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**MASTER DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS AND RIGHTS FOR ROBERT S. JERVAY PLACE**

**THIS DOCUMENT  
PREPARED BY AND  
AFTER RECORDING  
RETURN TO:**

**RETURNED TO**

**MURCHISON, TAYLOR  
& GIBSON, PLLC  
16 North Fifth Avenue  
Wilmington, NC 28401**

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**MASTER DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS AND RIGHTS FOR ROBERT S. JERVAY PLACE**

**THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RIGHTS FOR ROBERT S. JERVAY PLACE** (this "Declaration") is made and entered into on this 30<sup>th</sup> day of October, 2002, by **TELESIS NORTH CAROLINA CORPORATION**, a Delaware corporation ("Declarant"). The **HOUSING AUTHORITY OF THE CITY OF WILMINGTON, NORTH CAROLINA** also joins herein as more particularly set forth below.

**RECITALS:**

A. Declarant is the holder of certain easement rights in, and is the owner of certain improvements constructed or to be constructed upon, that certain real property located in the City of Wilmington, New Hanover County, North Carolina, being more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Development Tract"). The Housing Authority of the City of Wilmington, North Carolina, a public body and a body corporate and politic (the "Authority"), is the fee owner of the Development Tract and consents to and joins in this Declaration as set forth in the Joinder, Subordination, Guaranty and Grant of Easement attached hereto and made a part hereof.

B. Declarant and the Authority caused an initial Plat of Subdivision of the Jervay Place Neighborhood Subdivision to be recorded against a certain portion of the Development Tract (such portion being defined below as the "Premises") with the Office of the Register of Deeds of New Hanover County, North Carolina on July 30, 2002, in Plat Book 42 at Page 326 (the "Plat of Subdivision"), and pursuant to the Plat of Subdivision the Premises initially consist of certain Residential Lots (as hereinafter defined).

C. In order to establish a uniform scheme of development for the Premises, Declarant and the Authority desire to establish, for their own benefit and for the mutual benefit of all future owners, tenants and occupants of the Premises or any part thereof, certain easements and rights in, over, under, upon and along the Premises and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof.

D. Declarant and the Authority desire to subject the Premises to the covenants, conditions, restrictions, easements and rights set forth in this Declaration, each and all of which is and are for the benefit of the Premises and of each owner, tenant and/or occupant of each Residential Unit and shall inure to the benefit of and shall pass with the Premises and each and every portion thereof.

E. In connection with the covenants, conditions, restrictions, easements and rights hereby created, Declarant will establish the Association (as hereinafter defined), which shall be

responsible, pursuant hereto, for the operation, maintenance, repair, replacement and renewal of the Common Area Lots, the Community Center Lot and certain other portions of the Premises from time to time.

**NOW, THEREFORE**, Declarant and the Authority hereby declare that the Premises, together with such additions thereto as may hereafter be made in accordance with the terms of this Declaration, are and shall be transferred, held, sold, conveyed and accepted subject to this Declaration. Declarant and the Authority do hereby further declare that the following easements, covenants, restrictions, rights, conditions, burdens, uses, privileges, charges and liens shall: (1) exist at all times hereafter among all parties having or acquiring any right, title or interest in or to any portion of the Premises, (2) be binding upon and inure to the benefit of each owner of each Residential Lot, Residential Unit, Common Area Lot and Community Center Lot (as hereinafter defined) and (3) run with the land subjected to this Declaration, to be held, sold and conveyed subject to this Declaration.

## **ARTICLE 1**

### **DEFINITIONS**

1.1 **“Assessment”** shall mean any assessment levied by the Association against Residential Unit Owners hereunder, including, without limitation, Association Assessments (as defined in Article 7 herein), Special Assessments (as defined in Article 7 herein) and Neighborhood Assessments (as defined in this Article 1).

1.2 **“Association”** shall mean and refer to a North Carolina non-profit corporation to be known by the name of “Jervay Place Residents Association, Inc.,” or such other name or names as Declarant shall designate. All Residential Unit Owners shall be members of the Association, all as more particularly described in this Declaration.

1.3 **“Board”** shall mean the Board of Directors of the Association as constituted, at any time or from time to time, in accordance with the applicable provisions of this Declaration.

1.4 **“By-Laws”** shall mean the By-Laws of the Association, a copy of which is attached hereto as Exhibit D and by this reference made a part hereof.

1.5 **“City”** shall mean the City of Wilmington, North Carolina, a North Carolina municipal corporation.

1.6 **“Common Area Lot”** shall mean any Lots which may be designated as a “Common Area Lot” in a Supplemental Declaration or Supplemental Plat. The maintenance, repair, improvement, use, enjoyment, and operation of all of the Common Area Lots shall be in accordance with the terms and provisions of this Declaration.

1.7 **“Community Center Lot”** shall mean the Lot or Lots which may be designated by Declarant as the “Community Center Lot” in a Supplemental Declaration or Supplemental Plat.

The maintenance, repair, improvement, use, enjoyment and operation of the Community Center Lot shall be in accordance with the terms and provisions of this Declaration.

1.8 **“Declarant”** shall mean Telesis North Carolina Corporation, a Delaware corporation, and its successors and assigns; provided, however, that any rights specifically reserved herein to Declarant shall not inure to the benefit of its successors and assigns unless specifically assigned in a recorded instrument or conveyed by operation of law (as contemplated in Section 12.13 herein). Where this Declaration provides for any act to be undertaken by Declarant, such act shall be deemed to include any action taken directly by or at the direction of Telesis North Carolina Corporation, and its successors and assigns as aforesaid. The rights of the Declarant herein contained shall be exercised solely by Telesis North Carolina Corporation and those designated successors and assigns to which Declarant specifically assigns such right as aforesaid.

1.9 **“Declaration”** shall mean this Master Declaration of Covenants, Conditions, Restrictions, Easements and Rights for Robert S. Jervay Place.

1.10 **“Duplex Unit”** shall mean a residential housing unit included within a duplex building, each of which shall consist of a group of rooms which are designed or intended for exclusive use as living quarters and which shall include a single complete kitchen and complete bath and toilet facilities permanently installed. Each duplex building constructed by Declarant on the Premises shall be deemed to include two (2) Duplex Units (as more particularly provided in Section 9.10 herein).

1.11 **“Jervay Place”** shall mean the project developed on the Premises by the Authority and Declarant.

1.12 **“Landscape Plan”** shall mean that certain Landscape Plan for Jervay Place prepared by FMK Architects, and the term “Landscape Plan” as used herein shall be deemed to refer to any amendments thereto which may be subsequently approved by the City.

1.13 **“Limited Common Area Lot”** shall mean any Lot which may be designated by Declarant as a “Limited Common Area Lot” in a Supplemental Declaration and/or a Supplemental Plat and which primarily benefits one or more, but less than all, Neighborhoods. The maintenance, repair, improvement, use, enjoyment, and operation of the Limited Common Area Lots (if any) shall be in accordance with the terms and provisions of this Declaration.

1.14 **“Lot”** shall mean and refer to a platted lot of record shown on the Plat of Subdivision.

1.15 **“Member”** shall mean and refer to any person or entity that holds membership in the Association, as more specifically described in Section 3.1 of this Declaration.

1.16 **“Municipal Laws”** shall mean the duly enacted ordinances and regulations of the City of Wilmington as the same affect the use and development of the Premises.

1.17 **“Neighborhood”** shall mean a group of Lots and/or Residential Units designated as a separate Neighborhood pursuant to Article 4 herein for purposes of sharing the benefits of Limited Common Area Lots and/or receiving other benefits or services from the Association which are not provided to all Residential Units, and/or for the purpose of electing one or more Directors to the Board. A Neighborhood may be comprised of more than one housing type. A Neighborhood may also include noncontiguous parcels of property. If the Association provides benefits or services to less than all Residential Units within a particular Neighborhood, then the benefited Units shall constitute a sub-Neighborhood for purposes of determining and levying Neighborhood Assessments for such benefits or services.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association, if any, having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 12.4 and/or Section 12.11 herein.

1.18 **“Neighborhood Assessments”** shall mean assessments levied against the Residential Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses.

1.19 **“Neighborhood Association”** shall mean an association or other owners association, if any, having jurisdiction over any Neighborhood concurrent with (but subject to) the jurisdiction of the Association. Nothing in this Declaration shall require the creation of any Neighborhood Associations.

1.20 **“Neighborhood Expenses”** shall mean the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Residential Unit Owners and/or Occupants within a particular Neighborhood or Neighborhoods, which may include reasonable reserves for various purposes and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s).

1.21 **“Occupant”** shall mean any person or persons other than the Residential Unit Owner in possession of a Residential Unit.

1.22 **“Planned Community Act”** shall mean the North Carolina Planned Community Act, N.C.G.S. §47F-1-101 et seq., as same may be amended from time to time.

1.23 **“Plat of Subdivision”** shall mean the Plat of the Jervay Place Neighborhood Subdivision recorded in the Office of the Register of Deeds of New Hanover County, North Carolina on July 30, 2002, in Plat Book 42 at Page 326 (as same may be supplemented from time to time by Supplemental Plats).

1.24 **“Premises”** shall mean that certain portion of the Development Tract which is described in Exhibit B attached hereto and which is being initially subjected to this Declaration, together with any Additional Property (as defined below) which is subsequently subjected to this



Declaration pursuant to the terms and conditions hereof. Declarant may from time to time subject to the provisions of this Declaration all or any portion of the property within the Development Tract which is not being initially subjected to this Declaration (the "Additional Property") by recording in the public registry of New Hanover County, North Carolina a Supplemental Declaration describing the Additional Property to be subjected, whereupon such Additional Property so subjected shall be deemed part of the Premises for all purposes hereunder. A Supplemental Declaration recorded for the purpose of bringing any or all of the Additional Property under the coverage of this Declaration shall not require the consent of any person or entity except Declarant.

1.25 **"Private Lot Maintenance Areas"** shall mean: (i) landscaped areas of Residential Lots that are not enclosed by fencing, as depicted on the Landscape Plan (if any); and (ii) fencing enclosing yards on Residential Lots. Except as otherwise provided herein, the Private Lot Maintenance Areas may be maintained by the Association notwithstanding their location on Lots owned by others.

1.26 **"Residential Lot"** shall mean each of the Lots designated on Exhibit C attached hereto, together with any additional Lots which may be designated as "Residential Lots" in a Supplemental Declaration. The Residential Lots are intended to be improved or are currently improved with buildings containing Single Family Units, Duplex Units and Townhouse Units.

1.27 **"Residential Unit"** shall mean a residential housing unit which includes a single complete kitchen and complete bath and toilet facilities permanently installed. The term "Residential Unit" shall include, without limitation, a Single-Family Unit, a Duplex Unit, a Townhouse Unit and/or any other residential housing unit which satisfies this definition (including, without limitation, stacked flats and apartment units), as the context requires.

1.28 **"Residential Unit Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to a Residential Unit, excluding those having such interest merely as security for the performance of an obligation or residing in a Residential Unit as a tenant. Notwithstanding the foregoing to the contrary, if the Authority, as the record owner of fee simple title to a Residential Unit, has leased such Residential Unit to a ground lessee pursuant to a recorded ground lease, then the ground lessee of record of such Residential Unit shall be deemed the Residential Unit Owner for all purposes under this Declaration (including, without limitation, the payment of assessments and the exercise of voting rights hereunder).

1.29 **"Single Family Unit"** shall mean a detached residential housing unit consisting of a group of rooms which are designed or intended for the exclusive use as living quarters for one family and which is located on a single Residential Lot.

1.30 **"Stormwater Management Facility"** shall mean any storm sewer service line or portion thereof located on a Common Area Lot, or stormwater retention and/or detention pond installed and/or constructed on a Common Area Lot to be owned and maintained by the Association. The term "Stormwater Management Facility" shall not include any facilities for the management of stormwater which have been dedicated to the City.

1.31 **“Supplemental Declaration”** shall mean an instrument recorded pursuant to this Declaration which subjects Additional Property to this Declaration, designates Neighborhoods, and/or creates or imposes additional easements, restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument Declarant records pursuant to Article 4 herein which designates Voting Groups.

1.32 **“Supplemental Plat”** shall mean a plat recorded by Declarant pursuant to this Declaration which describes certain Additional Property to be subjected to this Declaration; designates the types, numbers, size and/or specifications of Residential Units located or to be located on such Additional Property; designates Common Area Lots, Limited Common Area Lots, Stormwater Management Facilities and/or Water Facilities located or to be located on such Additional Property; and/or otherwise allocates and creates or imposes additional easements, restrictions and obligations on the land described on such plat.

1.33 **“Townhouse Unit”** shall mean an attached Residential Unit consisting of one or more rooms which are designed or intended for the exclusive use as living quarters for one family, even though such Townhouse Unit shares a common exterior wall, roof or other structural or common component (including access) with one or more other Townhouse Units.

1.34 **“Transfer Date”** shall mean that date which is the first to occur of (i) ten (10) years after the date of the transfer of the first Residential Unit to a Residential Unit Owner (other than Declarant, New Dawson Limited Partnership or the Authority); (ii) the date on which fee simple title to seventy-five percent (75%) of all Residential Units which are or may be permitted to be built upon the Development Tract has been transferred to Residential Unit Owners (other than Declarant, New Dawson Limited Partnership or the Authority); and (iii) such earlier date as Declarant may elect in its sole discretion. The period beginning on the date hereof and ending on the Transfer Date shall be deemed to be the period of Declarant control referenced in N.C.G.S. § 47F-3-103(d).

1.35 **“Voting Group”** shall mean one or more Neighborhoods, the Members of which vote on a common slate for election of Board members, as more particularly described in Article 4 herein or, if the context so indicates, the group of Members whose Residential Units are included in such Neighborhoods.

1.36 **“Water Facility”** shall mean any water service line or portion thereof located on a Common Area Lot or the Community Center Lot to be owned and maintained by the Association. The term “Water Facility” shall not include any facilities for the provision and management of water which have been dedicated to the City.

## **ARTICLE 2**

### **GENERAL PURPOSES**

2.1 **Purposes of this Declaration.** The Premises are made subject to this Declaration in order to insure proper use, appropriate development and improvement of the Premises and every part thereof; to protect each Residential Unit Owner from the improper use of surrounding Residential Units; to encourage attractive improvements on each Residential Lot with appropriate locations thereof; to assure and establish a uniform scheme of development for the Premises; to prevent haphazard and inharmonious improvements; to insure desired high standards of maintenance for the benefit and convenience of all Residential Unit Owners; to protect and preserve the open space features of the Premises; and in general to provide adequately for a high-quality residential subdivision.

2.2 **Purposes of the Association.** In order to implement the general purposes of this Declaration, the Association is being created with responsibility for, among other things, maintenance, repair and preservation of all of the Common Area Lots and the Private Lot Maintenance Areas, enforcement of the restrictions contained in this Declaration and the levying and collection of assessments to fund all of its responsibilities, all in accordance with the terms of this Declaration.

## **ARTICLE 3**

### **THE ASSOCIATION (AND OTHER ASSOCIATIONS GENERALLY)**

3.1 **Membership in the Association.** Every Residential Unit Owner shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation (but may include ground lessees of record as contemplated in Section 1.28 herein). Membership shall be appurtenant to and may not be separated from ownership of each Residential Unit; provided, however, if such Residential Unit is subject to a ground lease of record which grants membership rights to a ground lessee under Section 1.28 herein, the membership of such ground lessee shall be appurtenant to and may not be separated from the interest of the ground lessee of record of such Residential Unit. If the Residential Unit Owner shall be more than one person, all such persons shall be Members, but the voting rights in the Association attributable to such Residential Unit Owner shall be exercised in the manner hereinafter provided. If the Residential Unit Owner shall be a land trust, corporation, partnership or other legal entity, then the one individual who shall be entitled to exercise the rights and privileges (such as, to vote and to be a Director on the Board), and who shall be responsible to bear the obligations associated with membership in the Association with respect to that Residential Unit shall be designated by the Residential Unit Owner thereof in writing to the Association. Such designation may be changed from time to time thereafter by notice in writing from the Residential Unit Owner to the Association delivered no later than ten (10) days prior to the effective date of such change. No Residential Unit Owner

shall have any right or power to disclaim, terminate or withdraw from such Residential Unit Owner's membership in the Association or any of the obligations as such Member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such Residential Unit Owner shall be of any force or effect for any purpose.

3.2 **Voting Rights in the Association.** Members shall be all of the Residential Unit Owners. Residential Unit Owners shall be entitled to one (1) vote for each Residential Unit in which they hold the interest required for membership. When more than one person holds such interest in any Residential Unit, all such persons shall be Members, but the right to vote for such Residential Unit shall be exercised as they among themselves determine (subject to the requirements of the Planned Community Act), provided, however, that in no event shall more than one (1) vote be cast with respect to each Residential Unit.

3.3 **The Board.** The Association shall have a Board of directors (hereinafter individually a "Director" and collectively "Directors") determined as follows:

A. The first Board shall consist of three (3) Directors, all to be appointed by Declarant or its designee and each of which shall serve at the discretion of Declarant. Prior to the Transfer Date, such Directors need not be independent and need not be Members. Notwithstanding anything herein to the contrary, Declarant may voluntarily terminate its right to appoint Directors to the Board prior to the Transfer Date, and to fill vacancies pursuant to this Section prior to the Transfer Date, in which event the Members shall elect the Directors as contemplated in Section 3.3.B below and the Directors may fill vacancies occurring between meetings of the Members.

B. After the Transfer Date (or, if applicable, Declarant's relinquishment of its right to appoint Directors as provided in Section 3.3.A above), the Board shall consist of seven (7) Directors to be elected by the Members of the Association as provided in the By-laws and this Declaration. The elections of such Directors shall be taken at meetings to be held for such purpose at such intervals as are provided in the By-Laws. After the Transfer Date, at least a majority of the Directors on the Board shall be Members, and vacancies in the Board occurring between meetings of the Members may be filled by the majority vote of the remaining Directors then sitting on the Board.

Notwithstanding anything in this Section 3.3.B to the contrary, in the event Declarant has designated Neighborhoods prior to the Transfer Date as provided in Article 4 herein, then, after the Transfer Date (or, if earlier, after Declarant's relinquishment of its right to appoint Directors as provided in Section 3.3.A above), each Neighborhood so designated shall be entitled to elect at least one (1) Director (it being acknowledged that a Neighborhood may be entitled to elect more than one (1) Director as specified in the Supplemental Declaration creating, designating or redesignating such Neighborhood), with any remaining Directors being elected at large by a majority of all of the votes of the Members of the Association.

C. Notwithstanding anything in this Declaration to the contrary, the Residential Unit Owners, by a majority vote of all persons present and entitled to vote at

any meeting of the Residential Unit Owners at which a quorum is present, may remove any Director (other than a Director appointed by Declarant hereunder) with or without cause.

3.4 **Powers of the Association and the Board.** The Association shall have all of the powers enumerated in § 47F-3-102 of the Planned Community Act. Except as prohibited by the terms of this Declaration, the By-laws or the Planned Community Act, the Board may act in all instances on behalf of the Association. In the performance of their duties, officers and Directors shall discharge their duties in good faith and in accordance with applicable law. The Board may not act unilaterally on behalf of the Association to amend this Declaration (which amendments shall be made only in accordance with Section 12.3 herein), to terminate the planned community that is Jervay Place (which may be accomplished only in accordance with Section 12.3 herein), or to elect Directors or determine the qualifications, powers and duties, or terms of office of Directors (except as permitted hereunder with respect to the filling of vacancies on the Board). Nothing in this Section 3.4 shall be construed to limit the rights and powers reserved to Declarant hereunder.

3.5 **Officers of the Association.** The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. All officers of the Association shall be Directors on the Board. Except as expressly otherwise provided by the articles of incorporation of the Association or the By-Laws, all power and authority to act on behalf of the Association both pursuant to this Declaration and otherwise shall be vested in the Board from time to time and its officers under the direction of the Board, and shall not be subject to any requirement of approval on the part of the Members.

3.6 **Prohibition on Distributions to Members.** The Association, being a not-for-profit corporation, shall not distribute to the Members any sums in the nature of dividends.

3.7 **Agreements between the Association and Others.** Whenever possible, the Association shall perform its functions and carry out its duties by entering into agreements for the performance thereof with persons and business entities regularly engaged in the performance of generally similar functions and duties, which agreements shall be with such parties, for such length of time, at such rates of compensation and upon such other terms and provisions, all as the Board shall determine from time to time. Such persons or business entities may, but need not, be persons or business entities owning or otherwise directly or indirectly interested in the Premises or any part thereof. The Association itself shall also have power to perform its functions and carry out its duties.

3.8 **Rules and Regulations of the Association.** The Association, through the resolutions of the Board, shall have the right to adopt rules and regulations governing the Premises; provided, however, that no rule or regulation shall conflict with any provision of this Declaration or with any applicable law, ordinance or code.

3.9 **Books and Records of the Association.** The books and records to be kept by the Board shall be available for inspection by any Member or any representative of a Member duly

authorized in writing, at such reasonable time or times during the normal business hours as may be requested by the Member or its representative.

3.10 **Liability of the Directors and Officers of the Association.** Neither the Directors nor the officers of the Association shall be liable to the Residential Unit Owners or Occupants for any mistake of judgment or for any other acts or omissions of any nature whatsoever made by such individuals as such Directors and officers, except for any acts or omissions finally adjudged by a court of competent jurisdiction to constitute gross negligence or fraud. The Residential Unit Owners (including the Directors and the officers of the Association in their capacity as Residential Unit Owners) shall indemnify and hold harmless each of the Directors and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Residential Unit Owners or arising out of their status as Directors or officers of the Association, unless any such contract or act shall have been finally adjudged by a court of competent jurisdiction to have been made fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid or received in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any Director or officer of the Association may be involved by virtue of such persons being or having been such Director or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of such person's duties as such Director or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of such person's duties as such Director or officer. It is also intended that the liability of each Residential Unit Owner arising out of any contract made by, or other acts of, the Board or officers of the Association, or out of the aforesaid indemnity in favor of the Directors or officers of the Association, shall be limited to an amount equal to the total liability thereunder divided by the percentage interests of the applicable Residential Unit for Association Assessments (as hereinafter provided). Every agreement made by the Board on behalf of the Residential Unit Owners shall be deemed to provide (whether or not so provided) that the Directors are acting only as agents for the Residential Unit Owners, and shall have no personal liability thereunder (except as Residential Owners) and that each Residential Unit Owner's liability thereunder shall be limited to an amount equal to the total liability thereunder divided by the percentage interest of the applicable Residential Unit for Association Assessments (as hereinafter provided).

## **ARTICLE 4**

### **NEIGHBORHOODS AND VOTING GROUPS**

4.1 **Creation of Neighborhoods.** In the event Declarant elects to designate Neighborhoods within Jervay Place for purposes of governance, maintenance and other purposes contemplated herein, the boundaries of Neighborhoods shall be defined by Declarant. In the

discretion of Declarant, Declarant may assign portions of the Premises to a specific Neighborhood (by name or other identifying designation) by Supplemental Declaration, which Neighborhood may be then-existing or newly created. So long as it has the right to subject additional property to this Declaration pursuant to Section 12.4 herein, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Neighborhood boundaries. However, two or more existing Neighborhoods shall not be combined without the consent of Residential Unit Owners of a majority of the Residential Units in the affected Neighborhoods.

Any Neighborhood so created, designated or re-designated, acting either through a Neighborhood Committee elected as provided in the By-Laws or through a Neighborhood Association, if any, may request that the Association provide a higher level of service than which the Association generally provides to all Neighborhoods or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Residential Unit Owners of a majority of the Residential Units within the Neighborhood, the Association shall provide the requested services, provided that the cost of such services, which may include reasonable administrative charges and property management fees in such amounts as the Board deems appropriate, shall be assessed against the Residential Units within such Neighborhood as a Neighborhood Assessment (although such charges shall be assessed at a uniform rate per Residential Unit to all Neighborhoods receiving the same service).

**4.2 Voting Groups.** If Declarant elects to designate Neighborhoods within the Premises, then, at any time prior to the Transfer Date, Declarant shall be entitled to designate, in Declarant's sole discretion, Voting Groups consisting of one or more Neighborhoods for the purpose of electing Directors to the Board. The Neighborhoods comprising each Voting Group shall be determined in Declarant's sole discretion. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid some Members being able to elect the entire Board due to the number of Residential Units in such Neighborhoods. Following the Transfer Date, the number of Voting Groups within Jervay Place shall not exceed the total number of Directors to be elected pursuant to the By-Laws.

The Members in the Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board, and each Voting Group shall be entitled to elect the number of Directors specified in the By-Laws. Each Voting Group's election shall be held at a meeting of the Neighborhood or Neighborhood(s) constituting such Voting Group. Candidates for election as Director may be nominated by the Board, a nominating committee which the Board may appoint, or from the floor at any meeting at which such election is to be held.

The presence, in person or by proxy, or the filing of ballots by Members representing at least 25% of the total votes attributable to Residential Units in each Neighborhood represented in the Voting Group shall constitute a quorum at any such Voting Group meeting or election. In the event of a failure to obtain a quorum or vacancy in such positions for any Voting Group, the Board may appoint a Director to represent such Voting Group until a successor is elected.

For any Neighborhood election (including, without limitation, an election by a Voting Group to select one or more Directors), each Member shall be entitled to one equal vote for each Residential Unit which such Owner owns in the Neighborhood(s) or in the Voting Group (as the case may be). The candidate who receives the greatest number of votes shall be elected as the Director.

Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Transfer Date by filing with the Association and recording a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Residential Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the Transfer Date. Neither recordation nor amendment of such Supplemental Declaration by Declarant prior to the Transfer Date shall constitute an amendment to this Declaration, and no consent or approval of any person or entity shall be required except as stated in this paragraph.

After the Transfer Date, the Board shall have the right to amend the composition of Voting Groups by amending the Supplemental Declaration referenced in the immediately preceding paragraph upon the vote of (i) a majority of the total number of Directors and (ii) sixty-seven percent (67%) of the Members.

Until such time as Voting Groups are established (if at all), all of Jervay Place shall constitute a single Voting Group and Directors shall be selected as provided in the By-Laws. After a Supplemental Declaration establishing Voting Groups has been recorded, any and all portions of Jervay Place which are not assigned to a specific Voting Group shall constitute a single Voting Group.

4.3 **Neighborhoods May Be Restricted to a Greater Degree.** Nothing in this Article 4 shall preclude any Supplemental Declaration or other recorded covenants applicable to any portion of Jervay Place from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control. The Association may, but shall not be required to, enforce any such covenants, restrictions or other instruments applicable to any Neighborhood.

4.4 **Powers of the Association Relating to Neighborhood Associations.** Nothing in this Declaration shall require the creation of any Neighborhood Associations. No Neighborhood Association may be created without the prior written consent of the Association, and no recorded documents establishing or governing such Neighborhood Association shall be effective without the joinder of the Association. Additionally, the Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be inconsistent with this Declaration or the By-Laws or adverse to the interests of the Association or its Members. 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 levy specific assessments to cover the costs, as well as an administrative charge and sanctions.

4.5 **Neighborhood Structure in Declarant's Sole Discretion.** Notwithstanding anything in this Declaration to the contrary (including, without limitation, the provisions of this Article 4), nothing shall obligate Declarant to create Neighborhoods hereunder. No provisions in this Article 4 (or any other provision of this Declaration relating to the obligations of Neighborhoods or Residential Unit Owners within Neighborhoods) shall apply unless and until Declarant has designated separate Neighborhoods within Jervay Place by Supplemental Declaration.

## **ARTICLE 5**

### **COMMON AREA LOTS, COMMUNITY CENTER LOT, PRIVATE LOT MAINTENANCE AREAS AND LIMITED COMMON AREA LOTS**

5.1 **Description of the Common Area Lots.** The Common Area Lots will include Lots containing, among other things, private streets and access drives, lanes, roads and/or alleys providing access to certain Residential Units, landscaping, Stormwater Management Facilities, Water Facilities, play areas, tot lots, open space and other improvements, all as may be located on the Common Area Lots. The Common Area Lots are intended to be for the non-exclusive mutual use and enjoyment of all Residential Unit Owners, subject to such reasonable rules and regulations as the Association may prescribe.

5.2 **Description of the Community Center Lot.** The Community Center Lot will include the Lot containing, among other things, a community center that will serve residents of the Premises (and others that may be granted the right to use such facilities in the discretion of Declarant), private streets and access drives, parking areas, landscaping, Stormwater Management Facilities, Water Facilities, play areas, tot lots, open space and other improvements, all as may be located on the Community Center Lot. The Community Center Lot is intended to be for the mutual use and enjoyment of all Residential Unit Owners, subject to such reasonable rules and regulations as the Association may prescribe, provided that no less than one-third of the floor area of the improvements constructed on the Community Center Lot shall be reserved for use by Declarant and the Association. Subject to the discretion of Declarant and such reasonable rules and regulations as the Association may prescribe, residents of the City of Wilmington other than residents of the Premises may be entitled to use the community center facilities that may be located on the Community Center Lot from time to time.

**5.3 Easement and Other Rights of Residential Unit Owners, the Association, Declarant and Others.**

A. Unless otherwise set forth herein to the contrary, every Residential Unit Owner shall have a non-exclusive right and easement of ingress and egress in, over, upon and to, and use and enjoyment of, all portions of each Common Area Lot and the Community Center Lot, and all portions of each Common Area Lot and the Community Center Lot shall be held for the use and benefit of each Residential Unit, subject to any leases and/or sub-leases thereof, for a term of eighty-nine (89) years commencing on the date of execution by the Authority of the Joinder, Subordination and Guaranty set forth herein. In addition, every Residential Unit Owner shall have a non-exclusive right and easement of ingress and egress in, over, under, upon and to, and use and enjoyment of, all portions of any Stormwater Management Facility, Water Facility and other infrastructure facilities located on the Premises, including but not limited to electrical facilities, light bases and poles, interior and perimeter sidewalks, all roads and alleys, decorative lights, manholes, fire protection facilities, storm inlets, PVC conduit, gas mains, telephone lines and cable television lines for a term of eighty-nine (89) years commencing on the date of execution by the Authority of the Joinder, Subordination and Guaranty set forth herein. The foregoing described non-exclusive easements and rights granted to the Residential Unit Owners shall extend not only to each Residential Unit Owner, but also to all members of the immediate family, tenants, authorized guests, other authorized Occupants and visitors of such Residential Unit Owner. Vehicular, bicycle and other means of access (other than pedestrian access) shall be limited to those portions of each Common Area Lot and the Community Center Lot specifically improved for such purpose (e.g., those portions of the Common Area Lots and the Community Center Lot improved with roadways, walkways, etc.) and shall not be permitted in any other location. Further, no active recreational use (e.g., picnics, play areas and similar activities of any type or description) shall be permitted on any Common Area Lot or the Community Center Lot unless such Common Area Lot or the Community Center Lot is specifically improved for such purpose (e.g., play areas and tot lots). The use and enjoyment of the Common Area Lots and the Community Center Lot shall be subject to such reasonable rules and regulations as are adopted from time to time by the Association; provided, however, that in no event shall any rule or regulation have the effect of reducing or adversely affecting the obligations of the Association to maintain all portions of the Common Area Lots and of the Community Center Lot subject to any leases and/or sub-leases thereof.

B. The aforesaid non-exclusive rights and easements are granted as consideration for the Association's maintenance obligations as established by Article 6 hereof, and shall be appurtenant to and shall pass with the title to every Residential Unit, subject to the following reserved rights and easements in favor of others:

(1) Except as otherwise provided below in this paragraph, the conveyance of any portion of the Common Area Lots and/or the Community Center Lot by the Association, the encumbrance by the Association of any portion of the Common Area Lots and/or the Community Center Lot with a security interest and/or the dedication or transfer by the Association of all or any portion of

any Common Area Lots or the Community Center Lot to any public agency, authority or utility shall require, in each instance, (i) the agreement of Members entitled to cast at least eighty percent (80%) of the votes in the Association and (ii) prior to the Transfer Date, the consent of Declarant.

(2) Except as otherwise provided below in this paragraph, the conveyance of any portion of a Limited Common Area Lot by the Association, the encumbrance by the Association of any portion of a Limited Common Area Lot with a security interest and/or the dedication or transfer by the Association of all or any portion of any Limited Common Area Lot to any public agency, authority or utility shall require, in each instance, (i) the affirmative vote of Members entitled to cast at least eighty percent (80%) of the votes in the Association, (ii) the consent of one hundred percent (100%) of the Residential Unit Owners to which such Limited Common Area Lot is allocated and (iii) prior to the Transfer Date, the consent of Declarant.

(3) To the extent not granted by Declarant or the Authority, the Association hereby reserves the right, without the necessity of having to obtain any Member's consent (except to the extent required by the Planned Community Act), to grant, at any time and from time to time, subject to the reasonable approval of Declarant and the Authority, utility easement(s) for sanitary and storm sewers, water, gas, electricity, telephone, cable television and any other necessary public or municipal service over, through, upon and across all or any portion of any Common Area Lot, any Limited Common Area Lot and/or the Community Center Lot, all upon such terms and conditions as the Board deems necessary or appropriate.

(4) As part of the overall program of development of the Premises into a residential community and to encourage the marketing and construction thereof, Declarant hereby reserves for itself, its contractors and their respective subcontractors, agents and employees the right and easement of ingress and egress and of access and use in, over, upon, under and across each and every portion of the Common Area Lots, the Limited Common Area Lots and the Community Center Lot, for sales, marketing and construction purposes, as well as the right and easement of use of certain Residential Units, the Common Area Lots, any Limited Common Area Lots and the Community Center Lot and facilities thereof, all without charge during the entire sales and construction period on the Premises.

(5) The Association shall have the right, without having to obtain the consent of any party (except to the extent required by the Planned Community Act), (i) to grant and record such easements (in addition to the easements set forth and printed on the Plat of Subdivision) over, under, through, across, upon, in and on the Common Area Lots, the Limited Common Area Lots and/or the Community Center Lot or portions thereof for the provision of any utility service, landscaping, buffering, ingress and egress, and such other purposes as Declarant, in its reasonable discretion, deems necessary, desirable or required by the final

engineering plans for the Premises or by the "as-built" condition of the Premises, or any part or portion thereof; (ii) to add to the Common Area Lots and/or the Limited Common Area Lots by causing a deed, Supplemental Declaration and/or Supplemental Plat to be recorded which conveys to the Association a leasehold interest in or fee simple title to the real property which is to be added to the Common Area Lots and/or the Limited Common Area Lots, provided, however, that the addition of said real property (and its designation) is consistent with the intent and purposes of this Declaration; and (iii) to reclassify any of the Residential Lots then leased or owned by Declarant or Common Area Lots or Limited Common Area Lots [such as, for example, to convert a Residential Lot (or any portion thereof) then leased or owned by Declarant to Common Area Lots or vice versa] which reclassification results from the "as-built" condition of the Premises, a matter of convenience or any other reason and shall be accomplished by causing an amendment to this Declaration to be recorded in the manner hereinafter set forth for Special Amendments, which amendment shall designate by legal description or attached plat, or both, what real property is being so reclassified; provided, however, that each such reclassification shall in all events be consistent with the intent and purposes of this Declaration.

(6) Notwithstanding the foregoing to the contrary, if any portion of a Common Area Lot, Limited Common Area Lot or the Community Center Lot provides a primary route of access, ingress or egress to a Residential Unit, any conveyance, encumbrance or transfer of such Common Area Lot, Limited Common Area Lot or the Community Center Lot shall be subject to an easement allowing any Residential Unit Owners using such property as the primary route of access, ingress or egress to their respective Residential Units to continue to utilize such routes for primary access, ingress and egress. The foregoing provision shall not be deemed to limit dedications for public maintenance.

5.4 **Permitted Encroachments of Dwelling Units.** In the event that any part of any Residential Unit encroaches or shall hereafter encroach by no more than six inches (6") upon any other Lot, valid easements for the maintenance of such encroachments are hereby established and shall exist so long as all or any part of the same shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Residential Unit Owner if such encroachment or use is detrimental to or interferes with the reasonable use or enjoyment by another Residential Unit Owner of such Residential Unit Owner's Residential Unit or if such encroachment occurred due to the intentional or willful conduct or gross negligence of any Residential Unit Owner.

5.5 **Improvement of the Common Area Lots, Limited Common Area Lots, Community Center Lot and Private Lot Maintenance Areas.**

A. Declarant shall initially cause to be constructed, installed, renovated and/or located upon the Common Area Lots, the Limited Common Area Lots (if applicable), the Community Center Lot and the Private Lot Maintenance Areas such landscaping, private streets and lanes, fences, tot lots and play areas, benches, paths, walking trails, storm

water management facilities, water facilities, ponds and other improvements, all as Declarant shall from time to time, in its sole discretion, determine to be necessary, appropriate or desirable or to be required by the governmental laws, ordinances or regulations as shall be in effect during, and applicable to, the development of the Premises. Subsequent to the Transfer Date, the Association shall have the right, subject to obtaining the approval of Members entitled to cast more than fifty percent (50%) of the votes of the Association, to further improve the Common Area Lots, the Community Center Lot and the Private Lot Maintenance Areas in a manner consistent with the intent and purpose of this Declaration; provided, however, that the Association will undertake no further improvement of a Residential Lot containing a portion of the Private Lot Maintenance Areas without the prior express written consent of the Residential Unit Owner thereof. Subsequent to the Transfer Date, the Association shall also have the right, subject to obtaining the approval of Members entitled to cast more than fifty percent (50%) of the votes of the Association and the approval of all Residential Unit Owners to which such Limited Common Area Lots are allocated, to further improve the Limited Common Area Lots in a manner consistent with the intent and purpose of this Declaration.

B. If, in the course of undertaking the construction, installation and/or location of improvements permitted hereunder on a Residential Lot, Common Area Lot, Limited Common Area Lot or the Community Center Lot, a Residential Unit Owner (or anyone undertaking such construction, installation and/or location on behalf of a Residential Unit Owner) causes damage to a Common Area Lot, the Community Center Lot, a Limited Common Area Lot or a Private Lot Maintenance Area which, in the opinion of the Board, requires the repair or restoration thereof, such restoration or repairs shall be undertaken by the Association and such Residential Unit Owner shall reimburse the Association for the Association's costs of such repair or restoration within thirty (30) days of receipt of a written invoice from the Association therefor, and in the event such Residential Unit Owner fails to pay the amounts the Association incurs to undertake such repair or restoration within said thirty (30) days, such amounts, together with interest and all reasonable costs of collection, including attorneys' fees and litigation expenses, shall become a lien upon such Residential Unit Owner's Residential Unit, enforceable by an action contemplated in §47F-3-116(a) of the Planned Community Act or an action similar to the type of action instituted to foreclose the lien of a mortgage or deed of trust on real property.

5.6 **Landscaping and Planting in the Common Area Lots.** No landscaping or planting shall be installed and/or located within the Common Area Lots which is inconsistent in character and concept with the landscaping and planting contained on the Landscape Plan.

5.7 **Limited Common Area Lots.**

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

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

B. Initially, any Limited Common Area Lots shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such property; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area Lot to additional Residential Units and/or Neighborhoods by Supplemental Declaration, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 12.4 herein. Thereafter, Limited Common Area Lots may be assigned and reassigned upon approval of the Board and the vote of Members representing a majority of the votes in the Association, including a majority of the votes within any Neighborhood(s) affected by the proposed assignment or reassignment. As long as Declarant owns or leases any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 12.4, any such assignment or reassignment shall also require Declarant's written consent.

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

The Neighborhoods benefited by such Limited Common Area shall be designated by Declarant in Declarant's sole discretion. Maintenance, repair and replacement of Limited Common Areas shall be a Neighborhood Expense assessed to the Neighborhood(s) to which the Limited Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

## **ARTICLE 6**

### **MAINTENANCE OF COMMON AREA LOTS, COMMUNITY CENTER LOT, LIMITED COMMON AREA LOTS, RESIDENTIAL LOTS AND RESIDENTIAL UNITS**

#### **6.1 Maintenance of the Common Area Lots, Community Center Lot and the Private Lot Maintenance Areas.**

A. During the term of the easements granted in Section 5.3(A) hereof, the Association shall carry out or cause to be performed all maintenance, improvement, repair and replacement of the Common Area Lots, the Community Center Lot and the Private Lot Maintenance Areas (including, without limitation, the streets and access drives, alleys,

trees and slopes, snow removal from driveways and walkways, landscaping and other similar matters whether or not specifically described or existing on the date hereof), excluding those portions of the Common Area Lots or facilities located thereon which (i) have been or are hereafter dedicated, donated or otherwise conveyed to the City or other public or quasi-public body or (ii) which have been designated for maintenance by a particular Neighborhood Association (if any). Roadways, sidewalks and street lighting in any public rights-of-way (and any encroachments thereof onto portions of the Premises from said rights-of-way), if any, shall be maintained by the City.

B. The Association shall have an easement and right of ingress and egress over and upon the Common Area Lots, the Community Center Lot and such portions of the Residential Lots as are necessary to obtain access to and undertake work on the Private Lot Maintenance Areas and for any and all purposes connected with the maintenance, repair, operation, improvement, replacement and reconstruction of the Common Area Lots, the Community Center Lot and the Private Lot Maintenance Areas. The Association shall exercise its rights contained herein in a manner so as to minimize inconvenience to the Residential Unit Owners of the Residential Units containing Private Lot Maintenance Areas. No Residential Unit Owner shall undertake or construct any improvements on such Residential Unit Owner's Residential Unit which unreasonably interfere with the rights of the Association herein contained.

C. In furtherance of the matters set forth in this Section 6.1, the Association shall, during the term of the easements granted in Section 5.3(A) hereof:

(1) maintain the operation of any and all Stormwater Management Facilities and Water Facilities at all times consistent with the plans and specifications approved by the City for the construction and installation thereof;

(2) comply with any requests or requirements of the City regarding proof of compliance with the maintenance requirements assumed in subsection (1) above;

(3) promptly undertake any repairs, replacements or renewals to any Stormwater Management Facilities and Water Facilities to keep and maintain their operations consistent with the requirements in subsection (1) above; and

(4) promptly pay any and all assessments, mechanic's liens or judgment liens filed against the Common Area Lot(s) or Community Center Lot on which any Stormwater Management Facilities or Water Facilities are located from time to time, provided that any such items may be contested so long as such contest is in good faith and stays enforcement of the lien of any such item.

D. In furtherance of the matters set forth in this Section 6.1, each Residential Unit Owner shall be responsible as to his, her or its portion or interest in the Premises for any breach of Section 6.1C which is a result of his, her or its own acts or omissions or the acts or omissions of any occupant of his, her or its portion of the Premises.

6.2 **Maintenance of Residential Unit on Residential Lot.** Each Residential Unit Owner shall have the obligation to maintain in good condition and repair such Residential Unit Owner's Residential Unit and all other permitted improvements located on such Residential Unit Owner's Residential Lot in accordance with the applicable provisions of this Declaration. The Residential Unit Owner of a Residential Unit shall be required to promptly restore or rebuild, to the condition existing prior to such damage or destruction, any building which suffers damage or destruction due to casualty loss or raze and remove such improvements and landscape the affected Residential Lot in a sightly manner, or construct new improvements which comply with the terms of this Declaration. All landscaping on any Residential Lot shall be consistent with the Landscape Plan and other applicable provisions of this Declaration. Upon the failure of any Residential Unit Owner to timely so maintain such Residential Lot in a manner satisfactory to the Association, the Association, through its agents and employees, is hereby granted the right to enter upon such Lot and make such reasonable repairs, maintenance, rehabilitation or restoration thereof as may be necessary, and the costs thereof shall become a lien upon the Residential Unit located upon such Lot in the same manner as provided in Article 7 for nonpayment of maintenance assessments.

## **ARTICLE 7**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

7.1 **Covenant for Assessments.** Subject to the provisions of Section 7.7 below, Declarant, for each Residential Lot and each Residential Unit, hereby covenants, and each Residential Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) regular assessments and charges and (2) special assessments for capital or other improvements or maintenance requirements; the amount of the Association Assessment to be fixed, established and collected from time to time as provided in this Declaration (the "Association Assessment"). The Association Assessment, together with such late charges thereon and costs of collection thereof, as hereinafter provided, shall be a charge on each Residential Unit and shall be a continuing lien upon such Residential Unit against which such Association Assessment is levied. Each such Association Assessment, together with such late charges and costs of collection, including reasonable attorneys' fees and litigation expenses, also shall be the personal obligation of the person or entity that was the Residential Unit Owner of such Residential Unit at the time when the Association Assessment or installment thereof became due. Such personal obligation shall pass to said Residential Unit Owner's successors in title if not fully discharged by the transferor Residential Unit Owner prior to any transfer of said Residential Unit.

#### **7.2 Purpose and Use of Association Assessments and Neighborhood Assessments.**

A. The Association Assessment shall be used exclusively for the purpose of promoting the health, safety, and welfare of the Premises or any portion thereof and in particular for the improvement and maintenance (i) of the Premises, and (ii) of the services and facilities devoted to or serving the Premises or related to the use or enjoyment of any part of the Common Area Lots, the Community Center Lot or the Private Lot



Maintenance Areas. Such uses shall include, but are not limited to, the cost to the Association of any taxes and all insurance premiums with respect to, and the expense of operation, repair, replacement and maintenance of, the Common Area Lots, Community Center Lot and the Private Lot Maintenance Areas as may from time to time be authorized by the Board. In addition, the Association shall establish and maintain a reserve for capital expenditures and major repairs and replacements that may be required from time to time, as determined by the Board (such as, without limitation, for rebuilding or replacement of the Stormwater Management Facilities and/or the Water Facilities, for the replacement of landscaping and shrubbery located in the Common Area Lots, the Community Center Lot and the Private Lot Maintenance Areas, etc.). In addition, water, waste removal and/or any other utilities which are not separately metered or otherwise directly charged to individual Residential Unit Owners shall be paid for by the Association and such costs shall be included in calculating the amount of the Association Assessment. The Board reserves the right to levy additional specific assessments against any Residential Unit Owner for excessive or disproportionate use by such Residential Unit Owner of any utility or other service. In addition, any special service fees not separately charged to individual Residential Unit Owners ("Special Service Fees") shall be paid for by the Association and such costs shall be included in calculating the amount of the Association Assessments. The Board reserves the right to levy additional specific assessments against any Residential Unit Owner on the basis of the portion of the Special Service Fee that is property allocable to that Residential Unit, as determined by the Board in its sole discretion.

B. Neighborhood Assessments shall be used exclusively for the improvement and maintenance of the services and facilities devoted to or serving any Limited Common Area Lots. Such uses shall include, but are not limited to, the cost to the Association of any taxes and all insurance premiums with respect to, and the expense of operation, repair, replacement and maintenance of, the Limited Common Area Lots as may from time to time be authorized by the Board.

### **7.3 Establishment of Budgets and Assessments.**

A. The Board shall, on or before May 1 of each year, prepare a budget of the estimated total costs and expenses to be incurred (such as, but not limited to, real estate taxes, landscaping, insurance, Special Service Fees, etc.) during the ensuing calendar year to effect the purposes of the Association which shall be assessed to all Residential Unit Owners in Jervay Place in the form of Association Assessments, including the establishment/continued funding of the reserve for capital improvements and major repairs and/or operating reserves. Said "estimated cash requirement" shall be allocated among and assessed to the Residential Unit Owners in the manner hereinafter described. The Board shall send a summary of the final budget to each Residential Unit Owner within thirty (30) days after the Board adopts such budget. With such summary, the Board shall provide to each Owner a written notice of the meeting of the Residential Unit Owners at which the ratification of the budget will be considered. Such notice shall include a statement that the budget may be ratified at such meeting without a quorum. The meeting of the Residential Unit Owners to consider ratification of the budget shall be held not less

than ten (10) nor more than sixty (60) days after mailing of the summary and notice referenced in this paragraph. The budget shall automatically become effective unless disapproved at such meeting by (i) Members representing at least seventy-five (75%) of the total votes in the Association or (ii) the Declarant (although the Declarant's approval shall not be required after the Transfer Date).

B. If Declarant elects to use the Neighborhood structure as contemplated in Article 4 herein, then at the same time the Association Assessment budget referenced in Section 7.3.A above is prepared, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Each such budget shall include any costs for additional services or a higher level of services allocated to such Neighborhood. Each Neighborhood Expense 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 Residential Units, and the amount required to be generated through the levy of Neighborhood Assessments against the Residential Units in such Neighborhood.

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

The Board shall send a summary of the final Neighborhood budget, together with a notice of the amount of the Neighborhood Assessment to be levied pursuant to such Neighborhood budget, to each Residential Unit Owner in the Neighborhood within 30 days after the Board adopts such Neighborhood budget. With such summary, the Board shall provide to each Owner within the Neighborhood a written notice of the Neighborhood meeting at which the ratification of the Neighborhood budget will be considered. Such notice shall include a statement that the budget may be ratified at such meeting without a quorum. The meeting of the Owners within the Neighborhood to consider ratification of the Neighborhood budget shall be held not less than 10 or more than 60 days after mailing of the summary and notice referenced in this paragraph. The budget shall automatically become effective unless disapproved at such meeting by Members representing at least 75% of the total votes in the Neighborhood or (ii) the Declarant (although the Declarant's approval shall not be required after the Transfer Date). All amounts collected by the Association as Neighborhood Assessments shall be held in trust for and expended solely for the benefit of the Neighborhood for which they were collected and shall be accounted for separately from the Association's general funds.

C. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, the periodic budget last ratified by the Residential Unit Owners affected thereby shall continue in effect until a new budget is determined.

D. The Board may revise a budget and adjust the Association Assessments and/or Neighborhood Assessments as necessary from time to time during the year, provided the Members are afforded notice and an opportunity to disapprove such revised budget under the same procedure as set forth above in this Article relative to the annual approval of the budget.

7.4 **Obligation to Pay Assessments.** On January 1st of the ensuing year and on or before the 1st day of each and every month (or other assessment period as the Board may establish, as hereinafter provided) thereafter during said year, each Residential Unit Owner shall be personally obligated to pay an installment of said Residential Unit Owner's annual Association Assessment and any Neighborhood Assessment which may apply to such Residential Unit Owner as determined under Section 7.3 herein for such year. Notwithstanding anything contained herein to the contrary, the Board shall have the right to establish that each Residential Unit Owner shall be obligated to pay the annual Association Assessment due hereunder (together with any Neighborhood Assessment that may be applicable to such Residential Unit Owner) in one annual payment, two equal semi-annual installments or four equal quarterly installments, as well as twelve equal monthly installments; provided, however, that said payment schedule shall be uniformly and equally applicable to all Residential Unit Owners within the Board's jurisdiction.

7.5 **Special Assessments.** In addition to the annual Association Assessments and Neighborhood Assessments authorized above, the Association, with respect to the Common Area Lots, the Community Center Lot, Limited Common Areas and the Private Lot Maintenance Areas, may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto, if any, or the payment of any Special Service Fees (each a "Special Assessment"). A Special Assessment may be levied notwithstanding the fact that the Association may have then accumulated a reserve.

7.6 **Assessment Amount for each Residential Unit.** Except as set forth in Paragraph 7.2 above, and notwithstanding the manner in which voting rights are apportioned as set forth in Article 3, the amount of both the annual and any special Association Assessment for each Residential Unit shall be allocated by the Association among the Residential Units in accordance with the percentage interest for such Residential Unit based upon a consideration of the number of bedrooms in such Residential Unit, as set forth in Exhibit E. The percentage interests for each Residential Unit set forth in Exhibit E shall be adjusted from time to time if required by applicable law. Such Association Assessment shall be levied, paid and collected on a monthly basis or on such other alternative payment schedule as the Board may establish in the manner provided in this Declaration. The amount of Neighborhood Assessments shall be determined using the same proportions provided above in this Section 7.6 (although such

proportions shall be increased in an equitable manner to account for the fact that less than all Residential Unit Owners will be paying such Neighborhood Assessments).

7.7 **Commencement of Assessments**. The Assessments for each Residential Unit shall commence on the date on which such Residential Unit is first occupiable, whether or not occupied.

7.8 **Delinquent Assessments**. Installments of any Assessment shall be due on the first day of each applicable assessment period and, if not paid when due, shall be delinquent. If payment of any installment of an Assessment is not made on or before the 5<sup>th</sup> day following the date upon which it is due, then the delinquent Residential Unit Owner shall pay to the Association (which, in turn, shall, if applicable, be paid by the Association to any management company or agent responsible for maintenance, repair and replacement of the Common Area Lots, the Limited Common Area Lots, the Community Center Lot, the Private Lot Maintenance Areas or other matters hereunder) a late charge of \$25.00 for each assessment period or portion thereof that said installment remains delinquent, said late charge to cover the Association's administrative costs in monitoring and collecting said installment. In addition, the Association may bring an action at law against the Residential Unit Owner personally obligated to pay said delinquent installment(s), or may foreclose the lien for such amount hereby created against said Residential Unit Owner's Residential Unit, and in either event there shall be added to the amount of such delinquent Assessment installment(s) (and in the amount of said lien) late charge(s) and the costs of collection, including reasonable attorneys' fees and all court costs. Each Residential Unit Owner, by the acceptance of a deed to a Residential Unit, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Residential Unit Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien or liens by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a manner contemplated in §47F-3-116(a) of the Planned Community Act or an action similar to the type of action instituted to foreclose the lien of a mortgage or deed of trust on real property.

7.9 **Creation and Priority of the Lien for Assessment**. Each Residential Unit Owner, by acceptance of title to a Residential Unit, hereby consents to the creation of a lien in such Residential Unit and in the Residential Lot on which it is located in favor of the Association in the amount of any Assessment, together with such other charges as are identified in Section 7.8 above. Such lien shall attach from and after the date that a notice thereof is filed by the Association against title to the Residential Unit and/or Residential Lot affected thereby. The lien or liens for any Assessment as it relates to each Residential Unit shall be prior to all liens and encumbrances on such Residential Unit except (i) liens and encumbrances [specifically including any mortgage(s) or deed(s) of trust (a "Mortgage") now or hereafter recorded against title to that Residential Unit] recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court for New Hanover County, (ii) liens for real estate taxes and other governmental assessments and charges against the Residential Unit and (iii) any mechanics' or materialmen's liens that may have priority over the lien for Assessments pursuant to applicable law.

In the event that title to any Residential Unit is transferred either pursuant to the foreclosure of a Mortgage or by deed or assignment in lieu of such foreclosure, such transfer shall

extinguish the lien for Assessment payment(s) for sums which became due prior to the first to occur of (a) the date of the transfer of title and (b) the date on which the transferee comes into possession of the Residential Unit. Notwithstanding the foregoing, said transferee of said Residential Unit shall be liable for said transferee's share of any sums with respect to which a lien against said transferee's Residential Unit has been extinguished pursuant to the preceding sentence if the amount so extinguished is reallocated among all Residential Unit Owners pursuant to a subsequently adopted annual revised Assessment or special assessment, and non-payment thereof by said transferee shall result in a lien against said transferee's Residential Unit as provided in this Article.

## **ARTICLE 8**

### **INSURANCE**

8.1 **Liability and "Special Form" Insurance.** Subject to the requirements of the Planned Community Act (which may require additional insurance to be maintained), the Association shall procure and maintain in full force and effect at all times commercial general liability insurance, including general liability for injuries to and death of persons and for property damage, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence with a Two Million Dollars (\$2,000,000.00) aggregate, non-owned and hired automobile liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, umbrella liability coverage in an amount of not less than Ten Million Dollars (\$10,000,000.00), and other liability insurance as it may deem desirable, insuring the Association from liability in connection with the use of the Common Area Lots, the Limited Common Area Lots, the Community Center Lot and the Private Lot Maintenance Areas.

In addition, the Association shall be responsible for maintaining such policies of insurance for the improvements from time to time located on the Common Area Lots, the Limited Common Area Lots, the Community Center Lot and the Private Lot Maintenance Areas against loss or damage by fire and such other hazards contained in a customary "special form" policy provided that such policies shall (i) state that such policies may not be canceled or substantially modified without at least thirty (30) days (or 10 days in the case of the non-payment of premiums) written notice to the Association; and (ii) provide for coverage in the amount of one hundred percent (100%) of current full replacement value of said improvements.

8.2 **Fidelity Insurance** The Association shall procure and maintain a fidelity bond insuring the Association and its Board and the Residential Unit Owners against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Association or any Director or trustee while performing acts coming within the scope of the usual duties of an employee, in such amounts as the Board shall deem necessary, but not less than 150% of the annual operating expenses of the Association, including amounts collected for reserves. Such bonds shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bonds shall provide that they may not be canceled for non-payment of any premiums or otherwise substantially modified without thirty (30) days prior written notice to the Association.

8.3 **Workmen's Compensation and Employer Liability Insurance.** The Association shall procure and maintain workmen's compensation and employer liability insurance as may be necessary to comply with applicable laws.

8.4 **Other Insurance.** The Association may also obtain or require such other kinds of insurance as may be required by the terms of the Planned Community Act from time to time or as the Board shall from time to time deem prudent or necessary, in such amounts as are required or may be deemed to be desirable, including, but not limited to, Directors' and Officers' Liability insurance in an amount not less than One Million Dollars (\$1,000,000) and flood risk insurance.

8.5 **Residential Unit Owner's Liability Insurance.** Each Residential Unit Owner, by the acceptance of a deed to such Residential Unit Owner's Residential Unit, hereby agrees and covenants to procure and maintain in full force and effect at all times, comprehensive public liability insurance, including liability for injuries to and death of persons, and for property damage and against loss or damage to such Residential Unit by fire or other hazard, in connection with such Residential Unit.

8.6 **General Requirements.** All of the foregoing insurance shall be obtained from responsible companies duly authorized to issue insurance policies in North Carolina, with a rating in Best's Insurance Guide (or any comparable publication) of at least A (or any comparable rating) and a financial size category of VII (or equivalent) or better. All such policies relating to real property shall contain the standard mortgage clause, or equivalent endorsement, which is commonly accepted by private institutional mortgage investors in North Carolina. The aforesaid liability insurance policies shall also name as insureds the Directors, agents, officers, employees of the Association, and all Residential Unit Owners. The amounts of insurance required under this Article 8 shall be reevaluated from time to time by the Association to assure that such amounts are sufficient with respect to the matters required to be covered.

## **ARTICLE 9**

### **SPECIFIC RESTRICTIONS AND PROVISIONS RELATING TO USE AND IMPROVEMENT OF RESIDENTIAL LOTS, COMMON AREA LOTS, LIMITED COMMON AREA LOTS AND COMMUNITY CENTER LOT**

#### **9.1 Improvements on a Residential Lot.**

A. Exterior improvements including fences, play equipment, decks, patios and landscaping shall be subject to the restrictions set forth on Exhibit F. Exterior improvements on a Residential Lot shall be subject to architectural approval as provided in Article 10 below.

#### **9.2 Landscaping and Planting on the Residential Lots.**

A. The front yard of each Residential Lot may, subject to obtaining architectural approval as provided in Article 10 below, be planted only with plants

consistent with the character of those plants depicted and otherwise set forth in the Landscape Plan. No landscaping or planting shall be installed and/or located on a Residential Lot which is inconsistent in character and concept with the matters contained on the Landscape Plan.

B. No Residential Unit Owner whose Residential Unit contains Private Lot Maintenance Areas shall have the right to remove, replace or otherwise alter any landscaping or fencing installed in Private Lot Maintenance Areas by Declarant or the Association. Further, nothing herein shall prohibit any Residential Unit Owners from adding landscaping to the Private Lot Maintenance Areas located on such Residential Unit Owners Residential Unit at their sole cost, subject in all cases to architectural approval as set forth in Article 10. Notwithstanding anything herein which is or may appear to be to the contrary, each Residential Unit Owner whose Residential Unit contains Private Lot Maintenance Areas shall be solely responsible for the planting, care and maintenance of any lawn or sod thereon and the Association shall have no obligation in connection therewith.

### **9.3 Restrictions on the Use of a Residential Unit.**

A. Each Residential Unit shall be used only for residential purposes, as private residences, and for such professional, business or commercial use as is not otherwise prohibited under applicable City ordinances and regulations governing the Premises. Each Residential Unit Owner shall have the right (i) to maintain such Residential Unit Owner's personal professional library therein; (ii) to keep such Residential Unit Owner's personal, business or professional records or accounts therein; or (iii) to transmit and receive such Residential Unit Owner's personal, business or professional telephone calls, telecopies, e-mail and correspondence therefrom. A Residential Unit Owner's use of a Residential Unit shall not endanger the health or disturb the reasonable enjoyment of any other Residential Unit Owner or Occupant, except that the foregoing restriction on disturbing reasonable enjoyment shall not be deemed to preclude or prohibit any of the rights or activities expressly reserved by or granted in this Declaration to Declarant and the Association.

B. No Residential Unit Owner shall do or permit to be done on such Residential Unit Owner's Residential Unit or Residential Units or anywhere else in the Premises any act or thing which will impair any easement or hereditament granted to any other party, nor shall any Residential Unit Owner create or permit to exist on such Residential Unit Owner's Residential Unit or anywhere else in the Premises any condition which will adversely affect the use or enjoyment of the Premises or any part or portion thereof by any party entitled to such use or enjoyment.

C. No nuisance, noxious or offensive activity shall be or permitted to be carried on by any Residential Unit Owner on such Residential Unit Owner's Residential Unit or anywhere else in the Premises nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or nuisance to any other Owner or Occupant.

D. In addition to the restrictions set forth in this Declaration, the Association may from time to time adopt such rules and regulations governing the use or enjoyment of the Lots as the Board, in its reasonable discretion, deems desirable, appropriate or necessary.

9.4 **Prohibition on Use or Occupancy of Temporary Structures.** Except as expressly hereinafter provided, no structure of a temporary character, trailer, basement, tent, shack, shed, garage, barn or other out buildings shall be used as a residence at any time, either temporarily or permanently, or shall be created or maintained on the Premises at any time.

9.5 **Prohibition on Signage and Other Unsightly Matters.** Except for Declarant and its activities within the Premises, no signage of any type or description (including "For Rent" and "For Sale" signs), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any portion of the Premises.

9.6 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Residential Lot, Common Area Lot, Limited Common Area Lot or the Community Center Lot. Notwithstanding the foregoing, dogs, cats or other common domestic pets may be kept in Residential Units provided that they are not kept, bred or maintained for any commercial purposes and provided further that they are kept, bred and maintained solely on the Residential Lot in accordance with rules and regulations adopted by the Board (including, without limitation, rules and regulations limiting the total number of pets allowed within a Residential Unit).

9.7 **Garbage.** All rubbish, trash and garbage shall be kept on each Residential Lot so as not to be seen from neighboring Residential Lots and Residential Units and shall be regularly removed from each Residential Lot and shall not be allowed to accumulate thereon. In addition to the foregoing, all rubbish, trash and garbage shall be stored and removed in accordance with the rules and regulations adopted by the Board. If the City and/or the Association adopts a program for the recycling of rubbish, trash and/or garbage on the Property, then all owners of Residential Units shall comply with all terms of such program.

9.8 **Prohibited Exterior Activities/Improvements.**

A. Hanging of clothes shall be confined to the interior of each Residential Unit.

B. Without prior written authorization of the Board, no television or radio antennas or television satellite dishes of any sort (with the exception of individual satellite dishes not exceeding 24 inches in diameter) shall be placed, allowed or maintained on the exterior of any Residential Unit, on any portion of the exterior of any improvements located on any Lot, nor in a free-standing nature elsewhere on any Lot.

9.9 **Parking of Vehicles, Boats, Vans.**

A. Parking areas and driveways shall be used for parking operable, licensed, registered and insured automobiles and private vans only. No commercial vans, campers, trailers, boats, snowmobiles and other vehicles shall be parked on the exterior of any



Residential Unit or Residential Lot or the Common Area Lots or the Limited Common Area Lots or the Community Center Lot. No parking of any vehicles shall be allowed in any portion of the Common Area Lots or the Community Center Lot except in areas which may be designated by the Board for such parking (if any). The Board may authorize vehicles parked in violation of the Association's rules and regulations with respect thereto to be towed away and any such towing charge shall become a lien upon the Residential Unit of the Residential Unit Owner who owns such vehicle or of whom the owner of such vehicle is the guest, in the same manner as provided in this Declaration for nonpayment of Assessments.

B. The Association shall have the power to and may assign vehicle parking spaces located on the Common Area Lots on an equitable basis for the exclusive use of tenants and/or Residential Unit Owners and/or Residential Units. Pursuant to the easements granted in Section 5.3(A) hereof, the Association also shall have the power to subdivide the Premises in order to provide that leasehold or fee simple interests in the parking spaces located on the Common Area Lots may be conveyed to Residential Unit Owners; provided, at such time as any such leasehold or fee simple interest in such parking space is conveyed to a Residential Unit Owner, the portion of the Common Area Lots containing such parking space shall no longer be subject to the easements granted in Section 5.3(A) hereof.

9.10 **Certain Party Walls.** All dividing walls which straddle the property line between two (2) Duplex Units and which stand partly upon and within one Duplex Unit and partly upon and within another, and all walls which serve two Duplex Units, shall be considered party walls, and each of the Residential Unit Owners of said Duplex Units shall have the right to use said party wall below and above the surface of the ground and along the whole length or any part of the length thereof for the support of said Duplex Units and for the support of any building constructed to replace the same, and shall have the right to maintain in or on said wall any pipes, ducts and conduits originally located therein or thereon, subject to the terms of this Section 9.10. No Residential Unit Owner of any Duplex Unit or such Residential Unit Owner's successors-in-interest shall have the right to extend said party wall in any manner, either in length, height or thickness unless undertaken in connection with the expansion of a Duplex Unit in accordance with the terms hereof. In the event of damage to or destruction by fire or other casualty of any party wall, including the foundation thereof, the Residential Unit Owner of the Duplex Unit upon which such party wall may rest shall have the obligation to repair or rebuild such wall and the Residential Unit Owners of each Duplex Unit upon which such walls shall rest, be served or benefited by shall pay such Residential Unit Owner's aliquot portion of the cost of such repair or building. All such repair or rebuilding shall be done within a reasonable time, in a good and workmanlike manner with materials comparable to those used in the original wall and shall conform in all respects to the laws and ordinances regulating the construction of building in force at the time of such repair or reconstruction. Whenever any such wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall. Notwithstanding the foregoing to the contrary, the Residential Unit Owner of any Duplex Unit, or any other interested party, shall retain the right to receive a larger contribution from another or others under any rule or law regarding liability for negligent or willful acts or omissions. The right of any Residential Unit Owner of a Duplex Unit, or any other interested party, to

contribution from any other person, shall be appurtenant to the land and shall pass to such Residential Unit Owner's or other applicable person's successors in title. The title of each Residential Unit Owner to the portion of each party wall within such Duplex Unit is subject to a cross-easement in favor of the adjoining Residential Unit Owner of a Duplex Unit for joint use of said wall.

**9.11 Additional Restrictions Relating to Stormwater**

A. The covenants in this Section 9.11 are intended to ensure ongoing compliance with North Carolina State Stormwater Management Permit Number SW8961202 issued by the Division of Water Quality under Title 15 NCAC 2H.1000 (the "Stormwater Permit").

B. The State of North Carolina is made a beneficiary of the restrictions provided in this Section 9.11 to the extent necessary to maintain compliance with the Stormwater Permit.

C. The restrictions in this Section 9.11 are to run with the land and be binding on all persons and parties claiming under them.

D. The restrictions in this Section 9.11 pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

E. Alteration of the drainage as shown on the stormwater drainage plan approved by the Division of Water Quality may not take place without the concurrence of the Division of Water Quality.

F. The maximum allowable built-upon area for each Lot is shown on Exhibit G attached hereto and incorporated herein by reference. This allotted amount includes any built-upon area constructed within the Lot property boundaries, and that portion of the right-of-way between the front Lot line and the edge of the pavement. Built-upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking area, but does not include raised, open wood decking, or the water surface of swimming pools.

G. All runoff from the built-upon areas on the Lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the Lot to drain toward the street, or grading perimeter swales to collect Lot runoff and directing them into the stormwater system or into the street. Lots that will naturally drain into the system are not required to provide these additional measures.

H. If and to the extent any Lots lie within the boundaries of CAMA's Area of Environmental Concern ("AEC"), the maximum buildable area permitted on such Lots may be reduced due to CAMA jurisdiction within the AEC.

9.12 **Exceptions to Restrictions**

A. Except for the provisions of Section 9.11, the foregoing covenants of this Article 9 shall not apply to the activities of Declarant or the Association.

B. Declarant may maintain, while engaged in marketing, constructing and selling activities, in or upon such portions of the Premises as Declarant determines, such temporary facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, garages, signs and construction, and sales and storage trailers.

**ARTICLE 10**

**ARCHITECTURAL CONTROLS**

10.1 **Architectural Standards.** All buildings containing Residential Units, accessory structures, additions thereto, landscaping, and any other exterior aspect of a Residential Lot, or the Common Area Lots, the Limited Common Area Lots, the Community Center Lot or the Private Lot Maintenance Areas, whether original or replacement, temporary or permanent, shall be constructed, altered, restored, added to, located, remodeled on the exterior, placed or installed (a) in compliance with all requirements of this Article 10 and other applicable provisions of this Declaration as well as all applicable City ordinances and codes, and (b) in such manner so as to preserve the originally designed architectural and aesthetic appearance of the Premises and so as not to impair the value of the property of all Residential Unit Owners and shall be undertaken in a manner that is consistent with the use of the Premises as a quality residential subdivision. Any buildings containing Residential Units, accessory structures, additions thereto, landscaping, and any other exterior aspect of a Residential Lot, the Common Area Lots, the Limited Common Area Lots or the Community Center Lot constructed and installed by the Declarant in connection with the initial construction and/or rehabilitation and renovation of improvements shall conclusively be deemed to comply with the standards contained in this Section 10.1.

10.2 **Board Approval.** Other than as installed or approved by Declarant in connection with the initial construction and/or rehabilitation, remodeling and renovation of Residential Units, Residential Lots, the Common Area Lots, the Limited Common Area Lots and the Community Center Lot, no building, wall or other structure shall be commenced, erected, maintained or undertaken upon a Residential Lot, the Common Area Lots, the Limited Common Area Lots or the Community Center Lot nor shall any exterior addition to or change or alteration or, in the event of a casualty loss, any restoration be made to the exterior portion of any Residential Unit until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Board, or by an architectural control committee of three or more persons appointed by the Board, as to harmony of external design and location in relation to surrounding structures and topography and compliance with the provisions of Section 10.1. Further, in addition to the foregoing, until the Transfer Date, all matters which are subject to Board approval pursuant to this Section 10.2 shall

additionally require the approval of Declarant unless such approval right is waived by Declarant in its sole discretion. Any landscaping plans involving plantings on a Residential Lot submitted for approval must be approved by a registered landscape architect as being in conformance with the character of the plantings depicted and otherwise set forth in the Landscape Plan.

10.3 **Effect of Board Approval.** The approval by the Board or the architectural control committee of plans and specifications and standards pursuant to Section 10.2 shall in no event be construed as representing or implying that such plans and specifications or standards shall, if followed, result in properly designed construction. Such approvals and standards shall in no event be construed as representing or guaranteeing the Residential Unit, Residential Lot or other improvements/landscaping performed in accordance therewith shall be built in a good and workmanlike manner. Neither Declarant nor the Association shall be responsible or liable for any defects in any plans or specifications or standards submitted, revised or approved pursuant to this Article 10, any loss or damage to any person or property arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the non-compliance of such plans and specifications or standards with any governmental ordinances or regulations, or any defects in construction pursuant to such plans or specifications or standards. The applicable Residential Unit Owner shall be solely responsible to apply and pay for and obtain any and all required governmental approvals, permits, licenses, etc. and to comply with the requirements of all ordinances and regulations of the City, all applicable building, health, and safety codes and all recorded restrictions, covenants and conditions applicable to said Lot. Architectural approval given to any one Residential Unit Owner shall be based upon the Board's reasonable discretion and shall not be construed as waiving the requirement that, or interpreted to obviate the necessity for, architectural approval of any part or portion of any other proposed action even if such proposed action is identical or substantially similar to an action which has previously received architectural approval.

## **ARTICLE 11**

### **MUNICIPAL LAWS**

11.1 **Municipal Laws.** The Premises is subject to and shall be governed by all Municipal Laws. Each Residential Unit Owner, by acceptance of a deed for a Residential Unit, hereby covenants and agrees to comply with all Municipal Laws.

## **ARTICLE 12**

### **MISCELLANEOUS**

#### **12.1 Enforcement of this Declaration.**

A. The Association, any Residential Unit Owner, and, at all times prior to the Transfer Date, Declarant (in its capacity as such) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, rights, liens and charges now or hereafter imposed by the provisions of this

Declaration. Any Residential Unit Owner found by a court of competent jurisdiction to be in violation of any of the foregoing shall also be liable for reasonable attorneys' fees and litigation and court costs incurred by the prevailing party in prosecuting such action. The amount of such attorney's fees together with litigation and court costs, if unpaid, shall constitute an additional lien against the defaulting Residential Unit Owner's Residential Unit, enforceable as other liens herein established. Failure by the Association, any Residential Unit Owner or Declarant to enforce any covenant, restriction, easement, condition, reservation, right, lien or charge herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. In amplification of and in addition to the provisions contained in the other provisions of this Declaration, in the event that any Residential Unit Owner shall be in violation of any provision of this Declaration, the Association may and shall have each and every right and remedy as shall otherwise be provided or permitted by law.

12.2 **Partial Invalidity.** Invalidation by judgment or court order of any one of the covenants, restrictions, terms, provisions, etc. in this Declaration or of the application thereof to any particular person or circumstance shall in no way affect any other covenant, restriction, term, provision, etc. or the application of said covenant, restriction, term, provision, etc. to other persons or circumstances and this Declaration in all such other respects shall remain in full force and effect.

12.3 **Term of this Declaration; Amendment of this Declaration by Residential Unit Owners; and Termination of this Declaration.**

A. The covenants, conditions, easements, rights, and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, Declarant (prior to the Transfer Date), the Association, and each Residential Unit Owner subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of eighty-nine (89) years from the date this Declaration is recorded.

B. The covenants, conditions, easements, rights, and restrictions of this Declaration may be amended during the period referenced in Section 12.3.A above by an instrument signed by those Members entitled to cast eighty percent (80%) or more of the total votes of the Association, which executed instrument is then properly recorded in the Office of the Register of Deeds of New Hanover County, North Carolina (provided, that, prior to the Transfer Date, any such amendment shall also require the consent of Declarant). Notwithstanding the foregoing to the contrary, no right herein contained for the benefit of Declarant may be amended without the express prior written consent of Declarant. Any instrument executed pursuant to the provisions contained herein shall be filed for record in the Office of the Register of Deeds of New Hanover County, North Carolina and a true, complete copy of such instrument shall be transmitted to each Residential Unit Owner promptly. Notwithstanding the foregoing, Declarant shall have the right, without having to obtain the signature or consent of any other party, to amend this Declaration in the manner herein expressly provided.

C. This Declaration may be terminated prior to the period referenced in Section 12.3.A above only by an instrument signed by those Members entitled to cast eighty percent (80%) or more of the total votes of the Association, which executed instrument is then properly recorded in the Office of the Register of Deeds of New Hanover County, North Carolina (provided, that, prior to the Transfer Date, any such amendment shall also require the consent of Declarant). Any such termination shall also be subject to any further requirements of the Planned Community Act (including, without limitation, the requirements of N.C.G.S. §47F-2-118, as same may be amended from time to time).

**12.4 Declarant's Right to Expand Jervay Place.** Declarant may from time to time subject to the provisions of this Declaration all or any portion of the Additional Property by recording in the land records of New Hanover County a Supplemental Declaration describing the Additional Property to be subjected. A Supplemental Declaration or Supplemental Plat recorded pursuant to this Section 12.4 shall not require the consent of any person or entity except Declarant (unless the owner or ground lessee of such Additional Property is an entity other than Declarant, the Authority or a successor or assign of the Declarant or the Authority, in which case the joinder of such owner or ground lessee shall also be required).

Prior to the Transfer Date, any Supplemental Declaration executed by Declarant (and, if applicable, the owner(s) or ground lessee(s) of such property) may establish, amend, revise, classify and/or reclassify the designation of (i) any Common Area Lots, Limited Common Area Lots and/or Community Center Lot on such Additional Property, (ii) the Neighborhoods on such property (if applicable), (iii) the Voting Groups into which such Neighborhoods will be placed (if applicable), (iv) the applicable percentage interests for each Residential Unit on such Additional Property (in the manner set forth in Exhibit E) and (v) any other information necessary for the orderly and equitable inclusion of Additional Property into Jervay Place and the coverage of this Declaration. Prior to the Transfer Date, Declarant (together with, if applicable, the owner(s) or ground lessee(s) of such property) shall also be entitled, without the consent or joinder of any other person or entity, to record such Supplemental Plats necessary to designate or amend Common Area Lots, Limited Common Area Lots, the Community Center Lot and other aspects of development on such Additional Property (regardless of whether such Additional Property has already been subjected to the provisions of this Declaration).

Declarant's right to expand Jervay Place pursuant to this Section 12.4 shall expire upon the earlier to occur of (i) the date all of the Additional Property has been subjected to this Declaration, (ii) the date on which Declarant records a notice relinquishing its right to expand Jervay Place as provided in this Declaration or (iii) the Transfer Date. Until then, Declarant may transfer or assign this right to any person or entity who is the developer of at least a portion of the real property described in Exhibit A or B (as contemplated in Section 12.13 herein).

Nothing in this Declaration shall be construed to require Declarant or any successor to subject Additional Property or any portion thereof to this Declaration or to develop any of the Development Tract in any manner whatsoever.

12.5 **Notices.** Any notices required or desired to be sent to any Member of the Association or a Residential Unit Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address of such Member or such Residential Unit Owner, as the case may be, as such address appears on the records of the Association at the time of such mailing. Notice to the Association shall be given to the Association's Registered Agent as set forth in applicable documents filed with the State of North Carolina unless otherwise designated by the Association.

12.6 **Covenants and Restrictions to Run with Land.** All the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant, the Authority and each subsequent holder of any interest in any portion of the Premises and their respective grantees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Premises or any part thereof.

12.7 **Interpretation of this Declaration.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a high-quality residential development.

12.8 **Rights of Mortgagees, Insurers and Guarantors.** The following provisions are intended for the benefit of each holder of a recorded mortgage or trust deed encumbering a Lot and/or Residential Unit ("Mortgagee") and to the extent, if at all, that any other provision of this Declaration conflicts with the following provisions, the following provisions of this Section shall, in all instances, control:

A. Upon request in writing to the Association identifying the name and address of the Mortgagee or the insurer or guarantor of a recorded mortgage or trust deed on a Lot and/or Residential Unit ("Insurer or Guarantor"), the Association shall furnish each Mortgagee, Insurer or Guarantor that holds an interest relating to said Lot or Residential Unit a written notice of the default of the Residential Unit Owner in connection with such Lot under this Declaration which is not cured within thirty (30) days. Where a Mortgagee holding a first Mortgage against the Residential Unit (or a purchaser at a foreclosure conducted pursuant to a first Mortgage against the Residential Unit) comes into possession of the Residential Unit pursuant to the remedies provided in the Mortgage, the purchaser of such Residential Unit shall not be liable for the Assessments against such Residential Unit which became due prior to the acquisition of title to such Residential Unit by such purchaser (nor shall the Mortgagee have any duty to collect such unpaid Assessments). Such unpaid Assessments shall be deemed to be common expenses collectible from all Residential Unit Owners within Jervay Place (including, without limitation, such purchaser).

B. Upon request in writing, each Mortgagee, Insurer or Guarantor shall have the right:

(1) to examine current copies of this Declaration, and the By-Laws, rules and regulations and the books and records of the Association during normal business hours;

(2) to receive, without charge and within a reasonable time after such request, a copy of the then most current set of such financial statements as are prepared by the Association at the end of each of their respective fiscal years;

(3) to receive written notices of all meetings of the Association to designate a representative to attend all such meetings;

(4) to receive written notice of any decision by the Association to make a material amendment to this Declaration or to either the By-Laws or the articles of incorporation of the Association;

(5) to receive written notice of any proposed action which would require the consent of a specified percentage of Mortgagees; and

(6) to receive written notice of any condemnation or casualty loss that affects either a material portion of the Premises or the Lot and/or Residential Unit on which it holds, insures or guarantees the mortgage.

C. No provisions of this Declaration, the By-Laws or the articles of incorporation of the Association or any similar instrument pertaining to the Premises or the Residential Units therein shall be deemed to give a Lot owner or Residential Unit Owner or any other party priority over the rights of the Mortgagees pursuant to their mortgages in the case of distribution to such Lot owners or Residential Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of a Lot and/or Residential Unit, or any portion thereof or interest therein. In such event, the Mortgagees of the affected Lots or Residential Units shall be entitled, upon specific written request, to timely written notice of any such loss.

D. Upon specific written request to the Association, each Mortgagee of a Lot and/or Residential Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of any of the Common Area Lots or the Community Center Lot if such damage or destruction or taking exceeds Fifty Thousand Dollars (\$50,000.00), or of any damages to such Lot and/or Residential Unit in excess of Ten Thousand Dollars (\$10,000.00).

E. If any Lot and/or Residential Unit or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Mortgagee of said Lot and/or Residential Unit will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of this Declaration, the articles of incorporation or By-Laws of the Association or any other instrument pertaining to the Premises or the Residential Units will entitle the Lot owner or Residential Unit Owner or



other party to priority over such Mortgagee with respect to the distribution of the proceeds of any award or settlement with respect to such Lot and/or Residential Unit.

F. No amendment to, change or modification of either Section 7.9 (dealing with the priority of assessment liens) or Section 12.3 (dealing with the method of amending this Declaration) shall be effective unless, in addition to the terms and conditions set forth in Sections 7.9 and 12.3, such change or amendment shall be first consented to, in writing, by not less than seventy-five percent (75%) of the votes of Residential Unit Owners and their respective Mortgagees.

12.9 **Condemnation**. If all or any part of any Common Area Lot or the Community Center Lot shall be taken through condemnation by any governmental authority having power so to do, the net proceeds of such taking shall be paid to and retained by the Association, or to any insurance trustee, for the benefit of the Lot owners, Residential Unit Owners and their Mortgagees, and any distribution of such funds shall be made on a percentage basis equal to the percentage interest of each Residential Unit for the payment of the Association Assessment as set forth in Article 7. For purposes of this Section, the term "condemnation" shall include also any sale under threat of condemnation to any governmental authority having condemnation power.

12.10 **Dissolution of the Association**. Upon dissolution of the Association, its assets shall be transferred to another association or associations having similar purposes.

12.11 **Declarant's Rights with Respect to Amending the Plat of Subdivision and this Declaration**.

A. Declarant hereby reserves to itself the right to re-record the Plat of Subdivision to correct any inaccuracies, errors or mistakes contained therein and to record Supplemental Plats as contemplated in this Declaration.

B. Declarant hereby reserves to itself the right and power, to be exercised without the consent of any Residential Unit Owner or Mortgagee, to record a special amendment ("Special Amendment") to this Declaration or to the Plat of Subdivision at any time and from time to time for any of the following purposes:

(a) To cause this Declaration or the Plat of Subdivision to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities;

(b) To induce any of the aforesaid agencies or entities to make, purchase, sell, insure, or guarantee mortgages covering a Residential Unit;

(c) To carry out the purposes of Section 9.9 hereof with respect to parking of vehicles;

(d) To correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto;

(e) To change, amend or modify any of the terms or conditions of this Declaration or of the Plat of Subdivision based upon Declarant's determination, made in good faith, that such change, amendment or modification is in the best interests of the Premises and is consistent with the intent and purposes of this Declaration; or

(f) To carry out Declarant's rights under Section 12.4 herein relative to the expansion of Jervay Place.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Residential Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Residential Unit or Residential Lot, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to vote in favor of, make, execute and record Special Amendments. The right of Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as Declarant no longer holds or controls title to or a leasehold interest in any Residential Unit or Residential Lot.

12.12 **Interpretation Provisions.** The Plat of Subdivision may grant and reserve certain easements relative to use, access, maintenance, repair and operation of all or parts of Common Area Lots, the Limited Common Area Lots and the Community Center Lot for utility and other purposes. In the event of any conflict or ambiguity between the terms and conditions of easements granted and/or reserved in the Plat of Subdivision with respect to the Common Area Lots, the Limited Common Area Lots and the Community Center Lot and the terms and conditions of the easements granted and reserved in this Declaration with respect to the Common Area Lots, the Limited Common Area Lots and the Community Center Lot, those terms and conditions which are more restrictive or more specific and consistent with the intent and purposes of this Declaration and the Plat of Subdivision (whether set forth herein or therein) shall, in all instances, control and prevail over the less restrictive or less specific terms and conditions.

12.13 **Assignment of Declarant's Rights.** Any and all rights, powers, easements and reservations of Declarant herein contained may be assigned to any person(s), corporation(s), association(s) or other legal entity(ies) which will assume the duties of Declarant pertaining to the particular rights, powers, easements and reservations assigned, and upon any such person(s), corporation(s), association(s) or other legal entity(ies) evidencing his, her, its or their consent in writing to accept such assignment and assume such duties, he, she, it or they shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Without limiting the generality of the foregoing, Declarant may divide the Premises into distinct portions for purposes of assigning Declarant's rights hereunder [*i.e.*, Declarant may designate person(s), corporation(s), association(s) or other legal entity(ies) to assume the rights of the Declarant relative to separate and distinct portions of the Premises]. The term "Declarant," as used herein, includes all such

assignees and their heirs, successors and assigns. Any assignment or appointment made under this Section 12.13 shall be in recordable form and shall be recorded in the public real estate records of the jurisdiction in which the Premises is located.

12.14 **Conflicts with the Planned Community Act.** To the extent any provision of this Declaration is directly inconsistent with the terms of the Planned Community Act and such provision of this Declaration cannot reasonably be reconciled with the Planned Community Act, the terms of the Planned Community Act shall be controlling with regard to such term.

12.15 **Rights Reserved for the Benefit of HUD/VA.** Prior to the Transfer Date, the following actions shall require, in addition to any requirements provided above in this Declaration, the prior approval of the U.S. Department of Housing and Urban Development or the Veterans Administration ("HUD/VA"), if either such agency is insuring or guaranteeing the Mortgage on any Residential Unit at such time: merger, consolidation or dissolution of the Association; annexation of additional property other than property within the Development Tract; dedication, conveyance or mortgaging of any Common Area Lot, any Limited Common Area Lot or the Community Center Lot; or material amendment of this Declaration, the By-Laws or the articles of incorporation of the Association. The granting of easements for utilities or other similar purposes consistent with the intended use of common areas shall not be deemed a conveyance within the meaning of this Section.

**[SIGNATURES FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, Declarant has caused this Master Declaration of Covenants, Conditions, Restrictions, Easements and Rights for Jervay Place to be executed as of the date first above written.

TELESIS NORTH CAROLINA  
CORPORATION, a Delaware  
corporation

By: Gregory A. Hyson  
Name: Gregory A. Hyson  
Title: Vice President

~~STATE OF~~ \_\_\_\_\_  
~~COUNTY OF~~ District of Columbia

I, William Alan Baldwin, a Notary Public of the State and County aforesaid, certify that Gregory A. Hyson personally came before me this day and acknowledged that he is Vice President of Telesis North Carolina Corporation, a Delaware corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President.

WITNESS my hand and official seal this 29<sup>th</sup> day of October, 2002.

William Alan Baldwin  
Notary Public

My commission expires:

\_\_\_\_\_  
William Alan Baldwin  
Notary Public, District of Columbia  
My Commission Expires 06-30-2006



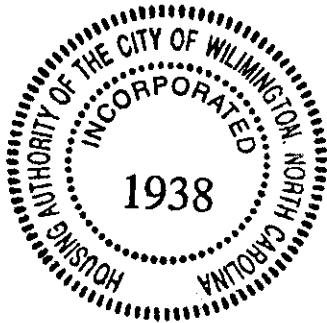
## **JOINDER, SUBORDINATION, GUARANTY AND GRANT OF EASEMENT**

The undersigned Authority, which is the owner of fee title to the Premises, intending to be legally bound, hereby agrees and consents to the terms and conditions of, and joins in the execution of, the foregoing Declaration and the grants and easements therein contained, and agrees and consents to the subordination of the fee interest in the Premises (and any Additional Property which may become a portion of the Premises at the discretion of Declarant) to the foregoing Declaration. The undersigned further agrees that, during the Guaranty Period (as defined herein), the undersigned shall unconditionally and absolutely guarantee the payment and performance of all obligations of all Residential Unit Owners as set forth in the foregoing Declaration (the "Obligations"); provided, the undersigned guarantees that, during the Guaranty Period, the Obligations will be observed strictly in accordance with the terms of this Declaration, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms, and agrees that the liability of the undersigned under this instrument shall be absolute and unconditional irrespective of: (i) any lack of validity or enforceability of agreements or instruments relating hereto; (ii) any change in the time, manner, or place of payment or performance of, or in any other term of, all or any of the Obligations, or any other amendment or waiver or any consent to departure from the Declaration; (iii) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors or readjustment of, or other similar proceedings, affecting the undersigned or any allegations or contest of the validity of this instrument in any such proceeding; (iv) the default or failure of the undersigned fully to perform any of its obligations, covenants or agreements contained in the foregoing Declaration; and (v) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the undersigned with respect to the Obligations.

As used herein, the "Guaranty Period" shall be the period commencing upon the date on which the first Residential Unit is occupied (the "Guaranty Commencement Date") and terminating on the date that is five (5) years after all of the Additional Property has been submitted to this Declaration and the last Residential Unit to be constructed on the Development Tract is substantially completed and occupied. Provided, however, in no event shall the Guaranty Period be deemed to exceed twenty (20) years after the Guaranty Commencement Date.

Authority also hereby bargains, sells, grants, conveys and gives unto Declarant, its successors and assigns, an easement to enter upon and occupy the Development Tract (as same may be modified from time to time) for the purpose of constructing residential homes and other improvements on the Premises as contemplated in the Declaration (such easement being referred to as the "Development Easement"). At the sole option of Declarant, the Development Easement may be released by Declarant relative to any Lots within Jervay Place which are sold to qualified home buyers who satisfy the requirements applicable from time to time to homeownership within Jervay Place. Declarant may also have additional rights and easements relative to the Premises pursuant to ground leases, deeds, easements, development agreements, management agreements and/or any other agreements that may be entered into between the Authority and Declarant from time to time relative to Jervay Place, and the

Development Easement shall not be deemed or construed to limit or restrain such additional rights and easements in any way.



HOUSING AUTHORITY OF THE CITY  
OF WILMINGTON, NORTH CAROLINA

By: Lee D. Weddle, Sr. (SEAL)

Lee D. Weddle, Sr.,  
Vice-Chairman of the Board of  
Commissioners

[CORPORATE SEAL]

ATTEST:

By: Benjamin J. Quattlebaum, II (SEAL)

Benjamin J. Quattlebaum, II  
Secretary

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

This is to certify that on this day personally came before me, Benjamin J. Quattlebaum, II with whom I am personally acquainted, and being by me duly sworn, says that he is the Secretary and Lee D. Weddle, Sr., is the Vice Chairman of the Board of Commissioners of the Housing Authority of the City of Wilmington, North Carolina, the municipal corporation named within and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to said instrument is said common seal; that the name of the corporation was subscribed thereto by the Vice Chairman and that the said Vice Chairman subscribed his name hereto and said common seal was affixed, all by order of the Housing Authority of the City of Wilmington, North Carolina and that said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 30<sup>th</sup> day of October,  
2002.

J. Lenwood Bowen, Jr.  
Notary Public

My commission expires:

3/15/04



## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE DEVELOPMENT TRACT**

**Being all of Blocks 24, 25, 38 and 39 of the City of Wilmington** as shown on the official plan of the City of Wilmington, North Carolina.

**TOGETHER WITH** the following tract also lying in the City of Wilmington, County of New Hanover, State of North Carolina:

BEGINNING at a point in the present Northern line of Dawson Street (40 feet from the center thereof), said point being South eighty-four (84) degrees twenty-three (23) minutes West eighty-two and fifty one-hundredths (82.50) feet from Western line of Tenth Street (33 feet from the center thereof), running thence from said beginning with the present Northern line of Dawson Street South eighty-four (84) degrees twenty-three (23) minutes West two-hundred forty-eight and twenty-two one-hundredths (248.22) feet to a point in the Eastern line of Ninth Street (33 feet from the center thereof), thence with said Eastern line of Ninth Street North five (05) degrees thirty-seven (37) minutes West one-hundred twenty-three and forty-five one-hundredths (123.45) feet to a point, thence North eighty-four (84) degrees twenty-three (23) minutes East one hundred forty-eight and twenty-two one-hundredths (148.22) feet to a point, thence North five (05) degrees thirty-seven (37) minutes West thirty (30.00) feet to a point, thence North eighty-four (84) degrees twenty-three (23) minutes East one-hundred (100.00) feet to a point, said point being Westwardly and perpendicular 82.50 feet from the Western line of Tenth Street, running thence South five (05) degrees thirty-seven (37) minutes East one-hundred fifty-three and forty-five one-hundredths (153.45) feet to the point of beginning, containing 33,642.75 square feet of area and being a part of Lots 4, 5 and 6 in Block 53 in the City of Wilmington, and being the same lands described in the Deed recorded in Book 2868 at Page 192 in the New Hanover County Registry.

**EXHIBIT B**

**LEGAL DESCRIPTION OF THE PREMISES (I.E., THE PROPERTY INITIALLY  
SUBMITTED TO THIS DECLARATION)**

LOTS 1-12 AS SHOWN ON THE "JERVAY PLACE -- PHASE I" SURVEY PLAT  
RECORDED JULY 30, 2002, IN PLAT BOOK 42, PAGE 326 IN THE NEW HANOVER  
COUNTY PUBLIC REGISTRY, LYING IN THE CITY OF WILMINGTON, NEW  
HANOVER COUNTY, STATE OF NORTH CAROLINA.



**EXHIBIT C**

**LEGAL DESCRIPTION OF THE RESIDENTIAL LOTS**

LOTS 1-12 AS SHOWN ON THE "JERVAY PLACE -- PHASE I" SURVEY PLAT RECORDED JULY 30, 2002, IN PLAT BOOK 42, PAGE 326 IN THE NEW HANOVER COUNTY PUBLIC REGISTRY, LYING IN THE CITY OF WILMINGTON, NEW HANOVER COUNTY, STATE OF NORTH CAROLINA.

## **EXHIBIT D**

### **BY-LAWS OF JERVAY PLACE RESIDENTS ASSOCIATION, INC.**

#### **ARTICLE 1**

##### **PURPOSES AND POWERS**

The Association shall be responsible for the general management and supervision of the Premises (unless otherwise provided in the Declaration) and shall have all of the powers to perform, and shall be responsible to perform, all of the obligations provided in the Declaration. Further, the Association shall have all powers now or hereafter granted by the General Not-For-Profit Corporation Act of the State of North Carolina which shall be consistent with the purposes specified herein and in the Declaration. Defined terms used herein shall have the same meaning ascribed to such terms in the Declaration (unless otherwise defined herein).

#### **ARTICLE 2**

##### **OFFICES**

2.1 **Registered Office.** The Association shall have and continuously maintain in this State a Registered Office and a Registered Agent whose office shall be identical with such Registered Office. The Association may have other offices within or without the State of North Carolina as the Board of Directors may from time to time determine.

2.2 **Principal Office.** The principal office of the Association shall be maintained in Wilmington, North Carolina.

#### **ARTICLE 3**

##### **MEMBERSHIP**

3.1 **Voting Members.** Every Residential Unit Owner shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation (but may include ground lessees of record as contemplated in Section 1.28 herein). Membership shall be appurtenant to and may not be separated from ownership of each Residential Unit; provided, however, if such Residential Unit is subject to a ground lease of record which grants membership rights to a ground lessee under Section 1.28 herein, the membership of such ground lessee shall be appurtenant to and may not be separated from the interest of the ground lessee of record of such Residential Unit. If the Residential Unit Owner shall be more than one person, all such persons shall be Members, but the voting rights in the Association attributable to such Residential Unit Owner shall be exercised in the manner hereinafter provided. If the Residential Unit Owner shall be a land trust, corporation, partnership or other legal entity, then the one individual who shall be entitled to exercise the rights and privileges (such as, to vote and to be a Director on the Board), and who shall be responsible

to bear the obligations associated with membership in the Association with respect to that Residential Unit shall be designated by the Residential Unit Owner thereof in writing to the Association. Such designation may be changed from time to time thereafter by notice in writing from the Residential Unit Owner to the Association delivered no later than ten (10) days prior to the effective date of such change. No Residential Unit Owner shall have any right or power to disclaim, terminate or withdraw from such Residential Unit Owner's membership in the Association or any of the obligations as such Member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such Residential Unit Owner shall be of any force or effect for any purpose.

3.2 **Membership.** Members shall be all of the Residential Unit Owners. Residential Unit Owners shall be entitled to one (1) vote for each Residential Unit in which they hold the interest required for membership. When more than one person holds such interest in any Residential Unit, all such persons shall be Members, but the right to vote for such Residential Unit shall be exercised as they among themselves determine (subject to the requirements of the Planned Community Act), provided, however, that in no event shall more than one (1) vote be cast with respect to each Residential Unit.

3.3 **Meetings.**

(i) **Quorum; Procedure.** Meetings of the Members shall be held at the principal office of the Association or at such other place in New Hanover County, North Carolina as may be designated in any notice of a meeting. The presence at any meeting of the Association, in person or by proxy, of a majority of the total votes determined pursuant to Section 3.2 above shall constitute a quorum. Unless otherwise expressly provided herein or in the Declaration, any action may be taken at any meeting of the Members at which a quorum is present upon the affirmative vote of the Members having a majority of the total votes present (whether in person or by proxy) at such meeting. Any Member in writing may waive notice of a meeting, or consent to any action of the Association without a meeting. In the event business cannot be conducted at any meeting of the Association because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding anything to the contrary in the Declaration or these By-Laws, the quorum requirement at the next meeting shall be one half (½) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

(ii) **Initial and Annual Meeting.** A meeting of the Association shall be held at least once per year. The initial meeting of the Members shall be held at such time as may be designated upon thirty (30) days' written notice given by the Declarant, provided that such initial meeting shall be held no later than ninety (90) days after the sale of the first Lot in Jervay Place to any person or entity other than Declarant or the Authority. Thereafter, there shall be an annual meeting of the Members in the month of June of each succeeding year. If the date for the annual meeting of Members is a legal holiday, the

meeting will be held at the same hour on the first day succeeding such date which is not a legal holiday.

(iii) **Special Meetings**. Special meetings of the Association may be called at any time for the purpose of considering matters which, by the terms of the Declaration or these By-Laws, require the approval of all or some of the Members, or for any other reasonable purposes. Special meetings of the Association may be called by the President of the Association, a majority of the Board or by Members representing ten percent (10%) of the votes of the Association.

3.4 **Notices of Meetings**. Not less than 10 nor more than 60 days in advance of any meeting, the Secretary of the Association shall cause written notice of such meeting to be hand-delivered or sent prepaid by United States mail to the mailing address of each Residential Unit or to any other mailing address designated in writing by the Residential Unit Owner. Such notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these By-Laws, any budget changes, and any proposal to remove a Director or officer.

3.5 **Voting; Proxies**. At any meeting of Members, a Member entitled to vote may either vote (i) in person or (ii) by dated proxy executed in writing by the Member which satisfies the requirements of the Planned Community Act. No proxy shall be valid after eleven (11) months from the date of its execution. No votes allocated to a Lot owned by the Association may be cast.

## **ARTICLE 4**

### **BOARD OF DIRECTORS AND OFFICERS**

4.1 **Board of Directors**. Except with respect to the number of members of the initial Board of Directors to be appointed by Declarant (which shall consist of three (3) persons, as set forth in the Declaration), the direction and administration of the Premises in accordance with the provisions of the Declaration shall be vested in the Board of Directors, consisting of seven (7) persons who shall be elected in the manner hereinafter provided. Each member of the Board, with the exception of the Board members initially appointed by the Declarant (or its designee) shall be a Residential Unit Owner; provided, however, that in the event a Residential Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director or officer of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, or manager of such legal entity, shall be eligible to serve as a member of the Board and provided further that in the event a member of the Board has entered into a contract to sell his or her Residential Unit and vacates the Residential Unit prior to the consummation of that transaction, such member shall no longer be eligible to serve on the Board and his or her term of office shall be deemed terminated. Notwithstanding anything in this Section 4.1 to the contrary, after the Transfer Date at least a majority of the Directors must be Residential Unit Owners.

4.2 **Determination of Board to be Binding.** All matters of dispute or disagreement between Residential Unit Owners with respect to interpretation or application of the provisions of the Declaration or these By-Laws shall be determined by the Board as hereinafter provided, which determination shall be final and binding on the Association and on all Residential Unit Owners subject, however, to the jurisdiction of any applicable court of law.

4.3 **Election of Board Members.** No later than the first meeting of the Members to occur after the earlier to occur of (i) the Transfer Date or (ii) Declarant's relinquishment of its right to appoint Directors as provided in Section 3.3.A in the Declaration, there shall be elected a Board of Directors consisting of seven (7) Board members (each, a "Director" or "Board member"). In all elections for Directors, each Member shall be entitled to vote on a non-cumulative basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected.

The initial Board of Directors designated by the Declarant pursuant to Section 4.1 hereof shall serve for a period commencing on the date the Declaration is executed and ending upon the qualification of the Directors elected at the first meeting of the Members held after the Transfer Date.

Seven (7) Board members shall be elected by the Members at the initial meeting of the Association after the Transfer Date. The four (4) persons receiving the highest number of votes shall be elected to the Board for a term of three (3) years and the three (3) persons receiving the next highest number of votes shall be elected to the Board for a term of two (2) years. In the event of a tie vote, the members of the Board shall determine which members shall have the three (3) year term and which members shall have the two (2) year term. Upon the expiration of the terms of office of the Board members so elected at the initial meeting of the Association after the Transfer Date, and relative to every election of Directors thereafter, successors shall be elected for a term of two (2) years each.

Notwithstanding the foregoing, if at any time prior to the Transfer Date Declarant elects to adopt the Neighborhood concept in Article 4 of the Declaration, then, after the Transfer Date, each Neighborhood shall be entitled to elect at least one (1) Director. Certain Neighborhoods and/or Voting Groups may be entitled to elect more than one (1) Director depending on the allocations determined by Declarant.

Until such time as Voting Groups are established (if at all), all of Jervay Place shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been recorded, any and all portions of Jervay Place which are not assigned to a specific Voting Group shall constitute a single Voting Group.

4.4 **Compensation.** Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the Members having two-thirds (2/3) of the total votes. However, any Director may be reimbursed for reasonable expenses incurred in the performance of his or her duties.

4.5 **Vacancies in Board**. Vacancies in the Board, other than as a result of removal pursuant to Paragraph 4.7 hereof (including, without limitation, vacancies due to any increase in the number of persons on the Board), shall be filled by a majority vote of the remaining members of the Board or by the Members present at the next annual meeting or at a special meeting of the Association called for such purpose.

4.6 **Election of Officers**. The Board shall elect from among its members: (i) a President who shall preside over both its meetings and those of the Members, and who shall be the chief executive officer of the Board and Association, (ii) a Secretary who will keep the minutes of all meetings of the Members and of the Board who shall, in general, perform all the duties incident to the office of Secretary, (iii) a Treasurer to keep the financial records and books of account, and (iv) such additional officers as the Board shall see fit to elect. All officers shall be elected at each annual meeting of the Board and shall hold office at the pleasure of the Board.

4.7 **Removal of Board Members**. The Members, by a majority vote of all Members present and entitled to vote at any meeting of the Association at which a quorum is present, may remove any Director (other than a Director appointed by Declarant) with or without cause. A successor to fill the unexpired term of a Board member removed may be elected by the Members at the same meeting or any subsequent meeting called for that purpose pursuant to the election procedures set forth herein.

4.8 **Meeting of Board; Quorum**. The initial meeting of the Board shall be held immediately following the initial meeting of the Members and at the same place. At such meeting the Board shall elect its officers to serve until the first annual meeting of the Board which shall be held immediately following the first annual meeting of the Members and at the same place. All subsequent annual meetings of the Board shall be held without other notice than these By-Laws immediately after, and at the same place, or other place, as the annual meeting of Members. Special meetings of the Board shall be held upon call by the President or by a majority of the Board on not less than forty-eight (48) hours' notice in writing to each member, delivered personally or by mail or telegram. Any member may in writing waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting. A majority of the number of Board members shall constitute a quorum for the transaction of business. Unless otherwise expressly provided herein, any action may be taken by the Board upon the affirmative vote of those present at its meetings when a quorum is present.

4.9 **Execution of Instruments**. All agreements, contracts, deeds, leases, vouchers for payment of expenditures, and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the President and countersigned by the Secretary.

## **ARTICLE 5**

### **POWERS OF THE BOARD**

5.1 **General Powers of the Board.** Without limiting the general powers which may be provided by law, the Declaration or these By-Laws, the Board shall have the following general powers and duties:

- (i) to elect the officers of the Association as hereinabove provided;
- (ii) to administer the affairs of the Association and the Premises;
- (iii) subject to Section 5.3(ii) below, to engage the services of a manager or managing agent who shall manage and operate the Premises, the Common Area Lots, the Limited Common Area Lots and other areas for which the Association is responsible pursuant to the Declaration;
- (iv) to formulate policies for the administration, management and operation of the Premises, the Common Area Lots, the Limited Common Area Lots and the Community Center Lot therein;
- (v) to adopt administrative rules and regulations governing the administration, management, operation and use of the Premises, the Common Area Lots, the Limited Common Area Lots and the Community Center Lot, and to amend such rules and regulations from time to time;
- (vi) to provide for the maintenance, repair and replacement of the Common Area Lots, the Limited Common Area Lots, the Community Center Lot and other areas for which the Association is responsible pursuant to the Declaration and payments therefor, and to approve payment vouchers or to delegate such approval to the officers or the manager or managing agent;
- (vii) to provide for the designation, hiring and removal of employees and other personnel, including accountants and legal counsel, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Common Area Lots, the Limited Common Area Lots, the Community Center Lot and other areas for which the Association is responsible pursuant to the Declaration and to delegate any such powers to the manager or managing agent (and any such employees or other personnel as may be the employees of the managing agent);
- (viii) to estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Residential Unit Owners of such Residential Units which have been occupied for residential purposes and the Wilmington Housing Authority their respective shares of such estimated expenses, as hereinafter provided, subject to the requirement that any estimated annual budget that would result in an increase in the next

year's general assessments of more than ten percent (10%) over the general assessment for the previous year must be approved by at least eighty-five percent (85%) of the Board members;

(ix) subject to the approval of the Declarant and the Authority, to dedicate or transfer the Association's interest in all or any part of the Common Area Lots, the Limited Common Area Lots or the Community Center Lot owned or leased by the Association to any public agency, authority or utility or to mortgage the Common Area Lots or any portion for such purposes and subject to such conditions as may be agreed to by the Members;

(x) to make such capital expenditures and investments with respect to the Premises as the Board reasonably determines are necessary to carry out the duties and obligations of the Association; and

(xi) to exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Residential Unit Owners by the Articles of Incorporation, the Declaration or these By-Laws.

5.2 **Tax Relief.** In connection with the Common Area Lots, the Limited Common Area Lots and the Community Center Lot, the Board shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments and any other special taxes or charges of the State of North Carolina or any political subdivision thereof, or any other lawful taxing or assessing body, which are authorized by law to be assessed and levied on real property and to charge all expenses incurred in connection therewith to the maintenance fund.

### 5.3 **Rules and Regulations; Management.**

(i) **Rules.** The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Premises, and for the health, comfort, safety and general welfare of the Residential Unit Owners and Occupants. Written notice of such rules and regulations shall be given to all Residential Unit Owners and Occupants, and the entire Premises shall at all times be maintained subject to such rules and regulations.

(ii) **Management.** The Board may engage the services of an agent to manage the Premises to the extent deemed advisable by the Board provided however, that if the Association, Declarant or Board shall enter into an agreement or agreements for the professional management of the Premises before the Transfer Date, such agreement or agreements shall be terminable by the Association by vote of two-thirds (2/3) of the Board members without cause at any time after the Transfer Date and shall not require the payment of any penalty by the Association and shall not require advance notice of termination of more than ninety (90) days. Any management fees incurred pursuant to this Section 5.3(ii) shall be paid from the assessments collected pursuant to Article 6 hereof.



(iii) Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Owners or any of them.

5.4 **Liability of the Directors and Officers of the Association.** Neither the Directors nor the officers of the Association shall be liable to the Residential Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever made by such individuals as such Directors and officers, except for any acts or omissions finally adjudged by a court of competent jurisdiction to constitute gross negligence or fraud. The Residential Unit Owners (including the Directors and the officers of the Association in their capacity as Residential Unit Owners) shall indemnify and hold harmless each of the Directors and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Residential Unit Owners or arising out of their status as Directors or officers of the Association, unless any such contract or act shall have been finally adjudged by a court of competent jurisdiction to have been made fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid or received in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any Director or officer of the Association may be involved by virtue of such persons being or having been such Director or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of such person's duties as such Director or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of such person's duties as such Director or officer. It is also intended that the liability of each Residential Unit Owner arising out of any contract made by, or other acts of, the Board or officers of the Association, or out of the aforesaid indemnity in favor of the Directors or officers of the Association, shall be limited to an amount equal to the total liability thereunder divided by the percentage interests of the applicable Residential Unit for Association Assessments (as provided in the Declaration). Every agreement made by the Board on behalf of the Residential Unit Owners shall be deemed to provide that the Directors are acting only as agents for the Residential Unit Owners, and shall have no personal liability thereunder (except as Residential Owners) and that each Residential Unit Owner's liability thereunder shall be limited to an amount equal to the total liability thereunder divided by the percentage interest of the applicable Residential Unit for Association Assessments (as provided in the Declaration).

## **ARTICLE 6**

### **ASSESSMENTS**

Covenants for Assessments, the purposes and uses of Assessments, the procedures for the establishment of Assessments, and other provisions applicable thereto shall be in accordance with the terms and provisions of the Declaration and with any additional rules and regulations adopted

by the Board or by the Members consistent with the terms and provisions of the Declaration and these By-Laws. The Board may authorize the levying of special assessments against Members, provided that such special assessments that result in an increase in total assessments against Members in one year of twenty percent (20%) or more over the total assessments against Members from the previous year shall be levied only with the approval of those Members entitled to cast sixty-seven percent (67%) or more of the total votes of the Association (provided, that, prior to the Transfer Date, any such action shall also require the consent of Declarant).

## **ARTICLE 7**

### **COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY**

All Residential Unit Owners shall maintain, occupy and use their Residential Lots, Residential Units and the Common Area Lots and Limited Common Area Lots only in accordance with the terms of the Declaration and any additional rules and regulations adopted by the Board or by the Members. The Board shall have full authority to enforce all such rules and regulations by taking all action as may be necessary.

## **ARTICLE 8**

### **COMMITTEES DESIGNATED BY THE BOARD**

8.1 **Board Committees.** The Board, by resolution adopted by a majority of the Directors in office, may designate one (1) or more committees, each of which shall consist of one (1) or more Directors. Said committees, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Association; but the designation of such committees and the delegation thereof of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law.

8.2 **Special Committees.** Other committees not having and exercising the authority of the Board in the management of the Association may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Members, and the President of the Association shall appoint the members thereof. Any member thereof may be removed whenever in the Board's judgment the best interests of the Association shall be served by such removal.

8.3 **Term.** Each member of the committee shall continue as such until the next annual meeting of the Board and until his or her successor is appointed and shall have qualified, unless the committee shall be sooner terminated, or unless such member shall cease to qualify as a member thereof.

8.4 **Chairperson.** One (1) member of each committee shall be appointed chairperson.

8.5 **Vacancies.** Vacancies in the membership of any committee may be filled by appointment made in the same manner as provided in the case of the original appointments.

8.6 **Quorum.** Unless otherwise provided in the resolution of the Board designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

8.7 **Rules.** Each committee may adopt rules for its own government not inconsistent with these By-Laws or with rules adopted by the Board.

## **ARTICLE 9**

### **NEIGHBORHOOD COMMITTEES**

9.1 **Structure and Powers.** In addition to any other committees appointed as provided above, each Neighborhood which has no formal organizational structure or association may elect a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue but shall not have the authority to bind the Board. Such Neighborhood Committees, if elected, shall consist of three (3) to five (5) Members, as determined by the vote of at least fifty-one percent (51%) of the Residential Unit Owners within the Neighborhood.

9.2 **Term of Members; Chairperson.** Neighborhood Committee members shall be elected for a term of one (1) year or until their successors are elected. Any director elected to the Board from a Neighborhood shall be an *ex officio* member of the Neighborhood Committee. Each Neighborhood Committee shall select a chairperson who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

9.3 **Meetings; Notice.** Regular meetings of the Neighborhood Committee may be held at such time and place as a majority of the members shall determine. Meetings of a Neighborhood Committee shall be open to all Owners of Units in the Neighborhood and their representatives. Notices of meetings shall specify the time and place of the meeting. The notice shall be given to each member of the committee by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the member or to a person at the member's office or home who would reasonably be expected to communicate such notice promptly to the member; or (iv) facsimile, computer, fiberoptics or other electronic communication device, with confirmation of transmission. All such notices shall be given at the member's telephone number, fax number, electronic mail number, or sent to the member's address as specified by the member to the committee. Members of a Neighborhood Committee may act by unanimous written consent in lieu of a meeting.

9.4 **Not Applicable Unless Declarant Designates Neighborhoods.** This Article 9 shall not apply unless and until Declarant elects to designate Neighborhoods under the Declaration.

## **ARTICLE 10**

### **AMENDMENTS**

These By-Laws may be amended or modified from time to time in accordance with and in the same manner as provided by the provisions of Section 12.3 and 12.11 of the Declaration. Such amendments shall be recorded in the Office of the Register of Deeds of New Hanover County, North Carolina. Notwithstanding the foregoing, until to the occurrence of the Transfer Date any amendment of these By-Laws shall also require the consent of HUD/VA.

## **ARTICLE 11**

### **DEFINITION OF TERMS AND CONSTRUCTION**

The terms used in these By-Laws shall have the same definition as set forth in the Declaration to which these By-Laws are attached to the extent such terms are defined therein. In the event of any conflict, contradiction or ambiguity between the terms and provisions contained in the Declaration or those contained in these By-Laws, the terms and provisions contained in the Declaration shall, in all instances, control and prevail.

**EXHIBIT E**

**ALLOCATIONS FOR ASSESSMENTS**

Jervay Place Allocation for Assessments

10/3/2002

LOT	ADDRESS	STATUS	BR	Unit Type	SF	%
1	921 South 8 <sup>th</sup> Street	For Sale	4	Detached	1,548	11.10%
2	925 South 8 <sup>th</sup> Street	For Sale	3	Detached	1,480	8.34%
3	929 South 8 <sup>th</sup> Street	For Sale	3	Detached	1,590	8.34%
4	933 South 8 <sup>th</sup> Street	For Sale	2	Detached	1,154	5.56%
5	937 South 8 <sup>th</sup> Street & 941 South 8 <sup>th</sup> Street	For Sale	4	2 Duplexes	2,282	11.09%
6	1005 South 8 <sup>th</sup> Street & 1009 South 8 <sup>th</sup> Street	For Sale	4	2 Duplexes	2,323	11.09%
7	1013 South 8 <sup>th</sup> Street	For Sale	2	Detached	1,154	5.56%
8	1017 South 8 <sup>th</sup> Street	For Sale	3	Detached	1,343	8.34%
9	1021 South 8 <sup>th</sup> Street	For Sale	3	Detached	1,591	8.34%
10	1025 South 8 <sup>th</sup> Street	For Sale	3	Detached	1,417	8.34%
11	1029 South 8 <sup>th</sup> Street	For Sale	2	Detached	1,137	5.56%
12	1033 South 8 <sup>th</sup> Street	For Sale	3	Detached	1,532	8.34%
TOTALS			36		18,551	100%

## **EXHIBIT F**

### **RESTRICTIONS ON EXTERIOR IMPROVEMENTS**

1. **Landscaping.** Only plantings in the character of the approved list set forth on the Landscape Plan or such other plantings as may be approved by the Declarant or the Board as being consistent in character therewith may be planted in the front yard of the Residential Lots.
2. **Fence Restrictions.** All fences shall be constructed only of wood or generally "see through" decorative metal, shall have a five foot height limit and shall conform with the Site Plan and the Landscape Plan. No chain link or stockade fences are permitted.
3. **Play Equipment.** Play equipment must be of predominantly wood or safety plastic materials and must be incorporated into any overall landscaping plan for the individual Residential Lot.

## **EXHIBIT G**

### **MAXIMUM ALLOWABLE BUILT-UPON AREA PER LOT**

<b>LOT</b>	<b>MAXIMUM ALLOWABLE BUILT-UPON AREA</b>
1	1360 square feet
2	1360 square feet
3	1360 square feet
4	1360 square feet
5	2020 square feet (for two duplex units)
6	2020 square feet (for two duplex units)
7	1360 square feet
8	1360 square feet
9	1360 square feet
10	1360 square feet
11	1360 square feet
12	1360 square feet



REBECCA T. CHRISTIAN  
REGISTER OF DEEDS, NEW HANOVER  
JUDICIAL BUILDING  
316 PRINCESS STREET  
WILMINGTON, NC 28401

\*\*\*\*\*  
Filed For Registration: 10/30/2002 04:55:58 PM

Book: RE 3499 Page: 742-805

Document No.: 2002054981

DECL 64 PGS \$200.00

Recorder: KAREN D GALLOWAY

\*\*\*\*\*  
State of North Carolina, County of New Hanover

The foregoing certificate of WILLIAM ALAN BALDWIN , J LENWOOD BOWEN JR Notaries are certified to be correct. This 30TH of October 2002

REBECCA T. CHRISTIAN , REGISTER OF DEEDS

By: Karen Galloway  
Deputy/Assistant Register of Deeds

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