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COMMUNITY CHARTER

FOR

BAYSIDE

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TAX PARCELS SUBJECT TO THIS COMMUNITY CHARTER

5-33-19.00-16.01	5-33-19.00-18.00	5-33-19.00-33.00	5-33-19.00-36.00
5-33-19.00-37.00	5-33-19.00-38.00	5-33-19.00-39.00	5-33-19.00-40.00
5-33-19.00-40.01	5-33-19.00-40.02	5-33-19.00-41.00	5-33-19.00-41.01
5-33-19.00-41.02	5-33-19.00-43.00	5-33-19.00-48.00	5-33-19.00-48.02
5-33-19.00-49.00	5-33-19.00-291.00	5-33-19.00-291.01	5-33-19.00-294.01
5-33-19.00-294.02	5-33-19.00-292.00	5-33-19.00-295.00	5-33-19.00-296.00
5-33-19.00-301.00	5-33-19.00-298.00	5-33-19.00-298.02	5-33-19.00-298.03
5-33-19.00-298.01	5-33-19.00-299.00	5-33-19.00-299.01	5-33-19.00-299.02
5-33-19.00-299.03	5-33-19.00-300.00	5-33-19.00-301.01	5-33-19.00-301.02
5-33-19.00-301.03	5-3-19.00-301.04	5-33-19.00-301.05	5-33-19.00-301.06
5-33-19.00-303.00	5-33-19.00-302.00	5-33-19.00-304.00	5-33-19.00-618.00
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**COMMUNITY CHARTER
FOR
BAYSIDE**

PREAMBLE

Carl M. Freeman Communities L.L.C., a Delaware limited liability company, as the founder and developer of Bayside, has established and recorded this "**Community Charter**" ("**Charter**") to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of the residential properties within "**Bayside**," a mixed-use master planned community. This document does not and is not intended to create a condominium under the provisions of the Delaware Unit Property Act, 25 Del. C. § 2201, *et seq.*, as may be amended.

DECLARATION OF COVENANT

The "**Community**" referred to in this Charter consists of the property described in Exhibit "A" and any additional property made subject to this Charter in the future by amendment or supplement, as provided for in this Charter. This Charter shall run with the title to such property, binding not only Carl M. Freeman Communities L.L.C., its successors and assigns (the "**Founder**") but also the future owners of any portion of the property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property. This Charter also shall be binding upon Bayside Community Association, Inc., its successors and assigns (the "**Association**").

PART ONE: INTRODUCTION TO THE COMMUNITY

To accomplish great things, we must not only act, but also dream; not only plan, but also believe.

Anatole France

Chapter 1

Community

Truly great communities have a physical identity and a pride in that place; the community's stakeholders have a positive feeling of belonging and accomplishment in its activities. But words alone can never make community, and a community is only as good as the people who live and work there make it. Therefore, this Charter creates a vehicle, a process through which you and other stakeholders can build community at Bayside. By choosing to live in the Community, each resident understands the various components that comprise the Community and acknowledges the necessity to respect the diversity of perspective of other residents and Owners, the Founder, and the Builders, and the important role each must play in the Community's success and the success of Bayside as a whole.

Through the procedures established in this Charter, there is an administrative structure with the authority and responsibility to initiate programs, activities, and services and to respond to individual and collective creativity and interests.

1.1. Mission

We at Carl M. Freeman Communities value our relationship with you in the creation of this community. We have been partners with homeowners on the Delaware coast for nearly 30 years and take great pride in the vision of our founder to innovatively help people live better. Carl M. Freeman Communities is committed to creating communities that honor the land and the people who live on it.

- provide an orderly, regular, and informative communication system
- provide all interested parties a voice in community matters and an opportunity to communicate with the Association
- respect the value of each individual as well as the value and the importance of the community
- appreciate diversity of thought and of people
- establish community traditions that will engender pride in the community
- foster a sense of belonging
- motivate Owners and residents to participate by offering a variety of life-enriching opportunities
- provide meaningful opportunities to connect with the greater community

1.2. Participation

An essential component of building a sense of community involves listening to and appreciating input from all those interested in the community, whether Owners, residents, Builders, Mortgagees, or the Founder. This Charter creates opportunities for everyone to build and sustain a sense of community.

1.3. A Pledge

The Association and the Founder pledge to work to do the following with respect to the Community:

- insure an inclusive environment

- make a significant contribution to the quality of life in the Community and Bayside as a whole

- act with civility
- communicate constructively
- strive to make a contribution to the community

1.4. Expectations

There are only four expectations, but they are vital if there is to be community. They are that in all dealings among and between parties interested in the Community, everyone

Then there will be community.

- be informed

You Are the Community

Carl M. Freeman Communities L.L.C. and the Association cannot create community at Bayside; only you and your neighbors can accomplish this goal. This document and the processes and powers it creates are intended to enhance your ability to fashion the community you desire and to do so with minimal interference from sources outside the Community. You can be as active or as inactive in that process as you desire, but ultimately you will have the community that you and your neighbors create. The Founder wants Bayside to be a special place and hopes that you do so as well.

Chapter 2

Governing Documents

A community is guided and governed by certain principles that each owner and resident, by choosing to own property or reside in the community, agrees to uphold. Those principles are set forth in the community's governing documents, which serve as a tie that binds the community together, give it structure, and provide guidance to all who participate in its growth and evolution.

2.1. Scope and Applicability

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property within the Community, as

well as on anyone else who may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Charter as the "**Governing Documents**," include this Charter and the other documents described in Table 2.1, as they may be amended. All Owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

2.2. Additional Covenants

The owner of any property within the Community may impose additional covenants on such

GOVERNING DOCUMENTS	
Community Charter: (Recorded)	this Community Charter for Bayside, which creates rights and obligations that are binding upon the Association and all present and future owners of property in the Community
Supplement: (Recorded)	a recorded Supplement to this Charter, which may submit additional property to this Charter, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, designate Service Areas or Limited Common Areas, or any of the foregoing
Certificate of Incorporation: (filed with the Secretary of State)	the Certificate of Incorporation of Bayside Community Association, Inc., as they may be amended, which establish the Association as a nonprofit corporation under Delaware law
By-Laws: (attached as Exhibit "D")	the By-Laws of Bayside Community Association, Inc. adopted by its Board of Directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc. A copy of the By-Laws is attached as Exhibit "D."
Design Guidelines: (Founder adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 6, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other improvements
Rules: (initial set attached as Exhibit "C")	the rules of the Association adopted pursuant to Chapter 8, which regulate use of property, activities, and conduct within the Community
Board Resolutions: (Board adopts)	the resolutions which the Board adopts to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of the property which the Association owns or controls

Table 2.1

property. If the provisions of any such additional covenants are more restrictive than the provisions of this Charter, the more restrictive provisions control. The Association shall have standing and the power to enforce any such additional covenants.

2.3. Conflicts

If there are conflicts between any of the Governing Documents and Delaware law, Delaware law shall control. If there are conflicts between or among any of the Governing Documents, then the Charter, the Certificate of Incorporation, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.

Diagrams, tables, and explanatory text (text set apart in boxes with "key" icons) are used in the Governing Documents to illustrate concepts and assist the reader. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control.

Space has been set aside throughout this Charter to allow the reader to make notes. Those spaces and the heading that denotes the spaces are not part of this Charter.

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

2.4. Definitions

Capitalized terms used in the Charter have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found following the Table of Contents. All other terms used in the Governing

Documents have their natural, commonly accepted definitions.

2.5. Interpretation of Certain References

Community-Wide Standard. Where the Governing Documents require compliance with the "**Community-Wide Standard**," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (b) the minimum standards described in this Charter, the Design Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the Board's or the Design Review Committee's discretion. The Community-Wide Standard may or may not be set out in writing. The Founder initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as the Community changes.

Consent or Approval. All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

Discretion and Determination. All references in the Governing Documents to "**discretion**" or to the right to "**determine**" any matter shall refer to the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Maintenance. All references in this Charter to "maintenance" shall refer to maintenance, repair, rehabilitation, and renewal.

A few strong instincts and a few plain rules suffice us. Ralph Waldo Emerson

Notice. All references in this Charter to "notice" shall be deemed to refer to written notice by personal delivery, United States mail, private carrier, or, if the intended recipient has given its prior written authorization to use such method of delivery, facsimile or electronic mail with written confirmation of transmission.

NOTES

Notices shall be deemed to have been duly given and effective if:

(a) sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(b) delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(c) sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

Person. References in the Governing Documents to a "person" or "persons" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed or the filing of a legal instrument in the official records of Sussex County, Delaware, or such other place designated as the official location for filing documents affecting title to real estate in Sussex County in order to make them a matter of public record.

Chapter 3

Community Administration

Vibrant communities depend upon community members working together to uphold community standards and achieve the vision and goals for the community. The Founder, the Association, the Owners, the Builders, and others have a role in the functioning of the Community and in helping to fulfill that vision. This chapter identifies parties with an interest in the Community and describes their roles in administering the Community.

3.1. The Founder

The Founder has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the Community during the initial period of development and sale and thereafter. The Founder's proposed plan for development of the Community is described in the land use plan(s) for Bayside approved by the Sussex County, Delaware, as such may be supplemented and amended, which encompass(es) all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B" (the "**Master Plan**"). However, the Founder is not obligated to submit all of the property shown on the Master Plan to this Charter. In addition, the Founder may submit property to this Charter that is not shown on the Master Plan.

The Founder has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Founder may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Founder or any Founder Affiliate owns real property in the Community or has an unexpired option to expand the Community pursuant to Chapter 18. A "**Founder Affiliate**" is any Person who controls, is controlled by, or is under common control with the Founder, and any Person who is an owner, member, partner, or

shareholder of the Founder. CMF Bayside, L.L.C. shall be a Founder Affiliate for all purposes under the Governing Documents.

Other rights may be exercised only during the "**Founder Control Period**," which is the period of time that the Founder is entitled to appoint a majority of the members of the Association's board of directors ("**Board**"). It begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

(a) when 90% of the total number of Units permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Persons other than builders holding title for purposes of construction and resale;

(b) December 31, 2024; or

(c) when, in its discretion, the Founder so determines and declares in a recorded instrument.

The Founder has certain approval rights, as specified in the By-Laws, for a limited period of time following termination of the Founder Control Period.

The Founder may assign its status and rights as the Founder under the Governing Documents to any Person who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties.

3.2. The Association

The Founder has established the Association as the primary entity responsible for administering the Community in accordance with the Govern-

ing Documents. On most matters, the Association acts through the Board. However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Delaware law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Association may exercise all rights and powers which the Governing Documents and Delaware law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It also may take any action reasonably necessary to effectuate any such right or privilege.

3.3. The Board

The Board is the body responsible for administration, management, and operation of the Association. The Board is selected as provided in the By-Laws and serves the same role as the board of directors under Delaware corporate law.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, as defined in Section 4.1, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances), and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

3.4. The Owners

Each Person holding record title to a Unit, as defined in Chapter 4, is referred to in the Governing Documents as an "Owner." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in Part Two of this Charter.

3.5. Builders

Much of the responsibility and credit for helping to create the Community rests with the "Builders" -- those Persons approved by the Founder who purchase one or more unimproved lots or parcels of land within the Community for further subdivision or development and/or construction and resale in the ordinary course of their business. The Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association. In addition, the Founder may extend some of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community to such Builders as it may designate.

3.6. Neighborhood Associations

Portions of the Community may be developed under a condominium form of ownership or under other circumstances that require a separate owners association to administer additional covenants applicable to that particular area. Any such association is referred to as a "Neighborhood

Association." Nothing in this Charter requires the creation of a Neighborhood Association, and the jurisdiction of any Neighborhood Association shall be subordinate to that of the Association.

A Neighborhood Association, if any, is responsible for administering the additional covenants applicable to the property within its jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property it owns or for which it has maintenance responsibility under such additional covenants.

3.7. Mortgagees

If a Unit is made subject to a mortgage, deed of trust, or other form of security instrument affecting title to a Unit ("**Mortgage**"), then the holder or beneficiary of that Mortgage ("**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 17.

A community is like a ship; everyone ought to be prepared to take the helm. Henrik Ibsen

NOTES

Chapter 4

Community Structure and Organization

The Community consists of parcels intended for the exclusive use of the Owner and other occupants of such parcel, as well as property that is intended for common use. Units are grouped into Neighborhoods and Election Districts to facilitate voting on Association matters. Units may be assigned to Service Areas to permit the Association to provide special services and benefits to and at the expense of particular areas of the Community.

4.1. Designations of Properties Comprising the Community

Units. The Governing Documents refer to the homes and home sites in the Community as "**Units.**" A Unit is a portion of the Community, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residence for a single family, and includes each lot or unit depicted in a recorded subdivision plat or a condominium instrument. The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on the Unit. The term "Unit" does not include common property of any Neighborhood Association or property dedicated to the public.

Until such time as a subdivision plat or a condominium instrument is recorded subdividing a parcel of land into more than one Unit, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the Founder's site plan, whichever is more recent. Thereafter, the portion encompassed by such plat or condominium instrument shall contain the number of Units determined as set forth in the preceding paragraph. Any portion not encompassed on such plat shall continue to be treated in accordance with this paragraph.

Common Area. Any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "**Common Area.**" The Common Area also includes any property that the Association holds under a lease.

Limited Common Area. Certain portions of the Common Area may be designated as "**Limited Common Area**" and assigned for the exclusive use or primary benefit of one or more Units in specified portions of the Community. Limited Common Areas might include such things as entry features, recreational facilities, and landscaped medians and cul-de-sacs, among other things.

The Founder may designate property as Limited Common Area and assign it to particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, or in a Supplement. At any time during the Development and Sale Period, the Founder may assign use of the same Limited Common Area to additional Units.

Area of Common Responsibility. All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to as the "**Area of Common Responsibility,**" regardless of ownership. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way. The initial Area of Common Responsibility is described in Chapter 10.

4.2. Neighborhoods

Units are grouped into "Neighborhoods" to facilitate a system of representative voting on matters as to which the Governing Documents require approval of the Association's membership. A Neighborhood may be comprised of any number of Units and may include Units of more than one housing type, as well as Units that are not contiguous to one another. Each Neighborhood will elect one "Voting Delegate" to cast the votes allocated to Units in that Neighborhood on matters requiring a vote of the Owners, as described in Chapter 5.

The Founder initially will assign Units to a specific Neighborhood (by name or other identifying designation) either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally record a Supplement, or an amendment to this Charter or any previously recorded Supplement, to designate or change Neighborhood boundaries. Thereafter, the Board may amend this Charter or any Supplement to re-designate Neighborhood boundaries; however, the Board may not combine two or more existing Neighborhoods without the consent of Owners of a majority of the Units in the affected Neighborhoods.

4.3. Election Districts

The Founder or the Board may designate "Election Districts," consisting of the Units within one or more Neighborhoods, for the purpose of electing directors to the Board. The By-Laws set forth the method of establishing Election Districts. The number of Election Districts shall not exceed the total number of directors on the Board. The purpose of Election Districts is to provide for representation on the Board by groups with potentially dissimilar interests and to avoid a situation in which particular groups are able to elect the entire Board due to the number of votes they represent.

Diagram 4.1 illustrates the Association's organizational structure and the manner in which each Election District elects representatives to the Board after the Founder Control Period.

4.4. Service Areas

Units may be part of one or more "Service Areas" in which the Units share Limited Common Areas or receive benefits or services from the Association that it does not provide to all Units within the Community.

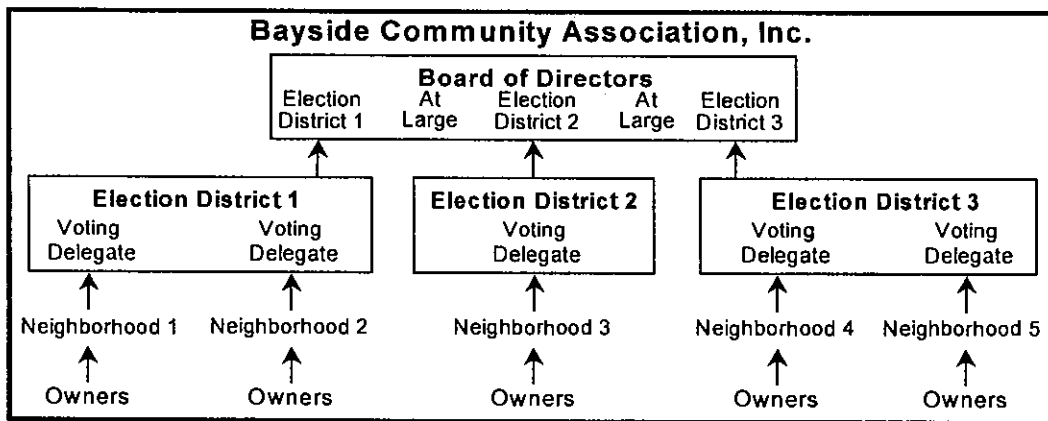


Diagram 4.1

Community Structure and Organization

NOTES

A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one housing type and may include Units that are not contiguous.

The Founder may initially designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally amend this Charter or any Supplement to change Service Area boundaries.

In addition, the Board may, by resolution, designate Service Areas and assign Units to them upon petition of Owners of at least 67% of the Units affected by the proposed designation pursuant to Section 11.2.

The Owners of Units within each Service Area may elect a "**Service Area Committee**" in accordance with the By-Laws to represent and act on behalf of the Owners with respect to the services and benefits that the Association provides to the Service Area. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

*Chaos is the law of nature; order is the dream
of men. Henry Adams*

Chapter 5

Association Membership and Voting Rights

The Association is an entity through which each Owner can participate in the governance and administration of the Community. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in each Owner allow the Owners to participate in administration of the Community and influence the outcome of major decisions.

5.1. Membership

The Association initially has two classes of membership: the Owner membership, which is comprised of all Owners, including Builders, and the Founder membership, which consists solely of the Founder.

(a) Owner Membership. Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, owner, member, shareholder, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any recreational facilities available for use by Owners.

(b) Founder Membership. The Founder holds the sole Founder membership. The Founder membership shall terminate two years after expiration of the Founder Control Period, or on such earlier date as the Founder determines and declares in a recorded instrument.

5.2. Voting

Each Unit is assigned one equal vote; provided, during such time as there is a Founder membership, no vote shall be exercised for Units that the Founder owns. In lieu of voting, the Founder's consent shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Governing Documents. After the Founder membership terminates, the Founder shall continue to hold a membership as an Owner and shall be entitled to one vote for each Unit it owns.

Due to the number of Units that may be developed in Bayside, the Governing Documents provide for a representative system of voting. The Owners of Units in each Neighborhood elect a "**Voting Delegate**" and an alternative Voting Delegate, in the manner provided in the By-Laws, to cast the votes of all Units in the Neighborhood on matters requiring a vote of the membership, except where the governing documents specifically require a vote of the Owners. However, until such time as the Board first calls for election of a Voting Delegate for a particular Neighborhood, each Owner of a Unit in such Neighborhood shall be considered a "Voting Delegate" and may personally cast the vote allocated to such Owner's Unit on any issue requiring a vote of the Voting Delegates under the Governing Documents.

The Voting Delegate or, in his or her absence, the alternative Voting Delegate, attends Association meetings and casts all votes allocated to Units in the Neighborhood that he or she represents on any matters as to which such Voting Delegate is entitled to vote under the Governing Documents. A Voting Delegate may vote all votes it is entitled to cast in its discretion and

may, but need not, poll the Owners of Units in the Neighborhood which he or she represents prior to voting. On any matter, other than election of directors, for which a Voting Delegate is entitled to cast more than one vote, the Voting Delegate may cast all such votes as a block or split them but shall not be entitled to fractionalize any single vote.

Voting Delegates are subordinate to the Board, and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Association governance beyond voting on matters put to a vote of the membership.

In any situation where there is more than one Owner of a Unit, the vote for that Unit shall be exercised as the co-Owners determine among themselves; provided, if more than one Person seeks to exercise the vote for a Unit, the last vote cast or received shall constitute the vote for such Unit.

Good order is the foundation of all things.
Edmund Burke

NOTES

PART TWO: COMMUNITY STANDARDS

The price of greatness is responsibility.

Winston Churchill

Chapter 6

Architecture, Landscaping, and Aesthetic Standards

Bayside derives its unique character from a mix of compatible architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on the Units.

6.1. General

All site work, landscaping, structures, improvements, and other items placed on a Unit in a manner or location visible from outside of any existing structures on the Unit ("**Improvements**") are subject to standards for design, landscaping, and aesthetics ("**Design Guidelines**") and the approval procedures set forth in this chapter, except as this chapter or the Design Guidelines may otherwise specify.


No prior approval is necessary to repaint the exterior of structures on any Unit using the most recently approved color scheme or to rebuild or restore any damaged structures on a Unit in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a Unit visible from outside a structure may require prior approval.

Any dwelling constructed shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Founder or its designee otherwise approves.

Approval under this chapter is not a substitute for any approvals or reviews required by Sussex County or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

This chapter shall not apply to the Founder's design and construction activities or to the Association's activities during the Founder Control Period.

6.2. Design Review Authority

 Initially, the Founder reviews applications for proposed Improvements and determines whether they should be approved. Thereafter, the Board of Directors will appoint a Design Review Committee to review applications for proposed improvements. The Founder or the Design Review Committee is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

(a) **Founder.** The Founder has exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Homes planned for the property described in Exhibits "A" and "B" have been improved with dwellings for which a certificate of occupancy has been issued. The Founder may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, the Founder and its designee act solely in the Founder's interest and owe no duty to any other Person.

From time to time, the Founder may delegate any or all of its rights under this chapter to other Persons or committee, including the committee appointed pursuant to Section 6.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Founder's right to revoke such delegation at any time and reassume its prior control, and (ii) the Founder's right to veto any decision that it determines to be inappropriate or inadvisable. So long as the Founder has any

rights under this chapter, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates.

(b) *Design Review Committee.* Upon the Founder's delegation of authority pursuant to Section 6.2(a), or upon expiration or termination of the Founder's rights under this chapter, the Board shall appoint a Design Review Committee ("Design Review Committee" or "DRC") to assume jurisdiction over matters within the scope of the delegated authority or this chapter, as applicable. The DRC shall consist of at least three, but not more than five, persons, who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.


Until expiration of the Founder's rights under this chapter, the DRC shall notify the Founder in writing within three business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes under this chapter. A copy of the application and any additional information the Founder may require shall accompany the notice. The Founder shall have 10 business days after receipt of such notice to veto any such action, in its discretion, by written notice to the DRC.

Unless and until such time as the Founder delegates all or a portion of its reserved rights to the DRC or the Founder's rights under this chapter terminate, the Association shall have no jurisdiction over architectural matters. However, the Association may enforce the provisions of this chapter and the Design Guidelines.

(c) *Reviewer.* For purposes of this chapter, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer."

(d) *Fees; Assistance.* The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Association's annual operating budget.

6.3. Guidelines and Procedures

 The purpose of the Design Guidelines is to maintain character and quality of appearance for the Improvements within the community and to ensure that Improvements are constructed in an orderly manner. The Design Guidelines may describe what types of building materials and design elements are preferred and others that are discouraged. The Design Guidelines also provide a specific procedure for submitting applications for proposed Improvements and describe how to carry out the construction of the Improvements once approval has been granted.

(a) *Design Guidelines.* The Founder may prepare the initial Design Guidelines, which may contain general provisions applicable to all of Bayside as well as specific provisions that vary among uses, housing types, or locations within the Community. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

The Founder has sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 6.2(a). The Founder's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless the Founder also delegates the power to amend to the DRC. Upon termination or delegation of the Founder's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

Amendments to the Design Guidelines shall be prospective only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines, as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and their contractors upon request. In the Founder's discretion, such Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Unless the Design Guidelines provide otherwise, no activities described within the scope of this chapter (as described in Section 6.1) may begin on any portion of the Community until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, and such other information as the Reviewer or the Design Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to Chapter 19, nor shall they be subject to judicial review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Founder's veto right under Section 6.2(a), the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 6.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement

unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Founder, or any aggrieved Owner.

The Reviewer may exempt certain activities from the application and approval requirements of this chapter, if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.


(c) Appeals Process. After the Board's appointment of the DRC, an applicant may appeal disapprovals of application to the Board. To request an appeal, the applicant must submit to the Association's Secretary, no later than 15 days after the delivery of the notification of disapproval, a copy of the original application, the notification of the disapproval of the application, and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for disapproval, if any, listed in the notification of disapproval. The Board may (i) affirm the DRC's decision, (ii) affirm a portion and overturn a portion of the DRC's decision, or (iii) overturn the DRC's decision. The Board shall notify the applicant and the DRC in writing of its decision no later than 30 days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the DRC's decision. During the appeal process the Owner shall not commence any work requiring approval hereunder.

6.4. No Waiver of Future Approvals

The people reviewing applications under this chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may

require that objectionable features be corrected or it may elect not to require changes to objectionable features; provided, the Reviewer may not require the removal of features or improvements constructed in conformance with plans which it previously has approved. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

6.5. Variances.

 In some circumstances, an Owner may find it difficult or impossible to comply with one or more requirements of the Design Guidelines. In that case, the Owner can file a request with the Reviewer to be excused from complying with such requirements. The Reviewer has the discretion to grant or deny the request.

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance or if the Reviewer otherwise reasonably deems a variance to be appropriate under the particular circumstances; however, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Charter; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Founder's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

6.6. Limitation of Liability

This chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to

this chapter may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

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The Founder, the Association, its officers, the Board, any committee, and any member of any of the foregoing shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Founder has approved or featured such contractor as a Builder; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify the Board, the DRC, and the members of each as provided in the By-Laws.

6.7. Certificate of Compliance

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this chapter or the Design Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.

*We shape our buildings and our
buildings shape us. Winston Churchill*

Chapter 7

Maintenance, Repair, and Replacement

One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive, and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the community. This chapter describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.

7.1. Maintenance of Units

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to this Charter, any Supplement, or by law.

Each Owner also shall be responsible for maintaining the landscaping, other than trees, within that portion of any adjacent Common Area, public right-of-way, or private street lying between the Unit boundary and any wall, fence, or curb located on the Common Area, public right-of-way, or private street within 10 feet of the Unit boundary, unless maintained by the Association or a Neighborhood Association pursuant to this Charter, any Supplement, or by law. However, Owners may not remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Chapter 6.

7.2. Maintenance of Neighborhood Association Property

A Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents,

the Community-Wide Standard, and all applicable covenants.

Any Neighborhood Association shall also be responsible for maintaining the landscaping, other than trees, and for irrigating all landscaping within that portion of any adjacent common property, public right-of-way, or private street lying between the Unit boundary and any wall, fence, or curb located on the common property, public right-of-way, or private street within 10 feet of the Unit boundary. A Neighborhood Association may not remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Chapter 6.

The Association may assume maintenance responsibility for property in any Neighborhood Association, either upon designation of the Neighborhood Association as a Service Area pursuant to Section 4.4 or upon the Board's determination, pursuant to Chapter 9, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. The Association need not treat all similarly situated Neighborhood Associations the same.

7.3. Maintenance of Area of Common Responsibility

The Association shall maintain the Area of Common Responsibility as more particularly described in Section 10.2.

7.4. Responsibility for Repair and Replacement

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement neces-

Maintenance, Repair, and Replacement

sary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either a Neighborhood Association (if any) or the Association carries such insurance (which they may but are not obligated to do). If the Association assumes responsibility for insuring a Unit, the premiums for such insurance shall be levied as a Service Area Assessment or a Specific Assessment against the benefited Unit(s) and the Owner(s). The Association is not obligated to, but may in the Board's discretion, institute requirements or procedures designed to verify each Owner's compliance with the above insurance requirement. In any event, however, the Association shall not be liable to any party for any costs or damages relating to or arising out of any failure of any Owner to carry the property insurance required under this paragraph.

Within three months of any damage to or destruction of a structure on a Unit, the Unit's Owner shall promptly repair or reconstruct the Unit in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 6, unless the Board, in its discretion, agrees to extend such period. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any Neighborhood Association or Service Area may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This section shall apply to a Neighborhood Association with respect to common elements or common property within the Neighborhood in the same manner as if the Neighborhood Association was an Owner and the common elements or common property was a Unit.

7.5. Maintenance and Repair of Party Walls and Similar Structures

Except as may otherwise be provided by law, a written agreement between Owners of adjacent Units, a Supplement, or other recorded documents applicable to adjacent Units:

(a) Each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two adjoining Units shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who share the party structure.

(b) If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner whose Unit is served by the structure may restore it. If other Units thereafter are served by the structure, the Owners of such Units shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(c) The right to and the obligation of contribution for party walls and similar structures between Owners, as provided in this section, shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(d) To the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure. Any dispute concerning a party structure shall be subject to the provisions of Chapter 19.

Chapter 8

Use and Conduct

In order to maintain a residential environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this chapter sets forth basic standards regarding use, occupancy and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within the Community to address particular needs and desires of the Community over time.

8.1. Use, Occupancy, and Transfer of Interests in Units

(a) Residential and Related Uses. Units may be used only for residential and related purposes, except as the Founder may otherwise authorize with respect to construction, marketing, and sale activities of the Founder and Builders it designates. A business activity shall be considered "related" to a residential use and thus permitted under this section only if conducted by a person or persons residing in the Unit and only if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

(iv) is consistent with the Community's residential character and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

The Board may exercise its discretion in determining the application of and compliance with these restrictions as they apply to particular uses and activities.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer 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.

Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that the Owner and any other Owners with whom such Owner is affiliated do not collectively lease or offer for lease Unit(s) other than their Unit(s) at any time. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure.

(b) Leasing. For the purposes of this Charter, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit. Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased; however, a detached "in-law suite" or "guest house" approved pursuant to Chapter 6 may be leased separate from the main dwelling.

Use and Conduct

All leases for a term of more than 120 consecutive days shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

Within 30 days of a lease for a term of more than 120 consecutive days being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of the Governing Documents.

In addition to, but consistent with this subsection, the Association or the Board may adopt Rules governing leasing and subleasing.


(c) *Transfer of Title.* Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least 30 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 continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

(d) *Subdivision and Combination of Units.* No Person other than the Founder and Builders authorized by the Founder shall subdivide or change the boundary lines of any Unit or combine Units without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue

to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling (i.e., the Owner of such adjacent Units shall be responsible for the separate assessments for each of such Units).

(e) *Timesharing.* No Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, unless such program is established by the Founder or with the Founder's prior written approval.

8.2. Rulemaking Authority and Procedures

 Since it is impossible to foresee all potential situations and problems that may arise within the community, the Board and the Voting Delegates have the authority to adopt and modify rules as needed to address these changing circumstances.

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Voting Delegates are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 8.3.

(a) *Board Authority.* Subject to the notice requirements in Section 8.2(c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting.

(b) *Membership Authority.* Subject to the notice requirements in Section 8.2(c), Voting Delegates representing a majority of the votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, as long as the Founder membership exists, any such action shall also be subject to the Founder's approval.

(c) *Notice.* The Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board or the Voting Delegates at which such action is to be considered. At any such meeting, Voting Delegates shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

(d) *Effective Date.* A Rules change adopted under this section shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners.

(e) *Conflicts.* No action taken under this section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Charter other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Charter (exclusive of the Rules), the Charter shall control.

8.3. Protection of Owners and Others

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

(a) *Similar Treatment.* Similarly situated Units shall be treated similarly; however, the Rules may vary by Neighborhood, Service Area, or housing type.

(b) *Displays.* No Rule shall abridge an Owner's right to display political, religious or holiday symbols and decorations on his or her Unit of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs. However, the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number.

Flags are generally permitted; provided, the Board may adopt Rules pertaining to flags in accordance with the Community-Wide Standard. In addition, Owners shall have the right to display one United States flag, measuring up to three feet by five feet, on a pole attached to the exterior wall of the Unit or Common Areas proximate to the Unit. This right may not be impaired by any state or private regulation or by any agreement, covenant, or restriction whatsoever. However, the Association may adopt rules consistent with this paragraph.

(c) *Household Composition.* No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area.

(d) *Activities Within Dwellings.* No Rule shall interfere with the activities carried on within a dwelling, except that the Association

Use and Conduct

may prohibit activities not normally associated with residential property. The Association may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance. The Association may not prohibit the Founder from maintaining an office in any dwelling which it owns or from using such dwelling as a model and/or for sales and/or marketing purposes.

(e) Allocation of Burdens and Benefits. No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 13.

(f) Leasing and Transfer of Units. No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit. The Rules may also require that Owners use Board-approved lease forms (or include specific lease terms), and may impose a reasonable review or administrative fee in connection with the Board's review of a lease.

(g) Abridging Existing Rights. No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not

apply to subsequent Owners who take title to the Unit after adoption of the Rule.

(h) Reasonable Rights to Develop. No Rule or action by the Association, the Board, or the membership shall impede the Founder's rights to develop or market the Community or impede the Founder's rights to sell, lease, or transfer any portion of the Community.

(i) Interference with Easements. No Rule may unreasonably interfere with the exercise of any easement.

The limitations in Section 8.3(a) through (g) of this section shall only limit rulemaking authority exercised under Section 8.2; they shall not apply to amendments to this Charter adopted in accordance with Chapter 22.

8.4. Owners' Acknowledgment and Notice to Purchasers

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

Peace rules the day when reason rules the mind.
Wilkie Collins

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Chapter 9

Compliance and Enforcement

The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the Owners in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This chapter sets forth the obligation to comply and the remedies available to the Association for non-compliance.

9.1. Compliance



All Owners and occupants of Units, as well as their tenants, guests, and other visitors, must abide by the Governing Documents and are subject to various penalties, including fines and the loss of the right to use the Common Area if they fail to do so.

Owners, occupants, and visitors to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, any violation of the Governing Documents by the occupants, tenants, guests, or invitees of his or her Unit and for any damage to the Area of Common Responsibility that such person may cause.

9.2. Remedies for Non-Compliance

The Association, the Founder, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those listed below and any others described elsewhere in the Governing Documents.

(a) Sanctions Requiring Prior Notice and Hearing. After written notice and an opportu-

nity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, 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;

(ii) suspend an Owner's right to vote (except that no hearing is required if the Owner is more than 60 days delinquent in paying any Base or Special Assessment);

(iii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspend services the Association provides (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(v) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including remov-

Compliance and Enforcement

ing personal property that violates the Governing Documents);

(vi) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Chapter 6, including the Design Guidelines, from continuing or performing any further activities in the Community;

(vii) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(viii) record a notice of violation with respect to any Unit on which a violation exists.

In the case of continuing or repeated violations, only a single notice and opportunity for a hearing is required prior to imposing any of the above sanctions for each violation.

(b) Other Sanctions. The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation on a Unit in any situation which requires prompt action to avoid potential injury or damage or involves unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner or Neighborhood Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Neighborhood Association's common elements or

common property, respectively, that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Neighborhood Association fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

(c) Additional Powers Relating to Neighborhood Associations. In addition to the foregoing sanctions, the Association shall have the power to veto any action that a Neighborhood Association proposes to take if the Board reasonably determines the proposed action to be adverse to the interests of the Association or its members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

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

9.3. Board Decision to Pursue Enforcement Action

Luck is the residue of design. Branch Rickey

NOTES

It is expressly intended that the Board have discretion to enforce or not enforce technical violations of the Governing Documents based upon fairness, hardship, aesthetic, or other considerations, except that the Board shall not act in an arbitrary or capricious manner. For example, the Board may determine that, in a particular case:

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

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

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

(d) that it is not in the Association's best interests, based upon fairness, hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

9.4. Attorneys Fees and Costs

In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

9.5. Enforcement of Ordinances

Susscx County and any other public governmental authority with jurisdiction may enforce ordinances within the Community.

PART THREE: ASSOCIATION OPERATIONS

We cannot escape the responsibility of tomorrow by evading it today.

Abraham Lincoln

Chapter 10

Property Management

One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of the Community. This chapter establishes the Association's obligation to accept property that the Founder designates as Common Area or Limited Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of the Community.

10.1. Acceptance and Control of Association Property

(a) Transfers and Conveyances by Founder. The Founder and its designees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Founder's written request, the Association shall reconvey to the Founder any real property that the Founder originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

(b) Management and Control. The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Board may adopt reasonable rules regulating the use of the Common Area. The Association is prohibited from allowing and/or entering into leases, licenses, or operating agreements with respect to portions of the Common Area for the purpose of conducting any commercial activities.

10.2. Maintenance of Area of Common Responsibility

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

(a) the Common Area;

(b) landscaping of each townhouse-style Home and of each multifamily building, and within public rights-of-way within or abutting the Community (except as maintained by an Owner or a Neighborhood Association in accordance with Section 7.1 or 7.2) to the extent that responsible governmental authorities do not maintain it to the Community-Wide Standard;

(c) such portions of any additional property as may be dictated by the Founder, this Charter, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association; and

(d) any property and facilities that the Founder or any Founder Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its members. The Founder shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Founder revokes such privilege of use and enjoyment by written notice to the Association.

The Association shall also be responsible for proper functioning of the stormwater drainage system serving the Community, including maintenance, repair, and replacement, as needed, of pipes, culverts, and other structures and equipment comprising the system. It shall have no

responsibility for landscaping or other maintenance of Units burdened by stormwater drainage easements unless otherwise specifically set forth in a Supplement or in a recorded agreement or plat.

The Association may maintain other property it does not own, including, without limitation, Units or property dedicated to the public, or property owned or maintained by a Neighborhood Association, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

The Association shall maintain public roads inside and surrounding Bayside to the extent required under the terms of separate agreements between the Founder and the Delaware Department of Transportation. The Founder's maintenance responsibilities and obligations under such agreements may be assigned to the Association.

10.3. Discontinuation of Operation

The Association shall maintain the Common Area facilities (other than Limited Common Area facilities) in continuous operation unless Voting Delegates representing at least 75% of the total votes in the Association consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall require the approval of the Board and the approval in writing of Owners representing at least 75% (or such higher percentage as a Supplement may require) of the Units to which such Limited Common Area is assigned. During the Development and Sale Period, the Founder's consent is required to discontinue operations of Common Areas. This Section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, nor to preclude temporary closures or interruptions in op-

eration as the Board may determine appropriate to perform maintenance or repairs.

10.4. Restoring Damaged Improvements

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements (other than Limited Common Area improvements) unless the Founder, during the Development and Sale Period, and Voting Delegates representing at least 75% of the total votes in the Association, decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, any decision not to restore the damaged improvements shall require the approval of the Board, Owners representing at least 75% of the Units to which such Limited Common Area is assigned, and the Founder (during the Development and Sale Period). If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.



This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible *not* to repair or rebuild if the Owners who benefit from the Common Area prefer not to rebuild.

If a decision is made not to restore the damaged improvements and no alternative improve-

ments are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

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The Association shall retain for the benefit of all Owners, or the Owners of Units within the affected Service Area, as the Board deems appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Voting Delegates, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 12.4.

10.5. Relationships with Other Properties

The Association may contract with the owner of any neighboring property to provide for sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services.

When you do the common things in life in an uncommon way, you will command the attention of the world.

George Washington Carver

Chapter 11

Provision of Services

In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This chapter describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.

11.1. Provision of Services to Units

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Founder or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as cable television, utilities (including propane and water), security, trash collection, landscape maintenance, pest control, caretaker services, Community Systems (as described in Section 11.3), and other technology services.

The Association may charge use fees for any such services or the Board may include the cost of services in the Association's Common Expense budget and assess it as part of the Base Assessment, if provided to all Units. If services are provided to less than all of the Units, the Association may assess such costs as a Service Area Assessment or a Specific Assessment, as appropriate, against only those Units being provided such service.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or oc-

cupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to Chapter 13.

Nothing in this section shall be construed as a representation by the Founder or the Association as to what, if any, services shall be provided. In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

11.2. Provision of Services to Service Areas

(a) Service Areas Designated by Founder. The Association shall provide services to Units within any Service Area designated by the Founder pursuant to Section 4.4 as required by the terms of this Charter or any Supplement applicable to the Service Area.

(b) Service Areas Designated by Board. In addition to Service Areas which the Founder may designate pursuant to Section 4.4, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Association (i) special benefits or services which are not provided to all Units, or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners of a majority of the Units within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the

initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least 67% of the Units within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 13.2(c).

11.3. Community Technology

(a) *Community Systems.* Without limiting the generality of Sections 11.1 and 11.2, and subject to the Founder's rights under Section 19.7, the Association is specifically authorized to provide, or to enter into contracts with other Persons to provide, or to take assignment from the Founder and assume contracts with other Persons to provide, central telecommunication receiving and distribution systems (*e.g.*, cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("Community Systems"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate.

The Association shall have no obligation to utilize any particular provider(s) and the Board is specifically authorized to act in its discretion with respect to the type and extent of Community Systems offered. However, except for cause (as defined by written agreement with the provider), the Association may not, without the Founder's consent, terminate or refuse to renew any contract entered into during the Founder Control Period.

The Association may charge use fees for any of the Community Systems or the Board may include the cost of Community Systems in the Association's Common Expense budget and assess it as part of the Base Assessment, if provided to all Units. If services are provided to less than all

of the Units, the Association may assess such costs as a Service Area Assessment or a Specific Assessment, as appropriate, against only those Units being provided such service.

(b) *Opportunities for Community Interaction.* The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association-sponsored activities. Unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

I think there is a world market for maybe five computers.

Thomas Watson, Chairman of IBM, 1943

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Chapter 12
Association Insurance

The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This chapter describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

12.1. Required Coverages

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated as typically purchased by properties of similar business size and scope within the same geographical area), for all insurable improvements on

(i) the Common Area;

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Service Area, to the extent specified or authorized by any applicable Supplement.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

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

(c) Workers compensation insurance and employers liability insurance;

(d) Directors and officers liability coverage in such amounts as the Board may determine; and

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

At least every two years, the Association shall arrange for a review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Sussex County area.

In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this section requires.

12.2. Deductibles



The Board can charge Persons who cause damage in the Community for amount of the insurance deductible to ensure that the Association need not pay for such damages.

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 12.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

12.3. Policy Requirements

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner.

To the extent available at reasonable cost and terms, all Association insurance shall:

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

(b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its

members, except that policies on Limited Common Area shall be for the benefit of the Owners of Units within the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

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

(d) contain an inflation guard endorsement;

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

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;

(g) provide a waiver of subrogation against any Owner or household member of an Owner; and

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.



Subrogation is a legal concept by which one person is substituted in the place of another with respect to a lawful claim or right. For example, once they have paid a claim by an insured party, insurance companies generally have the right to step into the shoes of the insured party and sue any one that the insured party could have sued.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners (as a class) as additional insureds and provide:

(a) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

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

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

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

(e) a cross liability provision; and

(f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

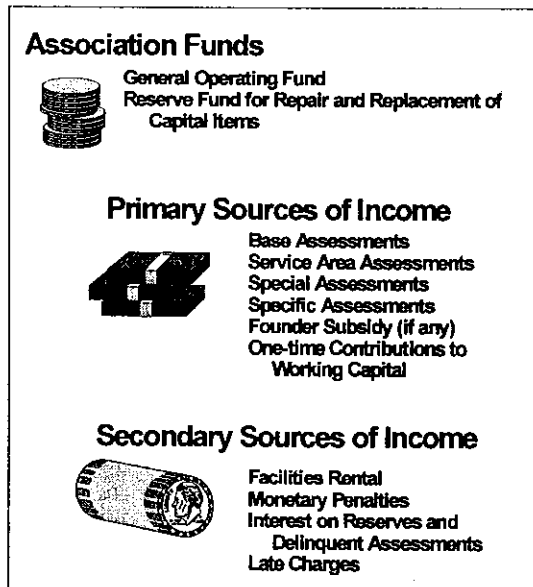
12.4. Insurance Premiums

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Common Areas assigned to, a particular Service Area shall be a Service Area Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

Chapter 13

Association Finances

This chapter provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments which this chapter authorizes the Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this chapter.



13.1. Association Expenses

(a) **Common Expenses.** Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered "Common Expenses." Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board

finds necessary or appropriate. Common Expenses shall not include Service Area Expenses.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Charter, any Supplement, or any other recorded covenants or agreements.

(b) **Service Area Expenses.** All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance, and operation of Limited Common Areas, or in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "Service Area Expenses." Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Unit among all Service Areas receiving the same service.

13.2. Budgeting for and Allocating Association Expenses

(a) **Preparation of Budget.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a

reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units (including amounts to which the Association is entitled pursuant to any covenant or agreement to share costs), and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (c).

(b) Calculation of Base Assessments. The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, shall be allocated equally among all Units subject to assessment under Section 13.5 and levied as a "**Base Assessment.**"

(c) Calculation of Service Area Assessments. The total Service Area Expenses budgeted for each Service Area, less any surplus in such Service Area budget from prior years, shall be allocated among all Units in the Service Area that are subject to assessment under Section 13.5 and levied as a "**Service Area Assessment.**" Unless otherwise specified in any Supplement applicable to a Service Area, Service Area Assessments shall be set at a uniform rate per Unit in the Service Area, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or re-

placement reserves which pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

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

(d) Founder's Subsidy Option. The Founder may, but shall not be obligated to, reduce the Base Assessment or any Service Area Assessment for any fiscal year by payment of a subsidy. Any such subsidy may be treated as a contribution, an advance against future assessments due from the Founder, or a loan, in the Founder's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Founder to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Founder.

(e) Notice of Budget and Assessment; Right to Disapprove. The Board shall make available a copy of each applicable budget, and send a notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budgets, to each Owner at least 30 days prior to the due date of the assessments to be levied pursuant to such budget. After termination of the Founder Control Period, the Common Expense budget shall be subject to disapproval at a meeting by Voting Delegates representing at least 75% of the total votes in the Association. After termination of the Founder Control Period, each Service Area budget shall be subject to disapproval at a meeting by Owners of at least 67% of the Units within the Service Area, except that the right to disapprove a Service Area budget shall apply only to those line items which are attributable to services or bene-

fits requested by the Service Area and shall not apply to any item which the Governing Documents require to be assessed as a Service Area Expense.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the Common Expense budget, on petition of the Voting Delegates as provided for special meetings in the By-Laws, and in the case of a Service Area budget, on petition of Owners representing at least 33% of the Units within the Service Area. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

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

(f) **Budget Revisions.** The Board may revise the budget and adjust the Base Assessment or Service Area Assessments anytime during the year, subject to the same notice requirements and rights to disapprove set forth in Section 13.2(d).

13.3. Special Assessments

The Association may levy "Special Assessments" to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Charter, any Special Assessment for Common Expenses in excess of \$400.00 per Unit in any fiscal year shall require the affirmative vote or written consent of the Voting Delegates representing more than 50% of the votes attributable to Units subject to assessment under Section 13.5 and shall be allocated equally among all such Units. Any Special Assessment for Service Area Expenses shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes

allocated to Units in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under Section 13.2(c). In addition, until termination of the Founder membership any Special Assessment also shall be subject to the Founder's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

13.4. Specific Assessments

The Association may levy **Specific Assessments** against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 11.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service;

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

(c) to cover the Unit's pro rata share of any costs that the Association incurs in bringing the common elements or common property of a Neighborhood Association of which the Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Owners of Units in the Neighborhood Association and an opportunity for such Owners to be heard before levying any such assessment.

13.5. Authority to Assess Owners; Time of Payment


The Founder hereby establishes and the Association is hereby authorized to levy assessments as provided for in this chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the later of the date: (a) the Unit is conveyed to a Person other than the Founder or a Founder Affiliate; (b) the certificate of occupancy is issued by Sussex County, Delaware for a completed dwelling on the Unit; or (c) the Board first determines a budget and levies assessments pursuant to this Charter. The first annual Base Assessment and Service Area Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

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

13.6. Personal Obligation for Assessments

By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 18% per annum), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Owner and a

lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

 By buying a Unit in the Community, each Owner agrees to pay all assessments levied against his or her Unit. If the Owner does not pay on time, that Owner will be charged late fees on all past due amounts. Owners may not claim a reduction in their assessments due to action or inaction by the Association.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Service Area Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

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

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive

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evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

13.7. Lien for Assessments


(a) *Existence of Lien.* The Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges, and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit. Such liens, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(b) *Enforcement of Lien.* The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf and the Unit shall not be counted as an eligible vote in determining the presence of a quorum for any purpose; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in

addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) *Effect of Sale or Transfer.* Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 13.5, including such acquirer, its successors and assigns.



If an Owner does not pay his or her assessments on time, the Association may foreclose the lien on the Owner's Unit, causing it to be sold to pay the past due assessments. The Association may also sue an Owner in court to recover past due assessments.

13.8. Exempt Property

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

- (a) All Common Area and any property owned by the Founder including that in the Area of Common Responsibility;
- (b) Any property dedicated to and accepted by any governmental or quasi-governmental authority, or public or private utility; and
- (c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by all members of a Neighborhood Association as tenants-in-common.

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In addition, both the Founder and the Association shall have the right, but not the obligation, to grant exemptions to schools, houses of worship, hospitals, libraries, police or fire stations (or other similar public service uses), or Units owned by Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code and used by such Persons for purposes listed in Section 501(c) of the Internal Revenue Code. Exemptions granted by the Founder shall be binding on the Association.

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13.9. Capitalization of Association

The first Owner of each Unit other than the Founder or a Builder designated by the Founder shall make a contribution to the working capital of the Association in an amount not to exceed one-fifth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and any Service Area Assessment levied on the Unit and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immediately upon transfer of title, for its use in covering initial start-up expenses, operating expenses, and other expenses it incurs pursuant to this Charter and the By-Laws.

13.10. Use and Consumption Fees

The Association may offer services or facilities for which it does not recover its costs through assessments under this Article. The Board may charge use and consumption fees to any Person who chooses to use or participate in such services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Owners and non-Owners).

PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

You don't get harmony when everybody sings the same note.

Doug Floyd

Chapter 14

Easements

The easements created in this chapter establish the rights of Owners to use the Common Area and create various rights for the benefit of Owners, the Founder, the Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the rights of Association to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.



An easement is one person's right to go onto the property of another.

14.1. Easements in Common Area

The Founder grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) Certain Owners' rights to the exclusive use of those portions of the Common Area designated "Limited Common Area"; and
- (d) The Board's right to:
 - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
 - (ii) suspend an Owner's right to use Common Area facilities;

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

(iv) permit use of any recreational facilities situated on the Common Area by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and

(v) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

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

During the Development and Sale Period, the Founder grants its employees, agents, and designees a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area to use any recreational and Common Area facilities.

14.2. Easements of Encroachment



An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. This section permits minor, inadvertent encroachments to remain.

The Founder grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto an-

other's a distance of less than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

14.3. Easements for Utilities and Other Infrastructure

(a) *Installation and Maintenance.* During the Development and Sale Period, the Founder reserves for itself 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 to:

(i) install utilities and infrastructure, other Community Systems, irrigation, cable television, propane and other fuel generation and delivery systems, security and similar systems, and drainage systems to serve the Community;

(ii) install walkways, pathways and trails, street lights, and signage on property the Founder or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

Notwithstanding the above, the Founder reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) *Specific Easements.* The Founder also reserves for itself the non-exclusive right and power to grant and record such specific easements consistent with Section 14.3(a) as it deems necessary to develop the property described in

Exhibits "A" and "B." The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.



Before the Founder can grant a new right to enter property, if someone else owns that property, the Founder must get that Owner's permission.

(c) *Minimal Interference.* All work associated with the exercise of the easements described in Sections 14.3(a) and (b) shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

14.4. Easements to Serve Additional Property

The Founder hereby reserves for itself and its duly authorized agents, successors, and assigns, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Charter. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property.

If the above easement grants permanent access to any property which is not submitted to this Charter, the Founder, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

14.5. Easements for Maintenance, Emergency, and Enforcement



The Association may come onto the exterior portions of your Unit to do maintenance or to address violations of the Governing Documents but will give prior notice unless there is an urgent need to enter the property before notice can be given.

By this Charter, the Founder grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Section 10.2 and its enforcement rights under Section 9.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

14.6. Easements for Lake and Pond Maintenance and Flood Water



The Founder and the Association have the right to access property adjacent to lakes, streams, and other water bodies to perform maintenance for irrigation purposes. They also have the right to cause water bodies in the Community to rise above their normal banks to perform maintenance. They will be responsible for repairing any damage they cause in so doing.

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

The Founder reserves for itself, the Association, and their respective successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not dwellings thereon) adjacent to or within 100 feet of bodies of water and wetlands within the Community, in order to (a) temporarily flood and back water upon and maintain water over such property; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in, and repair

any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make the Founder or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences. Nothing herein shall be construed to affect in any way any rights of any owner of any Private Amenity to all groundwater, surface water and stormwater runoff.

In the event that any lake or other body of water within the Community is dedicated to the Association, Sussex County, or any other local, state, or federal governmental or quasi-governmental entity, the Founder may amend this section as necessary or appropriate to reserve or assign rights with respect to bodies of water to such parties.

14.7. Easements for Golf Course



If the golf course is close to your Unit, you can expect that golf balls and people will come near your Unit. This section puts Owners on notice that activities relating to the golf course will affect Units next to the golf course.

A golf course is located adjacent to the Community. The Community is burdened with an easement permitting golf balls unintentionally to come upon areas adjacent to or in the vicinity of the golf course and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood Association, or the exterior portions of a Unit to retrieve errant golf balls. However, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls.

The owner and/or operator of the golf course, their respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Area reasonably neces-

sary to the operation, maintenance, repair, and replacement of the golf course.

Any portion of the Community immediately adjacent to the golf course is hereby burdened with a non-exclusive easement in favor of the golf course for overspray of water from the irrigation system serving the golf course. In addition, the Community is hereby burdened with easements in favor of the golf course for the natural drainage of stormwater runoff from such golf course.

The owner and/or operator of the golf course, their respective agents, employees, successors, successors-in-title, and assigns, shall have a perpetual, exclusive easement of access over the Community for the purpose of retrieving golf balls from bodies of water within the Common Area lying reasonably within range of golf balls hit from its golf course, and they as well as the golf course's members, guests, invitees, employees, contractors, and authorized users of the golf course shall at all times have a right and non-exclusive easement of access and use over the golf cart paths, if any, located within the Community as reasonably necessary for the use and enjoyment of the golf course.

Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of the easements provided for in this section: the Founder; CMF Bayside, L.L.C., Carl M. Freeman Communities L.L.C., its Affiliates, the Association or its members (in their capacities as such); the owner and/or operator of the golf course, its successors, successors-in-title to the golf course, or assigns; any builder or contractor (in their capacities as such); or any employee, agent, officer, director, member, owner, shareholder or partner of any of the foregoing, or any officer, director, member, owner shareholder or partner of any partner.

14.8. Rights to Stormwater Runoff and Water Reclamation

The Founder reserves for itself and its designees, including, but not limited to, the owner and/or operator of the golf course, its successors, assigns, and designees, all rights to ground water, surface water, and storm water runoff within the Community. By accepting a deed, each Owner agrees that the Founder shall retain all such rights. Such rights shall include an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water and runoff.

egress over such roadways within the Community as are necessary to gain access by the most direct route available to the parcels of land surrounded by the Community (as shown on the Master Plan) which are not part of the Community and not owned by the Founder or CM F Bay-side, L.L.C. This easement shall be subject to such reasonable rules as the Association may adopt and shall be exercised with a minimum degree of interference with the rights of Owners and occupants of Units to the quiet enjoyment of their Units and the Common Areas.

NOTES

14.9. Easements for Cemeteries and Gravesites

The South Church and Captain James Bishop cemeteries and a single grave at the Olla White Bay site are located within or adjacent to the Community (as shown on the Master Plan) and are accessible only through the Community. The Founder hereby grants to family members of those persons buried in such cemeteries and grave sites a perpetual, non-exclusive easement for access, ingress, and egress over such roadways within the Community as are necessary to gain access by the most direct route available to the gravesite of their family members, for the limited purpose of visiting and the maintenance and long term preservation of such gravesites. This easement shall be subject to such reasonable rules as the Association may adopt and shall be exercised with a minimum degree of interference with the rights of Owners and occupants of Units to quiet enjoyment of their Units and the Common Areas.

14.10. Easements for Outparcels

Certain parcels of land that are or should be completely surrounded by the Community are not a part of the Community and not subject to this Charter. The Founder grants to the owners and occupants of such parcels of land, as well as their guests, invitees, and licensees, a perpetual, non-exclusive easement for access, ingress, and

Chapter 15

Private Amenities

A golf course and various recreational and other facilities may be located within Bayside or in the vicinity of the Community are or shall be privately owned and operated by Persons other than the Association. Those facilities are not part of the Common Area of the Community and ownership of property in the Community does not give any person the right to use them. This chapter explains the right of the owners of those facilities to determine if and on what terms they wish to make their facilities available for use by Owners. It also establishes certain rights for the benefit of the owners of such facilities.

15.1. General

Property and facilities located within Bayside and adjacent to or near the Community are or shall be owned and operated by Persons other than the Association for recreational and related purposes. Those facilities are referred to collectively as "**Private Amenities**." The Private Amenities shall include, without limitation, the golf course and country club (the "**Club**") located or to be within Bayside and its related and supporting facilities and improvements.

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

any written agreements with their respective members.

The Club may contain certain non-golf facilities, such as outdoor swimming pool(s), fitness facility, tennis courts, and such other facilities as may be added from time to time, and non-golf membership classifications.

15.2. Conveyance of Private Amenities

All Persons, including Owners, are hereby advised that no representations or warranties have been or are made by the Founder, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity.

Ownership or operation of the Private Amenity may change at any time by virtue of, but without limitation, (a) the sale or lease to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; (c) the conveyance of any Private Amenity to one or more the Founder Affiliates; or (d) the dedication of any Private Amenity to the Association.

Consent of the Association, any Neighborhood Association, any Voting Delegate, or any Owner shall not be required to effectuate any change in ownership or operation of any Private

Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

NOTES

15.3. Rights of Access and Parking

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

15.4. Limitations on Amendments

In recognition of the fact that the provisions of this chapter are for the benefit of the Private Amenity, no amendment to this chapter, and no amendment in derogation of any other provisions of this Charter benefiting any Private Amenity, may be made without the written approval of the Private Amenity. However, the foregoing shall not apply to the Founder's amendments.

15.5. Jurisdiction and Cooperation

It is the Founder's intention that the Association and the Private Amenity shall cooperate to the maximum extent possible in the operation of the Community and the Private Amenity. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines.

Chapter 16

Disclosures and Waivers

This chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, accepts and agrees to the matters set forth in this chapter.

16.1. Facilities and Services Open to the Public

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

16.2. Safety and Security

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security that each person provides for himself or herself and his or her property. However, neither the Association nor the Founder 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 system or measure, including any security monitoring system or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented or that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of such Owner's Unit that the Association, its Board and committees, and the Founder are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

16.3. Changes in Master Plan

Each Owner acknowledges that Bayside is a master planned community, the development of which is likely to extend over many years, and agrees that neither the Association nor any Neighborhood Association shall engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses or density of property within Bayside; or (h) changes in the Master Plan as it relates to property outside the Community, without the Founder's prior written consent, which consent may be granted or withheld in the Founder's discretion.

16.4. View Impairment

Neither the Founder nor the Association guarantee or represent that any view over and across the golf course or any other Private Amenity and any other property within or outside of the Community will be preserved without impairment. The Founder, Founder Affiliates, the As-

Disclosures and Waivers

sociation, and any Private Amenity owner shall have no obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Common Area) has the right to add trees and other landscaping from time to time subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

Any golf course owner and/or operator may, in its discretion, but shall not be obligated to, change the location, size, configuration, landscaping, topography, hydrology, and elevation of the tees, bunkers, fairways, greens, buildings, improvements, landscaping, and water features on such golf course. Any such additions or changes to such golf course may diminish or obstruct the view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby disclaimed.

16.5. Notices and Disclaimers as to Community Systems

Any Community System and its providers, managers, and operators may be subject to federal, state, or municipal regulations, laws, and ordinances. Such regulations, laws, and ordinances may have a significant impact on certain aspects of the system including, but not limited to, the fees charged, the method of delivery, the rights of the system users, as well as the rights of the system providers or operators. These regulations and their impact are beyond the Association's and the Founder's control.

Each Owner acknowledges that interruptions in cable television and other Community Systems will occur from time to time. The Founder, Founder Affiliates, or any of their respective successors or assigns shall not be liable for, and no Community System user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems,

regardless of whether such interruption is caused by reasons within the service provider's control.

The Community Systems and all information and materials accessible to users of the Community Systems are made available "as is" without warranties of any kind, either express or implied, including, without limitation, warranties of title or implied warranties of merchantability or fitness for a particular purpose.

There is no guarantee, and neither the Founder nor the Association make any representation, that any particular Community System will be made available.

16.6. Assumption of Risk and Indemnification

Each Owner, by its purchase of a Unit in the vicinity of the golf course within or adjacent to any portion of the Community, hereby expressly assumes the risk of noise, personal injury, or property damage caused by maintenance and operation of such golf course, including, without limitation: (a) noise from operation and maintenance equipment (it being specifically understood that such maintenance typically takes place around or before sunrise or after sunset); (b) noise caused by golfers; (c) use of pesticides, herbicides, and fertilizers; (d) view restrictions caused by maturation of trees and shrubbery; (e) use of effluent in the irrigation of such golf course; (f) reduction in privacy caused by constant golf traffic on such golf course or the removal or pruning of shrubbery or trees on such golf course; (g) errant golf balls and golf clubs; and (h) design or redesign of the golf course.

Each such Owner agrees that the Founder, CMF Bayside, L.L.C.; the Association; any of the Founder's affiliates or agents; or any other entity owning or managing such golf course, including the owner and/or operator of the golf course, its successors, successors-in-title, or assigns, and their respective owners, officers, directors, employees and agents, shall not be liable to any

Owner claiming *any* loss or damage based upon, due to, arising from, or otherwise related to the proximity of such Owner's Unit to such golf course or the management thereof. Each Owner hereby agrees to indemnify and hold harmless the Founder; CMF Bayside, L.L.C.; the Association; the owner and/or operator of the golf course; and any other entity owning or managing such golf course and their respective owners, officers, directors, employees and agents, against any and all claims by Owner's occupants, visitors, tenants, and others coming upon such Owner's Unit.

NOTES

16.7. Mitigation of Impacts to Wetlands and Waters

Conservation areas, forest management areas, and mitigation conservation areas for wetland creation sites shall be or are located within or adjacent to the Community. The Founder has agreed, pursuant to U.S. Army Corps of Engineers and Delaware Department of Natural Resources and Environmental Control regulations, to the establishment of these areas. A conservation easement pertaining to these areas is or will be in place. Each Owner acknowledges the existence of these areas which may be located within Unit boundaries, and agrees to comply with all provisions of this Declaration, the conservation easement, and any other permits, agreements, rules, or regulations pertaining to these areas.

16.8. Agricultural Uses

Bayside is located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of Bayside is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities.

Chapter 17

Rights of Lenders

In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

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

17.1. Notices of Action

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

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

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

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

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

17.2. Special FHLMC Provision

If a condominium exists within any portion of the Community, and so long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Voting Delegates representing at least 67% of the total votes in the Association consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Community regarding assessments for Service Areas or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Charter);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance, or maintenance of Units and the Common Area (the issuance and amendment of

Rights of Lenders

architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Charter;

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property; or

(f) By act or omission seek to abandon or terminate the Community.

First Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

17.3. Other Provisions for First Lien Holders

To the extent not inconsistent with Delaware law:

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

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

subject to Mortgages held by such Eligible Holders are allocated.

17.4. Amendments to Documents

The following provisions do not apply to amendments to the Governing Documents or termination of the Association as a result of destruction, damage, or condemnation pursuant to Section 17.3(a) and (b), or to the addition of land in accordance with Chapter 18. If a condominium has been established in any part of the Community, then:

(a) The consent of Voting Delegates representing at least 67% of the total votes in the Association and of the Founder, so long as it owns any land subject to this Charter, and the approval of the Eligible Holders of first Mortgages on Units to which at least 67% of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association; and

(b) The consent of Voting Delegates representing at least 67% of the total votes in the Association and of the Founder, so long as it owns any land subject to this Charter, and the approval of Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Charter, By-Laws, or Certificate of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

(i) voting;

(ii) assessments, assessment liens, or subordination of such liens;

(iii) reserves for maintenance, repair, and replacement of the Common Area;

(iv) insurance or fidelity bonds;

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(v) reallocation or interests in the Common Area or Limited Common Area, or rights to their use;

(vi) responsibility for maintenance and repair of property in the Community;

(vii) expansion or contraction of the Community or the addition, annexation, or withdrawal of property to or from the Association's jurisdiction;

(viii) boundaries of any Unit;

(ix) leasing of Units;

(x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;

(xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder;

(xii) restoration or repair of the Community after damage or partial condemnation; or

(xiii) any provisions included in the Governing Documents that are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

17.5. No Priority

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

17.6. Notice to Association

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

17.7. 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.

17.8. Construction of Chapter

Nothing contained in this chapter shall be construed to reduce the percentage vote that must otherwise be obtained under this Charter, the By-Laws, or Delaware law for any of the acts set out in this chapter.

NOTES

PART FIVE: COMMUNITY DEVELOPMENT

The rung of a ladder was never meant to rest upon, but only to hold a man's foot long enough to enable him to put the other somewhat higher.

Thomas Henry Huxley

Chapter 18

Expansion of the Community

Due to the need to pace development to the needs of the Community and the market demand for Units or Common Areas, the Community may be developed in phases. The Founder or the Association may expand the initial property submitted to the Charter as set forth in this chapter.

18.1. Expansion by Founder

From time to time, the Founder may submit to the terms of this Charter all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if not the Founder.

The Founder's right to expand the Community under this section expires when all property described in Exhibit "B" has been submitted to this Charter or 25 years after this Charter is recorded, whichever is earlier. Until then, the Founder may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Founder. However, the time may be extended by affirmative vote or written consent, or any combination thereof, by Voting Delegates representing more than 67% of the total votes in the Association, excluding any votes held by the Founder, at any time during the year preceding the time this option would expire.

Nothing in this Charter shall require the Founder or any successor to submit additional property to this Charter or to develop any of the property described in Exhibit "B" in any manner whatsoever.

18.2. Expansion by the Association

The Association also may submit additional property to this Charter by recording a Supplement describing the additional property. Any Supplement that the Association records must be approved by Voting Delegates representing more than 50% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Founder's consent is required. The Association's President and Secretary, the owner of the property, and the Founder, if the Founder's consent is required, shall sign the Supplement.

18.3. Additional Covenants and Easements

Any Supplement that the Founder records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplement submitting new property to this Charter or may be set forth in a separate Supplement applicable to property previously submitted to this Charter. If someone other than the Founder owns the property, then the Supplement must be signed by such owner evidencing such owner's consent.

Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Charter as it applies to the property described in the Supplement in order to reflect the different character and intended use of such property.

18.4. Effect of Filing Supplement

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supple-

ment, any additional property made subject to this Charter shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Charter.

NOTES

Chapter 19

Additional Rights Reserved to the Founder

This chapter reserves various rights to the Founder, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Founder's development and sale of property in the Community, to enable the Founder to respond to Owners' concerns, and to protect various property rights and other interests of the Founder.

19.1. Withdrawal of Property

During the Development and Sale Period, the Founder may amend this Charter to remove any unimproved portion of the Community from the coverage of this Charter, provided such withdrawal does not reduce the total number of Units then subject to the Charter by more than 10%. "Unimproved" means that no permanent structure has yet been completed on the property. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Founder. If the property is Common Area, the Association shall consent to such withdrawal.

19.2. Marketing and Sales Activities

Notwithstanding anything in the Governance Documents to the contrary, during the Development and Sale Period, the Founder and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in the Founder's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units or the operations of the Founder and Founder's Affiliates at or near the Community. Such permitted facilities and activities shall include business and construction offices and activities, tents, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, exclusive use of portions of the Common Area (upon prior notice to

the Board) and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Founder and its employees, agents, and designees may park vehicles in designated areas, including within courtyards enclosed by building frontages or in parking courts. The rights of any Founder designee or assign under this section are subject to the Founder's approval.

19.3. Right to Develop

During the Development and Sale Period, the Founder and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area and to the Exhibit "B" property as it deems appropriate.

In addition, during the Development and Sale Period, the Founder may replat property that it owns and convert Units it owns into Common Area.

19.4. Right to Approve Changes in the Community Standards

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Founder.

19.5. Additional Covenants and Restrictions

During the Development and Sale Period, no Person other than the Founder may record additional covenants or restrictions affecting any portion of the Community without the Founder's written consent. Thereafter, the Board must consent. Any instrument recorded without the

required consent shall be void and of no force and effect.

19.6. Exclusive Rights to Use Name of Development


No Person shall use the name "Bayside" or any derivative of such name or in any logo or depiction associated with Bayside in any printed or promotional material without the Founder's prior written consent. However, Owners may use the name "Bayside " in printed or promotional matter where such term is used solely to specify that particular property is located within Bayside, and the Association shall be entitled to use the word "Bayside " in its name and on its letterhead. No Person shall use the name of any Private Amenity or any derivative of such name or in any logo or depiction associated with such Private Amenity in any printed or promotional material without the Private Amenity owner's prior written consent.

19.7. Community Systems

The Founder reserves for itself, Founder Affiliates, and their respective successors and assigns, a perpetual right and easement over all property in the Community to install and operate such Community Systems as the Founder, in its discretion, deems appropriate to service the buildings and the structures within any Unit or other portion of the Community. Such right shall include, without limitation, the Founder's right to select and contract with companies licensed to provide telecommunications, cable television, irrigation, and other Community Systems services in the region. The Founder also has the right to charge individual users a reasonable fee not to exceed the maximum allowable charge for such services, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

19.8. Easement to Inspect and Right to Correct

 The Founder, or someone it designates, may enter onto any Unit to inspect and correct problems with the Unit. The Founder must give the Owner of the Unit prior notice, and if entering an enclosed structure on the Unit, obtain the Owner's prior consent unless it is an emergency.

During the Development and Sale Period, the Founder reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition that may exist on any portion of the property within the Community, including Units, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

19.9. Right to Notice of Design or Construction Claims

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

Additional Rights Reserved to the Founder

19.10. Right of Founder's Employees to Use Amenities

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During the Development and Sale Period, the Founder and its employees, agents, and designees may use any recreational and Common Area facilities. During the Development and Sale Period, the Association shall not convert any of the recreational and/or Common Area facilities to use as offices without the prior written consent of the Founder.

19.11. Right to Transfer or Assign the Founder's Rights

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

19.12. Termination of Rights

The rights contained in this chapter shall be perpetual unless otherwise limited to the Development and Sale Period. The Founder may voluntarily terminate any of its rights by recording a written statement specifying such intent to terminate.

The very essence of leadership is that you have to have a vision. Theodore Hesburgh

PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

There are many ways of going forward, but only one way of standing still.

Franklin D. Roosevelt

Chapter 20

Dispute Resolution and Limitation on Litigation

From time to time, disputes may arise between Owners or between an Owner and the Association, the Founder, or others in the Community. This chapter commits the parties to any such dispute to work together in an attempt to resolve the dispute without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

20.1. Agreement to Encourage Resolution of Disputes Without Litigation

(a) Bound Parties. The Founder; the Association and its officers, directors, and committee members; all Persons subject to this Charter; and any Person not otherwise subject to this Charter who agrees to submit to this chapter (including without limitation any Private Amenity owner) (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 20.2 in a good faith effort to resolve such Claim.

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

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

- (iii) the design or construction of Improvements within the Community, other than matters of aesthetic judgment under Chapter 6, which shall not be subject to review and shall not be subject to this chapter.

(c) Exceptions. The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 20.2:

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

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

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

- (iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 20.2; and

- (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 20.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this chapter.

20.2. Dispute Resolution Procedures

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

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

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

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

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

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

(c) *Mediation.* If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Sussex County area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to

have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall pay an equal share of the mediator's fees.

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

20.3. Initiation of Litigation by Association

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

(a) initiated during the Founder Control Period;

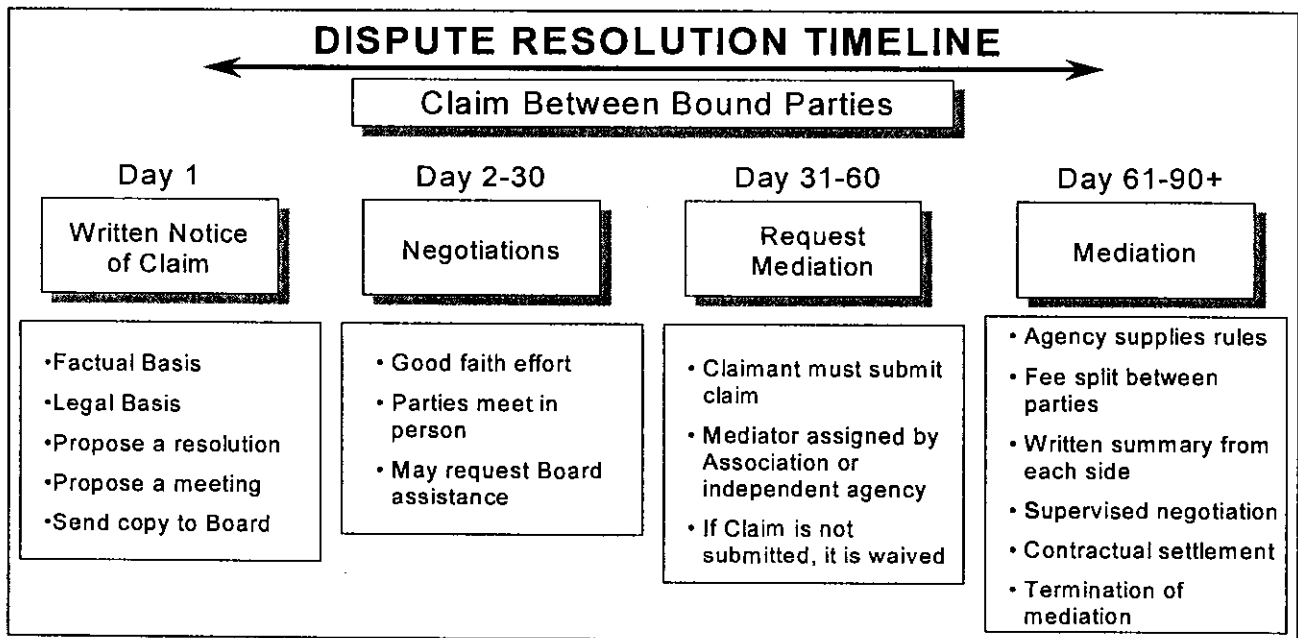
(b) initiated to enforce the provisions of this Charter, including collection of assessments and foreclosure of liens;

(c) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(d) initiated against any contractor, vendor, or supplier of goods or services to the Association arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

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



Chapter 21

Changes in the Common Area


Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of or rights to use Common Area. This chapter explains the procedures for dealing with matters such as changing use rights in Common Area or Limited Common Area, partition of the Common Area, and condemnation.

21.1. Assignment and Reassignment of Limited Common Area

The Board may designate a portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and the vote of Voting Delegates representing a majority of the total votes in the Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require the Founder's written consent.

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

21.2. Condemnation

 A public entity such as a town, county, or state has the power to condemn property for its own uses and generally has to pay the value of the property to do so.


If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation

with such approval as may be required under Section 21.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Founder, during the Development and Sale Period, and Voting Delegates representing at least 67% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 10.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 21.4.

21.3. Partition

 Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

Except as permitted in this Charter, the Common Area shall remain undivided, and no

Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Charter, with such approval as may be required under Section 21.4.

No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

Anyone who has never made a mistake has never tried anything new. Albert Einstein

NOTES

21.4. Transfer or Dedication of Common Area

The Association may dedicate portions of the Common Area to Sussex County, or to any other local, state, or federal governmental or quasi-governmental entity, may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Voting Delegates representing at least 67% of the total votes in the Association and the Founder during the Development and Sale Period; or

(b) if Limited Common Area, upon written approval of Owners representing at least 75% of the Units to which such Limited Common Area is assigned.

The Founder's consent shall be required during the Development and Sale period.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

The Founder may dedicate roads and other property within the Community as contemplated under the Master Plan.

Chapter 22

Termination and Amendment of Community Charter

As the Community matures and grows, the rules by which the Community is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This chapter sets out procedures by which either the Founder or the Owners as a group may amend this Charter to address such changes.

22.1. Term and Termination



There is an old concept of law known as the "Rule Against Perpetuities" that restricts how long covenants can affect the title to land. Many jurisdictions no longer observe the rule; however, where the rule applies, the term of the covenants cannot exceed 21 years after the death of a named person who is living at the time the covenants are recorded.

This Charter shall be effective for a minimum of 21 years from the date it is recorded. After 21 years, this Charter shall be extended automatically for successive 10-year periods unless at least 75% of the then Owners sign a document stating that this Charter is terminated and that document is recorded within the year before any extension. In such case, this Charter shall terminate on the date specified in the termination document.

If any provision of this Charter would be unlawful, void, or voidable by reason of any Delaware law restricting the period of time that covenants on land may be enforced, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

This section shall not permit termination of any easement created in this Charter without the consent of the holder of such easement.

22.2. Amendment

(a) By Founder. In addition to specific amendment rights granted elsewhere in this Charter, until conveyance of the first Unit to a Person other than a Builder, the Founder may unilaterally amend this Charter for any purpose.

Thereafter, the Founder may unilaterally amend this Charter if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; (iv) to satisfy the requirements of any local, state, or federal governmental agency; or (v) to clarify or correct technical, typographical, or scrivener's errors. However, any amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner consents in writing.

In addition, during the Development and Sale Period, the Founder may unilaterally amend this Charter for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 2% of the Owners.

(b) By Owners. Except as otherwise specifically provided above and elsewhere in this Charter, this Charter may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing at least 75% of the Units (with each Unit being allocated one vote regardless of whether owned by the Founder or an Affiliate of the

Termination and Amendment of Community Charter

Founder). In addition, during the Development and Sale Period, any such amendment shall also require the Founder's written consent.

in those exhibits or in the provisions of this Charter, which refer to such exhibits.

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. The approval of Eligible Mortgagees shall be obtained to the extent required under Section 17.4.

NOTES

(c) *Validity and Effective Date.* No amendment may remove, revoke, or modify any right or privilege of the Founder or the Founder Member without the written consent of the Founder or Founder Member, respectively (or the assignee of such right or privilege). In addition, the approval requirements set forth in Chapter 17 shall be met, if applicable.

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

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

(d) *Exhibits.* Exhibits "A" and "B" are incorporated by this reference, and this chapter shall govern amendment of those exhibits. Exhibit "C" is incorporated by this reference and may be amended under Chapter 8 or pursuant to this chapter. Exhibit "D" is attached for informational purposes and may be amended as provided

THIS COMMUNITY CHARTER is made this 22nd day of February, 2005, by Carl M. Freeman Communities L.L.C., a Delaware limited liability company ("Founder"). In witness whereof, the undersigned Founder has executed this Charter the date and year first written above.

FOUNDER: CARL M. FREEMAN COMMUNITIES L.L.C.,
A Delaware limited liability company

By: [Signature]
Thomas C. Halverstadt [SEAL]

Its: Sr VP

By: [Signature]
David E. Levitsky [SEAL]

Its: Assistant Secretary

STATE OF DELAWARE)
) ss
COUNTY OF SUSSEX)

Thomas C. Halverstadt

On this day personally appeared before me David E. Levitsky to me known to be the Sr VP + Asst Sec. of Carl M. Freeman Communities L.L.C., a Delaware limited liability company, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such company, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 25th day of February, 2005
Cathy W. DiGrazio
NOTARY PUBLIC

My Commission Expires: 12/2/08

Cathy W. DiGrazio
Notary Public-Delaware
My Commission Expires 12/2/08

**OWNER CONSENT
TO COMMUNITY CHARTER FOR BAYSIDE**

IN WITNESS WHEREOF, the undersigned, as owner of the property as described on Exhibit "A" to the Charter, hereby consents to the within and foregoing Charter and the recording of such this 22nd day of FEBRUARY, 2005.

PROPERTY OWNER: **CMF BAYSIDE, L.L.C., a Delaware limited liability company**

By: Frank G. Edwards [SEAL]
Its: Frank G. Edwards
Vice President

STATE OF Maryland)
COUNTY OF Frederick)

) ss

On this day personally appeared before me Frank G. Edwards, to me known to be the _____ of CMF Bayside, L.L.C., a Delaware limited liability company, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such company, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 22nd day of February, 2005.

Mary H. Scott
NOTARY PUBLIC

My Commission Expires: 7/1/07

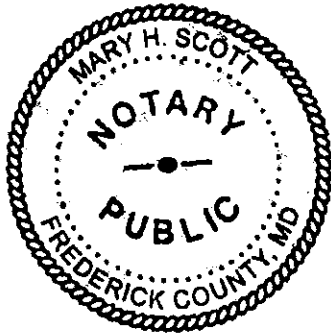


EXHIBIT "A"

Land Initially Submitted

All those certain tracts, pieces or parcels of land, situate, lying and being in Baltimore Hundred, Sussex County, State of Delaware, as shown on: that certain plot entitled Americana Bayside, Carl M. Freeman Communities, Sussex County, Delaware, Amended MR-RPC Plat for Phase 1A Town Center, prepared by George, Miles & Buhr, LLC, Architects & Engineers, dated January 27, 2005 and recorded in the Office of the Recorder of Deeds in and for Sussex County, at Georgetown, Delaware in Plot Book 91, Page 132; that certain plot entitled Americana Bayside, Carl M. Freeman Communities, Sussex County, Delaware, Amended Preliminary/Final Site Plans for Phase 1B, prepared by George, Miles & Buhr, LLC, Architects & Engineers, dated December 22, 2004 and recorded in the Office of the Recorder of Deeds in and for Sussex County, at Georgetown, Delaware in Plot Book 91, Page 149; that certain plot entitled Americana Bayside, Carl M. Freeman Communities, Sussex County, Delaware, Amended MR-RPC Plat for Phase 2 Town Center, prepared by George, Miles & Buhr, LLC, Architects & Engineers, dated January 31, 2005 and recorded in the Office of the Recorder of Deeds in and for Sussex County, at Georgetown, Delaware in Plot Book 91, Page 143; and that certain plot entitled Americana Bayside, Carl M. Freeman Communities, Sussex County, Delaware, Amended MR-RPC Plat for Phase 3 Town Center, prepared by George, Miles & Buhr, LLC, Architects & Engineers, dated January 31, 2005 and recorded in the Office of the Recorder of Deeds in and for Sussex County, at Georgetown, Delaware in Plot Book 91, Page 138; **EXCEPTING AND EXCLUDING, HOWEVER, THE FOLLOWING LOTS:** that certain lot designated as "Parcel 17.02" (Tax Map Parcel 5-33-19.00-17.02), consisting of 8.5 acres +/-, on that certain Lot Line Revision For Parcels 16, 17.02 and 38, prepared by George, Miles & Buhr, LLC, Architects & Engineers, dated January, 2003, as filed for record in the Office of the Recorder of Deeds in and for Sussex County, at Georgetown, Delaware, in Plot Book 82 at page 117; that certain lot designated as Lot 90, Tax Map Parcel 5-33-19.00-39.00, consisting of 3.27 acres +/-, as shown on that certain plot entitled Americana Bayside, Carl M. Freeman Communities, Sussex County, Delaware, Amended MR-RPC Plat for Phase 2 Town Center, prepared by George, Miles & Buhr, LLC, Architects & Engineers, dated January 31, 2005 and recorded in the Office of the Recorder of Deeds in and for Sussex County, at Georgetown, Delaware in Plot Book 91, Page 143; and that certain lot designated as Lot 9, consisting of 6,800 SF +/-, as shown on that certain plot entitled Americana Bayside, Carl M. Freeman Communities, Sussex County, Delaware, Amended Preliminary/Final Site Plans for Phase 1B, prepared by George, Miles & Buhr, LLC, Architects & Engineers, dated December 22, 2004 and recorded in the Office of the Recorder of Deeds in and for Sussex County, at Georgetown, Delaware in Plot Book 91, Page 149.

EXHIBIT "B"

Land Subject to Annexation

Any and all property lying and being in Sussex County, Delaware or Maryland, that is within 10 miles of any boundary of the property comprising the Community at any time.

EXHIBIT "C"

Initial Rules

The following Rules shall apply to all of the Community until such time as they are modified pursuant to the Charter.

1. **General.** The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Founder to assist in the sale of property described in Exhibit "A" or "B," offices for any property manager retained by the Association, or business offices for the Founder or the Association) consistent with this Charter and any Supplement.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are prohibited within the Community:

(a) Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages; provided, construction, service and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area, provided that no parked vehicle shall block any sidewalk within the Community;

(b) Raising, breeding, or keeping animals except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. However, those pets that are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Pets shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling, and all pet owners shall be responsible for immediately removing and disposing of any pet waste. Pets shall be registered, licensed, and inoculated as required by law;

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

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area; persons working in the Common Area; or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

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

(i) Using and discharging firecrackers and other fireworks;

(j) Dumping grass clippings, leaves, and other debris; petroleum products; fertilizers; or other potentially hazardous or toxic substances in any drainage ditch, stream, creek, or pond, or elsewhere within the Community, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and the Founder and the Builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulating rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers, which must be stored in an enclosed garage except on the regular day for garbage collection;

(l) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(m) On -site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

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

(o) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit;

(p) Placement, construction, installation, or any modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 6 and the Design Guidelines. This shall include, without limitation, signs (other than one sign placed in the front of a dwelling advertising that the Unit is for sale); basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans; woodpiles; lawn ornamentation; above-ground swimming pools; docks, piers, and similar structures; hedges, walls, dog runs, animal pens, or fences of any kind; and satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals

shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as

viewed from streets and adjacent property. The Founder and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, other communication system for the benefit of all or a portion of the Community, should any master system or systems be utilized by the Association and require such exterior apparatus;

(q) Vehicle maintenance on any part of a Unit other than inside an enclosed garage, except under circumstances where it is not practical to do so. When it is not practical to perform vehicle maintenance in an enclosed garage, such maintenance may be performed in a driveway, provided such activity must occur only during daylight hours and the vehicle upon which maintenance is being performed must be placed in an enclosed garage at the end of each day;

(r) Installation or storage, permanently or temporarily, of propane gas tanks and/or cylinders with capacity in excess of one hundred pounds of propane gas during the term of CMF Bayside, L.L.C.'s energy services agreement with Sharp Energy, Inc., a Delaware corporation. No amendment may be made to this restriction during the term of such energy services agreement; and

(s) Any garage sale, moving sale, rummage sale, or similar activity more than one time per year on any Unit.

3. Prohibited Conditions and Activities. The following shall be prohibited in the Community:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community;

(b) Structures, equipment, or other items on the exterior portions of a Unit that have become rusty, dilapidated, or otherwise fallen into disrepair, including, but not limited to worn, peeling, or chipped paint on the exterior portion of a Unit;

(c) Capturing, killing, or trapping wildlife within the Community, except by appropriately trained Persons in circumstances imposing an imminent threat to the safety of Persons or pets; and

(d) Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, ponds, lakes, wetlands, or other ground or surface waters within the Community, except that the Founder and the Association shall have the right to draw water from such sources.

4. Signs. The following restrictions on signs shall apply to all Units within the Community unless otherwise stated or unless otherwise approved by the Board. All signs must meet the guidelines adopted by the Board.

(a) Prior to the initial occupancy of the Unit, each Unit may display a sign setting forth the Owner's name and the name of the architect and Builder of the Unit and, in the case of a Unit owned by the Founder or a Builder approved by the Founder, a sign indicating that the Unit is available for sale; provided, any such signs shall be removed at the time of initial occupancy.

(b) Except as provided in Paragraph 4(a), no "for sale" or "for lease" signs may be posted on a Unit. An "open house" sign indicating that the Owner of the Unit is hosting such an event may be posted on the Unit for a period not to exceed three consecutive days.

(c) One sign not exceeding 18" x 24" containing political or similar endorsements may be posted on a Unit. Such sign may only be posted for 45 days prior to an election or a vote on a referendum and for two days thereafter.

(d) The Founder may post "model home" or similar signs on a Unit containing model homes open to the public prior to initial occupancy of the Unit.

(e) No other signs, except those required by law, including posters, circulars, and billboards, may be posted on any Unit so as to be visible from outside the Unit; provided, the Founder shall be entitled to post signs without Board approval.

BA 03106 212

EXHIBIT "D"

By-Laws of Bayside Community Association, Inc.

BK 03106 2213

EXHIBIT "D"

BY-LAWS

OF

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BY-LAWS
OF
BAYSIDE COMMUNITY ASSOCIATION, INC.

Article 1
Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Bayside Community Association, Inc. (the "Association").

1.2. Principal Office.

The Association's principal office shall be located in Sussex County, Delaware. The Association may have such other offices, either within or outside the State of Delaware, as the Board may determine or as the Association's affairs may require.

1.3. Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning ascribed to them in the Community Charter for Bayside recorded by Carl M. Freeman Communities L.L.C., a Delaware limited liability company, in the public records of Sussex County, Delaware, as it may be amended (the "Charter"). The term "majority," as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Article 2
Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

The Association shall have two classes of membership, one class consisting of the Owners and one class consisting of the Founder, as more fully set forth in the Charter. Provisions of the Charter pertaining to membership are incorporated by this reference.

2.2. Place of Meetings.

The Association shall hold meetings at the Association's principal office or at such other suitable place as the Board may designate.

2.3. Association Meetings.

(a) **General.** Association meetings shall be of the Voting Delegates unless the Board otherwise specifies or Delaware law otherwise requires; provided, until Voting Delegates are selected, meetings shall be of the Owners and references in these By-Laws to Voting Delegates shall be deemed to be references to the Owners. The first Association meeting, whether a regular or special meeting, shall be held within one year after the Association's incorporation.

(b) **Annual Meetings.** The Board shall schedule regular annual meetings to occur within 90 days before or after the close of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) **Special Meetings.** The President may call special meetings. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or upon a written petition of Voting Delegates representing at least 10% of the total votes in the Association.

2.4. Notice of Meetings.

The President, the Secretary, or the officers or other persons calling a meeting of the Voting Delegates shall deliver or cause to be delivered to each Voting Delegate entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Charter, or these By-Laws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered by such means as permitted under Section 9.5, at least 10 but not more than 50 days before the date of such meeting.

2.5. Waiver of Notice.

Waiver of notice of a meeting of an Association meeting shall be deemed the equivalent of proper notice. Any Voting Delegate may waive, in writing, notice of any Association meeting, either before or after such meeting. A Voting Delegate's attendance at a meeting shall be deemed a waiver by such Voting Delegate of notice of the time, date, and place thereof, unless such Voting Delegate 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.

2.6. Adjournment of Meetings.

If any Association meeting cannot be held because a quorum is not present, the Voting Delegates representing a majority of the votes present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted that might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, the Board shall provide notice to the Voting Delegates of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Voting Delegates present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Delegates to leave less than a quorum, provided at least a majority of the votes required to constitute a quorum must approve any action taken.

2.7. Voting.

(a) **Voting Rights.** Owners shall have such voting rights as are set forth in the Charter, which provisions are specifically incorporated by this reference. Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue as to which a Voting Delegate representing the neighborhood would be entitled to vote, and the term "Voting Delegate" shall include all such Owners.

(b) **Election of and Removal of Voting Delegates.** The Owners owning Units within each Neighborhood shall elect a Voting Delegate to cast all votes attributable to their Units on all Association matters requiring a membership vote, except as otherwise specified in the Charter or these By-Laws. In addition, each Neighborhood shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate.

The first election of a Voting Delegate and alternate Voting Delegate from each Neighborhood shall occur at least 30 days prior to any Association meeting at which the Voting Delegate from such Neighborhood will be entitled to vote. Thereafter, the Board shall call for an election of Voting Delegates and alternates on an annual basis.

Voting Delegate elections shall be by ballots cast by mail, computer, or at a meeting of the Owners within such Neighborhood, as the Board determines. Upon written petition signed by Owners holding at least 20% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. Candidates for election as Voting Delegates may be nominated by the Board, a nominating committee the Board may appoint, or from the floor at any meeting at which such election is to be held. In addition or in the alternative, any Person may submit his or her name for consideration.

The presence, in person or by proxy, or the filing of ballots of Owners representing at least 20% of the total votes attributable to Units in the Neighborhood shall constitute a quorum for any Neighborhood meeting or election. In the event of a failure to obtain a quorum or vacancy in such positions for any Neighborhood, the Board may appoint a Voting Delegates or alternate Voting Delegate to represent such Neighborhood until a successor is elected.

Subject to the above quorum requirement, in any election of Voting Delegates the candidate who receives the greatest number of votes shall be elected as the Voting Delegate and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. In the event of a tie vote among the leading candidates, the Voting Delegate shall be determined by drawing names from a hat, with the first person drawn being the Voting Delegate and the second being the alternate Voting Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of one year or until their successors are elected, whichever is longer.

Any Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owners representing a majority of the total number of Units in the Neighborhood that the Voting Delegate represents.

(c) Establishment of Election Districts. Founder shall establish Election Districts, if at all, not later than the date of expiration of the Founder Control Period by filing with the Association and recording a Supplement identifying the Units comprising each Election District by Neighborhood designation, legal description, or other means such that the Units within each Election District can easily be determined. The Founder, acting alone, may amend to change such designation at any time prior to the expiration of the Founder Control Period. After the Founder Control Period, the Founder may amend to designate additional Units as part of any Election District.

After termination of the Founder Control Period, the Board shall have the right to record or amend any such Supplement upon the vote of a majority of the total number of directors and approval of Voting Delegates representing a majority of the total number of Neighborhoods and a majority of the total votes in the Association. Neither recordation of nor the Founder's amendment of such Supplement shall constitute an amendment to the Charter. No consent or approval of any Person shall be required except as stated in this subsection. Until such time as Election Districts are established, all of Bayside shall constitute a single Election District. After a Supplement establishing Election Districts has been recorded, any and all portions of Bayside that are not assigned to a specific Election District shall constitute a single Election District.

2.8. Proxies.

Voting Delegates may not vote by proxy but only in person or through their designated alternates; however, any Voting Delegate who is entitled to cast only the vote(s) for his own Unit(s) pursuant to the Charter may cast such vote(s) in person or by proxy until such time as the Board first calls for election of a Voting Delegate to represent the Neighborhood of which the Unit is a part. Likewise, if an Owner is entitled personally to cast the vote for his Unit on any matter, he or she may vote in person or by proxy, subject to the limitations of Delaware law and subject to any specific provision to the contrary in the Charter or these By-Laws.

Every proxy shall be in writing specifying the Unit for which it is given, signed by the Owner or his or her duly authorized attorney-in-fact and shall be dated and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover all votes the Owner giving such proxy is entitled to cast, and 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.

A proxy is effective only for the specific meeting for which it was originally given, as such meeting lawfully may be adjourned and reconvened, and automatically expires 11 months after the date of the meeting for which it was originally given. Every proxy is revocable at any time at the pleasure of the Owner who executes the proxy.

2.9. Quorum.

Except as these By-Laws or the Charter otherwise provide, the presence of Voting Delegates representing 25% of the total votes in the Association shall constitute a quorum at all Association meetings

and the vote of Voting Delegates representing a majority of the total eligible votes cast shall constitute the action of the Voting Delegates.

2.10. Conduct of Meetings.

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall insure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Association's books.

2.11. Action Without a Meeting.

Any action required by the Charter, the Certificate of Incorporation, or Delaware law to be taken at a meeting of the Owners or Voting Delegates may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by the Owners or Voting Delegates holding at least the minimum number of votes necessary to authorize such action at a meeting if all Owners or Voting Delegates entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Owners or Voting Delegates at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Owners or Voting Delegates entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Article 3

Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualification.

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Founder, directors shall be Owners or residents. However, no Owner and resident representing the same Unit 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 Unit in the Community.

If an Owner is not an individual, any officer, director, partner, or trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Association signed by the Owner specifies otherwise. However, no Owner may have more than one such representative on the Board at a time, except in the case of directors the Founder appoints.

3.2. Number of Directors.

The Board shall consist of three to five directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office.

(a) Initial Board. The initial Board shall consist of the three directors identified in the Certificate of Incorporation, who shall serve until their successors are appointed or elected as provided in this section.

(b) Directors During Founder Control Period. Except as otherwise provided in this subsection, the Founder may appoint, remove, and replace Board members until termination of the Founder Control Period. The Voting Delegates shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Voting Delegates are referred to as "Owner Directors"):

(i) Within 30 days after the time that Owners other than Builders own 25% of the maximum number of Units permitted by the Master Plan or whenever the Founder earlier determines, the President shall call for an election by which the Voting Delegates shall be entitled to elect one of the three directors. The remaining directors shall be appointees of the Founder. The Owner Directors shall be elected for a term of two years or until the happening of the event described in Section 3.3(b)(ii), whichever is shorter. If such directors' terms expire prior to the happening of the event described in Section 3.3(b)(ii), successors shall be elected for a like term.

(ii) Within 30 days after the time that Owners other than Builders own 50% of the maximum number of Units permitted by the Master Plan or whenever the Founder earlier determines, the Board shall be increased to five directors and the President shall call for an election by which the Voting Delegates shall be entitled to elect two of the five directors. The Founder shall appoint the remaining three directors. The Owner Directors shall be elected for a term of two years or until the happening of the event described in Section 3.3(c)(i), whichever is shorter. If such directors' terms expire prior to the happening of the event described in Section 3.3(c)(i), successors shall be elected for a like term.

(c) Directors After the Founder Control Period.

(i) Within 30 days after the termination of the Founder Control Period, the President shall call for an election by which the Voting Delegates shall be entitled to elect four Owner Directors. Two Owner Directors shall be elected to serve until the second annual meeting following their election and two Owner Directors shall be elected to serve until the third annual meeting following their election, as such directors determine among themselves. Upon expiration of each such director's term, and thereafter upon the expiration of each successor's term, a successor Owner Director shall be elected by the Voting Delegates for a two-year term.

(ii) The Founder shall be entitled to appoint, remove, and replace the fifth director until termination of the Founder Membership, at which time the director appointed by the Founder shall resign. The remaining directors shall be entitled to appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Delegates, shall be entitled to elect a successor who shall be elected for a term of two years.

(iii) Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

The diagram below illustrates the concept of transition of control of the Board during and after the Founder Control Period.

TRANSITION OF CONTROL OF BOARD OF DIRECTORS				
Initial Board	25% of Total Units Conveyed	50% of Total Units Conveyed	Termination of Founder Control Period	Termination of Founder Membership
Founder	Owner	Owner	Owner	Owner
Founder	Founder	Owner	Owner	Owner
Founder	Founder	Founder	Owner	Owner
		Founder	Owner	Owner
		Founder	Founder	Owner

3.4. Nomination and Election Procedures.

(a) **Nomination of Candidates.** At least 30 days prior to any election of directors by the Voting Delegates, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a Board member, and three or more Owners or representatives of Owners. The Nominating Committee shall serve a term of one year or until its successors are appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Owners at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Nominations shall also be permitted from the floor at the meeting at which any election is held. All candidates shall have a reasonable opportunity to communicate their qualifications to the Voting Delegates and to solicit votes.

(b) **Election Procedures.** At each election, voting shall be by written ballot. Each Voting Delegate shall be entitled to cast all votes assigned to his or her Unit for each position to be filled from any slate of candidates on which such Voting Delegate is entitled to vote. 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. Removal of Directors and Vacancies.

Any director elected by the Voting Delegates may be removed, with or without cause, by the vote of Voting Delegates holding a majority of the votes entitled to be cast for the election of such director. 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 Owners entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who (a) has three consecutive unexcused absences from Board meetings; (b) is more than 30 days delinquent (or resides in a Unit owned by an Owner who is so delinquent) in the payment of any assessment or other charge due the Association; or (c) fails to cure a violation of the Governing Documents pertaining to his or her Unit after being given notice from the Board or its designee and a reasonable opportunity to cure such violation. 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 an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Owners entitled to fill such directorship may elect a successor for the remainder of the term.

This section shall not apply to directors the Founder appoints. The Founder may appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Founder.

B. Meetings.

3.6. Organizational Meetings.

The Board shall hold an organizational meeting within 10 days following each annual Association meeting at such time and place as the Board shall fix for the purpose of electing officers and providing for such other organizational functions as deemed appropriate.

3.7. Regular Meetings.

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least four times each fiscal year with at least one meeting per quarter.

3.8. Special Meetings.

The Board shall hold special meetings when called by written notice the President, Vice President, or any two directors sign(s).

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings 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 Board shall notify each director of meetings by posting in a prominent place or places in the Common Area and by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) 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 (iv) facsimile, electronic mail, other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown in the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or electronic communication at least 72 hours before the time set for the meeting.

(b) The Board shall notify the Owners of each Board meeting by either: (i) posting notice of the meeting in a conspicuous place in the Community at least 48 hours in advance of the meeting; (ii) publication of a schedule of the Board meetings in a newspaper, newsletter, on a community intranet or website, or by similar means at least seven days prior to the meeting; or (iii) mailing notice of the meeting to each Owner.

(c) Transactions of any Board meeting, 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) either before or after the meeting each director 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.

3.10. Telephonic Participation in Meetings.

Members of the Board or any advisory committee the Board designates may participate in a Board or advisory committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

3.11. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute 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 Delaware law, these By-Laws, or the Charter provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting 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 the Board may transact, without further notice, any business it might have transacted at the original meeting.

3.12. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all transactions occurring at such meetings are included in the Association's records.

3.13. Open Meetings; Executive Session.

(a) Subject to the provisions of Sections 3.15(b) and 3.16, all Board meetings shall be open to all Owners, but only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session and may exclude persons other than directors to discuss matters of a sensitive nature, such as proposed, pending, or threatened litigation, or other matters specified by law. The Board also shall

meet in executive session if requested by an Owner who may be subject to a fine, penalty, or other form of discipline, and the Owner shall be entitled to attend such executive session.

3.14. Action Without a Formal Meeting.

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if the directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.15. Powers.

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those that the Governing Documents or Delaware law require to be done and exercised exclusively by the Voting Delegates or the membership generally.

3.16. Duties.

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Charter, an annual budget and establishing each Owner's share of the Common Expenses and any Service Area Expenses;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) opening bank accounts on the Association's behalf and designating the signatories required;
- (e) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Charter;
- (g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;
- (h) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings that may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Charter;
- (i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Charter, paying the cost thereof, and filing and adjusting claims, as appropriate;

- (j) paying the cost of all services rendered to the Association;
- (k) keeping a detailed record of the Association's receipts and expenditures;
- (l) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 7.4; and
- (m) indemnifying a director, officer, or advisory committee member, or former director, officer, or advisory committee member of the Association to the extent such indemnity is required by Delaware law, the Certificate of Incorporation, or these By-Laws.

3.17. Conflicts of Interest.

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Notwithstanding the above, directors appointed by the Founder may be employed by or otherwise transact business with the Founder or its affiliate, and the Founder may transact business with the Association or its contractors.

Article 4 Officers

4.1. Officers.

The Association's officers shall include a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, 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 Association's officers at the first Board meeting following each annual meeting of the Association, to serve until their successors are elected.

4.3. Removal and Vacancies.

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

4.4. Powers and Duties.

The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the Association's budget as provided for in the Charter 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, 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. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

**Article 5
Committees**

5.1. General.

The Board may appoint such other advisory committees as it deems appropriate to perform such tasks and to serve for such periods (subject to Section 5.4) as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than five Owners who shall not be officers, directors, or employees of the Association or the spouse, parent, sibling, or child of any officer, director, or employee. Acting in accordance with the provisions of the Charter, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the Association's hearing tribunal and shall conduct all hearings held pursuant to Section 8.2. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

5.3. Service Area Committees.

The Owners within any Service Area that has no formal organizational structure or association may elect a Service Area Committee to determine the nature and extent of services, if any, it desires to have the Association provide to the Service Area over and above those services which the Association provides to all Units in the Community. A Service Area Committee, if elected, shall consist of three Owners of Units in the Service Area; however, if approved by the vote of at least 51% of the Owners of Units within the Service Area, the number may be increased to five.

Elections of Service Area Committees may be held by written ballot sent to all Owners of Units within the Service Area or at a meeting of the Owners of Units within the Service Area, as the Board determines. The Board or any Owner of a Unit in the Service Area may nominate candidates for election to the Service Area Committee. That number of candidates equal to the number of positions to be filled receiving the most votes shall be elected. Service Area Committee members shall be elected for a term of one year or

until their successors are elected. Any director elected to the Board from a Service Area shall be an *ex officio* member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

Meetings of a Service Area Committee shall be open to all Owners of Units in the Service Area and their representatives.

5.4. Term of Service.

In order to maximize the participation of all Owners and residents within the Community, service on all committees shall rotate on a regular, two-year basis.

5.5. Limitation on Powers.

The Board shall have the right to disapprove or veto any committee decision or action. Notwithstanding any provision to the contrary, committees shall not have the authority to contractually bind the Association or commit the Association financially.

Article 6 Standards of Conduct; Liability and Indemnification

6.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under Delaware law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under Delaware law.

6.2. Liability.

(a) A director or officer shall not be personally liable to the Association, any Owner, or any other Person for any action taken or not taken as a director or officer if he or she has acted in accordance with Section 6.1.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions that the director reasonably believes are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he or she has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit or relationship to the Founder or a Founder Affiliate); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

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

6.3. Indemnification.

Subject to the limitations of Delaware law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Delaware law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association;

(ii) intentional misconduct or knowing violation of the law;

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in Delaware law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director, or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

6.5. Board and Officer Training.

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable Delaware corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. The cost of any such seminar or program may be a Common Expense.

The Board also may provide, or provide for, Owner and resident education designed to foster a better understanding of Bayside's governance and operations, and leadership training classes designed to educate Owners about the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

**Article 7
Management and Accounting**

7.1. Compensation of Directors and Officers.

The Association shall not compensate directors and officers for acting as such unless Owners representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

7.2. Right of Founder to Disapprove Actions.

So long as there is a Founder Membership, the Founder shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the Founder's sole judgment, would tend to impair rights of the Founder or Builders under the Charter or these By-Laws, interfere with development or construction of any portion of the Community, or diminish the level of services the Association provides. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this section have been met.

(a) **Notice.** The Association shall give the Founder written notice of all meetings of the membership, the Board, and committees and any actions which any of them propose to take by written consent in lieu of a meeting. The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Founder has registered with the Association. Such notice shall comply as to Board meetings with Section 3.9, and shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) **Opportunity to be Heard.** At any such meeting, the Association shall give the Founder the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

The Founder, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Founder, 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.

The Founder may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Founder shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

7.3. **Managing Agent.**

The Board may employ for the Association professional management 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 to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ the Founder or its affiliate as managing agent or manager.

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

The managing agent shall not accept remuneration 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; any thing of value received shall benefit the Association. The managing agent shall promptly disclose to the Board any financial or other interest that it may have in any firm providing goods or services to the Association.

7.4. **Accounts and Reports.**

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

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

(ii) the Association's cash accounts shall not be commingled with any other accounts, and during the Founder Control Period, operating accounts shall not be commingled with reserve accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association within 60 days after the end of each quarter and shall include:

- (i) an income statement reflecting all income and expense activity for the preceding period;
- (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- (iv) a balance sheet as of the last day of the preceding period; and
- (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution). A copy of the quarterly financial report shall be made available at no charge to any Owner requesting a copy.

(c) An annual report consisting of at least the following shall be made available for Owners' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

7.5. Borrowing.

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Owner approval in the same manner provided in the Charter for Special Assessments 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 20% of the Association's budgeted gross expenses for that fiscal year.

7.6. 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, any Neighborhood Association, and other owners or residents associations within and outside Delaware.

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

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

Article 8 Enforcement Procedures

The Association shall have the power, as provided in the Charter, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Charter, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response.

The Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, (c) the alleged violator shall have 14 days to present a written request for a hearing before the Covenants Committee appointed pursuant to Article 6; and (d) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within 14 days of the notice.

The alleged violator shall respond to the notice of the alleged violation in writing within such 14-day period regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such 14-day period, the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 14-day period.

Prior to the effectiveness of sanctions imposed pursuant to this article, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing.

If a hearing is requested within the allotted 14-day period, the hearing shall be held before the Covenants Committee. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Covenants Committee shall contain a written statement of the results of the hearing (*i.e.*, the Committee's decision) and the sanction, if any, to be imposed.

8.3. Appeal.

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing date.

Article 9 Miscellaneous

9.1. Fiscal Year.

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

9.2. 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 Delaware law or the Governing Documents.

9.3. Conflicts.

If there are conflicts among the provisions of Delaware law, the Certificate of Incorporation, the Charter, and these By-Laws, the provisions of Delaware law, the Charter, the Certificate of Incorporation, and the By-Laws (in that order) shall prevail.

9.4. Books and Records.

(a) **Turnover of Books and Records.** Within 90 days after termination of the Founder Control Period, the Founder shall deliver to the Association all property, books, and records of the Association.

(b) **Inspection by Owners and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any Owner, 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 Unit: the Governing Documents; the membership register; books of account; the minutes of meetings of the Owners, the Board, and committees; and any other records as required by Delaware law. The Board shall provide for such inspection to take place within 10 business days after receipt of a written request for access at the Association's office or at such other place within Bayside as the Board shall designate.

(c) **Rules for Inspection.** The Board shall establish rules with respect to:

- (i) the frequency and manner of inspection;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(d) **Inspection by Founder and Directors.** The Founder and every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. The Founder and director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

9.5. Notices.

(a) Form of Notice and Method of Delivery. Except as otherwise provided in the Charter or these By-Laws or by Delaware law, all notices, demands, bills, statements, or other communications under the Charter or these By-Laws shall be in writing and may be delivered in person, United States mail, by private carrier, or, if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission:

(b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(i) if to an Owner, at the address the Owner has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Owner;

(ii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent or at such other address as the Association shall designate in writing to the Owners pursuant to this section; or

(iii) if to the Founder, at the Founder's principal address as it appears on the Secretary of State's records, or at such other address as the Founder shall designate by notice in writing to the Association pursuant to this section.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective if:

(i) sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment.

(a) By Founder. Until conveyance of the first Unit to a Person other than a Builder, the Founder may unilaterally amend these By-Laws for any purpose.

Thereafter, the Founder may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; (iv) to satisfy the requirements of any local, state, or federal governmental agency; or (v) as necessary to clarify or correct technical, typographical, or scrivener's errors.

(b) **By Owners Generally.** Except as provided above, until termination of the Founder Membership, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing at least a majority of the total votes in the Association and the consent of the Founder, if such exists. After termination of the Founder Membership, these By-Laws may be amended by the Board upon the approval of at least 67% of the directors.

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

(c) **Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of the Founder without the written consent of the Founder or the assignee of such right or privilege.

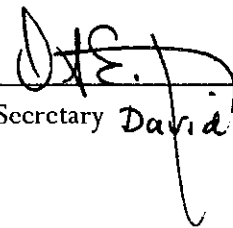
CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Bayside Community Association, Inc., a Delaware corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 25th day of February, 2005.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 25th day of February, 2005.

 [SEAL]
Secretary David E. Levitsky

RECORDER OF DEEDS
JOHN F. BRADY

05 MAR -1 PM 3:12

SUSSEX COUNTY
DOC. SURCHARGE PAID

Received

MAR 02 2005

ASSESSMENT DIVISION
OF SUSSEX CTY