

**Draft Plan
for
Revised Community Governing Documents
to
Address Owners' Governance Concerns and Issues**

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An Owner in The Village at Motts Landing

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Introduction

Many Owners find Community governance and provisions in the current governing documents to be troublesome. The governing documents – Declaration, Bylaws, Architectural Control Guidelines, Rules and Regulations, and Policies need to be amended or rewritten to appropriately address Owners' concerns and issues.

This document is a “straw-man” or draft plan for information, debate, and discussion to reach a consensus on a final plan and revised Community governing documents produced from a fully transparent process that includes Owner notice, participation, and approval.

Revised governing documents will improve the quality of governance and enhance Community spirit, harmony, and property values.

Background

The current five-member Association Board of Directors (BOD) is the first elected BOD. Terms for all the first elected BOD members started in 2021. Four of the five BOD members have been working on Community issues for several years as Developer/Builder appointed 2018 Advisory Committee Members and 2019 to 2020 Transition Committee Members. A member of the said Advisory and Transition Committees is now a member of the three-member Architectural Control Committee. Membership of the appointed 2018 Advisory Committee was announced to Owners on March 19, 2018. Membership of the appointed 2019 to 2020 Transition Committee was announced to Owners at an annual meeting held on May 23, 2019.

The Transition Committee with the services of attorney Jim Slaughter of the Law Firm of the Carolinas simply merged nine (9) virtually identical boilerplate Developer produced Declarations for different development sections and phases into one Community Declaration and replaced the Developer created Bylaws with boilerplate Bylaws. Transition Committee members, CEPCO Community management firm principals, and attorney Jim Slaughter recommend that Owners vote “FOR” the Transition Committee produced Declaration and Bylaws. They said approval was needed to allow the Association to elect an owner-controlled Board by the end of 2020. They argued the documents could be amended or changed in the future to address Owners' concerns. Although numerous informed and engaged Owners voiced many serious concerns with the Transition Committee generated Declaration and Bylaws, Owners approved them with an affirmative vote.

All the current Community Architectural Control “Guidelines,” Rules and Regulations, and Policies were created unilaterally by the Developer or the current Board of Directors. They were made without Owner notice, participation, or approval.

Owners' Concerns and Issues with Declaration and Bylaws

One of the key concerns Owners have with the current Declaration is all provisions that benefit, protect, or reference the Developer have not been removed or changed to benefit the Association – Owners collectively.

Considering the Association was in a strong negotiating position and given the content of the Declaration, it appears the Transition Committee with the services of attorney Jim Slaughter of the Law firm of the Carolinas made no or little effort to motivate the Developer to relinquish any Special Rights.

According to the Transfer of Special Declarant Rights for The Village at Motts Landing Homeowners' Association of March 25, 2021, filed by the Law Firm Carolinas for the Association with the New Hanover County Clerk's Office, the Declarant maintains the following rights:

- a. "Use Restrictions and Architectural Control;"
- b. "Annexation of Additional Property;"
- c. "Class B" membership and voting rights;
- d. "Rights of Developer/Developer Control" and "Plan of Development;"
- e. Rights to complete improvements indicated on plats and plans filed with the Declaration;
- f. Rights to maintain sales offices, management offices, signs, sign advertising the planned community, and models for or relating to lots located on the Property;
- g. Rights to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; and
- h. Rights under "Easements in Favor of Declarant."

According to the North Carolina Planned Community Act General Statute (G.S.) 47F-1-103(28), "Special declarant rights" means rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control.

The following are some key concerns informed and engaged Owners have voiced with the current Bylaws:

1. The definition of a quorum permits unrepresentative action by an unduly small number of owners
2. Board of Directors powers for unilateral action on matters such as rules, regulations, resolutions, and enforcement procedures
3. Unreasonable fines and lack of due process for violations of the Declaration, By-Laws, or Rules and Regulations
4. Interest charged for Assessments not paid within 30 days at "the highest rate allowed by law"
5. Board and committee meetings not being being open
6. Budget may be ratified without a quorum
7. Provisions are not in plain English and clear without the need for interpretation

The said concerns and many others are contained in Appendix B – Owners’ Concerns or Issues with Transition Committee Produced Bylaws.

Desirable Prerequisite for Revising Governing Documents

An Association and Developer negotiated Transition Agreement and Release should be in place prior to revising the governing documents. The said agreement and release must contain terms and conditions, including without limitation, that address the following:

1. Transfer of special declarant rights;
2. All design construction, and maintenance defects identified in the Giles Flythe Transition Study of September 24, 2020, and Punch List;
3. The transfer of all Community roads except those in Pamela’s Place to the North Carolina Department of Transportation (NCDOT) for maintenance;
4. Inadequate reserves as identified in the Giles Flythe Full Reserve Study of October 5, 2020;
5. Operation or maintenance activities to a Common Element that are required by any government agency;
6. Non-compliance of infrastructure with applicable laws, ordinances, regulations, rules, and directives of governmental authorities;
7. Deficient maintenance of common stormwater conveyance facilities, such as waterways, streams, creeks, ditches, swales, channels, canals, conduits and culverts, and stormwater control facilities, such as ponds and lakes within the common property;
8. Transfer of all permits to the Association; and
9. The installation of fountains, irrigation pumps, and/or diffusion circulators in stormwater ponds.

The terms and conditions need to address schedule and nonperformance consequences.

Ideally negotiations would motivate the Developer to release all Special Rights so that all “Declarant” language could be removed from the Declaration.

Troublesome First Elected Board Actions, Inactions, and Decisions

The following identifies and describes some of the troublesome first elected Board actions, inactions, and decisions.

Notwithstanding the Developer has failed to take appropriate action to address the numerous major design, construction and maintenance defects identified in the Transition Study of September 24, 2020 and Punch List, since taking office at the beginning of 2021, the BOD has made compliance with the Declaration “Use Restrictions and Architectural Control” requirements a priority. The BOD has issued several communications about the matter.

On July 20, 2021, the elected BOD dictated the requirement for Owners to get approval from the Architectural Control Committee (ARC) for flowerpots placed with plants at or near the entrance to their dwelling or in flower beds adjacent to their house. The BOD ordered that no more than a total of six flowerpots shall be placed in the said areas and an ARC request must be submitted describing the number, sizes, and colors of the pots along with a photo of the pots. The BOD threatened Owners who did not comply would be faced with enforcement measures to the fullest extent permitted under the North Carolina General Statutes.

Under the direction of the elected BOD, Association attorney Ellen P. Wortman, sent a two-page Certified Mail Letter of June 21, 2021, to an Owner who operates, maintains, and controls the Owners @ Motts Landing Website ([Owners at Motts Landing - public.htm](#)), a community-wide communications channel. The said letter was full of misinformation, accusations, and untruths. The letter contained unreasonable demands for operating the Website. All the issues in the letter could have been resolved with a simple phone call from the Board or a Board member, or a meeting and thereby avoiding the expense of unnecessary billable hours to the Association or Owners collectively for legal services.

The elected BOD has failed to acknowledge or respond to Owners’ communications sent to their official e-mail address (mottshoaboard@gmail.com), including communications covering, without limitation, seeking input from Owners prior to decision making, safety and security issues, multiple trash pickup vendors, and requests to examine Association records.

The elected BOD refuses to disclose to Owners what member voted for or against what and why on significant issues.

Absent any requirements to do otherwise, the elected BOD meets regularly without a public notice, agenda, minutes, and action items and the opportunity for interested owners to attend, record, and speak. (The North Carolina Planned Community Act and Association Articles of Incorporation and Bylaws do not address the issue of notice for board meetings. The North Carolina Nonprofit Act provides that regular meetings of the board may be held without notice of the date, time, place, or purpose of the meeting, unless the Articles of Incorporation or Bylaws provide otherwise.)

Notwithstanding the Developer and Builder have profited from the sale of lots and homes from the unfulfilled promise all roads in the Community shall be maintained by the North Carolina Department of Transportation (NCDOT) except for the private roads in Pamela's Place and road maintenance is a major expense, the elected BOD refuses to provide Owners a Plan of Action and Milestones (POA&M) with estimated Association costs for the transfer of all Community roads except those in Pamela's Place to the NCDOT for maintenance.

The elected BOD has failed to follow independent Subject Matter Expert (SME) advice contained in the Giles Flythe Transition Study of September 24, 2020, and the ARDURRA services firm report of May 17, 2021.

Notwithstanding the Developer has an obligation to transfer common property to the Association that is not substandard, without design and construction defects and is in a state of good repair or pay the Association for the cost of repairs, the elected BOD refuses to provide Owners a Plan of Action and Milestones (POA&M) with estimated Association costs to motivate the Developer to satisfactorily address each of the design, construction, and maintenance defects identified in the Giles Flythe Transition Study of September 24, 2020, and Punch List.

Board Member Support for Plan or Removal

Implementing a final plan requires support from the members of the elected BOD. Any BOD members that do not support revising the governing documents to address Owners' concerns and doing it in an Owner participative manner, can and should be removed.

BOD members can be removed by simply letting their term expire and not re-electing them if they seek re-election or by holding a vote to remove them.

According to the North Carolina Planned Community Act §47F-3-103, Executive board members and officers, (b):

Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant. (Emphasis added.)

According to Article V, Board of Directors, of The Village at Motts Landing ByLaws adopted November 23, 2020:

Section 5. Removal and Resignation. Any Director may be removed from the Board, with or without cause, by a majority vote of all persons present and entitled to vote at any meeting at which a quorum is present.

Holding a vote to remove BOD members requires that all relevant procedural requirements to be satisfied. An Owner cannot simply make a motion at any meeting to remove a director or officer. The said motion is not in order if it conflicts with law or Association governing documents. For example, a formal meeting notice to Owners with a director or officer removal agenda item from the secretary or other officer is needed. An Owner can cause a special meeting to be held to remove a director or officer with a petition for that purpose signed by Lot owners having ten percent (10%) of the votes in the Association. The said petition needs to be delivered to the Association President and/or Secretary.

According to Article IV, Meetings, of The Village at Motts Landing ByLaws adopted November 23, 2020:

Section 2. Special Meetings. Special meetings of the Association may be called by the President, by a majority of the Board of Directors, or by Lot owners having ten percent (10%) of the votes in the Association. The purpose of the meeting shall be stated in the call, and only business mentioned in the call can be transacted at such a meeting.

Goals for Revised Documents

1. Enhance property values;
2. Enhance the quality of life for each Owner and contribute to Community spirit and harmony;
3. Be clear without the need for any interpretation;
4. Be in plain English – simple and understandable - and “user friendly;” and
5. Age well or not require many future amendments or updates with law and other changes.

Requirements for Revised Documents

1. Be consistent with the U.S. Constitution, U.S. Bill of Rights, North Carolina Declaration of Rights, and principles of local government;
2. Protect individual Owners' rights;
3. Be fully compliant with current State statutory and case law;
4. Be valid and enforceable;
5. Appropriately address Owners' concerns and issues and meet their expectations and preferences; and
6. Any and all restrictions shall be reasonable, serve a legitimate purpose, and benefit the Community as a whole.

Revised documents shall have numbered pages and be searchable (not in image format).

Requirements for Governing Documents Revision Committee

The Governing Documents Revision Committee (GDRC) shall be comprised of an odd number of Community property members. The Committee shall have three (3) or more members. No more than one Owner from each of the nine (9) Community neighborhoods, Bellamy Parke Estates, Bellamy Parke, Cypress Parke, Glenn Ellen, Motts Forest East, Motts Forest, Mount Carmel, Pointe Pleasant, and Yorke Meadow shall be on the Committee. Committee members shall be chosen by Owners in their Community. No Association Board member or employee of CEPCO shall serve on the Committee.

There shall be no eligibility or qualification requirements for an Owner to be on the Committee. (Owners that are independent critical thinkers with a relevant skill set are desirable.)

The Chairperson and member responsibilities and assignments shall be determined by Committee members – not the Association Board.

The Committee shall inform individual Owners that submitted inputs by name of how their input was considered and used.

Requirements for Documents Revision Process

Input from Owners shall be solicited by multiple means, including, without limitation, announcements, e-mail, newsletters, surveys, questionnaires, input forms, and virtual or in-person town-hall type meetings.

Owners shall have the option to submit inputs anonymously.

But for legally justified or legitimate closed meetings, all Committee meetings shall be open, with notice, the opportunity for interested owners to attend, record, and speak and have written minutes, including action items, as appropriate.

Committee rewritten documents for Owners' review shall be in a form and distributed so that Owners can easily identify proposed changes. Changes can be easily identified by using a change-tracking word processing function and/or providing two versions – “before” and “after.” A summary of “highlights” of what will be new or different would be helpful for a complete rewrite organized differently.

Participative Phased Approach

According to the State Planned Community Act and the current declaration, Owners can change the declaration only by an affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated. A participative versus a directive or unilateral approach is likely required to achieve the said 67% supermajority affirmative vote for an amended, revised, or rewritten declaration.

According to the current Bylaws, Owners can change the Bylaws at an annual meeting of the Association, or a special meeting of the Association called for that purpose by a two-thirds vote of the members present and voting.

A two phased, top-down approach is proposed for amending or rewriting the governing documents with the scope of Phase 1 including the Declaration and Bylaws and the scope of Phase 2 including the Architectural Control Guidelines, Rules and Regulations, and Policies.

Community Website

A Community Website with the capability for unrestricted, transparent, open, and interactive discussions between Owners and Committee members will be vital for an effective and efficient Owner participative approach to revising the governing documents. The Website needs to have the capability for taking anonymous surveys or polls during the revision process to help shape content and reach consensus.

Milestones

Recommended Plan milestones include, without limitation, the following:

1. Interested candidates for special or ad-hoc Governing Documents Revision Committee (GDRC) solicited.
2. GDRC created consisting of neighborhood members elected by Owners.
3. Names, home, mailing, and e-mail addresses of individual Committee members and official Committee mailing and e-mail addresses announced.
4. GDRC Chairperson, Secretary, member responsibilities and assignments, and regular meeting days, times, duration, and place announced.
5. Kickoff presentation meeting held for interested Owners and questions and answers.
6. Input from Owners solicited for comments, questions, concerns and/or issues regarding (a) Community governance and (b) provisions of Declaration and Bylaws.
7. A categorized and prioritized summary of all inputs from Owners *along with all original inputs* made available for review.
8. GDRC First Draft of rewritten Declaration and Bylaws completed and distributed or made available to Owners for review, discussion, and comments.
9. First Draft presentation meeting held for interested Owners and questions and answers.
10. GDRC Second Draft of rewritten Declaration and Bylaws completed and distributed or made available to Owners for review, discussion, and comments.
11. Second Draft presentation meeting held for interested Owners and questions and answers.

12. A First Draft Request for Proposal (RFP) for a competitive contract with a law firm or attorney to review the GDRC Second Draft of rewritten Declaration and Bylaws distributed or made available to Owners for review, discussion, and comments.
13. Final RFP issued for attorney to review the GDRC Second Draft of rewritten Declaration and Bylaws.
14. Proposals for attorney to review the GDRC Second Draft of rewritten Declaration and Bylaws evaluated, selection made, and contract created and signed.
15. Attorney review comments and recommendations for the GDRC Second Draft of rewritten Declaration and Bylaws presentation meeting held for interested Owners and questions and answers.
16. GDRC finalized documents completed and distributed or made available to Owners and Association attorney for review, discussion, and comments.
17. GDRC finalized rewritten Declaration and Bylaws presentation meeting held for interested Owners and questions and answers.
18. Affirmative vote obtained for finalized rewritten Declaration and Bylaws.
19. Finalized rewritten Declaration and Bylaws printed, signed, notarized, and recorded and sent or made available to all Owners.

Schedule

A reasonable target overall timeline from Committee candidates solicited to rewritten documents recorded is one year.

Cost

The participative approach outlined in the Milestones section will be time consuming and could be costly, particularly for optional attorney services. An assumption of the outlined approach is that Community Owner volunteers are best positioned and perfectly capable of modifying governing documents without legal advice to meet their expectations and preferences and getting them recorded. To reduce costs, any attorney services need to be well managed. The services of an attorney can be limited to a review and specific recommendations for an Owners produced draft to save money. Also, a competitive, fixed price contract or flat fee for Attorney services is a viable and wise additional cost savings optional step.

In addition, meeting costs can be reduced by holding virtual meetings.

Contract Considerations and Provisions for Competitive Law Firm or Attorney Services

With the capabilities to communicate and exchange information electronically and hold virtual meetings, a contract to review Association documents with a law firm or attorney located anywhere in the State that is noted or widely recognized for practicing Community Association Law is a practical option.

Reviewing documents is a suitable task for a fixed price or flat fee contract. A simple contract can be prepared that has little uncertainty about how much effort and time will be needed to perform the work. A Request for Proposal (RFP) for a competitive contract with a law firm or attorney, including the current Association attorney, to review Association Committee rewritten Declaration and Bylaws for a fixed price and a subsequent award will save the Association money and provide cost certainty for the service.

The following is a brief outline of key contract components:

Statement of Work

1. Review Association Furnished Documents.
2. Produce a draft Review Report for furnished Association Committee rewritten Declaration and Bylaws.
3. Present Draft Review Report to Owners, Committee, and Board for review, comment, questions and answers, and discussion at an Association held virtual meeting.
4. Produce a final Review Report for furnished Association Committee rewritten Declaration and Bylaws.

Requirements

1. Review report shall contain specific recommendations or comments for each article, section, or provision of the furnished Association Committee rewritten Declaration and Bylaws addressing whether the provision is outdated, compliant with current State statutory and case law, should be amended, or left as-is, along with specific reasons why. If the recommendation is the article, section, or provision should be amended, a rewritten or edited article, section, or provision shall be provided.
2. Review report shall identify articles, sections, or provisions that should be in the furnished Association Committee rewritten Declaration and Bylaws along with specific reasons why. Written articles, sections, or provisions shall be provided for any articles, sections, or provisions identified as omitted but should be included.
3. Participate in one (1) Association held virtual meeting having a maximum duration of three (3) hours.
4. All document deliverables shall be in electronic form with numbered pages and text in at least 12-point font. The documents shall be searchable (not in image format). Draft and Final Review Reports shall be delivered as digital files in both PDF and Word formats. The Draft Review Report Presentation shall be delivered as a digital file in both Power Point and PDF formats.

Association Furnished Documents

1. Amended and Restated Declaration of Covenants, Conditions, and Restrictions (CC&Rs) for The Village of Motts Landing Homeowners' Association Recorded March 31, 2021 (55 pages)
2. Bylaws of The Village of Motts Landing Homeowners' Association Adopted November 23, 2021 (7 pages)
3. Transfer of Special Declarant Rights for The Village at Motts Landing Homeowners' Association of March 25, 2021, filed by the Law Firm Carolinas for the Association with the New Hanover County Clerk's Office (11 pages)
4. Owners' Concerns and Issues with Community Governance
5. Owners' Recommended Changes to Amended and Restated Declaration of Covenants, Conditions, and Restrictions (CC&Rs) for The Village of Motts Landing Homeowners' Association Recorded March 31, 2021
6. Owners' Recommended Changes to Bylaws of The Village of Motts Landing Homeowners' Association Adopted November 23, 2021
7. Goals for Revised Documents
8. Requirements for Revised Documents
9. Association Committee Second Draft of rewritten Declaration
10. Association Committee Second Draft of rewritten Bylaws

Deliverables

1. Draft Review Report for Association Committee rewritten Declaration and Bylaws
2. Draft Review Report Presentation for Association Committee rewritten Declaration and Bylaws
3. Final Review Report for Association Committee rewritten Declaration and Bylaws

Schedule

1. Draft Review Report: Three (3) weeks after contract signature.
2. Draft Review Report Presentation: Five (5) weeks after contract signature.
3. Final Review Report: Six (6) weeks after contract signature.

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Appendix A – Excerpts from Statues, Bylaws, and Declaration

According to Chapter 47F of the General Statutes, The North Carolina Planned Community Act §47F-3-106, Bylaws:

- (a) The bylaws of the association shall provide for:
 - (1) The number of members of the executive board and the titles of the officers of the association;
 - (2) Election by the executive board of officers of the association;
 - (3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;
 - (4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;
 - (5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and
 - (6) The method of amending the bylaws.
- (b) The bylaws may provide for any other matters the association deems necessary and appropriate. (1998-199, s. 1.)

According to Chapter 55A of the General Statutes, The North Carolina Nonprofit Corporation Act §55A-1-40, Chapter definitions:

- (3) "Bylaws" means the rules (other than the articles) adopted pursuant to this Chapter for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated.

According to Chapter 47F of the General Statutes, The North Carolina Planned Community Act §47F-2-117, Amendment of declaration:

- (a) Except in cases of amendments that may be executed by a declarant under the terms of the declaration or by certain lot owners under G.S. 47F-2-118(b), the declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies or by the declarant if necessary for the exercise of any development right. The declaration may specify a smaller number only if all of the lots are restricted exclusively to nonresidential use.
- (b) No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than one year after the amendment is recorded.

- (c) Every amendment to the declaration shall be recorded in every county in which any portion of the planned community is located and is effective only upon recordation.
- (d) Any amendment passed pursuant to the provisions of this section or the procedures provided for in the declaration are presumed valid and enforceable.
- (e) Amendments to the declaration required by this Chapter to be recorded by the association shall be prepared, executed, recorded, and certified in accordance with G.S. 47-41. (1998-199, s. 1; 2012-18, s. 1.8; 2013-34, s. 5.)

According to the Bylaws of The Village at Motts Landing Homeowners' Association adopted November 23, 2021, Article XII, Amendment:

These Bylaws may be amended at the annual meeting of the Association or a special meeting of the Association called for that purpose by a two-thirds vote of the members present and voting, or in such other manner as may be permitted by law.

According to Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Village at Motts Landing Homeowners' Association of March 25, 2021, recorded March 31, 2021, Section 4, Amendment of Declaration:

Except as provided elsewhere herein, the covenants and restrictions of this Declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or by the Declarant if necessary for the exercise of any development right. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant.

In addition, this Declaration may be amended by the Declarant or by the Board of the Association to (a) correct any obvious error or inconsistency in drafting, typing or reproduction; (b) qualify the Association or the Property and Additional Property, or any portion thereof, for tax exempt status; (c) include any platting change as permitted herein; or (d) conform this Declaration to the requirements of any law or governmental agency relating to the property, including, without limitation, storm water, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare.

Appendix B – Owners’ Concerns or Issues with Transition Committee Produced Bylaws

Informed and engaged Owners’ voiced concerns or issues with the Developer/Builder selected Transition Committee produced Bylaws include, without limitation, the following:

1. The definition of a quorum permits unrepresentative action by an unduly small number of owners;
2. Board of Directors powers for unilateral action on matters such as rules, regulations, resolutions, and enforcement procedures;
3. Unreasonable fines and lack of due process for violations of the Declaration, By-Laws, or Rules and Regulations;
4. Interest charged for Assessments not paid within 30 days at "the highest rate allowed by law;"
5. Provisions for removal of directors and officers that make their removal more difficult than provisions in the State Planned Community Act;
6. Board, instead of owners, electing Officers;
7. Board and committee meetings being not being open;
8. Closed or executive session meetings not addressed;
9. No provision for a consent signed for Board action taken without a meeting being available to owners or posted on a secure community Website;
10. A Nominating Committee to screen and select candidates for the Board of Director positions;
11. Spouses, co-owners, cohabitants, or their relatives serving as Directors or Officers at the same time;
12. Board of Directors consisting of non-member spouses of members;
13. A Board member receiving payment for goods and/or services provided by a Board member to members;
14. Powers the executive board or officers may delegate to other persons or to a managing agent are not addressed;
15. Rights of homeowners, such as books and records examination, not addressed;
16. Budget may be ratified without a quorum;
17. No requirement for independent annual audits;
18. Referenced documents, such as Articles of Incorporation and Declarations, are not available for review;
19. Recorded map, plan or plat not provided;
20. Legal definition of The Village at Motts Landing not provided;
21. Important terms are not defined;
22. Inconsistencies exist among provisions; and
23. Provisions are not in plain English and clear without the need for interpretation.

No draft was presented to Owners for review and discussion before a vote. Also, the Bylaws were presented to Owners for a vote prior to a Declaration being known and approved.

Appendix C – Sample Input Form for Owners’ Concerns or Issues with Community Governance

At a minimum, please provide the information requested in italics. Providing additional information will be very helpful and greatly appreciated.

Owner Name (Voluntary):

Concerns or Issues with Community Governance:

Priority for Owner (Low, Medium, High):

Specific examples of actions, inactions and/or decisions giving rise to said concerns or issues:

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Appendix D – Sample Input Form for Owners’ Recommended Changes to Declaration of Covenants, Conditions, and Restrictions (CC&Rs) and Bylaws

At a minimum, please provide the information requested in italics. Providing additional information will be very helpful and greatly appreciated.

Topic:

Owner Name (Voluntary):

Priority for Owner (Low, Medium, High):

Location in Document (Page, Para, Article, Section):

Language in Document:

Comments, Questions, Concerns:

Proposed Change or Language:

Purpose of Proposed Change:

Effect of Proposed Change:

Appendix E – Recommended Changes to Amended and Restated Declaration of Covenants, Conditions, and Restrictions (CC&Rs) for The Village of Motts Landing Homeowners’ Association Recorded March 31, 2021

Topic:

Owner Name (Voluntary):

Priority for Owner (Low, Medium, High):

Location in Document (Page, Para, Article, Section):

Language in Document:

Comments, Questions, Concerns:

Proposed Change or Language:

Purpose of Proposed Change:

Effect of Proposed Change:

DRAFT

Topic: Declarant or Developer Language

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): pp. 1 -55, Entire document.

Language in Document: See document.

Comments, Questions, Concerns: The document contains Declarant or Developer language. The Community is now under homeowner control. The Developer unilaterally produced the document. The document was part of an adhesion or “take it or leave it” contract.

Negotiate or renegotiate from a holistic, multi-issue position of strength the surrender of Developer Special Rights and Memberships.

Proposed Change or Language: Remove all applicable Declarant or Developer language. *All provisions that reference, benefit, or protect the Developer need to be deleted or changed to benefit Owners.*

Purpose of Proposed Changes: *Actually, transition from Developer control to homeowner control.*

Effect of Proposed Changes: Homeowner controlled Community.

Topic: Use Restrictions and Architectural Control

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): pp. 19 -29, Article VI, Use Restrictions and Architectural Control

Language in Document: See document.

Comments, Questions, Concerns: The document contains Declarant or Developer language. The Community is now under homeowner control. *The Developer unilaterally produced the document. The document was part of an adhesion or “take it or leave it” contract.*

Content deleted, such as Exterior Lights, can be addressed new documents created with Owner participation and approval.

Proposed Change or Language:

Remove all Declarant or Developer language. For example: Change “... approved by the Declarant, the Board or the ARC, ...” to “... approved by the Board or the ARC, ...” Change “The Declarant, during the Declarant Control Period and thereafter the ARC, ...” to “The ARC ...” Delete “Design for mail and newspaper boxes shall be furnished by Declarant.”

Add “Section X. Establishment of Architectural Committee. The Architectural Review Committee (ARC) shall be elected by Owners. The ARC may, but need not, include Owners with architectural, engineering, or similar professional backgrounds. The ARC shall consist of at least three (3), but not more than five (5), Owners, who shall serve and may be removed and replaced by Owners.

Add “Section X. Board or ARC Subjective Opinions. The Board or the ARC shall not impose its subjective opinions as to what is aesthetically attractive onto an Owner. An Owner shall be allowed to construct and/or modify an improvement, including yard decorations, in any manner such Owner believes is attractive and desirable, so long as it is in compliance with the Restrictive Covenants herein and not incompatible with existing homes and other improvements in the Community. The Board or the ARC shall not make a determination that is arbitrary, capricious, or discriminatory.”

Add “Section X. Limitations on Architectural Control Authority. The Board and ARC shall not impose restrictions upon Owners that are more stringent than those specifically set out in this Declaration.”

Add “Section X. Authority to Grant a Variance. The Board or the ARC may grant a variance only if there is good cause or justification for allowing the deviation and such variance will not have an adverse impact on the Community. Circumstances, such as topography, natural obstructions, hardship, or aesthetic or environmental considerations, may justify such a variance. All variances shall be documented and specifically identify the Lot or Unit, reasons and bases for the variance, to whom granted, and the decision makers. No variance shall (a) be effective unless in writing; (b) contrary to this Declaration; or (c) prevent the Board or the ARC from denying a variance in other circumstances.”

Add “Section X. Right to Challenge ARC Determination. An Owner shall have the right to appeal an ARC determination to the Board. An Owner shall also have the right to challenge an ARC determination by judicial proceeding.”

Add “Section X. Time Period for Approving or Denying Architectural Review Requests. In the event the Board or the ARC, fails to approve or disapprove any architectural review request within thirty (30) calendar days after said request has been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.” (Make a separate section for emphasis and clarity.)

Delete “Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant, the Board, or ARC shall be deemed sufficient.”

Add “Section X. Refusal or Approval Criteria. Refusal or approval of any plans, location or specification shall be based on (a) compliance with applicable Restrictive Covenants and (b) architectural harmony and compatibility. The determination shall take into consideration plans, specifications, Lot or Unit conditions, conditions and compatibility of Lots and Units nearby, architectural style, proportion, scale, and complimentary or similar use of materials, color, and design details, as well as the location and impact on adjacent properties.”

Add “Section X. Notice to Owners of ARC Determinations. The ARC shall notify Owners in writing within five (5) business days of any action, including variances, (*i.e.*, approval, partial approval, or disapproval) it takes on any individual Owners’ request under this Declaration. The application and all related documentation shall accompany the notice. The notice may be by electronic mail and shall be posted on an official Community Website permanently.”

Add "Section X. No Required Changes for "As-Built" Plan Consistent with Approved Plan. If the "as-built" request or plan is substantially compliant with the initial approved request or plan, the Board or the ARC may not require changes.

Add "Section X. No Fees and Assistance for Reviewing Requests. Owners shall not be directly charged any fees for processing architectural review requests, including costs for any professionals needed to review a request. All said processing costs shall be included in the Community Association's annual operating budget."

Add "Section X. Signs, Posters, Non-Decorative Flags, or Banners. An Owner may post or display noncommercial signs, posters, non-decorative flags, or banners anywhere on or in their property unless doing so is contrary to the protection of public health or safety or if the posting or display would violate a local, state, or federal law. No ARC request is required for posting or displaying the said items."

Add "Section X. Yard Decorations. An Owner may place lawn ornamentation, including, without limitation, such items as statuary, sculptures, bird baths and feeders, decorative garden flags, fountains, wind spinners, flowerpots with plants, and other decorative objects anywhere on their property. An item may consist of multiple, closely associated parts. Such items must be in keeping with the character of the design of the home and landscaping. No ARC request is required for the said items."

Add "Section X. Security System Components. An Owner may install any security system components anywhere on or in their property to monitor and protect their property so long as doing so does not violate another Owner's reasonable expectation of privacy. Said security system components, include, without limitation, cameras, motion sensors, motion activated spotlights, two-way audio mechanisms, and yard and window signs. No ARC request is required for the installation of the said items."

Add "Section X. Display of Religious Items. An Owner may display one or more religious items anywhere on or in their property. No ARC request is required for displaying the said items."

Section 2. Approved Plans. Paragraph D. Delete "Clotheslines are not permitted on any Lot." (North Carolina is a "Right to Dry" or "Solar Access" State.)

Section 5. Lot Maintenance. Change to read as follows: “Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. In the event the Owner fails to do so, then, after *thirty (30) calendar days' notice* from the Board, the Association or its designee may enter upon the Lot *after three (3) calendar days' notice for entry* and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass, and in such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Lot, including collection costs and such amounts shall be due and payable as an assessment. *Monies paid by the Owner shall be applied first towards the actual cost for removal or delinquent assessment, before being applied to any attorney's fees, third-party collection costs, or fines.* Such lien shall be enforceable by Court proceedings as provided by law for enforcement of assessment liens.” (Emphasis added only to show changes.)

Section 9. Statuary, Television Satellite Dishes and Antennas. Delete statuary in heading and body.

Delete Section 10. Exterior Lights.

Delete Section 14. Paragraph I. “No outdoor poles, clotheslines or similar equipment shall be erected or located upon any Lot.”

Delete Section 14. Paragraph P. “No decorative objects may be placed on any Lot without the written approval of the Declarant or the ARC.”

Section 14. Paragraph S. Change to read as follows: “Further, the Board or its designee, after *thirty (30) calendar days' notice*, may remedy the violation or perform any required maintenance or other activities, all at the expense of the Owner. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot as an assessment, including collection costs and a fifteen percent (15%) administrative fee and any reasonable attorneys' fees. *Monies paid by the Owner shall be applied first towards the actual cost of remedying the violation or delinquent assessment, before being applied to any administrative fee, attorneys' fees, third-party collection costs, or fines.*” (Emphasis added only to show changes.)

Add “Section X. Prospective Application of Rules or Guidelines. Amendments to any and all rules or guidelines, including, without limitation, Architectural Control Guidelines, Rules and Regulations, and Policies, shall apply prospectively only. They shall not require modifications to or removal of anything previously approved. There shall be no limitation on the scope of amendments and such amendments may eliminate requirements previously imposed or otherwise make the rules or guidelines less restrictive.”

Given said recommended additions and deletions, proposed language for Section 1. Building and Site Improvement:

Except as exempted in this Declaration, no dwelling, wall or other structure, including fences, shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an Architectural Review Committee (ARC). One copy of all plans and related data shall be furnished to the Board, or ARC for its records. Neither the Board, nor the ARC shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

Proposed language for Section 1 of Additional Design and Permitted Uses Provisions Applicable to Townhomes:

Only Townhomes or improvements related thereto as set forth hereafter shall be commenced, erected, or maintained upon the Townhome Lots. No Townhome Lot improvements shall be constructed unless first reviewed and approved by the ARC, as herein provided, for compliance with Motts Forest Design Standards. Any Townhome design must be consistent in exterior appearance to the existing Townhomes within the same section of Motts Forest. The ARC shall notify Owner if complete plans and specifications have not been received.

Delete Sections 2, 3, 4, and 5 of Additional Design and Permitted Uses Provisions Applicable to Townhomes.

Sections 9 of Additional Design and Permitted Uses Provisions Applicable to Townhomes. Delete "Disapproval of plans, location, specifications or details may be based upon any grounds, including purely aesthetic considerations which the ARC or Declarant, in its sole and uncontrolled discretion, shall deem sufficient."

Add "Section X. Owners' Right to Organize and Free Speech. An Owner or group of Owners may organize to discuss or address planned Community business, including Board elections or recalls, potential or actual ballot issues. Owners shall have the right to assemble in common areas or facilities for said business. There shall be no restrictions for Association political free speech, including showing signs regarding said political activity."

Add “Section X. No Prohibitions for Producing and Distributing Communications of Community-wide Interest. Owners shall have the right to organize petitions or letters of Community-wide interest and circulate or post them within the Community or on the official Community Association Website. Mailboxes may be used for distribution of leaflets or printed items of Community-wide interest.”

Add “Section X. Owner Participation and Approval for Rules, Guidelines, Policies, Procedures, and Official Community Website Use Terms and Conditions. *The creation of any and all rules, guidelines, policies, procedures, and official Community Website use terms and conditions including, without limitation, Architectural Control Guidelines, Rules and Regulations, and Policies by the Board or the ARC or any other committee shall be done only with Owner participation and approval.*”¹

¹PROVISO: The current unilateral Architectural Control Guidelines, Rules and Regulations, Policies, and procedures shall be superseded with new documents consistent with this Declaration. The said documents shall be created with Owner participation and approval.

Purpose of Proposed Changes: Address Owners’ concerns.

Effect of Proposed Changes: Declarant or Developer language removed, ambiguous provisions clarified, unreasonable restrictions removed, Owner participation and voice prioritized, and Community spirit enhanced.

Topic: Management, Accounting, and Operation

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): Topic omitted in document.

Language in Document: Language omitted in document.

Comments, Questions, Concerns: Management, Accounting, and Operation is not specifically and separately addressed in the document.

Proposed Change or Language:

Add an Article entitled “Management, Accounting, and Operation” containing, without limitation, the following content:

Section X. Annual Audits of Association Books and Records. An audit of the Association books and records shall be performed annually by an outside, independent Certified Public Accountant (CPA) and the results or audit report shall be made available to Owners by posting it on an official Community Website permanently and made available to Owners upon request.

(A Compilation, Review or Management Company produced financial information is unacceptable. A compilation is meaningless. It is limited to putting information into proper financial statement format without investigation or analysis. A review is a superficial or general investigation. It does not provide the high-level assurance of an audit.)

The CPA performing the audit shall have demonstrated knowledge and experience in homeowner association and non-profit corporation tax laws.

Section X. Fidelity Bonding. The Association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time.

As used in this section, the term “persons who control or disburse funds of the Association” includes, without limitation, those individuals authorized to sign checks on behalf of the Association, and the President, Secretary, and Treasurer of the Association. The association shall bear the cost of any such bonding. No person may serve as Treasurer unless so bonded.

Section X. Debit Cards. The Association and its Officers, Directors, employees, and agents may not use a debit card issued in the name of the Association, or billed directly to the Association, for the payment of any Association expense.

Section X. Accounting Standards. The Association financial statements shall strictly and completely comply with Generally Accepted Accounting Principles (GAAP) and the Financial Accounting Standards Board (FASB), Accounting Standards Codification (ASC), Section 972 dealing with Common Interest Realty Associations. All information required to be disclosed by GAAP shall be made known to Owners.

Section X. Financial Documents Line-Item Dictionary. A line-item title or Work Breakdown Structure (WBS) type dictionary shall be created, maintained, and made available to Owners for the Association financial documents that eliminates ambiguity, is easily understood by Owners, and identifies expense elements lumped or rolled up under one heading or line-item title. The said dictionary shall be made available to Owners by posting it on an official Community Website permanently and made available to Owners upon request.

Section X. Accounts and Financial Reports to be Created, Maintained and Made Available. Commencing at the end of the quarter, the following financial reports, without limitation, shall be prepared for the Community Association within 60 working days after the end of each quarter and posted on an official Community Website permanently and made available to Owners upon request:

1. An account statement reflecting all income and expense activity for the preceding period;
2. A statement reflecting all cash receipts and disbursements for the preceding period;
3. A variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
4. A balance sheet as of the last day of the preceding period;
5. A statement of Percent Funded for The Village at Motts Landing (Master), Townhomes, and Pamela's Place reserves; and
6. A delinquency report listing covering all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution). *The said report shall not specifically identify Owners who are delinquent.*

A copy of a quarterly financial report with the said items shall be made available at no charge to any Owner requesting a copy.

An annual report consisting of at least the following shall be prepared and made available for Owners' review within 75 calendar days after the close of the fiscal year:

1. A balance sheet;
2. An operating (income) statement; and
3. A statement of changes in financial position for the fiscal year.

Such annual report shall be prepared on an audited basis.

The following information or documents, without limitation, shall be prepared, maintained, and posted on an official Community Website permanently:

1. A long-term operating budget (covering the next five years);
2. A monthly and year-to-date income and expense "actual" versus "approved" budget;
3. A monthly and year-to-date Delinquency Report;
4. Monthly and year-to-date amounts for loss of revenue from Owners' dues that are waived, deferred, reduced, or otherwise not paid; and
5. Monthly and year-to-date cash flow statements.

Budget information shall include for each line-item budgeted amount (a) source(s) for estimated funds, (b) assumptions, (c) reasons and bases for each amount and (d) a specific explanation for variances over ten percent (10%). The long-term operating budget shall be updated annually.

Section X. Inspection of Association's Books and Records by an Owner. An Owner or any other person designated as an Owner's agent, attorney, or certified public accountant in writing signed by any such Owner shall have the right to inspect any and all records related to the operation of the Association as long as the Owner or Owner's agent provides written notice, the Owner's demand is in good faith and for a proper purpose, the Owner specifically describes the purpose and the records he/she wants to inspect, and the records are directly connected with the purpose.

Records that contain content about individuals shall be made available in a manner that would not identify or compromise the privacy of an individual, such as redacting personal or confidential information or providing aggregated or summary information.

The Association may withhold or redact information that is privileged under law, such as documents subject to attorney-client privilege or relating to litigation in which the Association is or may become involved, and confidential settlement agreements.

The Association shall provide an Owner a written explanation detailing the legal basis for withholding or redacting any requested records. The said explanation shall include, without limitation, a legal opinion with facts, law, analysis and references to State statutes and cases to support withholding or redacting any or all the requested records or not posting them on the official Association Website.

The Association shall offer the option of making books and records available to an Owner electronically via the Internet.

Association records are subject to Owner inspection permanently.

The Association shall provide records within ten (10) working days after receipt of a written request.

An Owner who is denied access or copies of Associations Books and Records the Owner is entitled to inspect, and copy shall have the right to file a lawsuit.

Any Association policies and procedures that are related to the inspection of its books and records by an Owner, such as a "Records Production and Copying Policy" prescribing compilation, production, and/or reproduction costs, shall be created with Owner participation and approval.

Any and all Association records shall be posted on an official Community Website permanently, and made available to Owners upon request.

Section X. Owners' Right to Inspect Underlying Documents or Materials Used to Prepare Association Financial Statements. An Owner shall be able to inspect any and all documents or materials used to prepare the Association's financial statements.

Underlying documents or materials, include, without limitation, the following: executed vendor, management and professional advisory or services contracts and options; a breakdown of Professional Services expenses; aggregate schedule, hours and compensation of employees for each cost center; delinquency reports; invoices; vouchers; statements reflecting all cash receipts and disbursements (Cash Flow Statements); general ledger; cancelled checks; check registers; bank statements; State and federal tax returns; information relating to any interest earned; information relating to any loans; information relating to any property taxes; information relating to any business license taxes; journals and ledgers.

Section X. Budgeting for and Allocating Community Association Expenses. The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense. In determining the amount of such reserve contribution, the Board shall consider the results of a professional independent Capital Reserve Study and Updates and the contribution required to fund the projected needs by annual contributions over the useful life of the asset. Operating accounts shall not be commingled with reserve accounts.

Section X. Independent Professional Capital Reserve Study and Updates. The Board shall commission an independent, professional recognized expert to prepare an initial full level 1 Capital Reserve Study. The said reserve study shall be updated at least every three years by an independent, professional recognized expert. The initial study and updates shall be posted on an official Community Website permanently and made available to Owners upon request.

Section X. Reserve Funding Method. Capital Reserves shall be funded by the moderate risk Threshold Funding method, a.k.a., Cash Flow Threshold or Pooling Threshold Method.

The use of a Community Enhancement Fee upon each transfer of title to a Unit for reserve funding or any other expense, shall require the approval of a supermajority of Owners.

Section X. Reserve Fund Strength Target. The minimum Percent Funded target for The Village at Motts Landing (Master), Townhomes, and Pamela's Place reserves shall be seventy percent (70%).

Section X. Management by Independent Management Company. The Association shall be managed by a competitively selected independent management company for day-to-day operations.

The Board of Directors shall not delegate its authority to make policy decisions concerning the Community Association. No Community Association or Board of Directors Powers and no Board of Directors duties as defined in the North Carolina Planned Community Act, this Declaration, and the Bylaws shall be delegated.

A management company shall not be paid any fee, bonus, incentive, or other amount based on the number or value of Owner violations of any governing documents it alleges or addresses.

The management company shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Community Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Community Association. The management company shall promptly disclose to the Board any financial or other interest that it may have in any firm providing goods or services to the Community Association.

Add Section X. Establishment of Management Committees. Any and all Management Committees that have and exercise the authority of the Board of Directors in the management of the Association shall be elected by Owners. Members of Management Committees may be removed and replaced by Owners.

Section X. Community Technology. The Community Association may make use of computers, the Internet, and expanding technology to facilitate Community interaction and encourage participation in Community Association activities. For example, the Community Association may create and maintain a Community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Community Association-sponsored activities. To the extent North Carolina law permits, and unless otherwise specifically prohibited in the Governing Documents, the Community Association may send notices by electronic means, hold Board or Community Association meetings and permit attendance and voting by electronic means, and send and collect assessments and other invoices by electronic means.

Section X. Official Community Website. The Association shall have an official Community Website. The Website shall be independent of any management company. The Website shall be self-managed by volunteer Owners serving on the Board of Directors or committees or by an employed manager.

The Website shall provide the capability for unrestricted, transparent, open, honest, respectful, and interactive communications between Owners and Association Directors, Officers, and Committee Members.

The Website shall have the following capabilities, without limitation:

1. Community discussion forum(s) for Owners to identify, explore or discuss any topic and resolve/solve important Community-wide issues/problems;
2. The ability for taking polls or surveys; and
3. A Categorized and searchable Asked Questions (AQs) database with Date, Inquirer First Name, Inquirer Last Name, Category, Question, Publish Date, Responder First Name, Responder Last Name, Responder Title and Response fields.

Freedom of speech shall be a priority for use terms and conditions and the type, content, and flow of communications.

Use terms and conditions shall be created with Owner participation and approval.

The following documents, without limitation, shall be posted on an official Community Website permanently and be made available to Owners upon request: Association plans, permits, warranties; Articles of Incorporation, including amendments; governing documents, including amendments; Architectural Control Guidelines; rules and regulations; policies; a membership list, including name, property address, mailing address, and e-mail address, but not including information an Owner has opted not to share; executed management agreements, leases, or other contracts; all executed contracts for work performed or to be performed; bids for work performed or to be performed; bids for materials, equipment, or services; written Board approval of vendor or contractor proposals or invoices; insurance policies; bills of sale or transfer for all property owned by the Association; accounting records; reserve account balances and records of payments made from reserve accounts; State and federal tax returns; minutes of all Association meetings, including Committee meetings; accurate, itemized, and detailed records of all receipts and expenditures; all audits, reviews, accounting statements, and financial reports of the Association; credit card statements for credit cards issued in the name of the Association; statements for services rendered; reimbursement requests submitted to the Association; all Association election materials, including, without limitation, the following: ballots, sign-in sheets, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, voting proxies, and the candidate registration list, candidate bios and statements explaining interest and background, and all other papers and electronic records relating to voting by Owners; maintenance records; inspection reports; and all other written records of the Association not specifically included in the foregoing which are related to the operation of the Association.

The Website shall have a full site and data backup in place.

Section X. Requirements for Contracts.

The Association shall not enter into a contract with a Director or Officer or with a business, business associate, or relative of a Director or Officer.

All relationships with and any products or services from any Community Management firm shall be by written contract. Community Management firm contracted services shall not include advice, consulting, or guidance relative to the application, meaning, interpretation, consequences or implications of any relevant law(s) or governing documents.

The maximum duration for a contract with a Community Management firm shall be two (2) years. The contract shall not have a provision for automatic renewal.

If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the Association that exceeds five percent (5%) of the total annual budget of the Association, including reserves, the Association shall obtain at least three (3) competitive bids for the materials, equipment, or services.

A written justification shall be posted on an official Community Website permanently for any sole source contracts or contracts not awarded to the lowest bidder. The justification shall contain all the reasons and bases for the contract award. Nothing contained herein shall be construed to require the association to accept the lowest bid.

Notwithstanding the foregoing, contracts for attorney, accountant, architect, engineering, and landscape architect services may be, but are not subject to the provisions of this section.

The Association shall contract only with properly licensed and insured firms with a good performance record.

Nothing contained herein is intended to limit the ability of an Association to obtain needed products and services in an emergency.

All Association executed contracts shall be posted on an official Community Website permanently. All applicable contract elements, including, without limitation, the following shall be posted: Statement of Work (SOW); Request for Proposal (RFP); design and construction specifications; drawings, blueprints, sketches; performance specifications; schedule requirements; payment requirements; acceptance criteria; bidding instructions; cost proposals; warranties; evaluation factors for contract award.

Section X. Execution of Agreements, Contracts, Deeds, and Leases. All Community Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two Board members or Officers.

Section X. Condition for Association Court Action. The Association shall obtain the affirmative approval of a majority of the Owners at a meeting of the membership at which a quorum is present before commencing any court action against any party in the name of the Association.

Section X. Limit on Attorney's Fees and Costs in Actions Against an Owner. The Association shall obtain the affirmative approval of a majority of the Owners at a meeting of the membership at which a quorum is present before incurring yearly total legal expenses greater than five thousand dollars (\$5,000) related to any action the Association initiates against an Owner or resident.

The \$5,000 limit shall be increased or decreased after the first year of the effective date of this Declaration based on the U. S. Department of Labor's Bureau of Labor Statistics Consumer Price Index for the Wilmington, NC metropolitan statistical area.

The said limit does not apply to the Declarant or Developer, builders, or individuals who are neither Owners nor residents.

Purpose of Proposed Change: Reduce the risk of financial shenanigans. Establish complete transparency.

Effect of Proposed Change: Association financials without irregularities, discrepancies, errors, and omissions. Knowledgeable, active, and engaged Owners. Effective and efficient operations. Elected Board that serves and is accountable to Owners.

Topic: Easements

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): pp. 8 -11, Article II, Easements

Language in Document: See document.

Comments, Questions, Concerns: Liens and encumbrances on common areas or facilities.

Add "Section X. Liens on Easements. Any easements not included within the boundaries of individual Owner Lots shall not be encumbered by any leasehold or lien."

Purpose of Proposed Change: Prevent liens on easements.

Effect of Proposed Change: Easements protected from liens. Sound fiscal management.

Topic: Levying and Collecting Assessments

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): pp. 13 -18, Article IV, Covenants for Assessments

Language in Document: See document.

Comments, Questions, Concerns: Right of security against foreclosure.

Proposed language for Section 3. Annual Assessments:

The Board of Directors shall adopt a proposed annual budget at least ninety (90) days before the beginning of each fiscal year. Within thirty (30) days after the adoption of the proposed budget for the Planned Community, the Board shall provide to all Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may *not* be ratified without a quorum. The budget is ratified unless at the meeting a majority of all the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted. The due date for payment shall be established by the Board. The Board shall have the authority to require that the Assessments be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or managing agent of the Association setting forth whether the Assessments on a specified Lot have been paid.

The Treasurer shall have primary responsibility for preparing the Community Association's budgets. To assist in the preparation of the annual budget, a Finance Committee shall be created and composed of elected Owners from different neighborhoods or areas to help develop a proposed budget. The committee shall have at least one Owner from each neighborhood or area with expense items that are to be solely paid by that neighborhood or area. The committee shall have at least one Owner from Pamela's Place and one Owner from the Townhomes to address expense items that are to be solely paid by Pamela's Place and Townhomes Owners.

Add "Section X. Limit and Conditions on Increase of Annual and Special Assessments. The Board may not impose an annual assessment that is more than ten percent (10%) greater than the annual assessment for the Association's preceding fiscal year or impose special assessments which in the aggregate exceed five percent (5%) percent of the budgeted gross expenses of the Association for that fiscal year without the affirmative approval of a majority of the Owners at a meeting of the membership at which a quorum is present.

The section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

1. An extraordinary expense required by an order of a court.
2. An extraordinary expense necessary to repair or maintain the common areas and facilities any part of them for which the Association is responsible where a threat to personal safety on the property is discovered.
3. An extraordinary expense necessary to repair or maintain the common areas and facilities or any part of them for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual budget.

Prior to the imposition or collection of an assessment under this section, the Board shall pass a resolution containing written findings as to the necessity of an extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to Owners with the notice of assessment."

Add "Section X. Fines and Suspension of Privileges or Services for Owner Violations of Declaration, Bylaws, or Rules and Regulations. Any fines or suspension of privileges or services for Owner violations of the Declaration, Bylaws, or Rules and Regulations shall be fair and reasonable. Fine and suspension of privileges or services schedules for violations shall be developed with Owner participation and approval.

A fine may not become a lien against an Owner's property.

A fine may be levied by the Board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a Committee of at least three Owners appointed by the Board. However, the fine may not exceed \$100 per violation, or \$1,000 in the aggregate.

The said Committee members shall not be Officers, Directors, or employees of the Association or a management company, or the spouse, or relative of a Director, Officer, or employee.

The role of the Committee is limited to determining whether to confirm or reject the fine or suspension levied by the Board. If the committee does not approve the proposed fine or suspension by majority vote, the fine or suspension may not be imposed. If the proposed fine or suspension is approved by the Committee, the fine payment is due five (5) working days after the date of the Committee meeting at which the fine is approved. The Association must provide written notice of such fine or suspension by mail or hand delivery to the Owner.

An Owner shall have the right to bring legal representation with him or her to the hearing and record the proceedings. The Owner may have authorized agents, representatives, observers, or fellow Owners of their choice attend the said hearing.

Add "Section X. Charges for Late Payment of Assessments. Any charges, including statement charges, for late payment of assessments shall be fair and reasonable. The amount of the said charges shall not exceed any actual administrative expenses incurred by the Association that are directly related to the late charges.

Add "Section X. Payment Plan Requirement. The Association shall adopt guidelines by which Owners may pay off delinquent regular or special Assessments or any other amounts owed the Association over a period of time without accruing additional monetary penalties (hereinafter referred to as a "Payment Plan Guidelines Policy"). Payment plans may incorporate any assessments that accrue during the payment plan period. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan.

In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan."

Add "Section X. Priority of Payment Schedule. Any payments made by an Owner toward a debt shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest."

Assessments shall be itemized or have a breakdown identifying all components, such as fees and costs of collection, attorney's fees, late charges, or interest.

Add "Section X. Criteria for Recording a Lien or Initiating Foreclosure.

Before filing a lawsuit for a money judgement, getting a lien, or foreclosing on a lien for any delinquent assessments, the Association shall offer Owners the opportunity to create a payment plan. The Association shall provide Owners a copy of a Payment Plan Guidelines Policy or standards for payment plans.

The Association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party, if so, requested by an Owner.

The Association may not use foreclosure to enforce a lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than twenty percent (20%) of the current value of the home or property in question. For delinquent assessments or dues in excess of twenty percent (20%) of the current value of the home or property in question and more than 18 months delinquent, the Association may use foreclosure. The said current value shall be the average of three (3) independent appraisals.

The decision to record a lien for delinquent assessments or initiating foreclosure on a lien shall be made by separate votes of both the Board and Owners in an open meeting. The Board shall approve the decision by a two-thirds vote of the Directors and Owners shall approve the decision by a two-thirds vote. The Board and Owners votes shall be recorded in the minutes of that meeting. The confidentiality of the Owner or Owners shall be maintained by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners."

Purpose of Proposed Change: Ensure fairness for any foreclosure action.

Effect of Proposed Change: Right of Owners security against foreclosure strengthened. Foreclosure action is for only significant unpaid assessments.

Topic: Interest Charges

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 16, Article IV, Covenants for Assessments, Section 10. Effect of Nonpayment of Assessments and Remedies of the Association.

Language in Document: See document.

Comments, Questions, Concerns: Unfair and unreasonable interest charges.

Proposed Change or Language:

Section 10. Effect of Nonpayment of Assessments and Remedies of the Association:

Change “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.” to “Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date.”

Add “Section X. Fair and Reasonable Interest Charges. Any Assessment or installment not paid when due shall bear interest at a rate no greater than the highest rate then being paid on savings accounts, excluding certificates of deposit, by savings and loan associations in the area of New Hanover County, North Carolina. In any event the annual interest rate shall not exceed five percent (5%).”

Purpose of Proposed Change: Prevent unfair and unreasonable interest charges.

Effect of Proposed Change: Reduce the risk of undue hardship on an Owner.

Topic: Owner's Right to Vote

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 12, Article III, Homeowners' Association, Section 4. Powers, Privileges, Rights and Obligations., paragraph D.

Language in Document: See document.

Comments, Questions, Concerns: Suspension of Owner's right to vote.

Proposed Change or Language:

Delete "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 sixty (60) days for an infraction of the published rules and regulations of the Association."

Add "A Lot Owner shall not be disqualified from voting for any reason in an election of Directors or on any matter concerning the rights or responsibilities of the Lot Owner."

Purpose of Proposed Change: Protect Owner's right to vote.

Effect of Proposed Change: Voting right protected.

Appendix F – Recommended Changes to Bylaws of The Village of Motts Landing Homeowners’ Association Adopted November 23, 2021

Topic:

Owner Name (Voluntary):

Priority for Owner (Low, Medium, High):

Location in Document (Page, Para, Article, Section):

Language in Document:

Comments, Questions, Concerns:

Proposed Change or Language:

Purpose of Proposed Change:

Effect of Proposed Change:

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Topic: Levying and Collecting Assessments, Charges for Late Payment of Assessments, Interest Charges, and Fines.

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): pp. 1-2, Article III, Members

Language in Document: See document.

Comments, Questions, Concerns: Abuse of power. Lack of due process. Unfair and unreasonable charges. Right of security against foreclosure.

Proposed Change or Language:

Delete Section 3. Assessments. and Section 4. Suspension of Privileges or Services. The said sections are covered in the Declaration. See pp. 13 -18, Article IV, Covenants for Assessments. See p. 32, Article IX, Lots Subject to Declaration and Enforcement, Section 2. Enforcement and Remedies., paragraph C.

See the following topics for recommended changes to Declaration: *Levying and Collecting Assessments, Interest Charges, Owner's Right to Vote.*

Purpose of Proposed Change: Prevent unfair and unreasonable and arbitrary charges, interest, fines, and suspension of privileges or services.

Effect of Proposed Change: Reduce the risk of undue hardship on an Owner.

Topic: Meetings

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): pp. 2-3, Article IV, Meetings

Language in Document: See document.

Comments, Questions, Concerns: Executive Sessions, and Virtual Meetings not addressed. Meetings being open. Quorum requirement too low, allowing a very small, unrepresentative group, to act for the entire Association.

Proposed Change or Language:

Add "Section X. Meeting Requirements in General for All Meeting Types. *But for legally justified or legitimate closed meetings, all meetings, including Regular Board, Special, and all Committee meetings, shall be open, with advance notice, a detailed agenda, the opportunity for interested owners to attend, record, observe, and speak and have written published minutes, including action items, as appropriate.*

A standing agenda item shall be actions taken since the previous meeting, including actions taken without a meeting.

All meetings may be conducted electronically, i.e., via the internet, Intranet, videoconference, teleconference, or any combination thereof if, and to the extent, permitted by law.

Genuine discussion shall occur before a vote is taken at any meeting. Decisions, motions, and votes shall not be scripted or pre-planned at "preliminary meetings" for public meetings. The Board shall provide a written justification for any pattern and practice of no Board member dissenting votes at open meetings.

Owners shall have an opportunity to voice their support or opposition on matters impacting them before a decision is made or a vote taken.

The minutes of any meeting shall be posted on an official Community Website permanently within thirty (30) calendar days of the meeting and made available to Owners upon request."

Add "Section X. Place of Meetings. The Community Association shall hold all meetings at Wilmington or New Hanover County in North Carolina within a ten (10) mile radius of the Community."

Add "Section X. Meeting Dates and Times. Meeting dates and times shall be set to facilitate or encourage Owner attendance."

Delete Section 1. Annual Meetings.

Add "Section X. Annual Meetings. The Board shall schedule regular annual meetings of Owners to occur within 90 days before or after the close of the Community Association's fiscal year, on such date and at such time and place as determined by the Board of Directors for the purpose of electing Directors, receiving reports, and transacting such other business as may properly come before it.

A quorum must be established and announced before taking any action."

Add "Section X. Membership List. At least thirty (60) days before every election of Directors, a complete alphabetical list of Members entitled to vote at said election with contact information of each, including residence, shall be prepared by the Secretary and posted on an official Community Website permanently and made available to Owners upon request.

The said list is for the purpose of Owners communicating with each other concerning the meeting."

Delete Section 2. Special Meetings.

Add "Section X. Special Meetings. Special meetings of the Association may be called by the President, by a majority of the Board of Directors, or by a written petition of Owners having five percent (5%) of the votes in the Association describing the purpose or purposes for which the special meeting is to be held. The purpose or purposes of the meeting shall be stated in the call, and only business mentioned in the call can be transacted at such a meeting. Notice of any special meeting called upon petition of the Owners shall be delivered to the Members within thirty (30) days after the Secretary receives the petition."

Add "Section X. Owner's Right to Vote. A Lot Owner shall not be disqualified from voting for any reason in an election of Directors or on any matter concerning the rights or responsibilities of the Lot Owner.

Add "Section X. Regular Board Meetings. The written published minutes of Regular Board meetings shall include, without limitation, Board members present, Board members absent, others present, who made and seconded what motion, the specific wording of each motion, who voted for or against what and why, who abstained from voting and why."

A vote or abstention for each member present shall be recorded in the minutes.

The Board must hear any and all Owner's comments on or questions about any particular issue before the Board prior to addressing or taking action on that issue. The Board must respond fully to questions asked.

Section X. Executive Sessions. The Board may adjourn to, or meet solely in, closed Executive Session to consider actions involving personnel, pending litigation, consulting with legal counsel, contract negotiations, enforcement actions, payment plans, matters involving the invasion of privacy of individual Owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board of Directors.

Prior to adjourning a Board Meeting for purposes of reconvening in executive session, the general nature of any business to be considered in Executive Session must first be announced at the open Board Meeting.

Any matter discussed in Executive Session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership. The said minutes shall include a general explanation of all expenditures approved in Executive Session.

Delete Section 3. Notice.

Add "Section X. Notice. Not less than 10 nor more than 60 days in advance of any Annual, Quarterly, and Special meetings and not less than 5 nor more than 30 days in advance of any Regular, Committee and ad hoc meetings, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the Lot Owner. The notice of the meeting shall state the date, time, place, and purpose of the meeting, a description of any matter or matters that shall be approved by the members, expected outcome(s), and the items on the agenda. Notices for virtual meetings shall also contain a link to join the meeting by computer, tablet or smartphone, a dial in phone number, access code, and link to get the virtual meeting client application. Waiver by a Member in writing of the notice, signed by the member before or after such meeting, shall be equivalent to the giving of such notice."

Delete Section 4. Quorum.

Add "Section X. Quorum. Fifty percent or more of all Members of the Association present in person or represented by written proxy, shall be requisite to and shall constitute a quorum as otherwise provided by statute or by these Bylaws. If, however, such quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote there and present in person or represented by written proxy shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called. If adjournment extends past thirty (30) days, notice of the date on which the adjourned meeting is to be reconvened shall be given as herein provided for regular meetings."

Purpose of Proposed Change: Address topics omitted. Increase quorum requirement.

Purpose of Proposed Change: Increase transparency. Address omitted topics. Increase quorum requirement.

Effect of Proposed Change: Transparency increased. Risk of a very small, unrepresentative group, to act for the entire Association reduced.

Topic: Composition of the Board of Directors

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 3, Article V, Board of Directors, Section 1. Composition.

Language in Document: See document.

Comments, Questions, Concerns: Non-Owner, non-resident Board members.

Proposed Change or Language:

Delete Section 1. Composition.

Add "Section 1. Composition. The affairs of this Association shall be managed by a Board of five (5) Directors, all of whom shall be resident Owners.

Members of the same household or Owners cohabitating at the same primary residence may not serve on the Board of Directors at the same time.

Any Owner who has criminal charges pending or was convicted of a felony or a crime involving moral turpitude may not serve on the Board of Directors."

Purpose of Proposed Change: Encourage independent Owner Board members of good character. Discourage voting blocks.

Effect of Proposed Change: All Board members are required to be Owners of good character and residents of the Community.

Topic: Consecutive Terms

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 3, Article V, Board of Directors, Section 2. Term of Office.

Language in Document: See document.

Comments, Questions, Concerns: Board members serving consecutive terms.

Proposed Change or Language:

Add "A vacancy on the board caused by the expiration of a Director's term must be filled by electing a new Board member. A Board member may not serve consecutive terms."

Purpose of Proposed Change: Reduce the risk of shenanigans.

Effect of Proposed Change: New responsive leadership with different perspectives and skills.

Topic: Limitations and Conditions on Powers of the Board

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): pp. 3 - 4, Article V, Board of Directors, Section 3. Powers.

Language in Document: See document.

Comments, Questions, Concerns: Abuse of power. Unilateral Board decisions. Owners voice and participation in decision making on matters impacting them.

Proposed Change or Language:

Add "Section X. Matters Required to be Approved by Owners. Notwithstanding the powers and duties of the Board of Directors in these Bylaws and as more fully provided in the Declaration, the following actions shall require the participation and/or approval by Owners:

- (a) Creating and amending Architectural Control Guidelines, Rules and Regulations, Policies, Payment Plans, and procedures;
- (b) Creating and amending fine and suspension of privileges or services schedules for violations;
- (c) Deciding to record a lien for delinquent assessments or initiating foreclosure;
- (d) Levying an annual assessment that is more than ten percent (10%) greater than the annual assessment for the Association's preceding fiscal year or special assessments which in the aggregate exceed five percent (5%) percent of the budgeted gross expenses of the Association for the fiscal year of the assessments;
- (e) Commencing any court action against any party in the name of the Association;
- (f) Incurring yearly total legal expenses greater than five thousand dollars (\$5,000) related to any action the Association initiates against an Owner or resident;
- (g) Creating and amending use terms and conditions of an official Community Website;
- (h) Creating, amending, and using a Community Enhancement Fee upon each transfer of title to a Unit for reserve funding or any other expense;
- (i) Creating and amending a budget line-item title or Work Breakdown Structure (WBS) type dictionary;
- (j) Establishing an Architectural Review Committee (ARC);
- (k) Establishing any Management Committees;
- (l) Creating Officer positions from outside the Board of Directors; and
- (m) Selecting Officers from outside the Board of Directors.

Purpose of Proposed Change: Prevent Board of Directors abuse of power and unilateral decisions on matters that are important to Owners.

Effect of Proposed Change: Owner participation in decision making.

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Topics: Duties, Budget Ratification, Statement Charges, Insurance Coverage, and Contact Information

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 4, Article V, Board of Directors, Section 4. Duties.

Language in Document: See document.

Comments, Questions, Concerns: Budget ratification without a quorum. Unreasonable charges for statements. Scope of liability insurance coverage.

Proposed Change or Language:

Section 4. Duties. Subsection (a). Change “within 30 days after adoption of any proposed budget, provide to all Lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum.” to “within 30 days after adoption of any proposed budget, provide to all Lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may *not* be ratified without a quorum.”

Delete “There is no requirement that a quorum be present at the meeting.”

Section 4. Duties. Subsection (b). Add “The amount of the said charges shall not exceed any actual administrative expenses incurred by the Association that are directly related to preparing the statement.” after “A reasonable charge may be made by the Board for such statement.”

Section 4. Duties. Subsection (e). Add voluntary committee members, i.e., “maintain liability insurance for the officers, Board, Directors, voluntary committee members, employees, and agents;”

Section 4. Duties. Subsection (f). Change to read as follows: “publish the names and contact information, including mailing, physical, and e-mail addresses, of all officers and board members of the Association within five (5) working days of their election.”

Add “Section 4. Duties. Subsection (g). publish the names and contact information, including mailing, physical, and e-mail addresses, of all committee members of the Association within five (5) working days of their being appointed or elected to a committee.”

Purpose of Proposed Change: Prevent a budget being ratified without a quorum. Provide liability coverage for voluntary committee members. Provide contact information for Committee members.

Effect of Proposed Change: Quorum required for budget ratification. Communications facilitated between owners, officers, board members, and committee members.

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Topic: Compensation of Directors

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 5, Article V, Board of Directors, Section 7. Compensation.

Language in Document: See document.

Comments, Questions, Concerns: A Director receiving payment in any way for holding office.

Proposed Change or Language: See document.

Section 7. Compensation. Change to read as follows: “Directors shall serve without compensation. No financial payments, including payments in the form of goods and services, may be made to any Director or to a business, business associate, or relative of a Director by the Association or any Association members for any reason.

Directors shall not receive any fees or other monetary benefits or have any ownership interests or profit-sharing arrangements with service providers used by the Association.

However, a Director may be reimbursed for actual expenses directly related to the performance of Association duties.”

Purpose of Proposed Change: Prevent conflict of interest and personal gain of Directors and Officers.

Effect of Proposed Change: Help prevent self-serving Directors.

Topic: Action Taken Without a Meeting

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 5, Article V, Board of Directors, Section 8. Action Taken Without a Meeting.

Language in Document: See document.

Comments, Questions, Concerns: Transparency. Board making unilateral decisions outside of Board meetings. Board President overstepping authority of the Board.

Proposed Change or Language:

Section 8. Action Taken Without a Meeting. Change to read as follows: "Section 8. Action Taken by the Board Without a Meeting. Any action permitted to be taken at a meeting of the Board may be taken without a meeting only if the action is taken by all members of the Board. The action shall be evidenced by a written consent signed by all directors before such action. The written consent shall specifically describe the action taken and the reasons and bases for taking the action.

Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.

A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

The signed written consent for a Board action taken without a meeting shall be filed with the Association records, posted on an official Community Website permanently, and made available to Owners upon request."

Purpose of Proposed Change: Clarify requirements for action taken without a meeting.

Effect of Proposed Change: Transparency and unanimous written consent of Board members for action taken without a meeting. Actions conforming to the law and the governing documents.

Topic: Board Appointment of a Nominating Committee

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 5, Article VI, Nomination and Election of Directors, Section 1. Nomination.

Language in Document: See document.

Comments, Questions, Concerns: A Board selected Nominating Committee that would screen and select candidates. Anyone that wants to run must be able to run under equal conditions. A Nominating Committee selected candidate may have an unfair process advantage.

Proposed Change or Language:

Section 1. Nomination. Change to read as follows: "The Board of Directors may not appoint a Nominating Committee. Pursuant to Robert's Rules of Order, nominations for elections shall be made from the floor, by the chair, and/or by petition at the annual meeting.

Anyone that wants to run shall be able to run under equal conditions.

Purpose of Proposed Change: Elimination of a Board selected Nomination Committee.

Effect of Proposed Change: Fair nomination process.

Topic: Records Transfer

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 5, Article VI, Nomination and Election of Directors.

Language in Document: Topic omitted in document.

Comments, Questions, Concerns: Efficient transition.

Proposed Change or Language:

Add "Section 3. Records Transfer. An outgoing Board member must relinquish all official records and property of the Association in his or her possession or under his or her control to the incoming Board within five (5) calendar days after the election.

Purpose of Proposed Change: Address omitted topic.

Effect of Proposed Change: Timely transition of records.

Topic: Regular Meetings

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 5, Article VII, Meetings of Directors, Section 1. Regular Meetings.

Language in Document: See document.

Comments, Questions, Concerns: Closed meetings.

Proposed Change or Language:

Section 1. Regular Meetings. Change to read as follows: “Regular Board Meetings. Regular Board Meetings shall fully comply with the Meeting Requirements in General for All Meeting Types, Place of Meetings, and Meeting Dates and Times sections of these Bylaws.

The written published minutes of Regular Board meetings shall include, without limitation, Board members present, Board members absent, others present, who made and seconded what motion, the specific wording of each motion, who voted for or against what and why, who abstained from voting and why.”

A vote or abstention for each member present shall be recorded in the minutes.

The Board must hear any and all Owner’s comments on or questions about any particular issue before the Board prior to addressing or taking action on that issue. The Board must respond fully to questions asked.”

Purpose of Proposed Change: Address topics omitted.

Effect of Proposed Change: Transparency increased.

Topic: Selecting Officers from Outside the Board of Directors

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 5, Article VIII, Officers, Section 1. Officers.

Language in Document: See document.

Comments, Questions, Concerns: The Board unilaterally selecting officers from outside the Board.

Proposed Change or Language:

Section 1. Officers. Change to read as follows: “The officers of the Association shall be a President and Vice-President, Secretary, and Treasurer all of whom shall be selected from the Board of Directors.

No officer may hold more than one office at the same time.

The Board of Directors may not create and fill other officer positions from outside the Board of Directors. If other officer positions from outside the Board of Directors are needed from time to time, they shall be created with the participation and approval of Owners. Officer positions from outside the Board of Directors shall be selected annually by Owners in the same manner as Directors and for two-year terms.”

Purpose of Proposed Change: Require the creation and filling of officer positions from outside the Board of Directors to be done with the participation and approval of Owners.

Effect of Proposed Change: The creation and filling of officer positions from outside the Board of Directors is done with the participation and approval of Owners.

Topic: Removal of Officers

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 6, Article VIII, Officers, Section 4. Resignation and Removal.

Language in Document: See document.

Comments, Questions, Concerns: Board removing Owner elected Officers.

Proposed Change or Language:

Section 4. Resignation and Removal. Change to read as follows: Any Officer, including an Officer from outside the Board of Directors, that is elected by Owners, shall only be removed by Owners. The Board may remove from office with or without cause any Officer selected by the Board. Removal of an Officer does not also remove such person from the Board of Directors if he or she is also currently serving as a Director of the Association.

Purpose of Proposed Change: Prevent the Board from removing elected Officers.

Effect of Proposed Change: Officer removal requirements mad clear.

Topic: Treasurer's Role and Responsibilities and Annual Audits

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 6, Article VIII, Officers, Section 6. Duties., Subsection (d) Treasurer.

Language in Document: See document.

Comments, Questions, Concerns: Delegation of authority. A Compilation, Review or Management Company produced financial information is unacceptable. A compilation is meaningless. It is limited to putting information into proper financial statement format without investigation or analysis. A review is a superficial or general investigation. It does not provide the high-level assurance of an audit.

Proposed Change or Language:

Section 6. Duties., Subsection (d) Treasurer. Change to read as follows: "The Treasurer shall perform the duties customarily performed by such officers of corporations. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; keep proper books of account; and shall prepare an annual budget and statement of income and expenditures to be represented to the membership at its regular annual meeting and deliver a copy of each to the Members.

No powers or duties of the Treasurer shall be delegated to a Community Management Firm hired by the Association. The Treasurer shall oversee any and all Association financial and accounting related work performed by a Community Management Firm.

The Treasurer shall oversee independent annual audits of Association books and records as provided in the Declaration."

Purpose of Proposed Change: Clarify Treasurer and Community Management Firm roles and responsibilities. Prevent financial shenanigans.

Effect of Proposed Change: High-level assurance of sound financial performance.

Topic: Board Members as Ex Officio Members of Committees

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 6, Article VIII, Officers, Section 6. Duties.

Language in Document: See document.

Comments, Questions, Concerns: Board member influence, dominance, and control of committees

Proposed Change or Language:

Section 6. Duties. Add at the end of the section “No Officer shall be an ex officio or full member of any non-management committee. Officers may liaison with committees.”

Purpose of Proposed Change: Prevent Board members from chairing or being members of committees.

Effect of Proposed Change: Board member participation prevented in the proceedings of committees. Conditions to foster committee member independent and critical thinking.

Topic: Compensation of Officers

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 6, Article VIII, Officers, Section 6. Compensation.

Language in Document: See document.

Comments, Questions, Concerns: An Officer receiving payment in any way for holding office.

Proposed Change or Language:

Section 6. Compensation. Change to read as follows: "Officers shall serve without compensation. No financial payments, including payments in the form of goods and services, may be made to any Officer or to a business, business associate, or relative of an Officer by the Association or any Association members for any reason.

Officers shall not receive any fees or other monetary benefits or have any ownership interests or profit-sharing arrangements with service providers used by the Association.

However, an Officer may be reimbursed for actual expenses directly related to the performance of Association duties."

Purpose of Proposed Change: Prevent conflict of interest and personal gain of Officers.

Effect of Proposed Change: Help prevent self-serving Officers.

Topic: Committees

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 7, Article IX, Committees

Language in Document: See document.

Comments, Questions, Concerns: Committee members of key committees serving at the pleasure of the Board vice Owners. Fair and open process for committee member selection.

Proposed Change or Language:

Add "The only standing or permanent committees of this Association shall be the Architectural Review Committee, the Finance Committee, and the Grounds, Facilities, and Infrastructure Maintenance Committee.

No standing or special or ad hoc committee may have subcommittees.

A duty of each standing committee shall be to receive concerns or complaints from Owners on any matter involving the Association's functions, duties, and activities within its area of responsibility. It shall respond to such concerns or complaints as it deems appropriate or refer them to another committee, Director or Officer of the Association as applicable.

All members of a standing committee are fiduciaries and may be removed for not serving as such.

No member of a standing committee may serve on any other standing or ad hoc committee except temporarily in an emergency.

No Board member shall be on a committee related to compliance, violations, or fines."

Section 1. Architectural Review Committee. Change to read as follows: "A standing Architectural Review Committee shall be elected by Owners. It shall be the duty of this committee to review and approve proposed plans and specifications for construction, improvements, or modifications upon Lots or Units in the Community, as provided in any Declaration."

Delete Section 2. Nominating Committee.

Add "Section X. Finance Committee. The Association shall have a standing Finance Committee elected by Owners as provided in the Declaration. It shall be the duty of this committee to do, without limitation, the following: Help prepare the annual budget, maintain financial records, create financial reports and provide advice on financial matters to the Board and other committees."

Add "Section X. Grounds, Facilities, and Infrastructure Maintenance Committee. The Association shall have a standing Grounds, Facilities, and Infrastructure Committee elected by Owners. It shall be the duty of this committee to advise the Board of Directors on and review, evaluate, and oversee all matters pertaining to the maintenance, repair or improvement of common grounds, facilities, and infrastructure.

Add "Section X. Management Committees. Any Management Committees or Committees that exercise the authority of the Board of Directors in the management of the Association shall be elected by Owners.

The membership of a Management Committee must consist of at least two members. The majority of the members on the management Committee shall be currently serving Directors.

The creation of a Management Committee and the delegation of authority to it does not relieve the Board of Directors or an individual Director of any responsibility imposed on such Board of Directors or individual Director by North Carolina law."

Add "Section X. Non-Management Committees. A Non-Management Committee shall not exercise any power or authority of the Board of Directors. A Non-Management Committee shall not have decision making authority or take action on behalf of the Board of Directors."

Add "Section X. Records Transfer. An outgoing committee member must relinquish all official records and property of the Association in his or her possession or under his or her control to the Board within five (5) calendar days after removal, resignation, election, or termination of the committee."

Purpose of Proposed Change: Clarify committee types, charters, and roles and responsibilities.

Effect of Proposed Change: Fair and open committee member selection process for key committees. Additional Board resources. Clarification of committee types, charters, and roles and responsibilities.

Topic: Indemnification of Committee Members

Owner Name (Voluntary): Al Bennett

Priority for Owner (Low, Medium, High): High

Location in Document (Page, Para, Article, Section): p. 7, Article X, Indemnification

Language in Document: See document.

Comments, Questions, Concerns: Lack of indemnification for committee members.

Proposed Change or Language:

Add committee members: Change “The Association shall have the power to indemnify any present or former Director, officer, employee or agent or any person who has served or is serving in such capacity ...” to “The Association shall have the power to indemnify any present or former Director, officer, committee member, employee or agent or any person who has served or is serving in such capacity ...”

Change “To the extent provided by law, the Association shall indemnify any and all of its officers and Directors against liability and litigation expense, ...” to, “To the extent provided by law, the Association shall indemnify any and all of its officers, Directors and committee members against liability and litigation expense, ...”

Purpose of Proposed Change: Provide indemnification coverage for committee members.

Effect of Proposed Change: Committee members indemnified.