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FOR REGISTRATION REGISTER OF DEEDS  
REBECCA P. SMITH  
NEW HANOVER COUNTY, NC  
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INSTRUMENT # 2005062199

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

PREPARED BY & RETURN TO  
ALLEN, MACDONALD & DAVIS, PLLC  
1508 MILITARY CUTOFF ROAD  
SUITE 102  
WILMINGTON, NC 28403

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FAIRHAVEN AT LYTHAM**

**THIS DECLARATION**, made as of this the 19<sup>th</sup> day of October, 2005, by DAN KENT INVESTMENTS, LLC, a North Carolina Limited Liability Company, and AWK, INC., a North Carolina corporation, hereinafter collectively referred to as "Declarant" or "Developer", for the purposes hereinafter stated, with the joinder of Landfall Associates, a North Carolina Limited Liability Company, hereinafter referred to as "LA".

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real property in New Hanover County, North Carolina, known as FAIRHAVEN AT LYTHAM (hereinafter referred to as "Fairhaven"), the Lots of which are described more particularly on **Exhibit A** attached and incorporated herein (the "Property"), and

**WHEREAS**, Landfall Associates LLC is the owner of one Lot, also described on **Exhibit A**, and has agreed to join in the execution of this Declaration for the sole purpose of subjected said Lot to the terms and provisions of this Declaration.

**NOW, THEREFORE**, Declarant hereby declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act in Chapter 47F of the North Carolina General Statutes (the "Act") and also subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the land and be binding on and shall inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

**ARTICLE I  
DEFINITIONS**

**SECTION 1. Additional Property** shall mean and refer to any lands which are now owned or may be hereafter acquired or developed by Declarant, which are described in Exhibit B.

**SECTION 2. Association** shall mean and refer to FAIRHAVEN HOMEOWNERS' ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns, the owners' association organized for the purposes set forth herein.

**SECTION 3. Assessments** shall mean the Annual, Special, Insurance, Ad Valorem and Working Capital Assessments and any other assessments provided for in this Declaration.

**SECTION 4. Common Area(s)** shall mean and refer to all lands and easements within or appurtenant to the Development owned or to be owned by Declarant or the Association and designated as Common Area by Declarant, or which are designated as Common Area by deed of easement.

**SECTION 5. Common Expenses** shall mean expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

**SECTION 6. Courtyard and Enclosed Pool Area** shall mean all land within any courtyard or fenced area in the front or rear of any Home, or any other area on a Lot designated as such in the deed of conveyance of such Lot or any map of Fairhaven recorded in the New Hanover Registry to which these restrictions apply, or in an amendment to this Declaration, or otherwise within the Fairhaven Code.

**SECTION 7. Declarant** shall be used interchangeably with Developer (which designations shall include singular, plural, masculine, feminine, and neuter as required by the context) and shall mean and refer to DAN KENT INVESTMENTS, LLC, and/or AWK, INC., their successors and assigns.

**SECTION 8. Declarant Control Period** shall mean that period ending upon the earlier to occur of the transfer of title to all Lots within the Property and Additional Property to third parties (other than successor Declarants) by Declarant, or December 31, 2010, whichever first occurs.

**SECTION 9. Declaration** shall mean this instrument as it may be from time to time be amended or supplemented.

**SECTION 10. Development** shall mean the Property plus any Additional Property made subject to this Declaration by amendment hereto.

**SECTION 11. Fairhaven Code** shall mean that set of building and use requirements established by Landfall Associates LLC to govern all construction of improvements in the Development and all further requirements and restrictions imposed by the Declarant, its successors and assigns, including all restrictions imposed by any instrument or by any entity contained in, or adopted by an entity empowered by, any instrument made a part of the Fairhaven Code by this Declaration or otherwise.

**SECTION 12. House or Home** shall mean the dwelling located on a Lot, and shall include all structures on a Lot, and all man made hardened ground cover on a Lot, including, but not limited to, driveways, walkways, decks, patios and similar surfaces.

**SECTION 13. Improvements** shall mean any change or addition to a Lot, including landscaping, by or on behalf of an Owner other than the Declarant.

**SECTION 14. Lot(s)** shall mean and refer to any numbered Lot within the Development, together with the dwelling and other improvements situated thereon.

**SECTION 15. Member(s)** shall mean and refer to every person or entity who has a Membership in the Association.

**SECTION 16. Membership** shall mean and refer to the rights, privileges, benefits, duties and obligations, which shall inure to the benefit of and burden each Member of the Association.

**SECTION 17. Owner** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**SECTION 18. Property** shall mean the Property as described on Exhibit A attached hereto, and any land deeded from time to time to the Association.

## **ARTICLE II PROPERTY RIGHTS AND EASEMENTS**

**SECTION 1. Owners' Property Rights and Easement of Enjoyment in the Common Area.** Every Owner shall have and is hereby granted a right and easement of enjoyment in and to

the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Areas by the Owners, and limiting the number of guests of Members.

(b) The Association may suspend the voting rights and privileges of an Owner for any period during which any Assessments against the Owner's Lot remain unpaid and for a period not to exceed 60 days for an infraction of the published rules and regulations of the Association.

(c) The Association may mortgage or convey the Common Areas, or dedicate or transfer all or part of the Common Areas, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least two-thirds of the Members, excluding the Developer; provided, however, the Association may without the consent of the Owners grant easements over the Common Area for drainage systems, public utilities servicing the Development (both municipal and non-municipal) and provided, further, that any conveyance or encumbrance of Common Area shall be subject to any rights of ingress and egress to any Lot over private streets.

(d) The Association, acting through the Board of Directors, shall have the right to grant easements, rights of way, licenses and similar interests over any part of the Common Areas for any lawful purpose which it determines, in its own discretion, to be consistent with the interest of the Association.

(e) The Association may levy fines in accordance with the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes).

**SECTION 2. Easements in Favor of Declarant and the Association.** The following easements are reserved to Declarant and the Association, their successors and assigns:

(a) Easements as necessary in the lands constituting the Common Area and that portion of each Lot not occupied by a structure for the installation and maintenance of utilities and drainage facilities. Specifically, and not by way of limitation, there shall be a ten foot (10') non-municipal utility easement along and inside the front and rear Lot lines of all Lots and a four foot (4') non-municipal easement for utilities and drainage along and inside the side lines of all Lots. Declarant and the Association shall have the right to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of New Hanover County; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the Owner of such Lot. No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems.

(b) Easements over all private streets, if any, access easements, and Common Areas within the Development as necessary to provide access, ingress and egress to any Additional Property.

(c) Some Lots may be subjected to non-disturbance easements or similar easements for conservation or wet lands buffering purposes. Further, some Lots may be subjected to landscape easements for the purpose of maintaining specified plantings, levels of maintenance, signs, walls, fences, and other decorative structures. The operation of such easements shall be governed by

provisions in this Declaration, other recorded instruments and by policies duly enacted by the Association and pursuant to its authority set forth in this Declaration.

**SECTION 3. Other Easements.** The following easements are granted by Declarant to others:

(a) An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Areas in the performance of their duties.

(b) In case of any emergency originating in or threatening any Lot or Common Areas, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it shall have the right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners, and such right of entry shall be immediate.

**SECTION 4. Nature of Easements.** All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional Property, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

**SECTION 5. Prohibition Of Permanent Structures Within Easements.** No permanent structure may be built within the easements described in this Article or those easements shown on any recorded plat of the Property, or described in the Fairhaven Code, unless constructed by Declarant. Owners may not plant trees, shrubs, flowers and grass in those easements except with written approval of the Declarant or the Architectural Control Committee. Owners shall be responsible for the cost of removal, repair and/or replacement of any non-permanent structures which the Association deems necessary to remove to allow for maintenance, servicing, repair or replacement within those easements. Owners shall also be responsible for the cost of the removal of any permanent structure constructed within those easements, if removal is required by the Association. Any costs incurred by the Association for removal, repair and/or replacement of structures or vegetation in the easement areas shall be assessed to the Owner of the related Lot.

### **ARTICLE III RIGHTS OF DEVELOPER**

The Declarant shall have, and there is hereby reserved to the Declarant, the following rights, powers and privileges which shall be in addition to any other rights, powers and privileges reserved to the Declarant herein:

**SECTION 1.** For as long as Declarant owns one or more Lots within the Development, which Lot or Lots are being actively marketed for sale, Declarant shall have the right to conduct development, construction, marketing and customer service operations within Fairhaven in a customary and reasonable fashion. This includes the right to maintain construction and sales offices and model homes on Lots which Declarant or Landfall Associates (or an entity designated by either or them) own and to park vehicles thereon, the right of access over the streets and rights of way within Fairhaven by construction and supply vehicles and the right to store materials and equipment related to such land development and construction on Lots owned by Declarant, and the right to make and reproduce photographs of the Common Area and of private homes in marketing, advertising, and public relations efforts. However, it shall be incumbent upon those exercising these reserved rights to conduct their activities in ways respectful of the comfort and safety of the occupants of Lots in Fairhaven.

**SECTION 2. The Architectural Control Committee.** All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property.

**SECTION 3. Plan of Development.** The right to change, alter or redesignate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Development including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract; to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access or are needed for use as public or private roads or access areas, whether serving the Development or other property or are needed for Common Areas or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Area.

**SECTION 4. Amendment of Declaration by Declarant or Board without Membership Approval.** This Declaration may be amended or supplemented without Member approval by the Declarant, or the Board of the Association, as the case may be, as follows:

- (a) in any respect, prior to the sale of the first Lot;
- (b) to the extent this Declaration applies to Additional Property;
- (c) to correct any obvious error or inconsistency in drafting, typing or reproduction;
- (d) to qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status;
- (e) to include any platting change as permitted herein;
- (f) to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and Improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and Improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. Notwithstanding anything else herein to the contrary, only the Declarant, during the Developer Control Period, shall be entitled to amend this Declaration pursuant to this Section.

**SECTION 5. Annexation of Additional Property.** Declarant may annex to and make a part of the Development any other real property which Declarant now owns or which Declarant may hereafter acquire (the Additional Property) which is described in **Exhibit B** which is hereto attached and incorporated by reference. Additional Property may be annexed to the Development without the assent of the Members so long as the Additional Property is developed as a residential subdivision. Nothing herein shall require the Declarant to develop any other lands now owned or hereafter acquired by the Declarant in accordance with the same general scheme as the Development, except that Declarant agrees that it will submit those Lots described on **Exhibit B** as "Mandatory Annexation Lots" to the terms and provisions of this Declaration. The annexation of the Mandatory Annexation Lots shall be accomplished on or before December 31, 2006. Any additional annexation by Declarant shall be accomplished on or before December 31, 2010.

#### **ARTICLE IV ARCHITECTURAL STANDARDS**

##### **SECTION 1. General.**

- (a) No Improvements shall be made, placed, constructed or installed on any Lot (other

than in the Courtyard and Enclosed Pool Area) and no exterior modifications to existing Improvements shall be undertaken without prior approval of the Declarant so long as the Declarant owns any Property or Additional Property and thereafter without the approval of the Architectural Control Committee (hereinafter the ACC) in accordance with this Article, except that the Declarant's activities shall be exempt from this requirement so long as it is engaged in development or construction in Fairhaven.

(b) All Improvements to Lots in Fairhaven shall conform to the Declaration and the Fairhaven Code.

(c) The Declarant during the Developer Control Period and the ACC thereafter shall have jurisdiction over all original construction or installation of Homes or Improvements on any Lot and later changes or additions after initial approval thereof together with any modifications, additions or alterations subsequently to be constructed or installed on any Lot or made to any Improvements initially approved, including any exterior change or alteration or change of color.

(d) The Declarant during the Developer Control Period and the ACC thereafter shall have the right to disapprove any plans, specifications and details submitted to it in the event the same are not in accordance with any of the provisions of this Declaration or any provision of the Fairhaven Code which may be in effect at the time, if any maintenance obligations of the Association would be adversely impacted or if the aesthetics of the Development would be negatively impacted. Disapproval of plans may be based upon any grounds which the Declarant or the ACC, in their sole and uncontrolled discretion, shall deem sufficient; however, approval of plans shall not be unreasonably withheld.

Owner's shall have the right to appeal disapproval by the ACC (but not by Declarant) of plans submitted to the Association. The decision by the Association, upon majority vote of the members of its Board of Directors, shall be final and not subject to appeal or review.

(e) The Declarant during the Developer Control Period or the ACC thereafter shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans.

## **ARTICLE V HOMEOWNERS' ASSOCIATION**

**SECTION 1. Formation of Association.** The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to own, operate and maintain the Common Areas in accordance with this Declaration, the Association's Articles of Incorporation and Bylaws, and to otherwise carry out its duties and obligations as set out therein and herein.

**SECTION 2. Membership.** Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

**SECTION 3. Voting Rights.** Each Member shall be entitled to one vote in the affairs of the Association for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the absence of agreement as to how to vote, the provisions of the N.C. Planned Community Act shall govern.

**SECTION 4. Powers, Privileges, Rights and Obligations.** In addition to the rights and powers granted to the Association in its charter and to the rights and powers with regard to assessments set forth in Article VI of this Declaration, the Association shall have and possess and shall perform and exercise the following powers, privileges, rights and duties, subject, however, to the rights of the Declarant contained in this Declaration:

(a) The Association shall be entitled to make and amend reasonable rules and regulations governing use of the Common Areas and Lots by the Owners.

(b) The Association shall be responsible for the operation, upkeep, maintenance, protection, preservation, repairs, reconstruction and/or replacement of (i) the Common Areas and Improvements and additions thereto, and (ii) landscaping maintenance on Lots with the exception of Improvements within the Courtyard and Enclosed Pool Areas which shall be maintained by the Lot Owner. In the event that any Association maintenance or repair is necessitated by the willful act or active or passive negligence of any Owner, his family, guests, invitees and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors of the Association, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may be added to the annual assessment levied against said Owner's Lot. The Association shall have absolute discretion to determine the landscape maintenance schedule, and shall have no obligation to maintain any portion of any Home.

(c) The Association may engage in such other activities as authorized by a majority of the Members.

(d) The Association may suspend the voting rights and privileges of an Owner for any period during which any Assessments against the Owner's Lot remain unpaid and for a period not to exceed 60 days for an infraction of the published rules and regulations of the Association.

(e) The Association may mortgage or convey the Common Areas, or dedicate or transfer all or part of the Common Areas, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least two thirds of the Members.

(f) The Board of Directors on behalf of the Association, as a Common Expense, may at all times keep the Common Areas and other property of the Association, if any, insured against loss or damage by fire or other hazards and other such risks, including, but not limited to directors liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each Member to insure his Home and personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees.

**SECTION 5. Government Permits.** All duties, obligations, rights and privileges of the Declarant under any water, sewer, storm water and utility agreements, easements and permits for the Development with municipal or governmental agencies or public or private utility companies are at all times the responsibility of the Association.

## **ARTICLE VI COVENANTS FOR ASSESSMENTS**

**SECTION 1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot, by acceptance of a deed for the Owner's Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

- (a) Annual Assessments;
- (b) Special Assessments for Capital Improvements;
- (c) Insurance Assessments;
- (d) Ad Valorem Tax Assessments;
- (e) Working Capital Assessments; and
- (f) Any other assessments authorized or required by the Fairhaven Code.

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**SECTION 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and Additional Property and for the improvement and maintenance of the Lots and Common Areas, if any. The funds collected from said assessments or charges may be used for any or all of the following purposes: operations, maintenance and improvement of the Common Areas, including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; carrying out the maintenance obligations of the Association and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Areas and the Lots in good order, repair and appearance.

**SECTION 3. Annual Assessments.** The Board of Directors shall adopt an annual budget at least 60 days before the beginning of each fiscal year. Within 30 days after adoption of the proposed budget for the Development, the Board of Directors shall provide to all of the Owners a summary of the budget. The budget shall be effective unless rejected by the Members as set out in the N.C. Planned Community Act. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Home to an Owner. The due date for payment shall be established by the Board of Directors. The Board of Directors shall have the authority to require the assessments to be paid in periodic installments.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

**SECTION 4. Special Assessments for Capital Improvements.** In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures, personal property related thereto and any drainage to Lots required to be maintained by the Association, provided that any such assessment, reconstruction, maintenance, repair or replacement of a capital improvement shall have the assent of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

**SECTION 5. Insurance Assessments.** All premiums on insurance policies purchased by the Association or its Architectural Control Committee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may in any assessment year levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the annual cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

**SECTION 6. Ad Valorem Tax Assessments.** All ad valorem taxes levied against the Common Areas, if any, shall be a Common Expense, and the Association may in any assessment year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay such ad valorem taxes in such year not included as a component of the Annual Assessment.

**SECTION 7. Working Capital Assessments.** At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay an amount equal to two months' assessments to the Association as working capital to be used for initial operating and capital expenses of the Association. Amounts paid into the working capital fund are not to be considered as advance payment of the Annual or any other assessments. Any working capital funds remaining after the last Lot has been sold by Declarant shall be transferred to and become part of the general funds of the

Association, in the discretion of the Board of Directors.

**SECTION 8. Uniform Rate of Assessment.** All assessments shall be equal for all Lots.

**SECTION 9. Commencement of Assessments.** Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

**SECTION 10. Effect Of Nonpayment of Assessments And Remedies Of The Association.** Any assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

**SECTION 11. Lien for Assessments.** The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

(a) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47E-3-102, 47F-3-107, 47F-3-107A and 47F-3-115 of the Act are enforceable as assessments.

(b) The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

(c) The lien for unpaid assessments is extinguished unless proceedings to enforce the tax lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

(d) Any judgment, decree, or order in any action brought under this Article shall include costs and reasonable attorneys' fees for the prevailing party.

(e) Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

(f) A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

## **ARTICLE VII MINIMUM STANDARDS FOR SITE IMPROVEMENTS, USE RESTRICTIONS AND MAINTENANCE**

### **SECTION 1. Minimum Standards for the Site Improvements.**

(a) The Declarant reserves the right to select the precise site location of each House or other Improvement on each Lot in its sole discretion and to arrange the same in such manner and for such reasons as the Declarant deems sufficient. In any event, the placement of every House shall

be consistent with the provisions of the Fairhaven Code.

(b) Each Home shall have a minimum of 2300 square feet of “enclosed, heated dwelling area”. The term enclosed, heated dwelling area shall be the total enclosed area within a Home which is heated by a common heating system: provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

(c) All light bulbs or other lights installed in any fixture located on the exterior of any structure, or otherwise on a Lot, other than within a Home, for the purpose of illumination shall be clear, white or non-frost lights or bulbs. Exterior spot/flood lights must be approved by the Association. Any such approved spot/flood lights shall be aimed to the greatest extent possible to direct light away from adjoining property. The Owner of the Lot shall be responsible for the replacement of any non-functioning light bulb or fixture.

## **SECTION 2. Use Restrictions.**

(a) Land Use And Building Type. No Lot shall be used for any purpose except for residential purposes, except that nothing shall prohibit incidental use of a room within a Home as a home office, as long as no non-Owner utilizes said office. All numbered Lots are restricted for construction of one single family Home.

(b) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall be no plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on the Owner’s Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area.

(c) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently without the written consent of the Association; provided, however, that this shall not prevent the Declarant or its assigns from maintaining a construction trailer or sales office on any part of the Development until the construction of Homes on all Lots and all Improvements on Common Area are completed and conveyed to third party purchasers.

(d) Prohibited Vehicles/Boats. No boat, motor boat or other watercraft, camper, trailer, motor or mobile homes, recreational vehicles, tractor/trailer, or similar type vehicle shall be permitted to remain on any Lot, or on any street at any time, without the written consent of the Association. No inoperable vehicle or vehicle without current registration and insurance, will be permitted on any Lot, street or Common Area. The Association shall have the right to have all such vehicles towed away at the owners’ expense. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas not visible from the street. Further, boats and boat trailers may not be stored on any Lot at any time.

(e) Permitted Vehicles. Except for temporary guests and visitors, only standard private passenger vehicles, including passenger vans and pick-up trucks, are permitted to be parked within Fairhaven. Such vehicles must bear current licenses, be in operating condition, bear no signs, and be parked in designated areas. There must be at all times space maintained in each garage for at least one vehicle to be parked. No garage doors may be left open overnight.

(f) Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot, or in any Home except that a reasonable and traditional number of dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed or under the control of their owner on the Lot of the Owner and do not become a nuisance or cause a disturbance to Owners and occupants of other Lots in Fairhaven. Each owner shall be responsible for immediately collecting and properly disposing of wastes of his pet.

(g) Statuary, TV Satellite Dishes and Outside Antennas. No yard statuary and no yard art is permitted except in that portion of the Courtyard and Enclosed Pool Area that is fenced, unless specifically approved by Declarant or the Association. No TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or Home unless and until permission for the same has been granted by Declarant or the Association; provided, however, satellite dishes not over eighteen inches (18") in diameter which cannot be seen from the street are permitted.

(h) Construction in Common Area. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Areas except at the direction or with the express written consent of the Association or as permitted by this Declaration.

(i) Signs. No signs (including *for sale* or *for rent* signs) shall be permitted on any Lot or in the Common Areas without permission of the Board of Directors, except that each Lot may have posted, prior to initial occupancy, one sign setting forth the name of the Declarant.

(j) Subdividing. Subject to any rights reserved to the Declarant herein, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the Declarant Control Period and thereafter by the Board of Directors of the Association.

(k) Trash Cans. All trash cans must be kept in a garage and out of view from the street except on trash pickup days. Trash cans must be removed from the street within 8 hours of trash pickup.

(l) Christmas Decorations. Christmas decorations may only be exhibited between November 20 and January 7 of the following year.

(m) Alterations. No alteration, change or addition to the exterior of any Home constructed on a Lot by Declarant, or any Improvement constructed or installed by Declarant in the yard of any Lot, or any landscaping installed by Declarant, shall be permitted unless approved by the ACC. The ACC shall not approve any request if a finding is made that the proposed activity will result in additional maintenance expense for the Association or is not attractive, or is not consistent with the architecture and landscaping within Fairhaven. Notwithstanding this provision, the Lot Owner may add additional plantings or landscaping in the Courtyard and Enclosed Pool Area without the consent of the ACC.

**SECTION 3. Maintenance.** The Association shall maintain all landscaping on each Lot, and shall maintain the exterior portions of all irrigation systems. The Association its agents or employees shall have an easement across each Lot at reasonable times for the purpose of maintaining the landscaping on each Lot. Maintenance and repair of any and all Houses, garages, driveways, walkways, pools, patios, columns and all other structures on a Lot are the responsibility of the Lot Owner. Each Lot Owner shall be responsible for watering the landscaping located on his or her Lot, which shall include keeping the irrigation system running on its timer at all times during the growing season except when rains have provided sufficient water to sustain the landscaping. In the event that any maintenance or replacement of landscaping is necessitated on any Lot or to any Common Area by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors of the Association, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may be added to the annual assessment levied against said Owner's Lot and shall become a lien against the Lot.

**SECTION 4. Maintenance and Repair of Real Property.** Each Owner shall also be responsible for maintaining the Home and all other structures on such Owner's Lot in a clean and attractive condition and in good order and repair. In the event a Home or other structure sustains damage clearly visible from the exterior, its Owner shall repair or reconstruct the structure in accordance with its appearance prior to damage unless the Association allows otherwise. The repair or reconstruction shall be accomplished within 30 days of the damage unless the Association grants a waiver based upon a finding of hardship. Should an Owner not conform to these provisions, the Association may accomplish necessary repairs or reconstruction according to its best judgment, and

levy an assessment upon the Owner for the costs involved.

## **ARTICLE VIII GENERAL PROVISIONS**

**SECTION 1. Enforcement Of Storm Water Runoff Regulations.** The State of North Carolina requires that no more than 7,000 square feet of any Lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials (the "Built Upon Area"). The covenants contained in this section are intended to insure continued compliance with storm water runoff rules adopted by the State of North Carolina and set forth in Stormwater Permit Number SW\*980605 for Landfall Subdivision II, New Hanover County and may be enforced by the State of North Carolina.

(a) Swales shall not be filled in, piped, or altered except as necessary to provide driveway crossings.

(b) Built-upon area in excess of the permitted amount requires state stormwater management permit modification prior to construction.

(c) No Lot nor that portion of the street right of way between the edge of the pavement and the front Lot line, excluding curb, gutter and sidewalks, shall be covered by impervious structures, including asphalt, gravel, concrete, brick, stone, slate or similar material (but excluding wood decking and the water surface of swimming pools), in excess of the square footages authorized by the permit above referenced. Roadside or Lot line swales may not be filled, piped or altered except as necessary to provide a minimum driveway crossing.

These covenants are intended to insure continued compliance with the stormwater permit for the Property issued by the State of North Carolina and may not be changed or deleted without the consent of the State. For curb and gutter projects, no one may pipe, fill in, or alter any Lot line swale used to meet North Carolina Stormwater Management Permit requirements.

**SECTION 2. Rights of Institutional Note Holders.** Any institutional holder of a first lien on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Development or the Property securing its loan, (e) receive written notice of any sixty-day (60) delinquency in the payment of assessments or charges owed by any Owner of any Lot which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy. Any request for such information must be renewed every 12 months or shall expire.

**SECTION 3. Utility Service.** Declarant reserves the right to subject the Property to contracts for the installation of utilities, cable television, natural gas and street lighting, which may require an initial payment and/or a continuing monthly payment by the Owner of each Lot. Each Lot Owner will be required to pay for any water connections, sewer connections, impact fees or any other charges imposed by any entity furnishing water, sewer, natural gas or other utility service to the Owner's Lot. In the alternative, the Developer may collect such connection, impact and other fees and charges directly from the Lot Owners. All Lot Owners shall be required to use water and sewer supplied by the companies/governmental units servicing the Development. Separate water systems for outside irrigation and other outdoor uses shall not be permitted.

**SECTION 4. Severability.** Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**SECTION 5. Lots Subject to Declaration/Enforcement.** All present and future Owners,

tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Home on any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, the Declarant and the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, as though such provisions were made a part of each and every deed of conveyance or lease, until such provision is amended as allowed by this Declaration or the NC Planned Community Act. Failure by the Association, the Declarant or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**SECTION 6. Amendment of Declaration by Membership.** Except as provided elsewhere herein, the covenants and restrictions of this Declaration may be amended only by an instrument duly recorded in the Office of the Register of Deeds of New Hanover County, executed by the duly authorized officers of the Association upon the vote of not less than two-thirds (2/3) of the Lot Owners; provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant without the express consent of Declarant.

**SECTION 7. Other Associations and Restrictions.** Fairhaven is located within the community of Landfall, and all of the Members of the Association are also members of the Landfall Subdivision II Owners Association, Inc. All Lots and their Owners are subject to the following, in addition to the provisions of this Declaration:

- (a) The Master Cross-Access Easement and Maintenance Agreement dated October 22, 1990, recorded in deed book 1515, page 1583, New Hanover County Registry, as amended;
- (b) The Declaration of Covenants, Conditions and Restrictions for Landfall Subdivision II, dated April 10, 1995, recorded in deed book 1871, page 205, New Hanover County Registry, as amended;
- (c) The Development Declaration for Landfall Subdivision II, Blocks 41 and 44, Fairhaven at Lytham, dated December 15, 2004, recorded in deed book 4610, page 384, as amended in deed book 4871, page 352, New Hanover County Registry; and
- (d) The Declaration of Annexation Annexing Additional Lands into Landfall Subdivision II and to Master Cross-Access Easement and Maintenance Agreement dated August 23, 2003, recorded in deed book 4039, page 231, New Hanover County Registry.

All of the instruments above referenced, as well as all by-laws, rules and regulations of the association entities empowered thereby, shall be binding on all Lot Owners, and shall be considered for all purposes, except to the extent specifically modified hereby or by the Development Declaration referenced in subparagraph (c) of this Section 7, a part of the Fairhaven Code.

It is expressly set out therein that dues and assessments, in addition to the dues and assessments charged in accordance with this Declaration, can be and are charged by both the Landfall Council of Associations under authority given by the instruments referenced in subparagraph (a) of this Subsection 7, and by the Landfall Subdivision II Owners Association under authority given by the instruments referenced in subparagraph (b) of this Subsection 7. Such dues and assessments are a charge against the land, and failure to pay such assessments when due may result in a lien placed upon the Lot owned by the Owner failing to pay.

All rules and regulations adopted in accordance with this Declaration, and all other provisions of the Fairhaven Code, shall be fully binding on all Lots and Lot Owners as though set out herein.

IN WITNESS WHEREOF, the Declarant hereto has caused this Declaration to be executed in the Declarant's name under seal by its duly authorized manager as of the day and year first above written, and Landfall Associates LLC has caused this Declaration to be executed in its name by its duly authorized manager, for the limited purposes set out in this Declaration.

DAN KENT INVESTMENTS LLC

By: [Signature] (Seal)  
Daniel T. Kent, Manager

AWK, INC.

By: [Signature] (Seal)  
Daniel T. Kent, President

LANDFALL ASSOCIATES LLC

By: [Signature] (Seal)  
Kenneth M. Kirkman, President

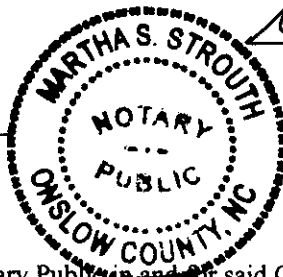
STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Martha S. Strouth, a Notary Public in and for said County and State, do hereby certify that DANIEL T. KENT personally came before me this day and acknowledged that he is a manager of DAN KENT INVESTMENTS, LLC, the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto.

WITNESS my hand and notarial seal, this the 19<sup>th</sup> day of October, 2005.

[Signature]  
Notary Public

My commission expires: Oct. 17, 2006



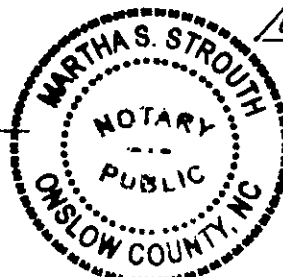
STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Martha S. Strouth, a Notary Public in and for said County and State, do hereby certify that DANIEL T. KENT personally came before me this day and acknowledged that he is President of AWK, INC., the corporation described in and which executed the foregoing instrument; that he executed said instrument in the corporation's name by subscribing his name thereto.

WITNESS my hand and notarial seal, this the 19<sup>th</sup> day of October, 2005.

[Signature]  
Notary Public

My commission expires: Oct. 17, 2006



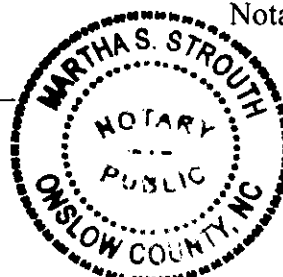
STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Martha S. Strouth, a Notary Public in and for said County and State, do hereby certify that KENNETH M. KIRKMAN personally came before me this day and acknowledged that he is a authorized agent of LANDFALL ASSOCIATES LLC, the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto.

WITNESS my hand and notarial seal, this the 19<sup>th</sup> day of October, 2005.

[Signature]  
Notary Public

My commission expires: Oct. 17, 2006



**EXHIBIT A**  
**DECLARATION OF COVENANTS-FAIRHAVEN AT LYTHAM**

**Property of Declarant:**

Being all of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 21 and 22, in Block 41, Landfall Subdivision II, as shown on a plat prepared by Clark Surveying Services and recorded in Map Book 46 at Pages 336 through Page 338, AND Lots 12R and 13R in Block 41, Landfall Subdivision II, as shown on a plat prepared by Clark Surveying Services and recorded in Map Book 47, Page 263 of the New Hanover County Registry.

**Property of Landfall Associates LLC:**

Being all of Lot 20, Block 41, Landfall Subdivision II, as shown on a plat prepared by Clark Surveying Services and recorded in Map Book 46, Page 338 of the New Hanover County Registry.