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**DECLARATION OF PROTECTIVE COVENANTS
FOR PROGRESS POINT**

Dated MARCH 24, 2003

Drawn by and mail to
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RETURNED TO *FLETCHER, RAY & SATERFIELD*

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**DECLARATION OF PROTECTIVE COVENANTS
FOR PROGRESS POINT**

THIS DECLARATION OF PROTECTIVE COVENANTS (“Declaration”) is made this ____ day of _____, 2003, by **PROGRESS POINT ONE, LLC**, a North Carolina limited liability company (“**Declarant**”) and **CAROLINA POWER & LIGHT COMPANY**, a North Carolina corporation (“**CP&L**”)

A. Declarant owns the real property in New Hanover County, North Carolina, shown as “Lot 2,” “Lot 3,” “Lot 4” and “Lot 6” on plat (“**Plat**”) recorded in Book of Maps 43, Page 119, New Hanover County Registry (“**Declarant Property**”) Declarant desires to create on the Property a mixed use development to be known as Progress Point (“**Progress Point**”).

B. CP&L owns the real property in New Hanover County, North Carolina, shown as “Lot 5” on the Plat (“**CP&L Property**”)

C. CP&L also owns “Lot 7” shown on the Plat (“**Substation Property**”), but Lot 7 shall not be a portion of Progress Point Provided, the Substation Property shall have as an appurtenant easement, certain rights over the Progress Point land as provided herein

D. Declarant and CP&L desire to insure the attractiveness of the development and to preserve, protect and enhance the values, appearance and amenities thereof, to provide for the maintenance and replacement of common areas and other improvements within Progress Point or appurtenant thereto

E. Declarant and CP&L desire to subject the Declarant Property and the CP&L Property, respectively, to the restrictions, easements and liens hereinafter set forth, each of which is for the benefit of the Declarant Property and the CP&L Property and each Owner thereof

NOW THEREFORE, Declarant and CP&L, by this Declaration, declare that the Declarant Property and the CP&L Property and such additions thereto as may be made pursuant to **Article II** hereof shall be held, transferred and occupied subject to the restrictions, easements and liens set forth in this Declaration which shall run with title to the Declarant Property and the CP&L Property and be binding on all parties owning any right, title or interest in such real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof

**ARTICLE I
DEFINITIONS**

Section 1 “Annual Assessments” shall have the meaning given in **Article V, Section 1**

Section 2 “Assessment” or “Assessments” shall have the meaning given in **Article V, Section 1**

Section 3 “Association” shall mean Progress Point One Property Owners Association, Inc , a North Carolina non-profit corporation, its successors and assigns

Section 4 “Association Landscape and Easement Areas” shall mean all land within the Property, including generally, all driveways, parking areas, medians, private streets, landscaped areas and other Improvements within Progress Point, but specifically excluding the Building Improvements

Section 5 “Board of Directors” shall mean the governing board of the Association

Section 6 “Building Improvements” or “buildings” shall mean structures located on any Lot that are the principal structures thereon having a roof supported by walls and intended to house the principal uses on such Lot

Section 7 “Common Area Improvements” shall mean all Improvements on the Property, excluding the Building Improvements, the telecommunications tower and compound located within Lot 5 (as such Lot is shown on the Plat), and the electric power poles, power pole foundations, guy wires and related facilities located within the transmission line easements shown on the Plat as “100’ Transmission Line Easement” and “75’ Transmission Line Easement ”

Section 8 “CP&L” shall mean Carolina Power & Light Company, a North Carolina corporation, its successors and assigns

Section 9 “CP&L Property” shall mean “Lot 5” on plat recorded in Book of Maps 43, Page 119 in the Office of the Register of Deeds for New Hanover County, North Carolina

Section 10 “CP&L Telecommunications Easement Area” shall mean the portion of the Property running between the Substation Property and Lot 5 shown on the Plat, and shown as “CP&L Telecommunications Easement Area” on maps of the Property presently or hereafter recorded

Section 11 “Declarant” shall mean Progress Point One, LLC and those of its successors and assigns, if any, to whom the rights of Declarant hereunder are specifically transferred by written instrument, subject to such terms and conditions as the Declarant may impose Upon any transfer by Declarant of any or all of its Declarant rights and obligations hereunder, Declarant shall be relieved of any and all obligations and liabilities with respect to the rights and obligations so transferred

Section 12 “Declarant Property” shall mean “Lot 2,” “Lot 3,” “Lot 4” and “Lot 6” on plat recorded in Book of Maps 43, Page 119, New Hanover County Registry

Section 13. “Design Guidelines” shall have the meaning given in **Article VII, Section 4**

Section 14 “Designated Maintenance Items” shall mean private streets, driveways, parking areas, lighting, sidewalks, utility lines, fences, signs, ponds, storm drainage facilities, storm water detention and retention facilities, fountains, entry monuments, landscaping

(including trees, shrubbery, grass and flowers) and other similar improvements located within the Association Landscape and Easement Areas, Utility Easement Areas and Sidewalk Easement Areas This Declaration imposes no obligation on Declarant to construct, install or maintain any of the Designated Maintenance Items, except as expressly set forth in **Article VIII** hereof

Section 15 “Drainage Easement Area” shall mean the portion of the Property shown on the Plat as “Drainage Easement (Private)”

Section 16 “Dumpster Easement Area” shall mean those portions of the Property shown as “Dumpster Easement Area” on maps of the Property presently or hereafter recorded

Section 17 “Electric Duct Easement Area” shall mean those two (2) portions of the Property shown on the Plat as “10’ Wide Electric Duct Easement”

Section 18 “Environmental Laws” shall have the meaning assigned to such term in **Article VII, Section 2**

Section 19 “Existing Property” shall mean the Declarant Property and the CP&L Property

Section 20 “Hazardous Substances” shall have the meaning assigned to such term in **Article VII, Section 2**

Section 21 “Improvements” shall mean generally all buildings and other structures, together with all additions, enclosures, fences, loading docks, entranceways, exitways, driveways, private streets, curb cuts, parking facilities, landscaping, plantings, storm drainage system, storm water detention facilities, irrigation facilities or other structures or permanent or temporary improvements on any Lot

Section 22 “Lot” shall mean any plot of land with delineated boundary lines, other than property located within public streets which are reserved or established for the use of all Owners, appearing on any maps of the Property recorded by Declarant, as such maps may be supplemented or amended. If Declarant consents in writing to the subdivision of any Lot, then each resulting parcel shall be considered a “Lot”

Section 23 “Member” shall mean and refer to Declarant and to any Owner of any Lot, which person or entity shall automatically be deemed a member of the Association

Section 24 “Owner” shall mean any record owner, now or in the future, of fee simple title to all or any portion of the Property, but excluding those (such as trustees under a deed of trust) having such interests merely as security for the performance of an obligation

Section 25 “Parking Easement Area” shall mean the portion of the Property shown as “Parking Easement” on **Exhibit A** hereto

Section 26 “Plans” shall have the meaning assigned to such term in **Article VII, Section 4**

Section 27 “Plat” shall mean the plat recorded in Book of Maps 43, Page 119, New Hanover County Registry

Section 28 “Progress Point” shall mean the mixed-use development to be created on the Property

Section 29 “Property” shall mean the Existing Property and any additions thereto that shall become subject to this Declaration and brought within the jurisdiction of the Association under the provisions of **Article II** hereof

Section 30 “Sidewalk Easement Areas” shall mean those portions of the Property located along or adjacent to the street-front boundary lines of each Lot or such areas designated as “Sidewalk Easement” on maps of portions of the Property, now or hereafter recorded, within which areas sidewalks may be constructed

Section 31 “Special Assessments” shall have the meaning assigned to such term in **Article V, Section 1**

Section 32 “Stormdrain Easement Area” shall mean those portions of the Property shown as “Private Stormdrain Easement” on maps of the Property presently or hereafter recorded Each “Private Stormdrain Easement” shown on **Exhibit A** hereto reflects the proposed location of such easements and the final location of such easements shall be shown on maps of the Property recorded after this Declaration

Section 33 “Substation Property” shall mean “Lot 7” on plat recorded in Book of Maps 43, Page 119, New Hanover County Registry

Section 34 “Substation Property Access Easement Area” shall mean the variable width portion of the Property shown on the Plat as “Access Easement,” running between the Substation Property and Allens Lane.

Section 35 “Substation Property Owner” shall mean any record owner, now or in the future, of fee simple title to all or any portion of the Substation Property, but excluding those (such as trustees under a deed of trust) having such interests merely as security for the performance of an obligation

Section 36 “Supplemental Declaration” shall have the meaning given in **Article II, Section 2**

Section 37 “Temporary Access Easement Area” shall mean the portion of the Property lying within the access road located in the vicinity of Lot 3 and Lot 4 (as such lots are shown on the Plat) and running between the Substation Property and U S Highway 17 Bypass (Military Cut-Off Road)

Section 38 “Total Votes” shall have the meaning given in **Article III, Section 3**

Section 39 “USTs” shall mean underground storage tanks

Section 40 “Utility Easement Areas” shall mean (i) the portions of the Property located within twenty feet (20’) of the front and rear boundary lines of each Lot and within ten feet (10’) of the side boundary lines of each Lot, provided, however, if the nature of development on a Lot is such that the Zoning Ordinance of New Hanover County does not impose a side yard requirement between buildings or other improvements constructed on the Lot and any adjacent Lot, then with respect to such Lot, utility easement areas shall only be in areas within twenty feet (20’) from the front and rear boundary lines of such Lot, and (ii) the portions of the Property designated as “Public Utility Easement” on maps of portions of the Property now or hereafter recorded, including those portions of the Property shown as “Public Utility Easement” on **Exhibit A** hereto

ARTICLE II PROPERTY

Section 1 **Description** The property initially made subject to this Declaration is the Existing Property

Section 2 **Additions to Property** Any additional real estate contiguous or adjacent to the Property may be subjected to this Declaration by Declarant recording a supplemental declaration (each a “**Supplemental Declaration**”) describing same, and thereupon the operation and effect of this Declaration shall be extended to such additional property and such additional property shall thereafter be a part of the Property. The Supplemental Declarations may contain such complementary additions to and modifications of this Declaration pertaining to such additional property as may be necessary or convenient, in the judgment of Declarant, to reflect or accommodate the different character, if any, of the added property. Notwithstanding any term or provision herein to the contrary, Supplemental Declarations as provided for in this **Section 2** may be executed and filed of record by Declarant without any requirement that other Owners approve or execute such Supplemental Declarations

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1 **Members** Every Owner of a Lot which is subject to Assessment (see **Article V, Section 1**) shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment. Notwithstanding the foregoing provisions, Declarant shall be deemed a Member whether or not it is obligated to pay Assessments under **Article V, Section 1**

Section 2 **Voting** The voting rights of the membership shall be appurtenant to ownership of the Lots. Each Owner of a Lot shall be entitled to one (1) vote for each acre owned in the Property, plus a fractional (hundredths) vote for each fractional (hundredths) acre owned. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to such Lot shall be exercised as they, among themselves, determine by majority vote based on ownership interest, and in no event shall the vote or votes be cast separately with respect to any jointly owned Lot

Section 3 Majority Notwithstanding the above provisions, Declarant shall be entitled to fifty-one percent (51%) of the total votes (“**Total Votes**”) of the Association Members until December 31, 2008

Section 4 Amendment Notwithstanding any provisions to the contrary contained herein, so long as Declarant owns any portion of the Property, this Declaration and the Bylaws of the Association may not be amended without Declarant’s written consent

Section 5 Board of Directors The Association shall be governed by a Board of Directors (“**Board of Directors**”) in accordance with the Bylaws Notwithstanding any provisions to the contrary contained in this Declaration or in the Bylaws, Declarant shall have the right to appoint or remove by written notice to the Board of Directors any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events occurs

- (a) Declarant no longer owns any portion of the Property,
- (b) Declarant surrenders the authority to appoint and remove members of the Board of Directors and officers of the Association by an express amendment to this Declaration executed and recorded by the Declarant, or
- (c) December 31, 2008

Section 6 Default by Member During any period in which a Member shall be in default in the payment of an Annual, Special or other Assessment levied by the Association, such Member’s rights to vote and all other rights and incidents of membership in the Association may be suspended by the Board of Directors until such Assessment is paid

ARTICLE IV EASEMENTS

Section 1 Owner’s Easements of Enjoyment Every Owner, through ownership of a Lot, shall have, subject to rules and regulations established by the Board of Directors of the Association, a non-exclusive right and easement of use and enjoyment to the Association Landscape and Easement Areas, Utility Easement Areas and Sidewalk Easement Areas, which shall be appurtenant to and pass with title to every portion of the Property Such right and easement of enjoyment may be delegated by any Owner to its tenants or contract purchasers and their agents, tenants, contractors and invitees

Section 2 Association Easements The Association, its successors and assigns, shall have a non-exclusive right and easement over the Association Landscape and Easement Areas This easement shall be for the purpose of inspecting Improvements, including facilities and landscaping thereon, and for the purpose of installing, maintaining and replacing Designated Maintenance Items located within the Association Landscape and Easement Areas, including but not limited to landscaping (including, but not limited to, trees, shrubbery, grass and flowers), private streets, driveways, parking areas, lighting, sidewalks, utility lines, fences, signs, ponds, storm drainage, storm water detention, fountains and entry monuments if so designated in the event the Association expressly undertakes an obligation to do so The Association shall at all

times have the right of ingress and egress over any Lot to access the Association Landscape and Easement Areas. The Association shall also have the right but not the obligation to install, inspect, and maintain the Designated Maintenance Items in the medians, islands and entrance ways located within the rights-of-way of public streets within or adjacent to Progress Point. The Declarant shall have exclusive control over the design and construction of all monument and/or pylon signs for Progress Point other than on Lot 5 (as such Lot is shown on the Plat), provided, however, that the Owner of Lot 5 (as such Lot is shown on the Plat) shall (i) irrespective of the dimensions or other characteristics of any other sign constructed within Progress Point, be entitled to install a sign on Lot 5 of up to the maximum dimensions permitted by applicable law as if Lot 5 were not a part of Progress Point (i.e. no signs constructed within Progress Point shall impact in any manner the ability of the Owner of Lot 5 to construct a sign on Lot 5 or the dimensions of such sign), and (ii) have exclusive control over the design and construction of all signs located on Lot 5. The Association shall determine, in its sole discretion, the placement of all signs in the sign slots on such monument and/or pylon signs on any Lot other than Lot 5.

Section 3 Utility and Sidewalk Easements Declarant and CP&L reserve for the benefit of themselves and the Association, and their respective successors and assigns, an easement over the Utility Easement Areas and Sidewalk Easement Areas for the purpose of installing, maintaining, replacing and using public sidewalks and utility lines. Any sidewalk located within the Sidewalk Easement Areas may be dedicated to the public by Declarant or any Owner of a Lot on which the sidewalk is located, in each case by plat recorded in the New Hanover County Registry.

Section 4 Reciprocal Access Easement, Parking Easement Each Owner shall have a non-exclusive, perpetual easement over and across the private streets and driveways located on the Property for pedestrian and vehicular ingress, egress and regress. Such easement shall also be for the benefit of any tenant, invitee and licensee of each Owner. Notwithstanding anything contained herein to the contrary, cross or reciprocal parking between the Lots is prohibited, provided, however that each Owner of Lot 3 as shown on **Exhibit A** hereto, and its tenants and invitees, shall have an exclusive, perpetual easement over and across the Parking Easement Area for the purpose of parking within the Parking Easement Area. The easement rights herein granted shall be subject in all respects to the rights of the Association with respect to the Association Landscape and Easement Areas.

Section 5 Temporary Access Easement Declarant grants for the benefit of the Substation Property Owner, and such owner's successors and assigns, a non-exclusive, temporary right-of-way and easement over, under and through the Temporary Access Easement Area for the purposes of pedestrian and vehicular (including large trucks and heavy equipment) ingress, egress and regress between the Substation Property and U.S. Highway 17 Bypass (Military Cut-Off Road). Such temporary easement shall terminate when the roadway to be constructed within the Substation Property Access Easement Area described in **Section 6(b)** of this Article is complete.

Section 6 Substation Property Access Easement

(a) Declarant and CP&L grant for the benefit of the Substation Property Owner, and such owner's successors and assigns, a non-exclusive, perpetual right-of-way and

easement over the Substation Property Access Easement Area for the following purposes (i) pedestrian and vehicular (including large trucks and heavy equipment) ingress, egress and regress, (ii) the maintenance and replacement of a gravel and paved roadway and other roadway improvements, all in accordance with applicable governmental rules and regulations, and (iii) the maintenance and replacement of drainage facilities, slopes, lines and pipes commonly associated with and constructed in or under road rights-of-way

(b) Declarant shall construct a gravel roadway within the Substation Property Access Easement Area, provided, however, that at such time as the Lot on which the Substation Property Access Easement Area is located is developed, Declarant shall pave the portion of the roadway lying within the proposed drive aisles on the Property (and the portion of the roadway lying outside of such drive aisles shall remain graveled)

(c) No temporary or permanent barriers, fences, or other obstructions shall be erected or maintained so as to unreasonably impede or interfere in any way with the free flow of vehicular (including large trucks and heavy equipment) and pedestrian traffic within the Substation Property Access Easement Area. Notwithstanding the foregoing, any party engaging in construction, maintenance or replacement activities within the Substation Property Access Easement Area may temporarily alter the normal flow of traffic within the Substation Property Access Easement Area provided that such party provides reasonably acceptable alternative access to the portion of the Substation Property where it intersects with the Substation Property Access Easement

(d) Notwithstanding the grant of easement in **Article IV, Section 6(a)(ii)**, the Substation Property Owner shall not have the right to exercise its right of maintenance and replacement of the Substation Property Access Easement Area unless the Association fails to (i) commence the maintenance and/or replacement of the roadway or other facilities located within the Substation Property Access Easement Area within thirty (30) days after written notice from the Substation Property Owner, and (ii) diligently pursue the same to completion

(e) The Owner of all or any portion of the Substation Property Access Easement Area shall have the right to relocate, at the sole cost of such Owner, all or any portion of the Substation Property Access Easement Area lying on the property of such Owner, so long as the new easement area continues to provide undiminished access between the Substation Property and Allens Lane. If such Owner exercises this relocation right, then such Owner shall construct a roadway within the relocated easement area of a condition equal to or greater than the roadway then existing within the Substation Property Access Easement Area. The relocated easement area must be free and clear of all liens, or any liens thereon must be made subordinate to the Substation Property Owner's access and maintenance rights. Upon the completion of such roadway and at the sole cost of such Owner, an instrument specifying the location of the relocated easement area (and warranting that such area is free and clear of all prior liens) shall be recorded in the New Hanover County Registry, and the easement shall no longer burden the portion of Substation Property Access Easement Area from which the roadway was relocated, but shall burden the relocated access easement area. Upon the recording of such instrument, the relocated access easement area shall constitute the Substation Property Access Easement Area

Section 7 Electric Duct Easement Declarant grants to the Substation Property Owner a non-exclusive, perpetual right-of-way and easement over, under and through the Electric Duct Easement Area for the purposes of constructing, maintaining and replacing underground duct work and underground electric transmission and communications lines. Upon completion of any construction, maintenance or replacement within the Electric Duct Easement Area, the party performing such work shall restore any pavement, concrete, utilities, landscaped and grassed areas within the Electric Duct Easement Area disturbed during the performance of such work.

Section 8 Drainage Easement

(a) Declarant grants to the Substation Property Owner a non-exclusive, perpetual right-of-way and easement over, under and through the Drainage Easement Area for the following purposes: (i) the collection and carrying of storm water drainage, and (ii) the construction, maintenance and replacement of ditches, slopes, pipes and any other facilities appropriate for storm water drainage.

(b) The Substation Property Owner shall be responsible for the maintenance and replacement of storm water drainage improvements in the Drainage Easement Area and of the existing landscaping buffer located within the Drainage Easement Area and on the Substation Property. Except to the extent reasonably necessary for storm water drainage purposes, the removal of trees, shrubs and other natural growth (other than dead or diseased plants) is prohibited within the Drainage Easement Area and the existing landscaping buffer area. Upon completion of any construction, maintenance or replacement within the Drainage Easement Area, the party performing such work shall restore any pavement, concrete, utilities, landscaped and grassed areas within the Drainage Easement Area disturbed during the performance of such work.

(c) If the Substation Property Owner fails to maintain and replace storm water drainage improvements in the Drainage Easement Area, then the Association, after giving such owner no less than thirty (30) days prior written notice sent to its last known address, may undertake to maintain and replace such improvements in the Drainage Easement Area at the expense of the Substation Property Owner. The cost of any such work shall be immediately due from the Substation Property Owner, and the Association shall be deemed to have contracted with such owner for such work and materials. The Association shall be entitled to file a mechanic's lien against the Substation Property Owner for the cost of such work and materials with all rights incident thereto, all in accordance with Chapter 44A of the North Carolina General Statutes. The Association may bring legal action against such owner personally and/or foreclose the lien against the Substation Property, and interest (at the lesser of twelve percent (12%) per annum or the maximum allowed by law), costs of collection and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such lien.

Section 9 Storm Drain Easement Each Owner shall have a non-exclusive, perpetual right-of-way and easement over, under and through the Storm Drain Easement Area for the following purposes: (i) the collecting, carrying, detaining and retaining of storm water drainage from the Property, and (ii) the construction, maintenance and replacement of ditches, slopes, pipes and any other facilities necessary for storm water drainage.

Section 10 Dumpster Use Easement The Owners of Lots 1 and 3 shown on Exhibit A hereto and the Owner of the second floor of the building located on Lot 2 shown on Exhibit A hereto, shall each have the non-exclusive, perpetual right to deposit trash in the dumpsters located or to be located within the Dumpster Easement Areas

Section 11 CP&L Telecommunications Easement Declarant grants to the Substation Property Owner a non-exclusive, perpetual right-of-way and easement over, under and through the CP&L Telecommunications Easement Area for the purposes of constructing, maintaining and replacing underground conduit and underground transmission and other communications lines Upon completion of any construction, maintenance or replacement within the CP&L Telecommunications Easement Area, the party performing such work shall restore any pavement, concrete, utilities, landscaped and grassed areas within the CP&L Telecommunications Easement Area disturbed during the performance of such work

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1 Creation of the Lien and Personal Obligation to Pay Assessments Declarant, for each Lot it owns within the Property, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to covenant and agree to pay to the Association (1) annual assessments or charges for the creation and continuation of an installation and maintenance fund in the amount hereinafter set forth (“**Annual Assessments**”); and (2) special assessments (“**Special Assessments**”), each such assessment to be established and collected as hereinafter provided (Annual Assessments and Special Assessments are hereinafter separately and collectively referred to as “**Assessment**” or “**Assessments**”) Any such Assessment or charge, together with interest, costs and reasonable attorneys’ fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made In the case of co-ownership of a Lot, all of the co-owners shall be jointly and severally liable for the entire amount of the Assessment

Section 2 Purposes of Assessments Except as hereinafter provided, the Assessments levied by the Association shall be used to pay the ongoing cost of and shall be used exclusively for obligations expressly undertaken by the Association to provide for the installation, maintenance and replacement of the Designated Maintenance Items, the Association Landscape and Easement Areas, Utility Easement Areas and Sidewalk Easement Areas, the provision of other services intended to promote the health, safety and welfare of the Members, the cost of labor, equipment, materials, management and supervision for and security services in protection of the same, the payment of taxes on portions of any common areas owned by the Association in fee simple and the costs of enforcing this Declaration These costs will include, but will not be limited to, legal expenses, administrative costs, accounting costs, insurance premiums, the payment of utility bills relating thereto (including water and electric power for irrigation and lighting systems), and fees the Association pays to a management company During the time Declarant controls the Association, the Association shall not expend its funds for the initial installation of Designated Maintenance Items, but may expend funds for the maintenance, repair, operation and restoration thereof

Section 3 Annual Assessment The Annual Assessment for each Member for each calendar year shall be the sum of (a) the acreage contained within such Member's Lot (excluding public and private road rights-of-way) multiplied by the Annual Assessment per acre established by the Association, plus (b) the square footage of Building Improvements contained within such Member's Lot multiplied by the Annual Assessment per square foot of Building Improvements established by the Association. The Association shall calculate the Annual Assessment per acre and Annual Assessment per square foot of Building Improvements such that one-half of the Association's expenditures shall be assessed to Members on a per acre basis and the remaining one-half of the Association's expenditures shall be assessed to Members on a per square foot of Building Improvement basis. Until such time as the initial Building Improvements are complete on a Lot, such Lot (as shown on Exhibit A hereto) shall be deemed to contain Building Improvements as follows: (i) Lot 1 – 4,000 square feet of Building Improvements, (ii) Lot 2 – 26,000 square feet of Building Improvements, (iii) Lot 3 – 44,800 square feet of Building Improvements, (iv) Lot 5 – 17,100 square feet of Building Improvements, and (v) Lot 6 – 24,000 square feet of Building Improvements. Upon completion of the initial Building Improvements on a Lot, the actual square footage of Building Improvements shall be used to determine the Annual Assessment. Notwithstanding anything contained herein to the contrary, a Lot Owner's Annual Assessment shall not include maintenance, repair, operation or restoration costs for the following particular categories of improvements: lighting, landscaping (including grassed areas), driveways, parking areas and sidewalks, until that particular category of improvement has been installed or constructed on such Owner's Lot. For example, if driveways and landscaping are installed on Lot 6 (as shown on Exhibit A hereto), then the Owner of Lot 6 shall be required to pay the annual assessment applicable to Lot 6, including assessments for the maintenance, repair, operation or restoration of driveways and landscaping on the Property, but excluding assessments for the maintenance, repair, operation or restoration of lighting, parking areas and sidewalks on the Property. Such assessments shall be based on projected expenditures for the calendar year for which such computation is made, with fractions of acres or square feet and fractions of calendar years to be computed and prorated equitably, at the same uniform rate for each calendar year. The Annual Assessment shall not commence until calendar year 2004. Beginning in 2003 and for each year thereafter, the Association, acting through its Board of Directors, shall estimate the costs of performing its responsibilities hereunder, or so many of such responsibilities as it shall have expressly undertaken, for the following calendar year and, by September 1 of the then current year, advise each Member by notice in writing of the amount of such Member's Assessment for the following calendar year. These Annual Assessments may include a contingency reserve for maintenance and replacement. If, for any given calendar year, excess funds remain after payment of all expenditures for such calendar year, then such excess funds may be applied in payment of expenditures in succeeding calendar years, to the contingency reserve, or to the proportionate return of Assessments to Members, in each case in the discretion of the Association.

Section 4 Special Assessments In addition to the Annual Assessments, the Association may levy Special Assessments only for the purpose of defraying, in whole or in part, or for the purpose of setting aside for future expenditure, the cost of any unexpected items, capital items, or the cost of any reserves required in excess of the amounts that may be included in the Annual Assessment, provided, however, that any such Special Assessment shall have the approval of eighty-five percent (85%) of the owners of the Lots present and voting in person or by proxy at an annual or special meeting of the membership at which a quorum is present with