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PREPARED BY: W. Thurston Debnam, Jr.
MAIL TO: Smith Debnam, PO Box 26268, Raleigh, NC 27611

STATE OF NORTH CAROLINA

COUNTY OF JOHNSTON

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PORTOFINO SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made by Walthom Group, a North Carolina general partnership (the "Declarant").

PART ONE: INTRODUCTION TO THE PORTOFINO COMMUNITY

Portofino Subdivision is a residential community. *The Declarant intends to develop the real property described in Exhibit A as a community of single-family residential lots and related amenities. The Declarant recognizes that one of the keys to a successful community is a mechanism for the long-term maintenance of the appearance and quality of life that attracts the very first homebuyers. By recording this Declaration In the public records of Johnston County, North Carolina, the Declarant-intends to establish that mechanism.*

Article I. Creation of the Community

This Declaration sets forth various rights and duties that will be binding on and benefit each lot and property owner in the Community, now and in the future. The provisions of this Declaration work together to establish a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the Community. All property now or hereafter made subject to this Declaration shall be owned, conveyed, and used subject to the provisions of this Declaration, which touch, concern and 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 the Community, their heirs, successors, successors-in-title, and assigns. Some or all of the Properties may be subject to the provisions of the Act. To the extent that Properties are subject to the Act, the provisions of the Act control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other governing documents.

The Declarant has established **Portofino Subdivision Homeowners' Association, Inc.** a North Carolina non-profit corporation (the "Association"), to own, operate, and maintain those areas of the Community that benefit all owners and their lots, and to administer and enforce the provisions of this Declaration and the other documents referenced in this Declaration. Each owner of property in the Community will be a member of the Association and, through such membership, will have the opportunity to participate in the governance and administration of the **Portofino Subdivision** Community.

This document does not, and is not intended to, create a condominium under North Carolina law.

The provisions of this Declaration control over any inconsistent provisions of any other governing documents of the Association, except as to matters of compliance with the North Carolina Nonprofit Corporation Act, in which event the Articles shall control.

Article II. Concepts and Definitions

The terms used in this Declaration and the attached exhibits are intended to have their normal, commonly understood definitions, unless otherwise specified. In order to minimize repetition, avoid confusion, and explain key concepts, some terms are capitalized to indicate that they have special definition. Whenever used in their capitalized form, those terms have the following meanings:

"Act" is defined as the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as G.S.47F, with the particular section number following the G.S.47F reference (for example, G.S.47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in the Code (for example, the term special declarant rights), have the definition contained in the Act.

"Architectural Guidelines" The guidelines, standards, and procedures adopted pursuant to Article IV which relate to construction, installation, placement and modification of structures, improvements, landscaping and other items on Lots.

"Area of Common Responsibility" Those areas within or abutting the Community which the Association is authorized or responsible to maintain as a Common Expense, including, the Common Area, all landscaping, entry features, and signage within or adjacent to public right-of-way, to the extent that such public rights-of-way run through or abut the Community, and such other areas, if any, for which the Association is assigned or assumes responsibility pursuant to this Declaration, any Supplemental Declaration, or any agreement with the owner of the property.

"Articles of Incorporation" or "Articles" The Articles of Incorporation of **Portofino Subdivision Homeowners' Association, Inc.,** as filed with the Secretary of State of the State of North Carolina.

"Assessment" An amount of money that the Owner of a Dwelling or Lot is obligated to pay to the Association and which, until paid, constitutes a lien on the title to the Lot or Dwelling which may be foreclosed in the same manner as a Mortgage under North Carolina law.

"Association" **Portofino Subdivision Homeowners' Association, Inc.**, a North Carolina non-profit corporation, its successors or assigns.

"Association Initiation Assessment" One time Assessment paid by Lot purchaser within the Association.

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

"Builder" Any Person who purchases land within the Community for the purpose of improving it with one or more dwellings for sale to consumers in the ordinary course of such Person's business.

"By-Laws" The By-Laws of Portofino Subdivision Homeowners' Association, Inc., attached as Exhibit E, as they may be amended.

"Common Area" All real and personal property, including easements, which the Association owns, leases, or otherwise holds possession or use rights in, for the common use and enjoyment of the Owners, including any landscaping, walkways, parking areas, docks, walking tails, clubhouses, swimming pools, roads, tennis courts and other structures and improvements situated on such real property which is specially owned by and deed to the Association. The Riding Stable Facilities are not part of the Common Area.

"Common Expenses" The expenses which the Association incurs, or expects to incur, in exercising its authority and performing its responsibilities under this Declaration and North Carolina law, and reasonable contributions to reserve funds, as the Board may find necessary and appropriate.

"Community" The real property described in Exhibit A, along with such additional property as is submitted to the terms of this Declaration in accordance with Article XII.

"Community-Wide Standard" The standard of conduct, maintenance, and appearance generally prevailing throughout the Community. Such standard shall be initially established by the Declarant and may be further defined in the Use Restrictions, the Architectural Guidelines, by resolutions and example. Such standard may contain both objective and subjective elements and may evolve as development progresses and as needs and demands change.

"Declarant" Walthom Group, a North Carolina general partnership, or any successor, successor-In-title, or assign who takes title to any portion of the property in the Community for the purpose of development and/or resale and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant. There shall be only one Declarant at any time.

"Developer Control Period" The period of time during which the Declarant, by virtue of its Class B membership, is entitled to appoint a majority of the members of the Board of Directors pursuant to the By-Laws.

"Limited Common Area" Shall include all sewers, storm water drainage ditches, individual Lot drainage ditches and any other areas, which the Association maybe, required to maintain.

"Lot." An unimproved portion of the property comprising the Community which may be independently owned and conveyed, which is intended for use and occupancy by one single family residence. The term shall include each numbered lot shown on the recorded subdivision plat of the Community. The term shall not include Common Areas or property dedicated to the public.

"General Assessment" Assessments to fund Common Expenses for the general benefit of all Dwellings and Lots, as described in Section 8.2(b).

"Governing Documents" The Articles of Incorporation, the By-Laws, this Declaration, any Supplemental Declaration, the Architectural Guidelines, the Use Restrictions and the Rules and Regulations, or any of the above, as each may be amended from time to time.

"Master Plan" The land use plan for the development of Portofino Subdivision prepared by Sanderson Engineering and approved by Declarant, as it may be amended from time to time, which plan includes the property described on Exhibit A and all or a portion of the property described on Exhibit B that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit B from the Master Plan bar its later annexation in accordance with Article XII.

"Member" A Person holding a membership in the Association pursuant to Section 6.1.

"Mortgage" A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument effecting title to any Lot or Dwelling.

"Mortgagee" The beneficiary or holder of a Mortgage.

"Owner" One or more Persons who hold the record title to any Lot or Dwelling, other than a Mortgagee or other Person holding title merely as security for the performance of an obligation. If a Lot or Dwelling 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.

"Pastures" That Common Area of land, which is deeded to and owned by the Association, and is used exclusively by the Riding Stable Facilities for consideration paid by the Lot Owners. This area is subject to use restrictions by the Board provided any use restrictions do not materially impact the operation of the Riding Stable Facilities.

"Person" A human being, a corporation, a partnership, a trust, or any other entity recognized by law.

"Public Records" The place designated as the official location for recording of deeds and similar documents affecting title to real estate in Johnston County, North Carolina.

"Riding Stable Facilities" This area is specifically excluded from the Common Area. All decisions, rules and regulations for this facility and the bridle trails shall be made by the management company of the facility and not the Association.

"Rules and Regulations" Board-adopted Rules and Regulations which establish administrative procedures for internal Association governance and operating procedures for use of the Common Area, any recreational facilities, and property included within the Area of Common Responsibility.

"Special Assessment" Assessments to cover unanticipated Common Expenses or Common Expenses in excess of those budgeted, as described in Section 8.2(c).

"Specific Assessment" An Assessment against a particular Dwelling or Dwellings for expenses that the Association Incurs or expects to Incur for any purpose described In Section 8.2(d).

"Stormwater Control Measures" or "Stormwater Control Facilities", such terms being used interchangeably herein is defined as one or more of the following devices and measures, together with associated private stormwater drainage easements (however identified on a plat or in a document) that serves the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Properties, and which are located outside public street rights-of-way and drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Properties, however identified on a recorded plat or in a recorded document, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof. All Stormwater Control Measures are Common Area or Limited Common Area, as applicable and are the responsibility of the Association.

"Supplemental Declaration" An instrument filed in the Public Records pursuant to Article XII which expands the Community by submitting additional property to this Declaration imposes additional restrictions and obligations on the land described in such Instrument, or both.

"Dwelling" A portion of the property comprising the Community, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single family. The term shall include each numbered lot shown on the recorded subdivision plat of any portion of the Community, together with the structures and improvements, if any, constructed on each such lot. The term shall not include Common Areas or property dedicated to the public.

"Use Restrictions" The restrictions relating to uses, activities and conduct within the Community set forth on Exhibit C, as they may be modified, expanded, and repealed pursuant to the procedures described in Article V.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for maintenance, architecture, use and conduct within the Community are what distinguish **Portofino Subdivision** from other subdivisions and make it a place that people want to call "home." Yet those standards should be more than just a long list of prohibitions. This Declaration establishes guidelines and procedures to establish and maintain community standards and to allow such standards to evolve as the Community changes and grows and as technology, public perception and applicable law change.

Article III. Maintenance and Repair of Dwellings

3.1 Maintenance of Dwellings

Each Owner shall maintain his or her Dwelling or Lot and all structures, parking areas, grounds and other improvements comprising the Dwelling or Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Dwelling or Lot. Maintenance shall include the responsibility for repair and replacement as necessary. In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and Specifically Assess all costs incurred by the Association against the Dwelling. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

3.2 Maintenance of Dwellings Wastewater Collection Line

It shall be the responsibility of each Owner to maintain the wastewater collection line from their Dwelling to the sewer main. The Owner shall be responsible not only for that portion of the collection line on their Dwelling but also that portion of the collection line that crosses any Common Area or Community easement prior to entering the sewer main from their Dwelling.

3.3 Insurance on Dwellings

Each Owner should obtain and maintain in effect at all times property insurance for the full replacement cost of all insurable improvements on his or her Dwelling or Lot, less a reasonable deductible. In the event of damage to or destruction of any structures or improvements on the Lot or Dwelling, the Owner shall proceed promptly to repair, reconstruct or replace the damaged structures or improvements In a manner consistent with their original condition or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Lot or Dwelling of all debris and ruins and maintain the Lot or Dwelling in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that are not covered by insurance proceeds.

3.4 Private Road Maintenance

The Association shall enter into an agreement to fulfill its obligation to maintain any private roads, including any gates. The Association shall also be responsible for road cleanliness.

Article IV. Architectural Standards

4.1 No Action Without Approval.

No dwelling building, fence, wall or other structure of any kind shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made (including, but not limited to, changes or alterations in the color exterior paint, vinyl siding, roof-shingles, masonry or shutters) until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said completed plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Any Owner may remodel, paint, or redecorate the interior of structures on his Lot or Dwelling without approval. 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. However, modifications to the interior of screened porches, patios, and similar portions of a Dwelling visible from outside the structures on the Dwelling shall be subject to approval.

This Article shall not apply to the activities of the Declarant, or to activities of the Association during the Developer Control Period.

4.2 Buildings

Lots shall have no building or dwelling located closer than thirty-five (35) feet to the boundary of the front of the Lot, twenty (20) feet to the boundary of the rear of the Lot, twelve (12) feet from the boundary of the side of the Lot, or thirty-five (35) feet from the boundary of the Lot adjacent to a side street. No trailer, tent, shack, barn or other building shall be erected or placed on any Lot covered by these Covenants. No detached garage shall at any time be used for human habitation temporarily or permanently. Temporary structures are prohibited. All use of garages shall remain for parking purposes only and may not be enclosed for living space or any other purpose.

4.3 Driveways and Sidewalks.

No additional driveways or sidewalks may be installed on any Lot without the prior written approval of the Architectural Committee of the Association.

4.4 Mailboxes.

Mailboxes shall not be altered in any way, with the exception of repairs to restore these items to their original appearance if damaged or discolored.

4.5 Landscaping.

Grass and flowerbeds shall be maintained in a neat and orderly manner to appear as the grass has been mowed on a weekly basis and the weeds in the flowerbeds removed on a weekly basis. In the event this work is not done, the Association shall have the authority, but not the obligation, to perform this work in lieu of the Owner and assess the cost to the Owner through the Association, including any legal fees and administrative costs incurred by the Association. In addition, any alteration (including altering the grade of the Lot) of the landscaping of the front and/or side yards and/or in any landscape easement must be approved by the Architectural Committee of the Association.

4.6 Yard Art.

No yard art, including plastic flowers, which is visible from the street may be displayed on any Lot without the prior written approval of the Architectural Committee of the Association.

4.7 Furniture.

No household furniture intended for interior use may be kept or stored on porches or yards.

4.8 Garbage.

Unless otherwise required by any municipality or county regulations, all garbage or refuse shall be kept in the rear yard of all Lots; not in the front or side yards and may not be visible from the public street.

4.9 Clothes Lines.

Clothes lines, including temporary or retractable lines, are prohibited on any Lot.

4.10 Lot Upkeep.

Upon the recordation of a deed from the Declarant to a builder, said builder shall be responsible for upkeep and cleanliness (including mowing of any grass on the Lot) of Lots for which no structure has been commenced. During the construction phase, the builder shall keep the Lot clean and maintain a dumpster or fenced area for the construction debris, so that the Lot is free from debris other than that contained in those areas. The fenced area must be cleaned at least once a week. Upon completion of the construction of a house, the builder shall establish a seeded or sodded lawn area and shall maintain that area in keeping with the requirements under this Article herein. At the commencement of construction at a Lot, the builder shall install such silt fencing, a gravel driveway the full width of the driveway from the front of the garage area to the street and all other such Lot protection devices as may be required by any governmental agency.

4.11 Nuisance.

No noxious or offensive trade, activity, or language shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No trade materials or inventories may be stored upon the premises and no trucks or tractors may be stored on the premises. No business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a doctor's office or professional office of any kind, a fraternity house, a rooming house, a boarding house, an antique shop or gift shop shall be carried on upon any Lot. Any business activity or trade that causes undue traffic, noise, outward signs of non-residential use or has any employee shall be prohibited, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

4.12 Billboards and Signs.

Except for unit identification numbers, no billboards shall be erected or maintained on the premises. No more than one sign not larger than five square feet in size is to be placed on any lot. For sale or for rent signs are permitted.

4.13 Trespassing. Trespassing on any Lot is strictly prohibited.

4.14 Architectural Review

No activities within the scope of this Article 4 ("Work") shall be commenced on any Dwelling unless and until the Owner of the Lot or Dwelling submits an application for approval of the proposed Work and such application is approved in writing by the Declarant or the Architectural Review Committee appointed pursuant to this Section.

So long as the Declarant owns any property described in Exhibit A or Exhibit B to this Declaration, the Declarant shall have the exclusive authority to review or act upon all applications for approval and to exercise all authority of the "Reviewer" under this Article. Thereafter, such authority shall be exercised by an architectural review committee comprised of three to five persons appointed by the Board (the "ARC"), the members of which shall serve and may be removed and replaced in the Board's discretion. (For purposes of this Article, the "Reviewer" shall refer to the Declarant or the ARC, as appropriate under the circumstances).

The Declarant or, upon passing of its authority to the ARC, the Board, may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. The Declarant or the ARC may retain architects, engineers or other professionals to assist In reviewing any application and may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

4.15 Guidelines And Procedures

(a) Architectural Guidelines Declarant may prepare Architectural Guidelines for the Community consistent with the requirements of the Development Agreement that may contain general provisions applicable to all of the Community, as well as specific provisions that vary from one portion of the Community to another depending upon the location and unique characteristics of that area. Copies of the Architectural Guidelines shall be made available to any Owner upon request.

The Architectural Guidelines, if adopted, are intended to provide guidance regarding matters of particular concern in considering applications hereunder, but shall not be the exclusive basis for decisions of the Reviewer. Compliance with the Architectural Guidelines does not guarantee approval of any application. The Declarant shall have sole and full authority to amend the Architectural Guidelines so long as it has jurisdiction over architectural matters pursuant to Section 4.2. Thereafter, the ARC shall, subject to the terms of the Development Agreement, have the authority to amend the Architectural Guidelines. Any amendments to the Architectural Guidelines shall be prospective only, There shall be no limitation on the scope of amendments to the Architectural Guidelines, and may make the Architectural Guidelines more or less restrictive.

(b) Procedures An application for approval of any proposed Work shall be in the form required by the Reviewer and shall include plans and specifications ("Plans") in such detail as the Reviewer reasonably deems appropriate to evaluate the proposed Work. The Reviewer may require the submission of such additional information as it deems necessary to consider any application. All approved mans of proposed Work shall comply with the terms of the Development Agreement. The Reviewer may refuse to consider any application if the Reviewer determines, in its reasonable discretion, that the Plans are not sufficiently legible, precise, or detailed or are otherwise insufficient in any respect.

In reviewing each submission, the Reviewer may consider (but shall not be limited to consideration of) finished grade elevations, the quality of workmanship and design, harmony of external design with surrounding structures and the environment, location In relation to surrounding structures and plant life, architectural melt, and compliance with the general intent of the Architectural Guidelines and the general scheme of development for the Community. Decisions of the Reviewer may be based on purely aesthetic considerations.

The Reviewer shall, within 30 days after receipt of each complete application or other required submission, advise the applicant, in writing at an address specified in the application, of (I) the approval of Plans, or (II) the disapproval of such Plans. The Reviewer may, but is not obligated to, specify the segments or features of the Plans that are objectionable and suggestions, if any, for the curing of such objections. In the event the Reviewer falls to so advise the applicant by written notice within such 30-day period, the Plans shall be deemed approved. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with this Declaration or the Architectural Guidelines unless a variance has been granted in writing pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the US. 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.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved Work and all Work previously approved with respect to the same Dwelling, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved Work, Declarant or the Association shall be authorized, after notice to the Owner of the Dwelling and an opportunity as provided for In the By-Laws, to enter upon the Dwelling and remove or complete any Incomplete Work and to assess all costs incurred against the Dwelling and the Owner thereof as a Specific Assessment.

All Work shall be completed within one year of commencement of construction or such shorter period as the Reviewer may specify In the notice of approval, unless completion within such time Is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Reviewer.

4.16 No Waiver of Future Approvals

Approval of proposals, plans and specifications, or drawings for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

4.17 Variances

The Reviewer may, subject to the limitations of the Development Agreement, 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. However, the ARC may not authorize variances without the written consent of the Declarant as long as the Declarant has any authority over architectural matters. Variances may only be granted to accommodate unique circumstances and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration or the Development Agreement; or (c) preclude the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain necessary governmental approvals or permits, or to satisfy the terms or conditions of any financing, shall not be considered a hardship warranting a variance.

4.18 Limitation of Liability

The standards and procedures established pursuant to this Article are intended only to provide a mechanism for maintaining and enhancing the overall appearance and attractiveness of the Community, and shall not create any duty or responsibility to any Person to ensure the structural integrity or soundness of approved Work, the adequacy of soils or drainage, compliance with building codes and other governmental requirements, or any other matter. Neither Declarant, the Association, the Board, the ARC, nor any member of any of the foregoing shall be held liable for any injury, damages, or loss to any Person arising out of the approval or disapproval of any proposed Work. The Association shall defend the ARC and Its members and reimburse them for any loss, damages, and expenses Incurred In any action arising out of their service on the ARC, to the extent provided in the By-Laws of **Portofino Subdivision**.

Article V. Use and Conduct

5.1 Framework for Regulation.

Initial Use Restrictions governing use, conduct and activities within the Community are set forth on Exhibit C. The Governing Documents establish, as part of the general plan of development for the Community, a framework of covenants (i.e., binding obligations), conditions and restrictions that govern the Community. However, 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 which Inevitably will effect the Community, its Owners and residents.

This Article establishes procedures that interpret, expand, modify or repeal the Initial Use Restrictions set forth on Exhibit C and which implement the authority granted to the Association under the Governing Documents.

5.2 Authority and Procedures to Promulgate Use Restrictions

(a) Authority

(i) Subject to the terms of this Article and its duty to exercise business judgment and act reasonably, the Board may adopt, amend, cancel or otherwise modify the Use Restrictions applicable to the Common Area or Dwellings. Except to the extent that the Governing Documents specifically assign authority to regulate a particular matter to the Board, any action by the Board may be overturned by the Members by a vote of the membership pursuant to subsection (b). The Board shall have no obligation to call for a vote of the membership except upon receipt of a petition of the members calling for a special meeting, as provided for in the By-Laws.

(ii) Subject to the terms of this Article, the Members may adopt Use Restrictions applicable to the Common Area or Dwellings upon the approval of a majority of the total Class A votes in the Association, with the consent of the Class B Member, if any.

(iii) Nothing in this Article shall authorize the Board or the Members to modify, repeal, or expand the Architectural Guidelines. In the event of any inconsistency between the Architectural Guidelines and the Use Restrictions, the Architectural Guidelines shall control.

(iv)Procedures required under this Section shall not apply to enactment and enforcement of Rules and Regulations unless the Board chooses in its discretion to submit to such procedures. Examples of such Rules and Regulations shall include, but not be limited to, hours of operation of recreational facilities, traffic and parking rules on the Common Area, and the procedures used to enforce the Governing Documents in the event of non-compliance. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such Rules and Regulations.

(v) Nothing in this Article shall limit the Declarant's ability to unilaterally amend this Declaration and the Use Restrictions during the Class B membership as provided In Section 17.2. Amendments made under Section 17.2 shall be effective when recorded.

(b) Notice to Owner No Use Restriction action shall be taken unless and until a meeting of the Board or the membership has been called to consider and discuss the proposed action. The notice of any meeting at which proposed Use Restriction is to be considered shall state that fact. Members shall have a reasonable opportunity to be heard at such meeting prior to any vote of the Board being taken on the proposed action. At least 10 days prior to the effective date of any Use Restriction approved under subsection (a) or (b) of this Section, the Board shall send notice to each Owner describing the action and the effective date.

5.3 Owners Acknowledgment

All Owners and occupants of Dwellings are given notice that use of their Dwellings is limited by the Use Restrictions as they may be enacted, amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and recording a contract of sale, acknowledges and agrees that the use, enjoyment and marketability of his or her Dwelling can be affected and that the Use Restrictions may change from time to time.

5.4 Rights of Owners

(a) The Association shall provide, without cost, a copy of the current Use Restrictions to any requesting Member or Mortgagee, and shall make available to any prospective purchaser of a Dwelling, any Owner, and the holders, Insurers, and guarantors of any Mortgage on any Dwelling, current copies of the Governing Documents.

(b) Except as may be specifically set forth In this Declaration (either initially or by amendment) or in Exhibit C, neither the Board nor the Members may adopt any Use Restriction in violation of the following provisions:

(i) Abridging Existing Rights. If any Use Restriction would otherwise require Owners or occupants of Dwellings to dispose of personal property which they properly maintained in or on the Dwelling prior to the effective date of such Use Restriction, or to vacate a Dwelling in which they lawfully resided prior to the effective date of such Use Restriction, such Use Restriction shall not apply to any such Owners without their written consent.

(ii) Activities Within Dwellings No Use Restriction shall interfere with the activities carried on inside 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 Dwellings, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, that create an unreasonable source of annoyance or nuisance to the neighborhood, or that create any noxious or offensive activity. A home office is acceptable if such office business actions do not conflict with these restrictions.

(iii) Alienation No Use Restriction shall prohibit the sale of any Dwelling, or require consents of the Association or Board for the sale of any Dwelling. The Board may, however, restrict or prohibit "for sale" or “for lease" signs within the Community.

(iv)Allocation of Burdens and Benefits No Use Restriction shall alter the allocation of financial burdens among the various Dwellings or discriminate among Owners with respect to their rights to use the Common Area over the objection of any Owner expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable Rules and Regulations for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate the Rules and Regulations or the Governing Documents, or fall in pay assessments. This provision does not affect the right to increase the amount of Assessments as provided in Article VIII.

(v) Household Composition No Use Restriction shall interfere with the freedom of occupants of Dwellings 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 Dwelling and to limit the total number of occupants permitted in each Dwelling on the basis of the size and facilities of the Dwelling and its fair use of the Common Area.

(vi)Reasonable Rights to Develop No Use Restriction or action by the Association or Board shall unreasonably impede Declarant's right to develop the Community.

(vii) Religious and Holiday Displays The rights of Owners to display religious and holiday signs, symbols, and decorations in or on their Dwellings of the kinds normally displayed in residences located In single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions and restrictions on the extent of such displays for the purpose of minimizing damage and disturbance to other Owners and occupants.

(viii) Similar Treatment Similarly situated Owners shall be treated similarly.

(ix) Speech The freedom of speech rights of Owners shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants of Dwellings.

The limitations in this Section 5.4 shall apply to exercise of the authority to promulgate Use Restrictions under this Article only; they shall not apply to amendments to this Declaration adopted in accordance with Section 18.2.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

The success of the community is dependent upon the support and participation of every owner In its governance and administration. The Declaration establishes Portofino Subdivision Homeowners' Association, Inc, as the mechanism by which each owner is able to provide that support and participate In the Community. While many powers and responsibilities are vested in the Association's board of directors, some decisions are reserved for the Association's membership, the owners of property in the Community.

Article VI. Association Membership and Voting Rights

6.1 Membership

(a) Qualification Every Owner shall be a Member of the Association. There shall be only one membership per Dwelling. If a Dwelling is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation. All co-Owners of a Dwelling shall be jointly obligated to perform the responsibilities of the Owner of the Dwelling, and any one co-Owner may be held fully responsible for all such obligations. The membership rights of an Owner which is a corporation, partnership, trust, or other entity 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.

(b) Classes The Association initially shall have two classes of membership, Class A and Class B, with such rights and privileges as are described in this Declaration and in the Association's Articles and By-Laws. Class A Members shall be all Owners except the Class B Member, if any. The sole Class B Member shall be the Declarant The Class B membership shall terminate upon the earlier of:

(i) the date upon which the last Lot anticipated for development on the Master Plan for the property described on Exhibit A and Exhibit B of this Declaration has been improved with a dwelling approved for occupancy and have been conveyed to Class A Members other than a Builder;

(ii) the date upon which the Declarant voluntarily terminates such membership by written notice recorded in the Public Records;

(iii) a date 12 years from recording of Declaration.

Upon termination of the Class B membership, the Declarant shall become a Class A member as to any Dwellings, which the Declarant owns.

6.2 Voting

(a) Class A. Class A Members shall have one equal vote for each Dwelling of which they are the Owner; provided, there shall be only one vote per Dwelling. In any situation where there is more than one Owner of a Dwelling, the vote for such Dwelling 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 Dwelling's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class B The Class B Member shall be the Declarant and shall be entitled to ten (10) votes for each residential Lot owned. The rights of the Class B Member, including the right to approve, or withhold approval of, actions proposed under the Governing Documents, are specified in the relevant sections of this Declaration, the By-Laws, and the Articles. The Class B Member may appoint members of the Board of Directors during the Developer Control Period, as specified In Section 3.3 and 3.5 of the By-Laws.

(c) Manner of Voting On any matter as to which the Governing Documents or North Carolina law require a vote or approval of the membership, such vote or approval may be obtained by affirmative vote at a meeting or by written consent, or by any combination of votes and written consents, unless the Governing Documents or North Carolina law expressly require that the vote on such matter be taken at a meeting of the membership.

Article VII. Association Powers and Responsibilities

7.1 Function of the Association

The Association has been established for the purpose of administering the Community in accordance with the Governing Documents. Its responsibilities shall include, but are not limited to:

(a) management, maintenance, operation, and control of the Area of Common Responsibility;

(b) enforcing the Governing Documents, including such reasonable Rules and Regulations governing the use, conduct, activities, and aesthetic matters within the Community as may be set forth in or adopted pursuant to this Declaration; and

(c) administering and enforcing the architectural standards set forth in Article IV and in the Architectural Guidelines, upon delegation or termination of the Declarant's authority under Article IV.

7.2 Implied Rights; Board Authority

The Association shall have the powers and authority granted by, and shall perform its functions in accordance with, the Governing Documents and the laws of the State of North Carolina. The Association shall also have any right, power or privilege, which may reasonably be Implied from, or which is reasonable necessary to exercise, any right power or privilege expressly granted by the Governing Documents or by law. Except as the Governing Documents or North Carolina law may otherwise specifically provide all rights and powers of the Association may be exercised by the Board without a vote of the membership.

7.3 Maintenance Responsibility

(a) The Association shall maintain the Area of Common Responsibility in good repair and in a neat, clean and attractive condition consistent with the Community-Wide Standard, and shall maintain the Common Area In accordance with the terms of the Development Agreement.

(b) The Association may maintain other property that it does not own, including, without limitation, storm drainage facilities and other 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 undertake any activity in violation of the Development

Agreement or Covenants without the prior written permission of the Declarant. In addition, the Association may enter into agreements or covenants to share costs with neighboring property owners for maintaining and/or operating properties or facilities benefiting both parties.

(c) Except as the Governing Documents may otherwise specifically provide, all costs associated with maintenance, repair, replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Dwellings as part of the General Assessment. The Board may, however, allocate the expense of any maintenance, repair, or replacement that benefits one or more, but less than all Dwellings, as a Specific Assessment pursuant to Section 8.2(d), according to the benefit received by such Dwellings, as the Board may reasonably determine.

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

7.4 Insurance

(a) Required Coverage The Association shall obtain and keep in effect, as a Common Expense, the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as are reasonably available:

(i) Blanket property insurance covering the full replacement cost under current building codes and ordinances of all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair, and/or replacement in the event of a casualty, regardless of ownership;

(ii) Commercial general liability insurance on the Area of Common Responsibility;

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

(iv) Directors' and officers' liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds; and

(vi) Such additional Insurance as the Board, in the exercise of its business judgment, determines advisable to provide for full replacement coverage of the Common Areas.

The Association may contract with or otherwise arrange to obtain any of the insurance described above through the Declarant and, In such event, shall reimburse the Declarant for that portion of its cost which is attributable to the coverage provided to the Association.

The Board shall periodically review the types and amounts of insurance coverage for sufficiency.

(b)Insurance Deductibles The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance of the By-taws, 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 specifically assess the full amount of such deductible against such Owner(s) and their Dwellings pursuant to Section 8.2(d).

(c)Policy Requirements All Association Insurance policies shall:

(i) be written with a company authorized to do business in the State of North Carolina which satisfies the requirements of the Federal National Mo'tgage 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, for the benefit of the Association and its Members;

(iii) provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member Insured;

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

(v) contain an inflation guard endorsement; and

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

7.5 Safety and Security

Each Owner and occupant of a Dwelling shall be responsible for his or her own safety and the security of his or her Dwelling and personal property. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance safety and security within the Community. However, neither the Association nor the Declarant shall in any way be considered Insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or Ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures installed or undertaken cannot be compromised or circumvented, nor that any such systems or measures 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 agrees to Inform any and all tenants and occupants of its Dwelling that the Association, its Board of Directors and committees, Declarant, and any successor or assign of each are not insurers and that each Person using the Community assumes all risks of personal injury and loss or damage to property, including Dwellings and the contents of Dwellings, resulting from acts of third parties.

7.6 Provisions of Services

The Association may arrange for or provide services to the Owners and their Dwellings and shall be authorized to enter Into contracts or other agreements with third parties, Including Declarant, to provide such services. By way of example, such services may include trash collection, lawn maintenance, pest control, cable television service, and other similar services, although the Association shall have no obligation to provide any such services. The Board may modify or caned any services provided to the Owners and their Dwellings at any time in its discretion.

The cost of any such services provided to all Dwellings shad be a Common tense and/or the Association may charge use and consumption fees for selected services. No Owner shall be exempt from the obligation to pay for such services based upon non-use or any other reason.

Article VIII. Association Finances

8.1 Assessments.

Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) stormwater assessments created and established pursuant to Part B of this Article; (4) special assessments; (5) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (6) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (7) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (8) all other assessments and charges imposed or allowed to be imposed by this Declaration.

The Association at all times has the right to include as part of the assessments or other charges applicable to the Properties and the Owners thereof such amounts as are required to pay all Common Expenses and all financial obligations of the Association imposed by a municipality either (i) directly on the Association, or (ii) indirectly on the Association by imposition of the financial obligation on some or all of the Owners, with the Association having responsibility for collection and payment.

The Declarant shall have authority to determine how assessment will be applied to builders as owners of the Lots.

8.2 Budgeting for Common Expenses

(a) At least 60 days before the beginning of each fiscal year, the Board shall prepare an operating budget reflecting the estimated Common Expenses that the Association expects to incur during the coming year. The Board shall include as a line Item in the budget of Common Expenses a contribution to a reserve fund, which the Board shall establish to provide for the repair and replacement of any capital assets of the Association. The amount of such contribution shall be based upon the Board's reasonable estimate of the annual contribution needed over the estimated useful life of each asset to provide sufficient funds for repair or replacement of such asset as required. The Board shall send a copy of the budget to each Owner at least 30 days prior to the effective date of such budget.

Except as otherwise provided in Section 8.2, Assessments shall be fixed at a uniform rate for all Dwellings. Subject to the provisions of subsection (b) below, such assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves.

So long as the Declarant has the right unilaterally to annex additional property, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.3), which may be treated as either a contribution or an advance against future assessments due from the Declarant, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

So long as the proposed General Assessment does not exceed the applicable Maximum General Assessment, as defined in subsection (b), the Board without a vote of the membership may adopt the budget and proposed General Assessment. If the proposed General Assessment would exceed the applicable Maximum General Assessment, the proposed General Assessment shall become effective only upon approval by 67% of the Class A votes represented at a duly called meeting of the membership at which a quorum is present, and the consent of the Class 8 Member. If a quorum is not present at the meeting when originally called, a second meeting may be called and the quorum for the second meeting shall be reduced to one-half of the quorum originally required.

(b) The Maximum General Assessment which may be levied on any Dwelling without a. vote of the membership shall be $1,140.00 for the 2008 fiscal year payable $95.00 per month and shall be increased for each subsequent fiscal year by 20% if approved by the Declarant. The Maximum General Assessment for any year may be Increased by an amount greater than that set forth above with the approval of at least 67% of the Class A votes represented at a duly called meeting of the membership at which a quorum is present including proxies and the consent of the Class B Member.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

8.3 Allocating Common Expenses

(a) Purposes and Types There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under the Governing Documents, specifically including, but not limited to: making contributions for expenses of maintaining, repairing, replacing, improving, operating and Insuring the Area of Common Responsibility, including amounts due to third parties who perform such tasks on behalf of the Association and the costs of labor, equipment, materials, management, supervision and utilities; taxes, if any, imposed on the Association or the Common Area: the cost of insurance and fidelity bond coverage obtained pursuant to Article VII; expenses of monitoring and enforcing compliance with the provisions of this Declaration and all exhibits hereto and all instruments referenced herein; expenses arising out of the Association's indemnification obligations; expenses arising out of any measure undertaken to enhance the safety of the Owners and occupants of Dwellings and the Community; expenses of architectural control; expenses of managing the Association, Including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with members; administrative expenses; legal, accounting and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Community in good, clean and attractive condition and to maintain and enhance property values and marketability of Dwellings. Such assessments shall commence at the time and in the manner set forth in Section 8.3.

The Association is authorized to levy three types of Assessments to cover the Common Expenses of the Association, as follows:

(b) General Assessments Common Expenses that directly or indirectly benefit all of the Dwellings shall be allocated among all of the Dwellings that are subject to Assessment under Section 8.3 as a General Assessment The Board shall determine the amount of the General Assessment for each fiscal year at the time the budget is prepared, subject to adjustment in the event that the budget is revised during the year. Notice of the amount of the General Assessment, as it may be adjusted, shall be sent to each Owner with a copy of the budget.

The General Assessment shall be a monthly assessment due and payable in advance on the first day of each month; however, the Board may permit any General Assessment to be paid in monthly, quarterly, semi-annual or annual installments, in its discretion.

(c} Special Assessments Any Common Expenses of a non-routine nature, or which were not anticipated in the Association's annual operating budget, or which exceed budgeted amounts, may be assessed as a Special Assessment Special Assessments shall be allocated equally among all Dwellings subject to Assessment. Special Assessments shall be payable in such manner as the Board may determine, and may be payable in installments over a period of more than one year.

Notice of any Special Assessment shall be sent to each Owner at least 30 days prior to the due date of such Special Assessment (or the first installment thereof). Any Special Assessment must be approved by a majority of the Class A Members subject to such Special Assessment and by the Class B Member, if any.

(d) Specific Assessment The Association may assess the following expenses as a Specific Assessment against a particular Dwelling or Dwellings:

(i) those costs, including overhead and administrative costs, of providing benefits, items or services to a Dwelling or the occupants thereof upon request of the Owner, which Assessments may be made in advance of the provision of the requested benefit, item, or service as a deposit against costs to be incurred on behalf of the Owner; and

(ii) those costs incurred in bringing the Dwelling into compliance with the Governing Documents or as a consequence of the conduct of the Owner or occupants of the Dwelling, their agents, contractors, employees, licensees, or guests (subject to the notice and heating requirements set forth in Section 16.3).

8.4 Commencement of Assessments

(a) The obligation to pay Assessments shall commence as to each Dwelling on the first day of the month following; (i) closing on the Lot, (ii) the month in which the Dwelling is made subject to this Declaration, or (ii) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later.

(b) Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not waive the Association's right to collect such Assessments retroactively or release any Owner from the obligation to pay any Assessment when made. Each Owner shall continue to pay General Assessments on the same basis as during the each year for which an Assessment was made, if any, until a new Assessment is made, at which time the Association may retroactively assess any shortfalls.

(c) The Association Initiation Assessment shall be collected at closing. Such assessment shall be set by the Association and be payable by any new Lot Owner at closing without regards to its status as a builder or secondary purchaser. This assessment shall initially be $500.00 and can be amended by the Board from time to time.

8.5 Personal Obligation and Lien for Assessments

(a) Personal Obligation Except as otherwise provided in this Section, each Owner, by accepting a deed or entering Into a recorded contract of sale for any Dwelling, agrees to pay the Assessments authorized in this Declaration. No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Dwelling, or any other means. The obligation to pay assessments is a separate and Independent covenant on the part of each Owner. No reduction or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience arising from the making' of repairs or Improvements, or otherwise as a result of any action or inaction by the Association.

All Assessments, together with interest computed from the due date of each Assessment at a rate of 18% per annum (or the maximum rate permitted by North Carolina law if less than 18% per annum), late charges established by Board resolution (subject to the limitations of North Carolina law), and costs of collection (including reasonable attorneys' fees, whether or not suit is filed) shall be the personal obligation of the Person who is the Owner of the Dwelling at the time the

Assessment Is due. Upon a transfer of title to a Dwelling, the new Owner shall be jointly and severally liable with the former Owner for any Assessments and other charges due at the time of conveyance (Le. both are responsible and either may be required to pay the full amount due to the Association), unless the new Owner took tie following foreclosure of a Mortgage which has priority over the Association's lien under subsection (b) below.

(b) Lien for Assessments The Declarant does hereby establish, create and make each Dwelling subject to a lien (i.e. a security interest) in favor or the Association to secure payment of all Assessments and other charges. Such lien shall have priority over (i.e. shall be paid before) all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would have priority, and (ii) the lien or charge of any Mortgage recorded in the Public Records which was made in good faith and for value and which, by law, would have priority over all other Mortgages on the Dwelling (collectively, "Priority Liens"). In the event of a foreclosure of the Association's lien, the Association shall be entitled to receive only those proceeds remaining after payment of the amounts required to remove or satisfy any Priority Liens, up to the amount of the Association's lien.

In the event that the Owner is delinquent in paying any amounts due to the Association, the Association may sue to collect the amounts due and, upon obtaining a judgment, foreclose its lien in the same manner as mortgages are foreclosed under North Carolina law. The Association may purchase the Dwelling at the foreclosure sale and thereafter held, lease, mortgage, and convey the Dwelling. The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving its lien.

If a Dwelling is owned by the Association: (i) no right to vote shall be exercised on Its behalf; (ii) no Assessment shall be levied on it; and (iii) each other Dwelling shall be charged, In addition to its usual Assessment, its pro rata share of the Assessment that would have been charged such Dwelling had it not been acquired by the Association.

The sale or transfer of any Dwelling shall not affect the Association's lien or relieve such Dwelling from the lien securing any subsequent Assessments. However, a person who obtains title to a Dwelling pursuant to the foreclosure of a Mortgage constituting a Priority lien shall not be personally liable for Assessments due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses that the Association may thereafter allocate among all Owners as part of the General Assessment under Section 8.2(b).

8.6 Payment of Assessments: Delinquencies

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 Dwelling 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, Assessments 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 Dwelling, the Board may require the outstanding balance to be paid in full immediately and place a lien on the Dwelling.

The Association shall, upon request, 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.

8.7 Exempt Property

The following property shall be exempt from payment of assessments:

(i) all Common Area specifically stated herein to be exempt; and

(ii) any property dedicated to and accepted by any governmental authority or public utility.

PART FOUR: COMMON AREA

One of the primary functions of the Association is to own, operate, and maintain various portions of the Community, called Common Areas, which are designed and intended for the common use and enjoyment of all residents and the common benefit of all Dwellings. The Common Areas in **Portofino Subdivision** *are designed to enhance the lifestyle and the value of owning property in this Community and set* **Portofino Subdivision** *apart from traditional subdivision which either lack such amenities or have no mechanism for ensuring their continued maintenance and operation.*

Article IX. Acceptance, Management and Control of Common Area

9.1 Control of Common Area

The Association, acting through its Board, may acquire, hold, and dispose of real property and personal property subject to the limitations set forth in this Declaration. Any such property shall be Common Area during such period as it is held by the Association and shall cease to be Common Area upon transfer or conveyance of the Association's interest in the property. The Association, subject to the rights of the Owners set forth I this Declaration, shall be responsible for management, operation and control of the Common Area.

9.2 Acceptance of Common Area Conveyed by Declarant

Declarant and its designees may convey to the Association real and personal property, including easements, leasehold and other interests in property. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

9.3 Re-conveyance of Common Area To Declarant

Upon request of Declarant, the Association shall re-convey to Declarant any unimproved property or Interests therein which the Declarant originally conveyed at no cost to the Association, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines or to accommodate public or quasi-public facilities. The Declarant shall not be required to pay for such property, but shall pay the costs of preparing and recording the deed to effect such re-conveyance.

Article X. Rights to Use Common Area

10.1 Non-Exclusive Easement

Every Owner shall have a right and nonexclusive easement appurtenant to his or her Dwelling for the use, access, and enjoyment in and to the Common Area, subject to;

(a) the matters set forth in the Governing Documents and any other instruments effecting title to the property;

(b) any restrictions or limitations contained In any deed or other document conveying an interest In such property to the Association;

(c) the right of the Board and the membership to adopt, amend, and repeal Rules and Regulations governing the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) the right of the Board to charge reasonable use fees, damage deposits, and similar charges for the use of any recreational or soda' facilities situated upon the Common Area;

(e) the right of the Board to permit use of any recreational or sodas facilities situated on the Common Area for private events sponsored and attended by Owners or their tenants and to restrict access by others during such events;

(f) the right of the Board to permit use of any recreational or social facility situated on the Common Area by Persons other than Owners, their families, tenants, and guests, on such terms as the Board, in its business judgment, may establish, and if the Board deems it appropriate, to require payment of use fees, damage deposits, and proof of adequate insurance, among other things, as a condition of such use;

(g) the right of the Board to suspend the right of an Owner, his or her family, tenants, and guests to use recreational and social facilities within the Common Area:

(h) for any period during which any Assessment against such Owner's Dwelling remains delinquent;

(i) 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, and

(ii) for a period not to exceed 30 days for conduct which the Board determines to be unacceptable or abusive, which causes damage to the Common Area, or which interferes with the ability or Declarant to sell Dwellings;

(h) the right of the Association, acting through the Board, to dedicate, transfer, or grant easements over all or any part of the Common Area, subject to such approval requirements as may be set forth elsewhere in this Declaration;

(i) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the limitations and approval requirements as may be set forth elsewhere In this Declaration; and

10.2 Assignment of Rights to Use Common Area

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, occupants of the Owner's Dwelling under any lease authorized pursuant to this Declaration, and guests, subject to reasonable regulation by the Board. The Owner of a Dwelling that is rented under a lease authorized pursuant to this Declaration shall be deeded to have assigned to the tenant all such rights to use and enjoy recreational and social facilities on the Common Area for the term of the lease.

Article XI Changes In Common Area

11.1 Common Area to Remain Undivided

No Person shall seek to have a court partition or divide the ownership Interest of all or any portion of the Common Area unless the portion of the Common Area that is the subject of such action has been removed from the provisions of this Declaration. This section shall not apply to any property that was formerly Common Area once the Association no longer holds any legal interest in such property.

11.2 Conveyance of Common Area

(a) The Association may dedicate portions of the Common Area to Johnston County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity and may grant licenses, leases or easements over portions of the Common Area to the extent not inconsistent with the Intended use of the Common Area.

(b) Except as provided in Sections 9.3 and 11.2(a), the Association shall not convey or mortgage any real property comprising all or any portion of the Common Area without the approval of Owners representing two-thirds of the total Class A votes in the Association and the written consent of the Class B Member, if such exists.

11.3 Repair or Reconstruction After Damage, Destruction or Condemnation

If any portion of the Common Area Containing structures or improvements (other than landscaping) are damaged or destroyed, or taken by or sold under threat of condemnation proceedings, the Association shall file any appropriate insurance claims and shall repair, restore, or rebuild the effected structures and improvements if there is available property within the Common Area.

To the extent that the proceeds of condemnation, sale or insurance are Insufficient to cover the costs of repair, restoration or reconstruction, the Board may levy a Special Assessment or borrow the funds necessary to cover the excess costs without the approval of the membership. Any such construction shall be in accordance with the original Improvements or such other plans as the Board may approve.

If a decision is made not to repair, restore, or rebuild, or if net funds remain after completion of the repair, restoration or reconstruction, then the Association shall deposit the proceeds or net funds to its capital improvement reserves account to be used for future capital expenditures as the Board deems appropriate.

11.4 Improvements to Common Area

During the Developer Control Period, the Association shall not incur any Common Expenses for the development or construction of initial capital improvements to the Common Area unless approved by Persons entitled to cast two-thirds of the total Class A votes in the Association.

PART FIVE: DEVELOPMENT OF THE COMMUNITY

The Declaration reserves various rights to the Declarant and the Association in order to facilitate the smooth and orderly development of the Community and to accommodate changes in the master plan which Inevitably occur as a community the size of **Portofino Subdivision** *grows and matures.*

Article XII. Expansion of the Community

12.1 Expansion by Declarant

Declarant reserves the right to expand the Community to include all or any portion of the property described in Exhibit B. Such right shall expire 20 years after the date on which this Declaration Is recorded in the Public Records. Declarant may assign this right to any Person who Is the developer of at least a portion of the real property described in Exhibit A or Exhibit B. Any such assignment shall be in writing, signed by the Declarant, and recorded in the Public Records.

Such expansion shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being added to the Community. Such Supplemental Declaration shall not require the approval of Members, but shall require the consent of the owner of such property being added to the Community, If other than Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to expand the Community or develop any of the property described in Exhibit B In any manner whatsoever.

12.2 Expansion by the Association

The Association may expand the Community to include additional real property with the consent of the owner of such property, the approval of persons entitled to cast a majority of the Class A votes represented at a meeting called for such purpose, and the consent of the Declarant so long as Declarant has any rights under Section 12.1.

Such expansion shall be accomplished by filing in the Public Records a Supplemental Declaration describing the property being added to the Community. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the Owner of such property, and by Declarant, if Declarant's consent is required.

12.3 Additional Covenants and Easement

Declarant may impose additional covenants, restrictions and easements on any property in the Community by filing a Supplemental Declaration In the Public Records setting forth such additional covenants, restrictions and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the property upon which the additional provisions are being imposed, if other than Declarant. Any 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.

Article XIII. Additional Rights Reserved to Declarant

13.1 Withdrawal of Property

Declarant reserves the right to amend this Declaration, so long as it has a right to expand the Community pursuant to Section 12.1, for the purpose of removing any portion of the property within the Community from the coverage of this Declaration, provided such withdrawal is not unequally contrary to the general plan of development. Such an amendment shall not require the consent of any Person other than the Owner of the property to be removed.

13.2 Marketing and Sales Activities

Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Dwellings, including, but not limited to construction facilities, business offices, signs, model homes, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities.

13.3 Right to Develop

Declarant and its employees, agents, and assignees shall have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in Its sole discretion.

For so long as Declarant owns any portion of the Community, Declarant may designate sites which it owns within the Community for public or quasi-public sites and neither the Association nor any Owner shall have a right to object to such designation. The Declarant may also designate such sites on property, which it does not own, provided the owner consents to such use.

13.4 Right to Approve Additional Covenants

No Person shall record any declaration of covenants, conditions, and restrictions or similar instrument effecting any portion of the Community without Declarant's review and written consent and approval under the Development Agreement. 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 by Declarant and recorded in the Public Records.

13.5 Right to Approve Changes in Community Standards

No amendment to or modification of the Use Restrictions or the Architectural Guidelines made after termination of the Developer Control Period shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any portion of the Community primarily for development and sale.

13.6 Right to Transfer or Assign Declarant Rights

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that 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 signed by Declarant and duly recorded in the Public Records.

The Declarant may permit 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 permanently or in its entirety, and in such case it shall not be necessary to record any written assignment except as may be required to evidence Declarant's consent to such exercise.

13.7 Termination of Rights

The rights set forth in this Article shall terminate upon the earlier of (a) 25 years from the date this Declaration is filed in the Public Records, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Portofino Subdivision *is designed to be a true "community" in which people share common interests, activities and goals and relate to one another in mutually supportive ways, rather than being simply rows of houses. The success of* **Portofino Subdivision** *in meeting this goal requires attention to and understanding of the relationships within the Community between Owners, the Association and the developer. This part of the Declaration creates special rights and protections to facilitate the growth and development of the Community, and provides procedures for enforcing the provisions of the Governing Documents when necessary.*

Article XIV. Easements

14.1 Easements for Encroachment

The Declarant hereby creates, for the benefit of each Dwelling and each portion of the Common Area, reciprocal easements for encroachment due to the unintentional placement, or the settling or shifting, of the structures or improvements on such Dwelling or portion of the Common Area, and for maintenance and use of any encroaching structure or improvement, except that no easement for encroachment shall exist:

(a) for any structure or improvement constructed in violation of the Governing Documents;

(b) beyond a distance of three feet, as measured from any point on the common boundary along a line perpendicular to such boundary; or

(c) if such encroachment occurred due to reckless, willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

14.2 Easement for Utilities. etc.

(a) The Declarant reserves for itself and such other Persons as it may designate, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary for the purposes of:

(i) installing, on property which Declarant owns or within public right-of-way or easements reserved for such purpose on recorded plats, utilities and infrastructure to serve the Community, cable 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;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 14.2(a)(i); and

(iii) access to read, maintain, repair and replace utility meters.

(b) Declarant also reserves for itself the non-exclusive right and power to grant and record in the Public Records such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibit A and Exhibit B.

(c) Any damage to a Dwelling resulting from the exercise of the easements described in sub-sections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Dwelling, nor shall it unreasonably interfere with the use of any Dwelling and, except in an emergency, entry onto any Dwelling shall be made only after reasonable notice to the Owner or occupant

(d) Declarant reserves the right (i) to release all or any portion of the Community from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section 14.2, or (ii) to define the limits of any such easements; provided, Declarant shall relocate, at its own expense, any utility lines or facilities located on or under that portion of the Community being released.

14.3 Easements to Serve Additional Property

Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assignees, licensees, and mortgagees an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property described in Exhibit B or any property adjacent to the property described in Exhibit A and Exhibit B, 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 and the right to connect or tie in to roads and utilities to serve such property. Declarant agrees that it or the person exercising such easement shall be responsible for any damages caused to the Common Area as a result of the exercise of such easement.

14.4 Right of Entry

The Association shall have the right, but not the obligation, to enter upon any Dwelling for emergency, security, and to enforce the Governing Documents. Any member of the Board, the Association's officers, agents, employees, and managers, members of the ARC, may exercise such right. Such right of entry shall also extend to all policemen, firemen, ambulance personnel, and similar emergency personnel In the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall not authorize entry into any single family dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

14.5 Easements to Exercise Powers and Perform Responsibilities

The Declarant hereby reserves to itself and grants to the Association, perpetual, non-exclusive easements over the Community as necessary to enable the Declarant and the Association, and their respective agents, employees and assigns, to exercise the authority and fulfill the responsibilities that each of them are granted or assigned elsewhere in the Governing Documents, and to inspect for the purpose of ensuring compliance with the Governing Documents.

Article XV. Protection of Mortgagees

15.1 Notices of Action

An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (stating the name and address of such holder, insurer, or guarantor and the street address of the Dwelling 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 effects a material portion of the Community or which effects any Dwelling 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 Dwelling 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 Declaration or By-Laws relating to such Dwelling or the Owner which is not cured within 60 days; or

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

15.2 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 Dwelling in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.3 Notice to Association

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

15.4 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.

15.5 HUD/VA Approval

During the period of Declarant control, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA"), if either such agency is insuring or guaranteeing the Mortgage on any Dwelling: merger, consolidation or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; dedication, conveyance or mortgaging of Common Area; or material amendment of this Declaration. The granting of easements for utilities or other similar purposes consistent with then intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section.

If either HUD or VA insures or guarantees the Mortgage on any Dwelling, then the following actions shall require the prior approval of not less than two-thirds (2/3) of the total Class A votes in the Association and the consent of the Class B Member, if such exists: merger, consolidation or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; and dedication, conveyance or mortgaging of Common Area. Notwithstanding the foregoing to the contrary, the Association may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

Article XVI. Compliance and Enforcement

16.1 Obligation to Comply with Governing Documents; Right to Enforce

(a) Every Owner and occupant of a Dwelling shall comply with the Governing Documents and shall ensure that his or her guests and any visitors to the Dwelling also comply. Failure to comply shall be cause for:

(i) the Association or the Declarant to impose sanctions against the Owner, the occupant, and the Dwelling as authorized In the Governing Documents; and

(ii) the Declarant, the Association, or any Owner to take action in a court of law or equity to enforce the Governing Documents.

(b) The Association may enforce applicable county ordinances and permit local governments to enforce their ordinances within the Community for the benefit of the Association and its Members.

(c) The Association shall not be obligated to take enforcement action if the Board reasonably determines that, under the particular circumstances, (i) the Association's legal position is not strong enough to justify taking action, or (ii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources. Such a decision shall not be construed as a waiver of the right of the Association to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other provision of the Governing Documents.

16.2 Association Remedies and Sanctions

In addition to any remedies or sanctions specifically authorized elsewhere in the Governing Documents, the Association may seek or impose any of the following remedies and sanctions for violation of the Governing Documents:

(a) levy monetary fines which shall constitute a lien upon the violator's Dwelling (in the event that any occupant, guest or invitee of a Dwelling violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator, provided, 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);

(b) suspension of the Owner's right to vote;

(c) suspension of any Person's right to use any recreational facilities within the Common Area for up to 30 days per violation, or for the duration of any continuing violation plus 60 days (however, the Board may not unreasonably restrict access to or from a Dwelling);

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

(e) upon the Owner's failure to take required action after written notice and a reasonable opportunity to do so, entering upon the Dwelling (which entry shall not be considered a trespass) and taking action to cure any condition or remove any thing or structure which is in violation of the Governing Documents and to restore the Dwelling to a complying condition, in which event the Association may charge all costs incurred against the Dwelling and the Owner as a Specific Assessment;

(f) precluding any contractor, subcontractor, agent, employee or other invitee of an owner who falls to comply with the terms and provisions of Article IV and the Architectural Guidelines from continuing or performing any further activities in the Community (in which event the Association shall have no liability to any Person);

(g) levying Specific Assessments to cover costs incurred by the Association to bring a Dwelling into compliance with the Governing Documents; and

(h) recording a notice of violation in the Public Records.

16.3 Notice of Hearing Procedures

All hearing procedures shall be held and carried out in accordance with those terms set forth in N.C.G.S. § 47f.

Article XVII. Miscellaneous Provisions

17.1 Duration

Unless terminated by the Owners as provided below, this Declaration is intended to have perpetual duration. However, if North Carolina law limits the period during which covenants may run with the land, any provision of this Declaration effected by such law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of 20 years, unless amended or terminated by the record Owners as provided in Section 17.2.

Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Section. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

If any provision of this Declaration shall be unlawful, void, or made void for violation of the rule against perpetuities, then such provision shall continue in effect only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

17.2 Amendment

Until conveyance of the first Dwelling to a Person other than a Builder, the Declarant may, subject to the terms of the Development Agreement, amend this Declaration without the approval of the Association or the Owners. Thereafter, as long as the Declarant owns any property in the Community or which may become part of the Community pursuant to Section 12.1, the Declarant may amend this Declaration without the approval of the Association or the Owners, if such amendment (i) is required to enable any institutional or governmental entity to make, purchase, insure or guarantee mortgage loans on the Dwellings, (ii) is required to comply with any governmental ordinance, statute, rule, or judicial determination, or (iii) does not materially adversely effect the rights of any Owner under this Declaration without such Owner's consent.

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 persons entitled to cast at least 75% of the total number of Class A votes in the Association, the consent of Declarant, so long as Declarant owns any property within the Community or which may become part of the Community pursuant to Section 12.1, and such consents as are required pursuant to Article XV, if any.

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.

Material amendments or extraordinary actions must be approved by members entitled to cast at least 75% of the votes of the total number of Class A votes in the Association. A material amendment Includes adding, deleting, or modifying any provision regarding the following:

1. Assessment basis or assessment liens;
2. Any method of imposing or determining any charges to be levied against individual Dwelling owners;
3. Reserves for maintenance, repair, or replacement of Common Area improvements;
4. Maintenance obligations;
5. Allocation of rights to use Common Areas;
6. Regulation for enforcement of standards for maintenance;
7. Reduction of insurance requirements;
8. Restoration or repair of Common Area improvements;
9. Addition, annexation, or withdrawal of land to or from the project;
10. Voting rights;
11. Restrictions affecting lease or sale of a Dwelling; or
12. Any provision, which is for the express benefit of mortgages.

During the Declarant control period, all material amendments must have the Approval of VA, if VA has guaranteed any loans in the project.

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 in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within three 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.

17.3 Severability

Invalidation by judgment or court order of any provision of this Declaration shall not affect the validity of other provisions of this Declaration. Invalidation of any provision as applied In a particular case shall not affect the validity of other applications of the same provisions.

17.4 Cumulative Effect; Conflict

The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Any Supplemental Declaration or other recorded Instruments effecting title to any portion of the Community may contain provisions, which are more restrictive than the provisions of this Declaration, and in such case, the more restrictive provision shall control. The Association shall have the standing and authority to enforce all such restrictions.

17.5 Notice of Sale or Transfer of Title

Any Owner desiring to sell or otherwise transfer title to his or her Dwelling 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 Person transferring title shall be jointly and severally responsible with the Person to whom title is transferred for all obligations of the Owner of the Dwelling, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

17.6 Declarant Disclosure

Part of the Common Area is or has been used as a non-permitted stump dump. Any such areas used are to remain Common Area of the Subdivision permanently as required by the State of North Carolina. Such areas can be used for such specific recreational purposes set forth in the agreement between Declarant and the State of North Carolina.

17.6 Exhibits

Exhibits A, B, C, D and E to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by Article XVII, 17.2. Exhibit C to this Declaration is incorporated by reference and may be amended pursuant to Article XVII, 17.2 or as provided in Article V.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 27 day of Sept, 2007.

WALTHOM GROUP, a North Carolina general partnership

By: ____________________
Name:
Title: General Partner

STATE OF NORTH CAROLINA
COUNTY OF Johnston

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purposes stated therein and in the capacity indicated: Norwood Thompson, General Partner of Walthom Group, a North Carolina general partnership.

Date: 9-27-2007

Celeste M. Lopez
By: Celeste M. Lopez, Notary Public

(Official Seal)

CELESTE M. LOPEZ
NOTARY
PUBLIC
JOHNSTON COUNTY, NC

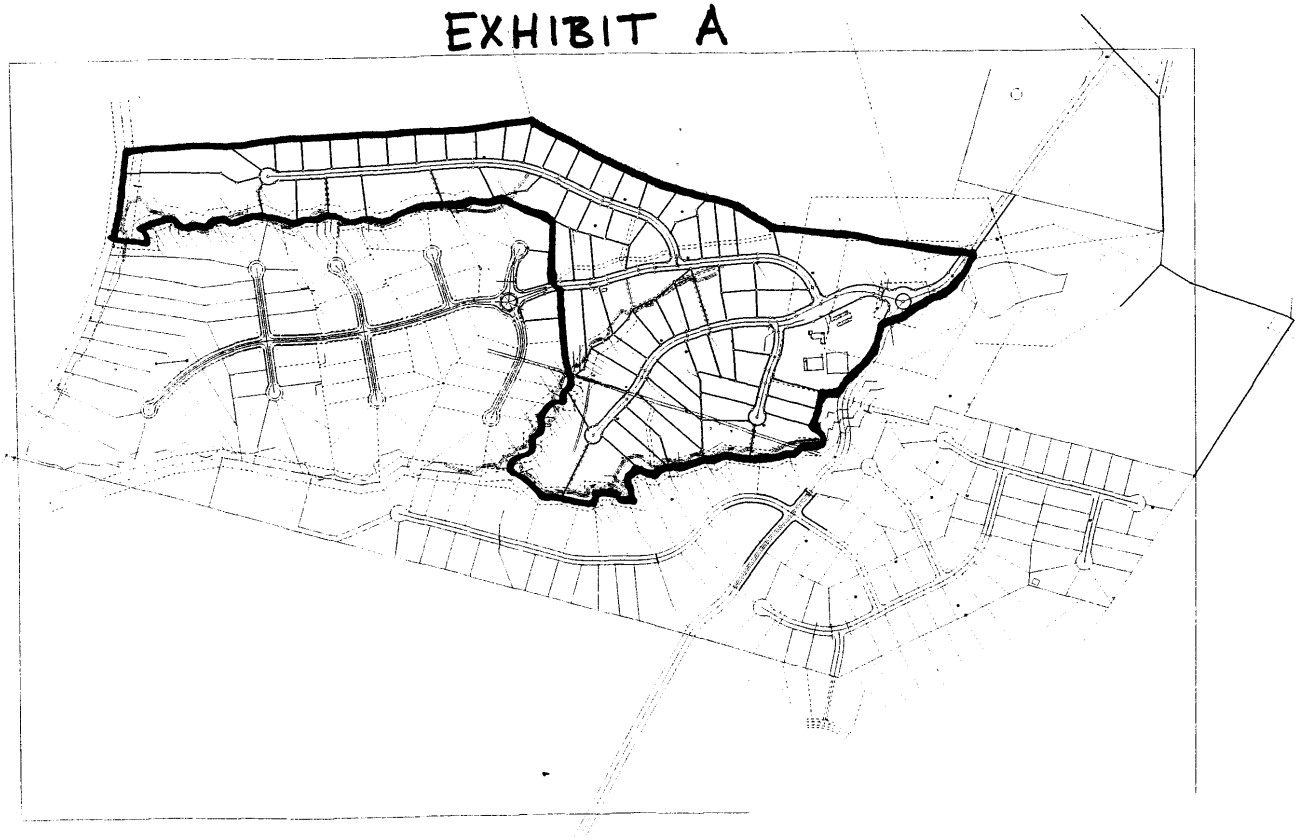
My commission expires: October 22, 2011

EXHIBIT A

Land Initially Submitted

EXHIBIT A

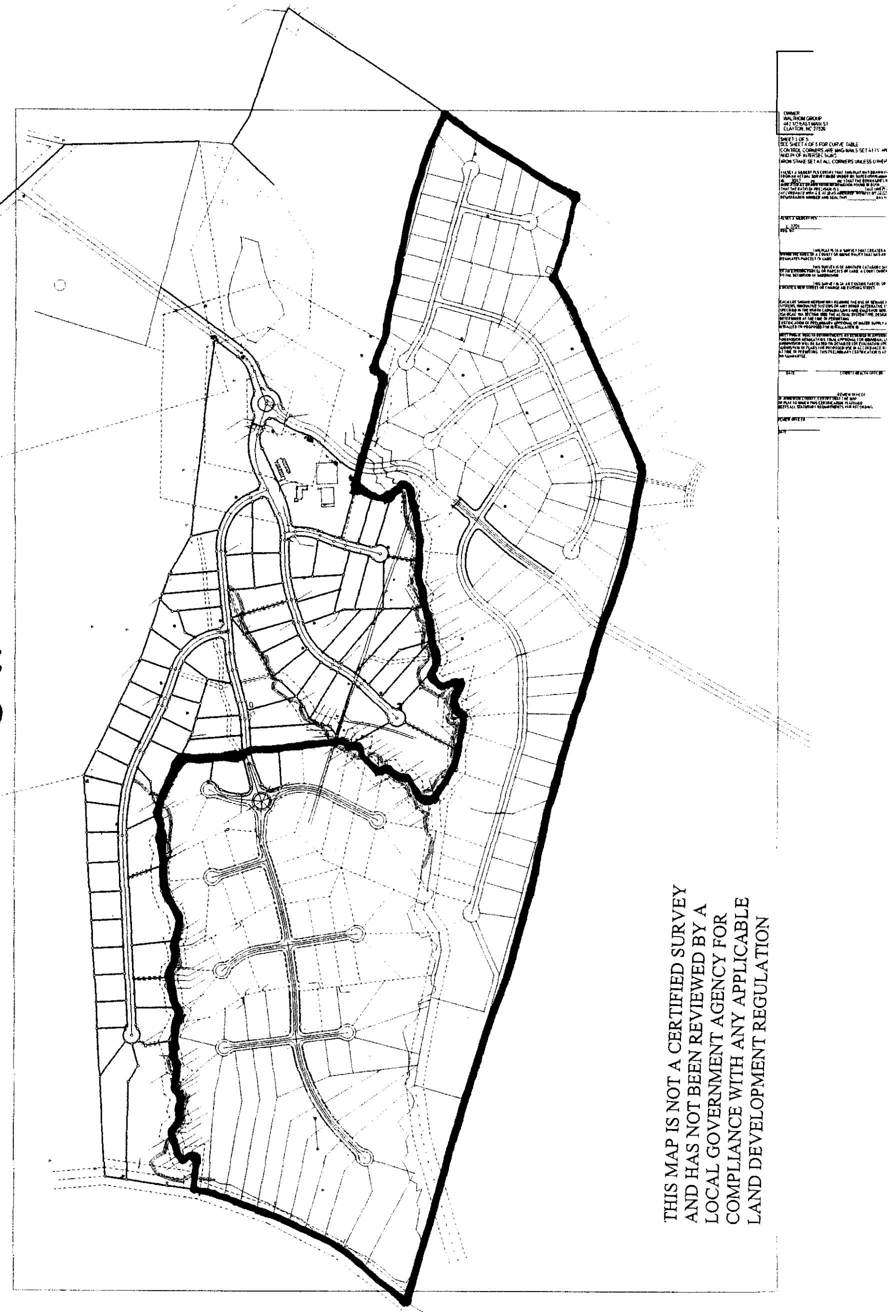
EXHIBIT A
LAND INITIALLY SUBMITTED



THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATION

DEED BOOK 3427 PAGE 947

EXHIBIT B



LAND SUBJECT TO ANNEXATION

EXHIBIT B

EXHIBIT C
Use Restrictions

The following restrictions applicable to property within the Community shall remain in effect until such time as they are amended, modified, repeated or limited by action of the Association adopted pursuant to Article V or Article XVII, 17.2 of the Declaration.

1. General The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, construction and sales offices of Declarant and Builders, offices for any manager retained by the Association and a community center) consistent with this Declaration.

2. Stormwater Management Restrictions In accordance with the Johnston County Stormwater plan approval the following restrictions and conditions shall apply:

(a) The total area for impervious residential structures on the Properties shall not exceed 378,997 square feet for the first seventy (70) Lots;

(b) No Lot Owner shall amend, alter, modify or change the Stormwater Control Measures or other drainage flow or Stormwater Facilities which are located on such Owner's Lot without prior approval from the Board, and/or the proper government agency, if applicable.

(c) Each Lot Owner shall bear the costs and be responsible for all Stormwater Control Measures or other drainage flow or Stormwater Facilities, which are located on such Owner's Lot. The Board, and/or proper government agency, if applicable must first approve any proposed or necessary corrective actions which are necessary or requested.

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

(a) Parking of any vehicles on streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than in carports except on a temporary basis for such period of time as is reasonably necessary to load, unload, or prepare such vehicles for imminent use. Such parking shall only occur on cement surfaces designed for such use;

(b) Raising, breeding, or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted on a Lot, provided they are not maintained for commercial purposes; however, those pets which are permitted to roam freely outside the boundaries of the owner's Dwelling, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Dwellings shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet, in addition to imposing such other sanctions as are authorized by the Declaration and By-Laws. Dog owners shall keep their dogs on a leash at all times when outside the boundaries of the Dwelling and clean up their dog's excrement; Vicious breeds of dogs such as pit bulls, dobermans, chows and rottweilers shall not be permitted on any Lot. All pets must be kept under the direct control of the owner by fence, leash or harness and may not run freely at any time. Pet owners are required to clean up after their animals at all times in the Common Areas, Streets and Lots, both at their own Lots and at Lots not their own. No more than two (2) pets are permitted per Lot. Violations will be subject to a fine and/or legal action.

(c) Any activity that emits foul or obnoxious odors outside the Dwelling or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Dwellings;

(d) Dumping of grass clippings, leaves or debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any stream, pond, or elsewhere within the Community, except that fertilizers may be applied to landscaping on Dwellings provided care is taken to minimize runoff;

(e) Accumulations of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved sanitary containers, which shall be stored out of plain sight and removed from the street within twenty-four (24) hours after pickup. Association shall have authority to designate trash collection service company for all Lot Owners. Builders shall be responsible for maintaining the cleanliness of any Lot;

(f) Obstruction or re-channeling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right, provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Dwelling without the Owner's consent;

(g) Subdivision of a Dwelling or Lot into two or more Lots or Dwellings, or changing the boundary lines of any Lot or Dwelling after a subdivision plat including such Lot or Dwelling has been approved and filed in the Public Records, except that Declarant shall be permitted to subdivide, combine, or re-plat Lots or Dwellings which it owns;

(h) Use of any structure of a temporary character, trailer, tent, shack, or other outbuilding as a residence, either temporarily or permanently; provided that Declarant and Builders may use construction and sales trailers. Manufactured homes on foundations shall be considered structures of a temporary character and shall not be permitted;

(i) Any business, trade or similar activity, except that an Owner or occupant residing in a Dwelling may conduct business activities within the Dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve regular visitation of the Dwelling by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Community; and (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

No Dwelling or any portion of the improvements thereon shall be leased for any purposes.

This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of the Community or its use of any Dwellings which it owns within the Community; and

(j) Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Dwelling, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. If not addressed in the Architectural Guidelines, the Board or the ARC, in their discretion, may prohibit or permit such things as it deems appropriate. This shall include, without limitation, mailboxes, signs, basketball hoops, swings sets and similar sports and play equipment; garbage cans; ornamental lawn figures; above-ground swimming pools; and hedges, walls, dog runs, animal pens, or fences of any kind including, without limitation, invisible pet fences. At no time will a fence of any kind be approved that will be placed forward of the rear foundation line of the house.

(k) **THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.** The Declarant or the Board, where applicable shall have the authority to provide rules and regulations for such displays.

(l) The use of golf carts are permitted provided the Lot Owner is responsible for any damages caused thereby. However, no other motorized off road recreational vehicles, including, without limitation, dirt bikes, three our four wheelers, go-carts, all terrain vehicles or the like may be used on any Lot or on the Common Areas or trails.

(m) The Riding Stable Facilities shall not be part of the Association Common Area, but Lot Owners shall have a right of first refusal to use such facilities. Walking trails may be used by Lot Owners and their horses as permitted by the rules and regulations adopted by the Board. Those areas labeled as Pastures are to be managed and controlled by the Riding Stable Facilities management and not that of the Association. Such areas surrounding or abutting the Pastures shall be consistent in design and style with the Pastures.

4. Prohibited Activities and Conditions The following shall be prohibited within the Community:

(a) Satellite dishes, antennas and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that (i) Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Community, and (ii) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (iii) antennas or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iv) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is placed in the least conspicuous location on the Dwelling in which an acceptable quality signal can be received and is screened from the view of the street and adjacent Dwellings in a manner consistent with the Community-Wide Standard and the Architectural Guidelines;

(b) Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, ponds, or other ground or surface waters within the Community; except that Declarant and the Association shall have the right to collect and divert storm water runoff from streets and other hard surfaces for irrigation and other purposes;

(c) Exterior lighting on any Dwelling, which allows excessive light to be directed or reflected on the Common Area or other Dwellings, except as may be permitted by the Reviewer in accordance with Article IV of the Declaration;

(d) The storage of garbage, trash, refuse piles or unsightly objects except in containers and in areas approved by the Association;

(e) Laundry drying facilities including, but not limited to, clothes lines, outside of any improvement constructed on a Dwelling. In addition, the use of porch railings or any other part of the exterior of the Dwelling for drying or storing of clothes or other articles is prohibited;

(f) Any thing or condition which will result in the cancellation, or increase in premium, or reduction in coverage of insurance maintained by the Association or which would be in violation or any law or other applicable requirement of governmental authorities;

(g) Fences or walls placed on any Dwelling nearer to the street or streets adjoining such Dwelling than is permitted under the set-back requirements for the main residence on such Dwelling, except for decorative subdivision entry features (if any); and

(h) Operation or storage of off-road recreational vehicles, including without limitation, dirt bikes, three or four wheelers, go-carts, or all-terrain vehicles shall not be permitted or used within the Community. Driving any vehicle on unpaved areas within the Community is strictly prohibited.

Exhibit D
Architectural Guidelines
Phase One
Portofino Subdivision

USE AND BUILDING TYPE. No Dwelling shall be used except for residential purposes and for single-family houses. No building shall be erected, altered, placed, or permitted to remain on any Dwelling other than a single detached one-family dwelling, except that each Dwelling may also have in addition to the dwelling, a detached or attached private garage or one out-building. Any out-building shall be completely screened from view from the street. No Dwelling shall be subdivided or boundary lines amended, except with the written consent of the Declarant and in compliance with the subdivision regulations of Johnston County. The Declarant hereby expressly reserves to itself and its successors and/or assigns the right to replat one or more Lots or Dwellings shown on the plat of said subdivision in order to create a modified building Lot or Dwelling. In order to maintain architectural beauty in **Portofino Subdivision** and to guard against the erection therein of poorly designed or proportioned structures, no building shall be erected, altered, or permitted to remain on any Dwelling until blueprint plans have been submitted for approval pursuant to the Development Agreement and been accepted by the Declarant.

MAILBOXES. Declarant shall have the right to designate one standard curb side mailbox for delivery by the United States Postal Service.

DWELLING SIZE. Dwellings shall have the following minimum square footage of heated floor space exclusive of porches, carports, garages and bonus rooms; 2,400 square feet for a one-story residence and 2,400 square feet for 1 ½ or 2 story residences with a minimum of 1,200 square feet on the first floor.

STRUCTURES. Improvements on any Lot or Dwelling shall be limited to a single, single-family, residential structure. No residential structure, which has a minimum area of less than 2,400 square feet of heated area for a one story residence and 2,400 square feet for a one and one-half or two story residence exclusive of porches, basement and garage, shall be erected or placed on any Dwelling. All buildings and structures erected upon Dwellings shall be of new construction and no building or structures, other than detached single-family homes (not to exceed three stories in height) shall be constructed. No structures of a temporary character, manufactured home, trailer, basement, tent, shade, garage, barn or other out-building shall be used on any portion of the Dwelling at any time as a residence, either temporarily or permanently.

MATERIALS. Exterior siding materials that will be allowed include stone, brick, and hardiplank or other masonry exteriors are acceptable. Vinyl siding is specifically prohibited. Specific styles and colors must be approved.

Foundations shall be crawl space with permanent masonry brick or block with brick veneer. Concrete slab foundations are prohibited. All exterior foundations of homes and all porches to be solid brick veneer or stucco, if home is all stucco. Exterior front and side steps shall be constructed with brick or stone. Architectural Review Committee must approve brick and mortar colors.

Roofs will have a 25-year shingle. Terricata, Copper, Steel are also acceptable. Style and color must be approved.

Roofs shall have a minimum pitch of 8/12.

All dwellings will include a front porch area no less than 5 feet deep and 6 feet wide. Porches, which contain columns, posts, or spindles of material other than brick or stone, shall be painted and columns must be at least 10" each.

All decks and patios are to have a minimum of 160 square feet.

All dwellings will have a two-car garage with overhead door(s).

All dwellings shall contain a concrete or brick driveway, minimum width ten feet, extending from the pavement line of the street to the front of the garage. All driveways shall have a stamped concrete apron at least five (5) feet in depth at the point at which the driveway connects to the street right of way. A variance for asphalt may be granted by Developer on lots with setbacks of more than 80 feet as longs as stamped concrete apron is at entrance equal to all other driveways.

Prior to construction, gravel must be placed in driveway at time of tile placement for driveway.

Gravel must be maintained one inch higher than paved road at point of contact with road to prevent road damage.

Gravel must be maintained at sufficient depth and width to accommodate large vehicles turning off road onto driveway.

Driveway must meet or exceed state specifications.

<u>SETBACKS</u>. Lots shall have no building or dwelling located closer than thirty-five (35) feet to the boundary of the front of the Lot, twenty (20) feet to the boundary of the rear of the Lot, twelve (12) feet from the boundary of the side of the Lot, or thirty-five (35) feet from the boundary of the Lot adjacent to a side street. For the purposes of this covenant, eaves, steps, carports, decks and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Dwelling to encroach upon another Dwelling. Provided it otherwise complies with the applicable zoning ordinances and the set backs, if any, shown of the applicable recorded plat, the Declarant and/or the Architectural Committee may approve by written waiver a violation of these requirements.

As a minimum, all live and healthy trees with a trunk diameter of six inches or more that are within 15 feet of the rear property line shall be preserved on all Dwellings.

No fence, wall, hedge, or shrub planting which obstructs street lines at elevations between two (2) and four (4) feet above the roadways shall be placed or permitted to remain on any corner Dwelling within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or, in the case of a rounded Dwelling, a corner from the intersection of the street property lines extended. The same site line limitations shall apply on any Dwelling within ten (10) feet from the Intersection of the street property line with the edge of a driveway or alley pavement, No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such site lines.

FENCES. All fences may be no taller than four (4) feet unless approved by the ARC due to the topography of the Lot, which may allow taller construction. Fences must be installed a minimum of two (2) feet from any Lot line to allow for exterior maintenance of such fence. Fences shall be constructed of wrought iron, extruded aluminum, vinyl, stone or masonry. No chain link or wood fences shall be allowed. All construction requires prior approval by the ARC as well as any variances of these terms.

DRIVEWAY PIPES. The size and materials for all roadway and guttering pipes for drainage, if required, under driveways at or near their point of access, shall be determined by the engineer for the Declarant, but in no event shall they be less than that required by the North Carolina Department of Transportation. In addition, each driveway drain pipe shall be constructed with head walls of a brick, stone or masonry material specified and approved by the Declarant and it's engineer.

ACCESS TO NEUSE RIVER. All Lots or Dwellings adjacent to the Neuse River shall be allowed to construct and maintain one boat dock and/or boat house on the Neuse River. Provided, however, that all such boat docks and boat houses must be approved by the Declarant in writing prior to commencement of construction. Furthermore, the Owner of all such boat docks and boat houses must obtain permits from any and all applicable governmental agencies prior to commencement of construction.

COMPLETION OF WORK. All work shall be completed within one (1) year of commencement of construction or such shorter period as the ARC may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the ARC. All work undertaken once a certificate of occupancy has been issued to a Lot Owner must be completed in the timeframe specified in the initial architectural review request submitted.

SIGNS. No sign of any kind shall be displayed to the public view on any Dwelling except on professional sign of not more than five (5) square feet advertising property for sale. During the construction phase of the development the following signage shall be authorized: (i) the original builder shall be entitled to a sign not greater than five square feet identifying the name and address of the builder, (ii) a sign that identifies the Realtor who is marketing the property for the builder no greater than five square feet; and (iii) signage for any model home no larger than three square feet in an area to indicate whether a model home is open and the hours of operation. The Architectural Review Committee, however, shall be entitled to, in its sole discretion, enlarge signage rights during the initial stages of the development. Otherwise, no bandit signs, banners, or flags of any kind are permitted for any Dwelling. For the purposes of this section, the permit box, which is required by County Government, shall not be considered a sign.

LANDSCAPING. The front lawn of each Lot shall be sodded with grass at upon completion of construction. Each Lot will be landscaped with at least two trees in the front yard and foundation shrubbery at a minimum of three feet on center across the front of the dwelling and five feet on center down the sides of the dwelling. Each Lot or Dwelling shall have an automated underground sprinkler irrigation system for the portion of the yard that lies in front of the main residential structure on said Lot. The Architectural Review Committee will determine the species and placement of landscape materials.

CONSTRUCTION DEBRIS. Each Dwelling must be kept neat and orderly during construction. One contained debris pile is acceptable during construction, provided however, debris must be removed at a minimum of once per week. Each lot must have a litter container or containment fence. The landscaping and roadsides of each Dwelling must also be maintained. No burning of any material is permitted on lot. The grass on each Dwelling must be cut regularly. Damage to any landscaping or roadsides by subcontractors or deliveries to your Dwelling are your responsibility and must be repaired without delay. Should any such debris not be maintained or removed then the Association shall be permitted to pay for such maintenance or removal and charge such to the Lot Owner.

CONSTRUCTION ENTRANCE. The Declarant shall designate certain entrances to the Community as "construction entrances". During the construction of any and all improvements on any Lot, the Owner thereof shall have the responsibility for insuring that all material suppliers, contractors and subcontractors utilize the designated construction entrances as access to the Community. There will be no parking on roads or on shoulders of roads. Builder is to provide parking area on lot for all subcontractors.

(Exhibit E)
BY-LAWS
OF
PORTOFINO SUBDIVISION
HOMEOWNERS ASSOCIATION, INC.

TABLE OF CONTENTS

BY-LAWS
OF
PORTOFINO SUBDIVISION
HOMEOWNERS ASSOCIATION, INC.

Article I. Name, Principal Office, Definitions

1.1 Names

The name of the corporation is **Portofino Subdivision Homeowners' Association, Inc.** (the "Association").

1.2 Principal Office

The principal office of the Association shall be located in Johnston County, North Carolina. The Association may have such other offices, either within or outside the State of North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 Definitions

The words used in these By-Laws shall be given their normal, commonly understood definitions, unless otherwise specified. In order to minimize repetition, some terms are capitalized to indicate that they have specific definitions as set forth in the Declaration of Covenants, Conditions and Restrictions for **Portofino Subdivision** (the "Declaration"), filed by Walthom Group, a North Carolina general partnership, in the Public Records of Johnston County, North Carolina, as such Declaration may be amended.

Article II. Membership and Meetings

2.1 Membership

The Association shall have two classes of membership, Class A and Cass B as described in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2 Place of Meetings

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate, either within the Community or as convenient as possible and practical thereto.

2.3 Annual Meeting

The first meeting of the Association membership, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association at a place and time as determined by the Board.

Subsequent regular annual meetings shall be set by the Board so as to occur during the fourth quarter of the Association's fiscal year on a date, time and location set by the Board.

2.4 Special Meetings

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 10% of the total Class A votes in the Association.

2.5 Notice of Meetings

Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by stature or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when hand delivered or deposited in the United States mail addressed to the Member at the address of the Member's Dwelling or such other address as the Member may have designated in writing to the Association, with postage prepaid.

2.6 Waiver of Notice

Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings

If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than 5 or more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is initially present may continue to do business until adjournment, notwithstanding the withdrawal of some Members leaving less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8 Voting

The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9 Proxies

Members may vote in person or by proxy, subject to the limitations of North Carolina law relating to use of proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing and shall identify the Dwelling for which it is given. The Member or the Member's attorney-in-fact shall sign proxies, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective.

Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes that the Member giving such proxy is entitled to cast. In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon conveyance of any Dwelling for which it was given, upon receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or one year from the date of the proxy, unless a shorter period is specified in the proxy.

2.10 Majority

As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11 Quorum

Except as otherwise provided in these By-Laws or in the Declaration, the presence of persons entitled to cast at least 10% of the total Class A votes in the Association shall be required to transact business at any meeting of the membership.

2.12 Conduct of Meetings

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13 Action Without Meeting

Unless otherwise prohibited by North Carolina law, any action required or permitted by law to be taken at a meeting of the Members may be taken by written consent or by ballot cast by mail without a meeting, in accordance with the following procedure:

(a) The Secretary shall send written notice of the proposed action for which consent is requested to each Member entitled to vote thereon at least 10 days prior to the deadline for returning the ballots or consents. The notice shall be accompanied by a ballot or consent form which:

(i) describes the proposed action;

(ii) provides a place to indicate, in the case of a ballot, how the Owner's vote is to be cast, or in the case of a consent, the Owner's approval or disapproval of, or consent to the proposed action;

(iii) provides a method of identifying the Owner and the Dwelling for which the ballot is cast or consent is given, and in the case of a consent, a place for the Owner's signature; and

(iv) indicates the address to which completed forms should be returned and the deadline for returning them, if any.

(b) The proposed action shall be deemed approved if ballots or consents approving the action are received from Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present and such ballots or consents shall have the same force and effect as a vote of the Members at a meeting. The ballots or consents shall be filed with the minutes of the Association. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote, fairly summarizing the material features of the authorized action.

Article III. Board of Directors

3.1 Governing Body: Composition

A Board of Directors, each of who shall have one equal vote, shall govern the affairs of the Association. Except with respect to directors appointed by the Class B Member, the directors shall be Members or residents; provided, however, no Owner and resident representing the same Dwelling may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Dwelling within the Community. In the case of a Member which is not a natural person, any individual authorized by written notice to the

Association signed by such Member to serve as a director; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class B Member.

3.2 Number of Directors

The Board shall consist of three to five directors, as provided In Sections 3.3 and 3.5 below. The initial Board shall consist of four directors as identified in the Articles of Incorporation and shall remain four until all Class B Members become Class A Members. At first annual meeting after the Class B Membership has ended, the Board shall increase to five members by election at such meeting.

3.3 Directors During Developer Control Period

Subject to the provisions of Section 3.5, the Declarant, as the Class B Member, shall be entitled to appoint, remove and replace the directors in its sole discretion during the Developer Control Period. Unless earlier terminated by the Declarant in its discretion, the Developer Control Period shall terminate upon the termination of the Class B membership as provided in the Declaration.

3.4 Nomination and Election Procedures

(a) Nominations and Declarations of Candidacy Prior to each election of directors, the Board shall announce the opening date and the closing date of a reasonable period in which any eligible person who has an interest in serving as a director may file as a candidate. The Board shall also establish such other rules and regulations, as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner.

Except with respect to directors selected by the Class B Member, a Nominating Committee may also make nominations for election to the Board. The Nominating Committee, if any, shall consist of a Chairman, who shall be a member of the Board, and three or more Members or representatives of Members. The Board shall appoint the members of the Nominating Committee, if one is to be appointed, not less than 30 days prior to the election, and such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine.

Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures Each Member may cast all votes assigned to its Dwelling for each position on the Board of Directors to be filled by such election. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5 Election and Term of Office

Notwithstanding any other provision of these By-Laws:

(a) Not later than 60 days after conveyance by Declarant of 25% of the Dwellings permitted by the Master Plan, the Board shall be increased to five directors. The President shall call for an election by which the Class A Members shall be entitled to elect one of the five directors. The remaining four directors shall be appointees of the Class B Member. The director elected by the Class A Members shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Not later than 60 days after conveyance by Declarant of 50% of the Dwellings permitted by the Master Plan, one of the directors appointed by the Class B Member shall resign and the President shall call for and election by which the Class A Members shall be entitled to elect two of the five directors. The remaining three directors shall be appointees of the Class B Member. The directors elected by the Class A Members shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Not later than 60 days after the conveyance by Declarant of 85% of the Dwellings permitted by the Master Plan, (termination of the Developer Control Period) the President shall call for an election by which the Class A Members shall be entitled to elect four of the five directors. Directors elected by Class A Members shall serve a term of two years. The Class B Member shall be entitled to appoint the remaining director until the first annual meeting following termination of the Class B Membership, at which time the Class A Members shall elect a director. If such meeting is scheduled to occur within 60 days after termination of the Class B Membership, the election of this director position shall be made at such meeting. The Member elected to this directorship shall serve a term of two years.

Upon the expiration of the term of office of each director elected by the Class A Member, such Members shall be entitled to elect a successor to serve a term of two years. The directors elected by the Members shall hold office until their respective successors have been elected.

COMPOSITION OF BOARD DIRECTORS

Initial Board	25% of Homes Sold	50% of Homes Sold	Termination of Developer Control All sold or a date 12 years from recording of Declaration	First Annual Meeting After Termination of Developer Control
Developer	Developer	Developer	Developer	Owners
Developer	Developer	Developer	Owners	Owners
Developer	Developer	Developer	Owners	Owners

	Developer	Owners	Owners	Owners
	Owners	Owners	Owners	Owners

Notes to Chart Previous Page:

"Developer" indicates position is filled by Developer appointment.
"Owners" indicates position is filled by election by Class A Members.

3.6 Removal of Directors and Vacancies

Any director elected by the Class A Members may be removed, with or without cause, by a two-thirds vote of the Class A Members present and entitled to vote at any meeting at which a quorum is present. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class A Members who has six consecutive unexcused absences from Board meetings, or who is more than 60 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class B Member or to any director serving as a representative of the Declarant. The Class B Member or the Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class B Member or the Declarant.

3.7 Organizational Meeting

The first meeting of the Board following each annual meeting of the membership shall be held within 30 days thereafter at such time and place the Board shall fix.

3.8 Regular Meetings

Regular meetings of the Board may be held at such time and place a majority of the directors shall determine, but at least six such meetings shall be held during each fiscal year with at least one meeting every other month.

Notice of the time and place of a regular meeting shall be communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9 Special meeting

Special meetings of the Board shall be held than called by written notice signed by the President or Vice President or by any two directors.

3.10 Notices: Waiver of Notice

(a) Notices of meetings of the Board shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by personal delivery, first class mall, postage prepaid, telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director, or facsimile, computer, fiber-optics or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the records of the Association. Notices of special meetings of the Board shall also be posted in a prominent place within the Community. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

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

3.11 Participation in Meetings

At all meetings of the Board, the presence of a majority of the directors shall be necessary to establish a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a Quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business, which might have been transacted at the meeting originally called, may be transacted without further notice.

3.13 Compensation

Directors shall not receive any compensation from the Association for acting as such. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. The Association may compensate a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.14 Conduct of Meetings

The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15 Open Meetings

Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but; attendees other than directors may not participate in any discussion or deliberation unless permission to speak is requested on their behalf by a director. In such case, the President may limit the time any such individual may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.16 Action Without a Formal Meeting

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

3.17 Powers

The Board of Directors shall have all of the powers and duties necessary for administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done, without a vote of the membership, all acts and things except those as to which the Governing Documents or North Carolina law require a vote of the membership.

3.18 Duties

The duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expense;

(b) levying and collecting such assessments from the Owners;

(c) making an annual contributions pursuant to the terms of the Covenants;

(d) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;

(e) maintaining the Common Area in accordance with the Development Agreement;

(f) designating, hiring, and dismissing the personnel necessary to exercise the authority and carry out the responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(g) depositing all funds received on behalf of the Association in a bank depository, which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;

(h) making and amending Rules and Regulations in accordance with the Declaration;

(i). opening of bank accounts on behalf of the Association and designating the persons authorized to sign on such accounts;

(j) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration, Development Agreement and these By-Laws;

(k) enforcing by legal means the provisions of the Declaration, these By-Laws, and the Rules and Regulations adopted by it;

(1) bringing any proceedings that may be instituted on behalf of or against the Owners concerning the Association;

(m) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(n) paying the cost of all services rendered to the Association;

(o) keeping books with detailed accounts of the receipts and expenditures of the Association;

(p) making available to any prospective purchaser of a Dwelling, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Dwelling, current copies of the Declaration, the

Articles of Incorporation, the By-Laws, Rules and Regulations and all other books, records, and financial statements of the Association as provided in Section 6.4;

(q) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;

(r) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by North Carolina law, the Articles of Incorporation or the Declaration;

(s) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration; and

3.19 Right of Declarant to Disapprove Actions

So long as the Declarant owns any property described on Exhibit A or Exhibit B which may be made a part of the Community, the Declarant shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws, interfere with development or construction of any portion of the Community, or diminish the level of services being provided by the Association.

(a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Section 3.10 and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program that would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsection (a) and (b) above have been met.

The Declarant, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services that the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20 Management

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary for the manager to assist the Board in performing its duties under Section 3.18, but shall not delegate policymaking authority or ultimate responsibility. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21 Accounts and Reports

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and

(f) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement, and (3) a statement of changes in financial position for the fiscal year. The annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or Insurer of any first Mortgage on a Dwelling, the Association shall provide an audited financial statement.

3.22 Borrowing

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain approval of Members entitled to cast at least a majority of the votes cast at a duly called and held meeting of the Members at which a quorum is represented, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 25% of the budgeted gross expenses of the Association for that fiscal year. During the Developer Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least 67% of the total Class A votes in the Association, the consent of the Class B Member and the approval of the U.S Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the mortgage on any Dwelling.

3.23 Right to Contract

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, within and outside the Community; provided, any common management agreement shall require the consent of a majority of the total number of directors of the Association.

Article IV. Officers

4.1 Officers

The initial officers during the Developer Control Period of the Association shall be a President, Vice President-Treasurer and a Secretary, which shall be selected by the Developer. Upon the termination of the Developer Control Period the officers shall be a President, Vice President, Secretary and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasures, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term of Office

The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected. The term of such office shall be three years. Such terms shall be staggered and the office of President cannot be held by the same person in two consecutive years.

4.3 Removal and Vacancies

The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the remaining portion of the term.

4.4 Powers and Duties

The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 Resignation

Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

Article V. Committees

5.1 General

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 Architectural Review Committee

The Board shall appoint an Architectural Review Committee upon delegation or termination of the Declarant's authority over architectural matters pursuant to Article IV of the Declaration. Such committee shall operate in accordance with the terms of Article IV and resolutions of the Board of Directors.

Article VI. Miscellaneous

6.1 Fiscal Year

The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules

Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3 Conflicts

If there are conflicts between the provisions of North Carolina law, the Development Agreement, the Covenants to Share Costs, the Declaration, the Articles of Incorporation, and these By-Laws, the provisions of North Carolina law, the Development Agreement, the Covenant to Share Costs, the Declaration, the Articles of Incorporation, and the By-Law (in that order) shall prevail.

6.4 Books and Records

The Board shall make available for inspection and copying by any holder, Insurer or guarantor of a first Mortgage on a Dwelling, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Dwelling: the Declaration, By-Laws, and Articles of Incorporation, including any amendments, the Covenant to Share Costs, the Development Agreement; the Rules and Regulations of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Community as the Board shall designate.

The Board shall establish Rules and Regulations with respect to:
(i) notice to be given: to the custodian of the records;
(ii) hours and days of the week when such an Inspection may be made; and;
(iii) payment of the cost of reproducing documents requested.

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

6.5 Notices

Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Dwelling of such Member; or

(b) if to the Association, a committee, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 Amendment

During the Class B Membership and subject to the approval requirements described in Article XV of the Declaration, if applicable, the Class B Member may amend these By-Laws without approval of the Board or the Class A Members. Additionally, the Class B Member may amend these By-Laws at any time if such amendment:

(1) is necessary to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination;

(ii) is necessary to enable any reputable title insurance company to issue title insurance coverage on the Dwellings; or

(iii) is necessary to enable any Institutional or governmental entity to make, purchase, Insure or guarantee mortgage loans on the Dwellings, or

(iv) does not materially adversely effect the rights of any Member without that Member's consent.

Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of persons entitled to cast 51% of the total Class A votes in the Association, and the consent of the Class B Member, if such exists. In addition, the approval requirements set forth in Article XV of the Declaration 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.

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

So long as the U.S. Department of Veterans Affairs (if it is then guaranteeing Mortgages in the Community or has issued a project approval for the guaranteeing of such mortgages) and/or the U.S. Department of Housing and Urban Development (if it is then insuring any Mortgage in the Community or has issued a project approval for the insuring of such mortgages) shall have the right to veto amendments to these By-Laws for as long as the Declarant has the right to appoint and remove the directors and officers of the Association.

Amendments to these By-Laws shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within three 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 these By-Laws.

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Certification

I, the undersigned, do hereby certify:

That I am the duty elected and acting Secretary of **Portofino Subdivision Homeowners' Association, Inc.,** a North Carolina corporation;

That the foregoing By-Laws constitute the original By-Laws of such Association, as duty adopted at a meeting of the Board of Directors thereof, held on the 28 day of SEPTEMBER, 2007.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 28 day of SEPTEMBER ,2007.

_______________(SEAL)
ROBERT N. BAILEY, Secretary