Government Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents;

or

(iii) the design or construction of improvements within the Properties, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 15.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 15.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

15.2. Dispute Resolution Procedures.

(a) **Notice.** The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

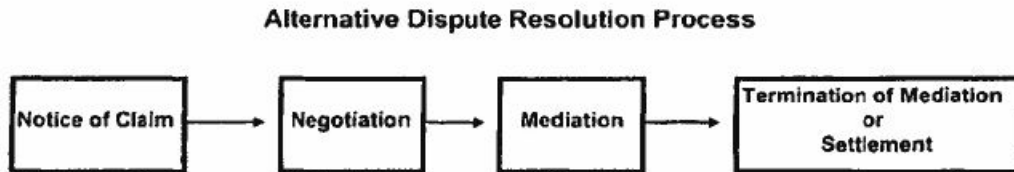
(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 15.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Northampton County area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties

are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.



(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one noncomplying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

15.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Members entitled to cast 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration against any Owner, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Article XVI Private Amenities

16.1. General.

Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to determine, amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve Club Memberships, use rights and to terminate Memberships and/or use rights altogether, changes, additions and reductions in the Private Amenities, subject to the terms of any Membership Agreements with Club Members.

16.2. Conveyance of Private Amenities.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the Private Amenities Owner. The ownership or operation of the Private Amenities may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the Club Members or an entity owned or controlled by Club Members become the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one or more of Declarant's affiliates, shareholders, employees, or independent contractors. Consent of the Association, any Neighborhood Association, any Member, or any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

16.3. View Impairment.

Declarant, the Association, and the Private Amenities Owner do not guarantee or represent that any view over and across a Private Amenity from Units adjacent to the Private Amenity will be preserved without impairment. Private Amenities Owner shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Private Amenities from time to time. In addition, the Private Amenities Owner may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees, bunkers,

fairways, and greens of the Golf Course and other Private Amenities, from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

16.4. Rights of Access and Parking.

There is hereby established for the benefit of the Private Amenities and Club Members (regardless of whether such Club Members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and non-exclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel between the entrance to the Properties and each Private Amenity and over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of each Private Amenity. Without limiting the generality of the foregoing, Club Members and guests and invitees of the Private Amenities Owner or the Club Members shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after tournaments and other similar functions held by or at the Private Amenities to the extent that such Private Amenities have insufficient parking to accommodate such vehicles.

16.5. Rights and Easements Relating to Lakes and Ponds.

The lakes and ponds within the Properties shall serve as visual amenities for the Private Amenities. The Private Amenities Owner and/or operator and its agents, employees, or designees shall have a non-exclusive right and easement to enter upon the lakes, ponds, wetlands, and other bodies of water located within the Area of Common Responsibility to install, operate, maintain, and replace pumps to supply irrigation water to the Private Amenity. The Private Amenities Owner and/or operator and its agents, employees, or designees shall have an access easement over and across any of the Properties (excluding dwellings) abutting or containing bodies of water or wetlands to the extent reasonably necessary to maintain, operate, or improve such Private Amenity or to exercise its rights under this Section.

16.6. Golf Tournaments.

(a) Golf tournaments or similar functions may be held at any Private Amenity within or adjacent to any portion of the Properties from time to time to which members of the public will be invited as spectators or participants. Each Owner acknowledges that certain inconveniences to Owners may result from holding such tournaments. The types of inconveniences occurring during such tournaments may include, by way of example and not limitation, construction by Declarant, the owner and/or operator of the Private Amenity, or tournament operators or sponsors, of television towers or other structures on the Private Amenity property which would be visible from the Units and which may obstruct the view of the Private Amenity from the Units; noise associated with the construction and destruction of structures and equipment associated with such tournaments; encroachment on a Unit by spectators; and other inconveniences relating to or caused by spectators, golfers, and others involved with the operation of tournaments.

(b) Each Owner, including Owners of Units adjacent to any such Private

Amenity, further acknowledges that Declarant, the Association, the Private Amenities Owner and/or operator, or any other entity makes no representations that Owners will be afforded any rights to view or attend such tournaments or functions other than such rights as are afforded members of the general public.

16.7 Cost Sharing.

The Private Amenities Owner shall not be subject to assessment or subject to cost sharing with respect to any Common Areas.

16.8. Architectural Control.

Declarant, the Association, any Neighborhood Association, or any committee shall not approve any construction, addition, alteration, change, or installation on or to any portion of the Properties which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private Amenities Owner at least 15 days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenities Owner shall then have 15 days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Private Amenities Owner to respond to the notice within the 15-day period shall constitute a waiver of the Private Amenities Owner's right to object to the matter. This Section shall also apply to any work on the Common Area or any common property or common elements of a Neighborhood Association, if any.

16.9. Limitations on Amendments.

In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Private Amenity, may be made without the written approval of such Private Amenity. The foregoing shall not apply, however, to amendments made by Declarant.

16.10. Jurisdiction and Cooperation.

It is Declarant's intention that the Association and the Private Amenities Owner shall cooperate to the maximum extent possible in the operation of the Properties and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance. The Association shall have no power to promulgate Restrictions and Rules affecting activities on or use of the Private Amenities without the prior written consent of the Private Amenities Owner.

16.11. Assumption of Risk and Indemnification.

(a) Each Owner, by its purchase of a Unit in the vicinity of any Private Amenity within or adjacent to any portion of the Properties, hereby expressly assumes the risk of noise, personal injury, or property damage caused by maintenance and operation of such Private Amenity, including, without limitation: (a) noise from maintenance equipment (it

being specifically understood that such maintenance typically takes place around or before sunrise or after sunset), (b) noise caused by golfers, (c) use of pesticides, herbicides, and fertilizers, (d) view restrictions caused by maturation of trees and shrubbery, (e) use of effluent in the irrigation of such Private Amenity, (f) reduction to privacy caused by constant golf traffic on such Private Amenity or the removal or pruning of shrubbery or trees on such Private Amenity, (g) errant golf balls and golf clubs, and (h) design of such Private Amenity.

(a) Each Owner agrees that Declarant, the Association, the Private Amenities Owner, and any affiliate, agent, successor, successor-in-title, or assign of any of the foregoing entities, shall not be liable to any Owner claiming *any* loss or damage based upon, due to, arising from, or otherwise related to the proximity of such Owner's Unit to such Private Amenity or the management thereof. Each Owner hereby agrees to Indemnify and hold harmless Declarant, the Association, the Private Amenities Owner and any entity managing such Private Amenity against any and all claims by Owner's occupants, visitors, tenants, and others coming upon such Owner's Unit.

16.12. Required Membership.

(a) Each Owner must acquire at least a Sports Membership in the Club as described herein and in the Membership Documents ("Sports Membership"), or a higher category of Membership if such Membership is available and the Owner applies and is approved for such higher category of Membership, which Membership shall be issued for the Unit. Each owner of a Unit other than Declarant, by acceptance of title to the Unit, also agrees to maintain at least a Sports Membership pursuant to this Section 16.12 in good standing as long as such individual or entity holds title to the Unit or an interest therein. If a Sports Membership is not then offered in the Club, the owner of Unit must acquire and maintain at least a level of Membership at the lowest level offered to owners of residential units in the Community. Club Membership is subject to the terms and conditions in the Membership Documents. Notwithstanding the foregoing, nothing contained herein shall be construed to prevent a Unit Owner from acquiring a higher level of Club Membership, in accordance with the terms of the Membership Documents. Notwithstanding anything to the contrary herein, the provisions of this Section 16.12 shall not apply to the Unit during the period in which it is owned by or held in the name of the Association, Declarant or their successors or any Successor Developer (as hereinafter defined), but shall apply to any subsequent purchaser or transferee of the Unit from the Association, Declarant or their successor or a Successor Developer. "Successor Developer" means any developer or builder that owns Units to which Declarant assigns its rights under this Article XVI. The Membership Documents may not be recorded; therefore, each Unit Owner agrees to obtain a copy of unrecorded Membership Documents from the Private Amenities Owner and become familiar with them.

(b) ACQUISITION OF CLUB MEMBERSHIP IS REQUIRED. OWNERSHIP OF A UNIT OR MEMBERSHIP IN THE ASSOCIATION DOES NOT GIVE ANY VESTED RIGHT OR EASEMENT, PRESCRIPTIVE OR OTHERWISE, TO USE THE PRIVATE AMENITIES WITHOUT ACQUISITION AND MAINTENANCE OF A CLUB MEMBERSHIP OR TO RETAIN A CLUB MEMBERSHIP WITHOUT PAYMENT OF DUES, FEES AND CHARGES AND DOES NOT GRANT ANY OWNERSHIP OR MEMBERSHIP INTEREST IN THE PRIVATE AMENITIES OWNER OR ITS PROPERTY. CLUB MEMBERSHIP DOES

NOT GRANT ANY VOTING RIGHTS IN THE CLUB OR THE PRIVATE AMENITIES OWNER.

(c) By acceptance of title to a Unit, each Unit Owner acknowledges that required Club Membership positively impacts the viability of a recreational facilities and a membership club in the Community and therefore renders ownership of the Properties and any part thereof more valuable and desirable than it would be otherwise. All Unit Owners and the Private Amenities Owner agree that the provisions and enforceability of this Article XVI are mutually beneficial. Each Unit Owner acknowledges that the Private Amenities Owner is initially investing substantial sums of money and time in developing the Private Amenities on the basis that eventually the Club will generate a profit to the Private Amenities Owner. Each Unit Owner agrees that the Private Amenities Owner would not have made such a substantial investment of money, which benefits the Community, without the anticipation of such profit and such profit shall not, if ever generated, affect the enforceability of this Article XVI.

(d) Each Unit Owner, by acceptance of title to a Unit, acknowledges and agrees that there were significant other housing opportunities available to each Unit Owner in the general location of the Properties. The Unit and the right to utilize the Private Amenities pursuant to the Club Membership were material in each Unit Owner's decision to purchase a Unit in the Community and were, for the purposes of this Article XVI, a "single product." Each Unit Owner understands that the Club is an integral part of the Community.

(e) By acceptance of a deed to a Unit, the Unit Owner acknowledges and agrees that any entry upon the Private Amenities property without permission of the Private Amenities Owner may be deemed a trespass and each Owner shall refrain from, and shall cause all occupants of such Owner's Unit, their guests and invitees to refrain from any unauthorized entry upon the Private Amenities property.

16.13. Joining Payment: Issuance of Club Memberships.

(a) At the Closing for the purchase or transfer of any Unit, the owner or purchaser of the Unit shall both (i) pay an amount to acquire a Club Membership to the Private Amenities Owner, in an amount equal to the membership deposit, initiation fee or other joining payment then being charged by Private Amenities Owner for Sports Membership, or for such Club Membership category acquired in accordance with Section 16.12 herein and the Membership Documents, as they may be amended from time to time ("Joining Payment"), and (ii) execute a Membership Agreement, in such form as the Private Amenities Owner shall provide, documenting the amount of such Joining Payment and acknowledging certain matters set forth herein and otherwise relating to the operation of the Club and the use of the Private Amenities. The Membership Agreement may provide for payment of the Joining Payment in installments, in which case the Unit Owner shall be obligated to pay the balance in accordance with the Membership Agreement and shall execute such documents as the Private Amenities Owner may require acknowledging and evidencing such obligation. Upon receipt of the same, Private Amenities Owner shall cause a Sports Membership (or such other Club Membership acquired in accordance with Section 16.12 herein) to be issued to the Unit Owner, entitling the Unit Owner and Unit Owner's family (as defined in the Membership Documents) ("Family") to such privileges as set forth in the Membership Documents, as may be amended in accordance with the Membership Documents.

(b) All privileges of Club Membership shall be limited to operating hours and subject to payment of such charges for food and beverage service as the Private Amenities Owner may establish. Such privileges shall also be subject to such membership policies and rules as the Private Amenities Owner may establish and modify from time to time.

(c) Nothing herein shall obligate the Private Amenities Owner to offer or maintain food and beverage service nor shall anything herein dictate the level of service or hours of operation of any food and beverage service provided.

(d) Notwithstanding anything to the contrary herein, the provisions of this Section 16.13 shall not apply to the Unit during the period in which it is owned by or held in the name of the Association, Declarant or their successors or a Successor Developer, but shall apply to any subsequent purchaser or transferee of the Unit from the Association, Declarant or their successor or a Successor Developer.

16.14. Covenant to Pay Dues and Club Charges.

(a) By accepting title to a Unit, each Owner of a Unit covenants and agrees, on behalf of himself/herself and his or her successors-in-title and assigns, to pay to the Private Amenities Owner the Joining Payment described in Section 16.13, as well as all Club dues ("Dues"), fees and charges and other amounts authorized by this Article XVI and any other charges incurred by Unit owner and his or her Family members or guests ("Club Charges"). Dues and Club Charges shall be determined by the Private Amenities Owner from time to time, and are subject to change as contemplated by the Membership Documents. Notwithstanding anything to the contrary herein, the provisions of this Section 16.14 shall not apply to the Unit during the period in which it is owned by or held in the name of the Association, Declarant or their successors or a Successor Declarant, but shall apply to any subsequent purchaser or transferee of the Unit from the Association, Declarant or their successor or a Successor Declarant.

(b) No Unit Owner may waive or otherwise escape liability for Dues or Club Charges provided for herein by non-use of, illness or disability that prevents or limits the use of, or the waiver of the right to use, the Club or Private Amenities or non-use or abandonment, lease or destruction of the Unit. Dues shall continue to be payable after the death of a Unit Owner.

(c) In the event of the damage to the Private Amenities by partial or total destruction by hurricanes, fire, windstorm, flood or any other casualty ("Casualty"), the Private Amenities Owner may elect, in the Private Amenities Owner's sole and absolute discretion, to reconstruct the Private Amenities; provided, however, the Private Amenities Owner shall have the right to change the Private Amenities as part of the reconstruction in its sole and absolute discretion. There shall be no abatement in payments of Dues during casualty or reconstruction unless otherwise provided by the Private Amenities Owner in its sole and absolute discretion, notwithstanding that the Private Amenities are not available for use. If the Private Amenities Owner elects not to reconstruct all or substantially all of the Private Amenities, the Private Amenities Owner shall terminate this Article [XVI] by document recorded in the Public Records. In the event the Private Amenities Owner elects to reconstruct the Private Amenities, the Private Amenities Owner shall use commercially reasonable efforts to reconstruct and re-open the Private Amenities in a timely manner. Any

insurance proceeds payable as a result of any casualty shall be the sole property of the Private Amenities Owner.

(d) If the Private Amenities Owner ceases operations of the Club or discontinues use of all or substantially all of the Private Amenities on a long term basis for reasons other than Casualty, maintenance, renovations and repairs or government order, the obligation to continue to pay Dues shall be suspended during any such period of Club operations cessation or Private Amenities use discontinuation, but shall be reinstated at such time as the Private Amenities Owner commences Club operations and Private Amenities use again.

(e) The obligation to pay the amounts provided for herein and in the Membership Agreement shall be required and shall be a separate and independent covenant on the part of Unit Owners. No diminution or abatement of Dues and Club Charges or set-off shall be claimed or allowed for any alleged failure of the Private Amenities Owner or Club operator to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

16.15. Payment of Dues and Club Charges.

(a) Each Unit Owner, by accepting a deed to a Unit, is deemed to covenant and agree to pay all Dues and Club Charges in a timely manner. All such Dues and Club Charges, together with any late fees, interest (computed from its due date at a maximum rate of 18% per annum or such other rate as the Private Amenities Owner may establish in the Membership Documents, subject to the limitations of Virginia law), costs of collection, and reasonable attorneys' fees whether or not suit is brought, shall be the personal obligation of person or entity who was the Unit Owner at the time the Dues and Club Charges were levied. Notwithstanding anything to the contrary herein, the provisions of this Section 16.15 shall not apply to the Unit during the period in which it is owned by or held in the name of the Association, Declarant or their successors or a Successor Developer, but shall apply to any subsequent purchaser or transferee of the Unit from the Association, Declarant or their successor or a Successor Developer.

(b) The failure to establish Dues or Club Charges or to notify a Unit Owner of the Dues and Club Charges shall not be deemed a waiver, modification, or a release of the Unit Owner from the obligation to pay Dues and Club Charges.

16.16. Multiple Owners of Unit; Ownership by an Entity.

(a) If more than one person holds title to the Unit, the Club Membership for the Unit will be issued to one of the co-owners or all co-owners jointly provided that the co-owners shall jointly designate one co-owner (or two co-owners who are legally married or reside together in the same household) ("Primary Member") as the Club Member for purposes of exercising all membership privileges hereunder and under the Membership Documents. If other co-owners desire membership privileges, each may apply for a Club Membership, if available, upon payment of the applicable Joining Payment and execution of a Membership Agreement in a form established by the Club from time to time, and if approved for membership privileges by the Club, will be obligated to pay Dues for the additional membership. All co-owners shall be jointly and severally liable for payment of the Primary Membership Joining Payment, Dues, and any other Club Charges

accrued under the Primary Membership during the period of co-ownership. Other co-owners will be able to resign additional memberships in accordance with the Membership Documents.

(b) If title to a Unit is held by a corporation, partnership, limited liability company, trust or other form of multiple ownership entity, the Club Membership for the Unit will be issued in the name of the entity, and the entity must designate one individual who will have the right to use the Club Membership for purposes of exercising all membership privileges hereunder and under the Membership Documents, unless the Membership Documents in effect at the time, permit more than one designated user. The designee must submit a Membership Agreement and will be subject to the approval of the Club. The designee must be a bona fide significant member, partner or shareholder of the entity, or a beneficiary, trustee or settlor of the entity if the Club Membership is held in the name of a trust, and must pay the required Dues and Club Charges for such Club Membership. No person other than the designee (or designees if the Membership Documents then permit more than one designee) and his or her Family will be able to simultaneously use the Club Membership. Notwithstanding anything to the contrary herein, the provisions of this Section 16.16 shall not apply to the Unit during the period in which it is owned by or held in the name of the Association, Declarant or their successors or a Successor Developer, but shall apply to any subsequent purchaser or transferee of the Unit from the Association, Declarant or their successor or the Successor Developer.

16.17. Transfer of Unit or Majority Interest Therein.

If a Club Member no longer owns a Unit or interest therein and his or her membership privileges thereto terminate, the former Club Member shall remain obligated for all charges incurred on account of such Club Membership prior to such termination. If there is a change in ownership of the Unit or change in more than 50% of the ownership interest in the Unit, singly or combined with other transfers, or in the case of an entity owned Unit, a change in more than 50% of the ownership interest in the owner entity, singly or combined with other transfers, the new Owner of such Unit is required to acquire at least a Sports Membership at the closing of the change in ownership by completing, executing and submitting to the Club a Membership Agreement and paying to the Club the then current Joining Payment for the membership category selected. In the case of a Unit owned by two or more persons as co-owners or by an entity with two or more co-owners, the transfer of any co-owner's ownership interest to one or more other co-owners shall terminate such transferring co-owner's interest in the Club Membership but shall not be considered a transfer of title to the Unit, except as set forth above. Former co-owners of a Unit shall remain jointly and severally responsible for all Dues and Club Charges incurred under the jointly held Club Membership prior to the termination of any co-owner's interest in the co-owned Unit.

16.18. Remedies.

The Private Amenities Owner or the operator of the Private Amenities may sue for unpaid Dues and Club Charges and other charges authorized hereunder.

16.19. Units Excluded.

Neither (i) Declarant or a Successor Developer, (ii) the Association or its successors, nor (iii) any Mortgagee who obtains title to the Unit pursuant to the remedies provided herein or in a Unit mortgage instrument, or by foreclosure of such mortgage, will be subject to the requirements of this Article XVI for acquisition of a Club Membership or payment of Dues on a Club Membership or payment of unpaid Dues and Club Charges on a Club Membership held by an Owner of the Unit that accrue prior to the Association or Institutional Lender's acquisition of title to such Unit. All requirements of this Article XVI, however, shall apply to any subsequent purchaser from the Declarant, Successor Developer, Association or an Institutional Lender, except as may otherwise be provided herein. Notwithstanding any provision herein, the requirements of this Article XVI shall apply to any subsequent purchaser or transferee of the Unit from the Declarant, Successor Developer, Association or its successor or any Mortgagee and to any subsequent owner after the period in which it is owned by or held in the name of the Declarant, Successor Developer, Association or its successors or a Mortgagee.

16.20. Other Memberships and Use Privileges.

(a) THE PRIVATE AMENITIES OWNER MAY, IN ITS SOLE AND ABSOLUTE DISCRETION, OFFER CLUB MEMBERSHIPS OR USE PRIVILEGES ON A DAILY OR OTHER SHORT TERM BASIS TO ANY PERSON OR ENTITY WHO IS NOT A UNIT OWNER. Persons to whom such Club Memberships or use privileges are issued, if any, shall have such rights, privileges and obligations relating to the use of the Private Amenities as established by the Private Amenities Owner from time to time. The Private Amenities Owner shall establish the Dues and fees to be paid by such persons, if any.

(b) The Private Amenities Owner have the right at any and all times, and from time to time, to make certain or all Private Amenities available to individuals, persons, firms, corporations or other legal entities other than Club Members as it deems appropriate, including but not limited to Unit rental guests or Hotel guests. The Private Amenities Owner shall establish the fees to be paid, if any, by any person using the Private Amenities who is not a Club Member. The granting of such rights shall not invalidate this Article XVI, reduce or abate any Unit Owner's obligations to pay Dues, or give any Unit Owner the right to avoid any of the provisions of this Article.

Article XVII Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

17.1. Notices of Action.

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

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held,

insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

17.2. Other Provisions for First Lien Holders.

To the extent not inconsistent with Virginia law:

(a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

17.3. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

17.4. Notice to Association.

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

17.5. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

PART SEVEN: CHANGES IN THE COMMUNITY

Article XVIII Changes in Ownership of Units

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Article XIX Changes in Common Area

19.1. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking, Declarant, so long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

19.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

Article XX Amendment of Declaration

20.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until conveyance of the first Unit to a Person other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, so long as Declarant owns property for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 2% of the Owners.

20.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of the total Class "A" votes in the Association, including 75% of the Class "A" votes held by Members other than Declarant, and Declarant's consent, so long Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1. In addition, the approval requirements set forth in Article XVII shall be met, if applicable.

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

20.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

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

Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

20.4. Exhibits.

Exhibits “A” and “B” attached to this Declaration are incorporated by this reference and the amendment of such exhibit shall be governed by this Article.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration of Covenants, Conditions, and Restrictions for Bay Creek Preserve Communities this ____ day of _____, 2021.

DECLARANT:

**Bay Creek Development, LLC,
a Virginia limited liability company**

By: _____

Name: _____

Its: _____

**STATE OF VIRGINIA
COUNTY OF NORTHAMPTON, to-wit:**

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____ as _____ of Bay Creek Development, LLC, a Virginia limited liability company, on behalf of the company.

Notary Public

My Commission expires: _____

Registration Number: _____