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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

PROTECTIVE COVENANTS
BAILEYWICK ON THE POINTE

THIS DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS AND EASEMENTS, dated for purposes of reference only this the 11 day of JULY, 2006, by ECI CUSTOM HOMES, INC. (hereinafter "Declarant").

RECITALS:

Declarant has, by recordation of a subdivision plat, subdivided certain property shown on said plat into lots intended for utilization for construction of single family homes. The subdivision plat is recorded in Map Book 49, Page 391 New Hanover County Registry, and all property shown thereon is hereinafter referred to as the "Subdivision". Each numbered lot shown on the recorded plat is referred to herein as a "lot". The name of the subdivision is BAILEYWICK ON THE POINTE.

Within the Subdivision and as shown on the recorded plat, there has been publicly dedicated one or more street rights of way, and there will be or has been constructed within each such right of way, in accordance with applicable construction standards of the State of North Carolina, a subdivision road. Access to each Lot within the Subdivision is over one or more streets shown on the recorded plat of the Subdivision.

In order to maintain the streets providing access to the Subdivision as shown on the recorded plat, to own, manage and maintain common areas and utilities as more fully set out hereinafter, and to enforce these Protective Covenants and to provide an organization for the benefit of the owner of each Lot within the Subdivision, Declarant has chartered a North Carolina nonprofit

corporation named BAILEYWICK ON THE POINTE HOMEOWNERS ASSOCIATION (the "Association"). The owner of each Lot is a member of the Association, and the owner of each Lot is obligated to pay dues and assessments to the Association for the benefit of the Association and the owner of each Lot within the Subdivision. The organization and operation of the Association is described in these Protective Covenants and in the By-Laws of the Association.

It is the desire and intention of the Declarant, for its benefit and with the intent of preserving the value of each Lot, to restrict the utilization of and improvements on each Lot within the Subdivision in accordance with guidelines established herein. Therefore, Declarant hereby subject the property described hereinafter to the terms and provisions of these Protective Covenants for the use and benefit of all present and future Lot owners within the Subdivision.

1. DESCRIPTION. This Declaration shall run with the land and shall bind and inure to the benefit of the owner of each Lot within the Subdivision, and the property made subject to these Protective Covenants is all of the property shown on that plat of BAILEYWICK ON THE POINTE recorded in Map Book 49, Page 391, New Hanover County Registry, as the same may be amended from time to time.

2. ADDITIONAL PROPERTIES. Declarant reserves the right to subject additional properties to the terms and provisions of these Protective Covenants. The property which may be made subject to the terms and provisions of these Protective Covenants may include additional adjacent properties thereto (adjacent being defined as inclusive of properties across a right of way or water body). All or any part of such property may be subjected hereto; such property may be subjected hereto in one or more phases. However, to the extent that any portion of such property has not been subjected to the terms and provisions of these Protective Covenants by recordation of an amendment to these Protective Covenants in the Office of the Register of Deeds of New Hanover County Registries, which amendment specifically exercises such right, on or before December 31, 2009, this right shall terminate. Lots made subject to the terms and provisions of these Protective Covenants by amendment shall be liable for payment of dues as specified in such amendment; but in no event shall dues be payable later than the conveyance by Declarant of any lot within a given phase or section to a third party.

3. SINGLE FAMILY UTILIZATION. This Protective Covenant restricts all numbered Lots subjected to its terms to use only for single family residential purposes. No home or other structure constructed within the Subdivision shall be utilized for commercial purposes, except that Declarant or its assigns shall be entitled to use any structure located within the Subdivision for purposes of assisting in the sale of Lots within the Subdivision. Nothing contained herein shall limit to single family utilization property subjected to this Declaration by valid amendment hereto, but all such properties shall be limited to residential utilization.

4. BUILDING AND SITE RESTRICTIONS. The Architectural Control Committee must give prior approval of any removal of any tree of a size of twelve inches in diameter or greater from any Lot or the construction of any improvement or structure on any lot in accordance with the

procedures described in Paragraph 5 of these Protective Covenants. In addition, the following restrictions shall apply:

(a) No detached garage, storage shed, or carport shall be permitted unless architecturally compatible with the primary dwelling structure on the Lot.

(b) No more than one (1) single family house shall be allowed per Lot.

(c) All homes must be constructed substantially on site, and no modular home shall be located within the Subdivision and no homes constructed elsewhere shall be allowed to be conveyed into and located on a Lot within the Subdivision. No temporary structures shall be allowed.

(d) No sign shall be allowed on any Lot so as to be visible from any street right of way or any adjoining Lot, except as to the following signs, which shall be allowed:

(1) a sign, no greater than four square feet in size, specifying the general contractor actually constructing a structure on a Lot. Such sign must be removed upon issuance of a certificate of occupancy for the structure;

(2) a sign identifying the property upon which such sign is placed only by the name of the owner and a street number. Such sign must be constructed at a size, and to specifications and styles established by the Architectural Control Committee, and must be located on the Lot in a place specified by the Architectural Control Committee;

(3) street or directional signs erected by the Association;

(4) any sign required to be constructed by any governmental agency; and

(5) identification and informational signs constructed by Declarant, or its agent, installed in places, for the purpose of assisting the Declarant in identifying the project and the location of sales offices, amenities, lots for sale, sales models or other nonresidential uses within the Subdivision.

(6) all other signs must be approved by the Architectural Control Committee.

All permitted signs, except those required to be constructed by a governmental entity, shall be constructed of materials, in a style of colors and in a location established and approved by the Architectural Control Committee.

(e) The minimum square footage of heated, enclosed living space for each approved residential structure shall be 2,500 square feet for a one story house and 3,000 square feet for a two

story house..

(f) There are no absolute building setback requirements other than those that may be imposed by a local government or those shown on the recorded plat of the Subdivision. However, no structure will be allowed within 30 feet of any street right of way, 15 feet of any side Lot line, 25 feet of any rear Lot line, unless alternatives are approved by the Architectural Control Committee. NOTWITHSTANDING ANY SUGGESTED SETBACK, THE ARCHITECTURAL CONTROL COMMITTEE SHALL HAVE COMPLETE AUTHORITY TO DETERMINE THE APPROPRIATE BUILDING SITE ON EACH AND EVERY LOT. THERE IS NO PRESUMPTION THAT SUCH APPROVED BUILDING LOCATION SHALL BE WITHIN THE SUGGESTED SETBACKS SET OUT HEREINBEFORE.

(g) Bulkheads and the utilization of other riparian rights by construction of improvements or structures shall only be allowed after approval by the Architectural Control Committee and all applicable governmental agencies, and no such structures will be allowed unless said structures are compatible with similar or proposed improvements on other Lots and after a finding that the construction of such structures will no unduly interfere with the riparian rights or reasonable property expectations of the owners of other Lots within the Subdivision. The type of construction utilized for bulkheads may be controlled by the Architectural Control Committee based on appearance, function and environmental engineering criteria.

(h) The heights of structures shall be subject to approval of the Architectural Control Committee in accordance with the standards set out in Paragraph 5 hereunder, but no structure may exceed in height the height limitation imposed by New Hanover County.

(i) Fences are subject to the complete jurisdiction of the Architectural Control Committee as to location, style, materials and height. As used herein, fences shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility. The Architectural Control Committee shall only approve the Construction of a fence upon a determination that the fence is aesthetically pleasing; does not detract from the reasonable value of any Lot and does not unreasonably impede the view of any water course or other attractive feature from any other Lot. It is the responsibility of the lot owner to insure all structures or fences are constructed within their lot.

(j) No satellite receiving dish, radio antennae or other similar device shall be located on any Lot. The Architectural Control Committee shall approve the location of such device only upon making an affirmative finding that the location of the device on the Lot is in the area of minimum visibility from any surrounding Lot or from any street, and upon a further finding that the proposed location will not significantly detract from the aesthetic values of the Subdivision.

(k) No boat, boat trailer, other trailer, camper, recreational vehicle, utility vehicle or truck (to the extent that a truck is rated as a two and one-half ton truck or larger) shall be allowed to remain on any street right of way or an any Lot or on any common property overnight unless it is

enclosed within a garage, solid fenced area or planted screen that has been constructed in accordance with the provisions of these Protective Covenants.

(l) The Association shall have authority to adopt rules and regulations prohibiting or restricting the location of temporary or permanent clotheslines, the number of vehicles that may be parked on any Lot and the number, type and location of trash receptacles and trash receptacle enclosures.

(m) No activity, whether active or passive, that is reasonably considered a nuisance by the Association shall be allowed on any Lot. This prohibition includes any activities within any structure, on any Lot or on any street or common area. The Association is specifically authorized by Paragraph 15 of these Protective Covenants to adopt rules regarding conduct and use of any Lot; however, The Association may find any conduct or use of a Lot to be a nuisance notwithstanding the fact that such conduct is not specifically prohibited by these Protective Covenants or by an adopted rule. If any conduct is deemed by the Association to be a nuisance, and to the extent that such conduct is not specifically prohibited by the provisions of these Protective Covenants or by an adopted rule, the Association shall give written notice to the offending owner specifying the nature of the nuisance, and requesting that such nuisance be terminated. If any nuisance is not terminated within a reasonable time thereafter, the Association may, in addition to any other remedy, impose a fine in the amount of \$100.00 per violation. If the nuisance is of a continuing nature, a separate violation shall be considered made each day the nuisance continues. All such fines may be collected in the same manner as an assessment as more fully specified herein, and all attorney's fees incurred may be collected as allowed by Paragraph 7 herein.

(n) Improved and unimproved lots must be maintained by the owner in a manner consistent with the Subdivision as determined by the Architectural Control Committee.

5. ARCHITECTURAL CONTROL COMMITTEE PROCEDURES. At least thirty (30) days prior to the anticipated commencement of any landscaping or construction of any structure or improvement on any Lot, the owner of such Lot (or his duly appointed agent) shall submit to the Chairman of the Architectural Control Committee a survey of the Lot, which survey shall show each Lot corner. There shall further be shown on said survey the proposed location of all proposed and existing structures or improvements, including driveways, bulkheads, piers, patios, decks and walkways, and further including a specific delineation of the proposed location of all improvements that will result in the creation of impervious surfaces as defined by the Department of Environmental Management of the State of North Carolina in accordance with the North Carolina coastal storm water regulations including the square footage calculation of the impervious surfaces. There shall further be provided to the Architectural Control Committees sufficient building elevations and other site plans, including a statement of exterior building materials and proposed exterior colors, to allow the Architectural Control Committee to appropriately and accurately evaluate what is proposed for construction on the Lot. The survey shall be prepared by a registered or licensed land surveyor, and the building elevations and other site plans shall be prepared professionally. There shall be submitted two copies of all information required to be submitted.

The owner of each Lot shall notify the Architectural Control Committee of the identity of the contractor proposed for construction of any major improvements on any Lot. Major improvements shall be all improvements of a reasonable construction cost of \$10,000.00 or more. The owner of each Lot shall include with the name of the contractor a statement as to the classification of contractor's license held by such contractor, the address and telephone number of the contractor, and tow owners of comparable properties previously constructed by such contractor, and a minimum of two financial references. This information shall be submitted to the Architectural Control Committee at time of submission of plans, if such information is available at that time; if the information is not available at that time, the information shall be submitted to the Architectural Control Committee at least thirty (30) days prior to commencement of construction.

Within thirty (30) days after receipt of all required information, the Architectural Control Committee shall submit in writing to the owner of the Lot whether or not the requested improvements are approved. Unless a response is given by the Architectural Control Committee within thirty (30) days, the plan shall be deemed approved. The response of the Association may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the thirty (30) day time for response shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and construction then begins, the construction shall be deemed approval by the owner of the Lot of the conditions imposed.

The Architectural Control Committee shall approve the plans as submitted, if all required information is submitted, and the following affirmative findings are made by the Architectural Control Committee:

(a) that the improvement sought to be constructed will not have negative economic impact on any other Lot within the subdivision;

(b) that all required specific building standards and other conditions contained within the Protective Covenants and other applicable legal documents have been complied with;

(c) that the improvements are architecturally compatible with proposed or constructed improvements on other Lots within the Subdivision; and

(d) that the natural features of the Lot have been retained to the maximum extent feasible.

(e) that the impervious surface limitation coverage proposed on each Lot is consistent with the requirements of the Department of Environmental Management coastal storm water regulations. Lots shall contain impervious surfaces as defined by said regulations not in excess of the following: Lots 1 – 9, 5,450 square feet each At no time shall the total impervious

surface coverage on all Lots which have construction existing or approved thereon exceed the amount of impervious surfaces equal to the total of all lots which is 49,050 square feet. This allotted amount includes any built-upon area constructed within the 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 areas but does not include raised, open wood decking or the water surface of swimming pools.

These covenants are intended to ensure the ongoing compliance with State Stormwater Management Permit Number SW8050417 dated June 27, 2005, as issued by the Division of Water Quality under NCAC 2H.1000. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the storm water management permit. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the State. These covenants are to run with the land and be binding on all persons and parties claiming under them. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is strictly prohibited by any persons. Each Lot will maintain a 30' wide buffer between all impervious areas and surface waters. All roof drains shall terminate at least 30' from the mean high water mark of surface waters.

In addition to plan approval, the Architectural Control Committee must approve the contractor selected by the owner of each Lot. A contractor shall be approved if the contractor has an appropriate North Carolina general contractor's license in good standing, is of good financial standing, has a good reputation in the community and has constructed to the satisfaction of the owner of property comparable structures on a regular and routine basis.

Any owner of any Lot disagreeing with the finding of the Architectural Control Committee may appeal the decision to the Board of Directors of the Association by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of notice of denial. The Board of Directors of the Association shall then review the plans, giving the Chairman of the Architectural Control Committee the opportunity to present to the Board of Directors of the Association specific reasons why the plans were denied, in the presence of the owner of the lot or his agent, and the owner of the Lot or his agent may present information challenging the findings of the Architectural Control Committee. The decision of the architectural Control Committee shall only be overridden by unanimous vote of the Board of Directors of the Association.

All notices required to be given herein shall be given in writing, hand-delivered or mailed postage prepaid, return receipt requested, and the Architectural Control Committee shall be obligated to specify the particular grounds upon which denial of any application is founded. One set of plans, denoted as approved (or approved with specified conditions) shall be retained by the

Architectural Control Committee and the other shall be returned to the applicant.

The Architectural Control Committee shall have the right to issue rules and regulations governing the maintenance of construction sites and the procedures to be followed by contractors and owners of lots during construction periods.

6. WETLANDS. The areas shown on the recorded plat entitled Baileywick on the Pointe, dated 7-13-06, and recorded in Book 49, Page 391 in the New Hanover County Register of Deeds as conservation areas shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- a. fill, grade, excavate or perform any other land disturbing activities
- b. cut, mow, burn, remove, or harm any vegetation
- c. construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures
- d. drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area
- e. dump or store soil, trash, or other waste
- f. graze or water animals, or use for any agricultural or horticultural purpose.

This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, Action ID 200500689, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it.

7. ASSOCIATION. The owner or owners of every Lot shall be a voting member of the Association. However, only one vote shall be allowed per Lot; to the extent that there is more than one owner of any one Lot, said owners shall determine among themselves, and designate, one voting member, which voting member shall cast the vote allocated to said Lot. If the owners cannot agree among themselves, the board of Directors of the Association shall determine and designate a voting member from among the owners of the Lot. The Association shall be governed by a Board of Directors, selected in accordance with the By-Laws of the Association, and the Association shall operate and do business in accordance with the terms of its By-Laws, see attached Exhibit "A".

The Association shall have the responsibility of maintaining in good condition all streets within the Subdivision and to maintain in good, working condition all street lights or area lights

constructed within the Subdivision and constructed for common benefit, to the extent such street lights or area lights are not owned and/or maintained by a public utility. The Association shall further have the responsibility of maintaining a slightly appearance along all street rights of way and utility easements, to the extent that the same are utilized for common ingress and egress or benefit. The Association shall be responsible for maintaining all streets and roadways within the Subdivision until such time as the county or state takes over the maintenance thereof.

The Association shall have the responsibility of maintaining in good condition all common areas and open or recreational space, and shall be responsible for adopting rules and regulations governing utilization of such common areas. The Association shall be obligated to accept ownership of all common area designated on any recorded subdivision plat the properties of which are made subject to the provisions of this Declaration. To the extent necessary, the Association may employ personnel necessary to perform its obligations, or needed to benefit the owners of Lots within the Subdivision.

The Association shall have the obligation to provide for itself and for the benefit of the owner of each Lot all necessary professional services to promote the proper maintenance of all streets and other common areas and to provide the smooth, proper and legal administration of the Association. These services may include services of an engineer, lawyer, accountant or other professional. The Association is specifically authorized to provide such other incidental services for the benefit of the Subdivision and in the management of the Association as deemed reasonably necessary by the Board of Directors of the Association. The Association shall also have an affirmative obligation to maintain all roads and other common elements in good condition, utilizing its funds so to do, notwithstanding the utilization of such facilities by any or all Lot owners.

The Association shall have the optional authority to provide any service to the Lots it believes desirable, including, but not limited to cable television, waste collection or utility service. such services may be provided by the Association directly, by a subsidiary owned by the Association or by contract with a third party. Assessments may be collected to pay for the provision of such services.

The Board of Directors of the Association may maintain a capital reserve fund for street replacement and maintenance if deemed necessary by said Association, but shall be under no obligation so to do if, in the reasonable opinion of the Board of Directors of the Association, annual maintenance of streets and other common area is sufficient to make unlikely significant and unexpected expenditures within a five year period for the due date of the current regular assessment. Reserve funds of other common element need not be maintained if the Board of Directors of the Association determines that annual maintenance expenditures will be sufficient to make unlikely large expenditure for replacement in a single year.

The Association shall pay any taxes that are due on common areas as designated herein.

In order to fund its obligations, the owner of every Lot is obligated and bound, whether or

not expressly stated in any instrument of conveyance, to pay to the Association the following:

- (a) annual charges or dues; and
- (b) special assessments.

All such assessments, charges, and dues, together with any interest thereon, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessments are made. Liens shall be perfected in the manner of mechanics or materialmen's lien under North Carolina General Statutes, and any lien for dues unpaid shall be filed within nine (9) months after the due date of the payment of such assessment. The due date shall be the first day of the fiscal year of the association, as to annual dues; and the date established for payment of a special assessment, as more fully set out hereinafter. Any such lien may be enforced in the manner of a deed of trust with power of sale, as allowed by North Carolina General Statutes, through a foreclosure proceeding. This instrument shall be deemed to give to the President of the Association said power of sale.

Annual assessments shall be in an amount determined by a majority vote of the Directors of the Association. The fiscal year of the Association shall be the calendar year; dues for the first year of the Association, prorated by date of closing, shall be payable to the Association at closing. Declarant shall pay dues for all unsold Lots beginning on the first day of the month following the first conveyance of a Lot to a third party by Declarant. Beginning with APRIL 1 of the year following issuance of a building permit for construction of a home on a Lot, the dues for each such Lot for which a building permit for construction of a home has been issued shall be twice the then determined assessment for each unimproved Lot. No amendment to these protective Covenants, unless approved by Declarant and all owners of Lots within the Subdivision, shall alter the ratio of dues paid by the owner of an unimproved Lot compared to the dues paid by an owner of an improved Lot.

A special assessment may be levied from time to time by vote of a minimum of 70% of the total votes cast in any regular or special meeting, called in accordance with the By-Laws. A special assessment may be made for any purpose for which expenditures are allowed in accordance with this Declaration. The resolution approving a special assessment shall specify the date payable.

Notwithstanding any provisions of these Protective Covenants, including this Paragraph 7, the Board of Directors shall have authority to levy any special assessment if, in the sole discretion of said Directors, the assessment is reasonably required to protect properties impacted in case of an emergency, such as a storm causing severe erosion. In such event, the Directors shall give written notice to the members so affected as promptly as possible after the determination of said assessment and the action shall be binding as though ratified by the requisite vote of the owners of Lots.

The Association shall have the optional authority to rebuild severely damaged structures that are a safety hazard to the community if left unrepaired by the property owner for more than four

(4) months after notice being given of the need for repair, said notice being delivered to the property owner by the Association by certified mail, return receipt requested. The Association Board of Directors may exercise this authority at its discretion by a majority vote of the Board of Directors. The property owner will be liable to the Association for any and all costs associated with the Association undertaking these repairs, and this liability will be a lien on the property.

It shall be the duty of the Association to maintain in effect casualty and liability insurance upon the Common Areas and facilities, including the private streets, as follows:

a. Amount and Scope of Insurance. All insurance policies upon the Common Areas and, etc., shall be secured by the Board of Directors. Properties shall be secured by the Board of Directors, or its designee on behalf of the Association with full authority which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional Mortgage Investors for projects similar in construction, location and use as the properties and the improvements thereon all under such terms and conditions as the responsible authority shall determine. However, such liability coverage shall be for a least \$500,000.00 for bodily injury, including death of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries, and deaths of persons in connection with the operation, or maintenance or use of the common areas and legal liability arising out of lawsuits relating to employment contracts of the Association.

b. Insurance Provisions. The Board of Directors shall make diligent efforts to ensure that said insurance policies provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Lot Owners and their employees, agents, tenants and invitees.

(2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.

(3) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the name insured and all mortgagees.

(4) Coverage will not be prejudiced by act or neglect of the Lot Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.

(5) The insurance coverage on the property cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual Lot owners.

(6) The insurance coverage on the property cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior

demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Lot owner or any mortgagee.

c. **Premiums.** All insurance policy premiums on the property for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the Owners equally as an additional annual assessment, (herein called "Insurance Assessment") which shall be in addition to the amounts provided for under Section 3 above, an amount sufficient to pay the annual cost of all such insurance premiums.

d. **Proceeds.** All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors.

e. **Policies.** All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "A" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and the Board of Directors thereof, as their respective interest may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors.

8. **ENFORCEMENT.** These Protective Covenants, including any amendment hereto, may be enforced by any individual Lot owner; by the Association, upon action by its Board of Directors; or by Declarant, as long as Declarant owns any Lot within the Subdivision. Appropriate remedies shall include, but are not limited to, specific performance. In any action to enforce these Protective Covenants, including any action to collect assessments, either regular or special, or to foreclose upon any real property for payment of such assessment, all costs associated with said collection, including court costs and reasonable attorney's fees, shall be collected as an additional assessment. In addition, interest at the rate of twelve percent (12%) per annum shall be collected from the due date of any assessment, until the assessment is paid in full.

The State of North Carolina is given specific authority to enforce these covenants to the extent necessary to cause compliance with the impervious surface limitation of the North Carolina coastal storm water regulations, and the State of North Carolina is specifically granted authority to enforce these Protective Covenants for such purpose, with remedies available to the State of North Carolina including, but not limited to, the remedy of specific performance.

9. **SETBACKS.** All setback and building restriction areas, and allowable building area, as shown on the recorded subdivision plat of the Subdivision, shall be incorporated herein by reference.

10. **AMENDMENTS.** These Protective Covenants shall continue in full force and effect until 12:00 noon on APRIL 1, 2011, at which time it shall automatically extend for additional successive periods of ten (10) years, unless a document terminating or modifying these Protective

Covenants, is recorded prior to any renewal date in the office of the Register of Deeds of New Hanover County, which amendment shall require approval of sixty-seven percent (67%) of the Lots subjected to these Protective Covenants (including any amendments hereto).

Paragraph 6 of this Declaration, entitled Wetlands, cannot be amended without the express written consent of the U.S. Army Corps of Engineers, Wilmington District.

11. BINDING EFFECT. All covenants, restrictions, reservations, easements and privileges contained herein shall run with the land and the grantee, by accepting any deed to any portion of such land described herein, accepts the same subject to these Protective Covenants and its terms and conditions and agrees for himself, his heirs, successors and assigns, to be fully bound by each and all of the terms and conditions of these Protective Covenants, jointly, separately, and severally.

12. RESERVATION OF RIGHTS. Declarant hereby reserves the right to utilize all streets and roads within the Subdivision for purposes of ingress and egress to Lots within such Subdivision owned by it, or for purposes of providing access to other contiguous properties owned by it. This right shall be assignable by Declarant to successors in interest to it of other contiguous properties. Any utility easements reserved as shown on any recorded plat (and all roadways shall be deemed for this purpose a utility easement) shall be available for utilization by Declarant, authorized utility companies, or by the owner of any Lot within BAILEYWICK ON THE POINTE, for purposes of providing utility services or necessary drainage, but only upon approval of the Association given by its Board of Directors.

13. RE-SUBDIVISION. No re-subdivision of any single Lot shall be allowed, if any resulting Lot will be smaller in size than any of the Lots re-subdivided, prior to re-subdivision. Nothing contained herein shall prohibit conveyance of more than one Lot, or portions of contiguous Lots, as long as the resulting Lot or Lots are greater in size than those originally subdivided. The deed of conveyance of any such re-subdivided or recombined Lots shall restrict the construction thereon to one single family residential home per re-divided Lot, so that the maximum number of homes which can be constructed within the Subdivision shall not increase. Upon the recombination of any Lots to reduce the total number of allowable building Lots within the Subdivision, for purposes of membership in the Association and for purposes of the payment of dues and assessments, any recombined Lots shall be considered a single Lot. Furthermore, should any Lot be determined by Declarant to be unbuildable, and should such Lot then be deeded to the Association as common area, or dedicated by Declarant as a recreation or open space area for the benefit of the Association, all by document duly recorded in the office of the Register of Deeds of New Hanover County, there shall get no further dues owed from the date of such recordation; however, any dues prepaid shall not be reimbursed.

14. UTILITY EASEMENTS. There is hereby reserved for the benefit of the Association and the owner of each Lot within the Subdivision a utility, drainage and maintenance easement running parallel to each street a width of 10 feet, and parallel to each side and rear Lot line a width of five feet and adjacent to any body of water (whether natural or manmade) a width of ten feet.

Utilization of such easement by anyone other than the Lot owner across which such easement runs shall be made only upon approval of the Board of Directors of the Association. In addition to the above named easements, all lots will be subject to the easement granted Cape Fear Utilities Company, the provider of water to the development.

15. MINOR AMENDMENT. Declarant, or its successor or assign, shall be allowed to amend these Protective Covenants, notwithstanding any other provision contained herein, and without joinder of any other party, for the purpose of correcting any discovered error contained herein, clarifying any ambiguity contained herein, or adding or deleting any incidental provisions deemed in the sole discretion of Declarant to be in the best interest of the Subdivision, and the owner therein. This right may be exercised, and shall be effective, only upon the recordation of a "Corrected Declaration" in the office of the Register of Deeds of New Hanover County, which Corrected Declaration shall specifically reference this document, and the provision impacted.

16. RULES. The Board of Directors may from time to time establish rules for use of any property within the Subdivision in order to protect the value of Lots, the aesthetic qualities of the Subdivision and the tranquility of the owners of Lots. Said rules may include, but are not limited to, reasonable restrictions on pets, rental use of homes, and parking of cars, trailer, boats, campers and other vehicles on Lots and streets. All such rules shall be effective after written notice of adoption is mailed to the record owners of all Lots. All such rules shall be enforceable as though set out within these Protective Covenants.

17. FEES AND BONDS. The Board of Directors is specifically authorized, but is not required, to charge application or processing fees for approval of plans, and to require the posting of reasonable bonds or deposits prior to commencement of construction to protect the Association against damage to streets or other common area or costs incurred in causing correction of any construction or site work performed otherwise and in accordance with approved plans.

IN TESTIMONY WHEREOF, said parties have caused this instrument to be executed in their corporate name by their corporate officers, and their corporate seals to be hereto affixed, all by order of their Board of Directors first duly given, this the day and year first above written.

ECI CUSTOM HOMES, INC.


(SEAL)

BY: T. J. TOMLINSON

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Ellen Marie Hopp, a Notary Public in and for the State and County aforesaid, certify that T. J. TOMLINSON personally came before me this day and acknowledged that he is the Vice-President of ECI CUSTOM HOMES, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President.

Witness my hand and official seal this 11th day of July, 2006.

Ellen Marie Hopp
Notary Public

(Notary Seal)

My Commission Expires:



ELLEN MARIE HOPP
NOTARY PUBLIC
STATE OF NORTH CAROLINA
NEW HANOVER COUNTY
COMMISSION EXPIRES MAY 15, 2010