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Melanie Arthur 27P
CARTERET COUNTY
MA Date 07/29/2005 Time 14:15:00
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NORTH CAROLINA, CARTERET COUNTY
The foregoing certificate(s) of Notary Public(s) is/are
certified to be correct. This instrument and this certifi-
cate are duly registered at the date and time and in
the Book and Page shown on the first page hereof.

Melanie Arthur, Register of Deeds
By *Sara Keis*
Vest/Deputy, Register of Deeds

DECLARATION OF RESTRICTIVE COVENANTS
FOR THE VILLAGE AT MAGENS BAY PUD

✓ Prepared by and Return to Richard L. Stanley

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STATE OF NORTH CAROLINA
COUNTY OF CARTERET

**DECLARATION OF RESTRICTIVE COVENANTS,
CONDITIONS AND STORMWATER EASEMENTS
FOR THE VILLAGE AT MAGENS BAY P.U.D.,
CEDAR POINT, NORTH CAROLINA**

These Restrictions and Easements executed this 29 day of July, 2005, by Kathryn Ferguson Gorham, Henry Gorham, DAB Enterprises, LLC, RBF Associates, LLC, and Cedar Point Associates, LLC, Emerald Isle, Carteret County, North Carolina; and all persons, firms and corporations hereafter acquiring certain designated lots within The Village at Magens Bay, P.U.D. located off Highway 24, Cedar Point, Carteret County, North Carolina, as shown on a Parker & Associates, Inc., consulting engineers plat dated 8-31-2004, as recorded in Map Book 30, Page 684, Carteret County Registry, said plat being incorporated herein by reference;

WITNESSETH:

WHEREAS, Kathryn Ferguson Gorham, Henry Gorham, DAB Enterprises, LLC, RBF Associates, LLC and Cedar Point Associates, LLC either now own or will hereafter be transferred ownership interest in the planned unit development of real property to be known as The Village at Magens Bay P.U.D., said real property consisting of Tracts 2, 3 and 4 as shown on a plat recorded in Map Book 30, Page 382, Carteret County Registry, with Henry Gorham and Kathryn Ferguson Gorham having acquired Tract 4 by deed recorded in Book 1041 at Page 83, re-recorded thereafter in Book 1043 at Page 408, with DAB Enterprises, LLC having acquired Tract 3 by a deed recorded in Book 1041, Page 82, and with RBF Associates, LLC having acquired Tract 2 by a deed recorded in Book 1041, Page 81, Carteret County Registry; and

WHEREAS, Henry Gorham, Kathryn Ferguson Gorham, DAB Enterprises, LLC, RBF Associates, LLC, and Cedar Point Associates, LLC, herein "Declarant", as the owners of Tract 2, 3 and 4 intend to subdivide the property into commercial, office, institutional or multi-family tracts or lots as part of the Declarant's project to be known as "The Village at Magens Bay P.U.D.";

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WHEREAS, Declarant intends to locate, construct and complete two access roads from Highway 24 over and across the property as shown on the recorded plat in Map Book 30, Page 684, Carteret County Registry, for use by the various tracts within The Village at Magens Bay P.U.D. for access to and from Highway 24, and Declarant further intends to locate, construct and complete swales and other stormwater facilities and equipment within The Village at Magens Bay P.U.D., for use by the various tracts for stormwater runoff, accumulation and infiltration;

WHEREAS, Declarant intends to impose certain restrictions regarding impervious surfaces, to allow for and impose easements for drainage, to allow for and impose easements for vehicular access, to require prior architectural approval for construction and development of certain designated tracts, and to otherwise preserve the values, attractiveness and environmental quality of said project, and in order to accomplish all of these purposes, Declarant has adopted these restrictions, covenants and easements;

NOW, THEREFORE, in order to provide for the foregoing, the Declarant does hereby covenant and agree with all persons, firms or corporations now owning or hereafter acquiring designated parcels within The Village at Magens Bay P.U.D., herein "Project", that the use of the lots or tracts in said Project is hereby made subject to the following restrictions, covenants, easements, terms and conditions, which shall run with said project and the lands therein, and be binding on the property owners within said project and their successors and assigns.

ARTICLE I - DEFINITIONS

As used throughout this Declaration, the following terms shall have the definitions set out herein as follows:

A. "Declaration" shall mean and refer to this Declaration of Covenants, Easements, Conditions, and Restrictions for The Village at Magens Bay P.U.D., and any amendments thereto as recorded in the Carteret County Registry.

B. "Declarant" shall mean and refer to Kathryn Ferguson Gorham, Henry Gorham, DAB Enterprises, LLC, RBF Associates, LLC, and Cedar Point Associates, LLC, and their heirs, successors in interests and assigns. "Declarant" and "Developer" as used herein are interchangeable and shall have the same definition.

C. "Lot" or "Parcel" shall mean and refer to any tract or plot of land within The Village at Magens Bay P.U.D. project as said project is more particularly described hereafter, which constitutes or will constitute after construction of improvements, a commercial, office, institutional, or multi-family site, as shown on the plats or plans for The Village at Magens Bay P.U.D., recorded in the Carteret County Registry.

D. "Owner" shall mean and refer to the owner of record of fee simple interest in any lot, tract or parcel in The Village at Magens Bay P.U.D. project, excluding those persons having such interests merely of a security interest for the performance of an obligation.

E. "Tract or Parcel" shall mean and refer to all of those tracts or parcels of The Village at Magens Bay P.U.D. as shown on the plat of Parker & Associates, Inc., recorded in Map Book 30, Page 684, Carteret County Registry, which are intended by Declarant for commercial, business, office, institutional, or multi-family uses and sites as authorized and permitted by the Town of Cedar Point under its Zoning, Subdivision, and Multi-Family Ordinances.

F. "Project" shall mean and refer to the multi-family, commercial, business, office and institutional project of The Village at Magens Bay P.U.D.

G. "Association" shall mean and refer to The Magens Bay Village Master Association, Inc., and its successors and assigns, the Master Association entity responsible for the overall administration, upkeep, and maintenance of the streets, stormwater facilities, and other common areas of The Village at Magens Bay P.U.D.

ARTICLE II - PROPERTIES SUBJECT TO THIS DECLARATION

1. Applicability. All of the properties as shown on the Parker & Associates, Inc. survey plat recorded in Map Book 30, Page 684, Carteret County Registry, are hereby expressly made subject to the operation of these Covenants.

2. Reservations. The Declarant reserves the right absolutely to change, alter or redesignate the allocated, planned, platted, or recorded use, area, or designation of any of the parcels shown on The Village at Magens Bay P.U.D. project as recorded aforesaid, so long as the Declarant retains title to the property involved, so long as any changes or alterations are in conformance with the Town of Cedar Point's Subdivision, Zoning, P.U.D. and Multi-Family Ordinances, including, but not limited to the right to change, alter or redesignate roads, utility and drainage easements, and to change, alter or redesignate such other present or proposed parcel or tract lines and facilities as may, in the sole judgment of the Declarant, be necessary or desirable.

ARTICLE III - ARCHITECTURAL CONTROL, INSPECTION AND USE RESTRICTIONS

Declarant shall have the responsibility of enforcing the restrictions set forth in this Article prior to the formation of the Committee, which upon appointment by the Declarant, shall assume and be responsible for enforcement. References in this Article to "Committee" shall mean Declarant until the Committee is appointed and references to "Declarant" shall include the Committee once it is appointed. The following building or architectural restrictions shall apply to each and every parcel of The Village at Magens Bay P.U.D. Project subject to this Declaration:

Section 1. Approval of Plans and Architectural Committee.

(a) No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to structures, buildings, landscaping, fences, walls, drainage, lot clearing, signs, antennas or other structures, shall be undertaken upon the parcels unless the plans and specifications therefore, showing the nature, proposed uses, kind, shape, size, height, materials, and location of the proposed improvements on each parcels, including but not limited to, buildings, decks, drives, drainage, landscaping, clearing, parking areas, plants, shrubs, trees (including trees to be removed), and any other permanent structures or changes to be made to the parcel, shall have been first submitted to the Committee and expressly approved in writing. No subsequent alteration or modification which would result in an exterior, structural change to the buildings, outbuildings, or significant changes to the landscaping may be undertaken on any of the parcels without the prior review and express written approval of the Committee.

(b) In the event the Committee fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Committee if they contain erroneous data or fail to present adequate information upon which the Committee can arrive at a decision.

(c) The Committee shall have the right, at its election, to enter upon any of the parcels during site preparation or construction, erection or installment of improvements, to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing standard industry methods and good quality materials.

(d) The approval of any such plans, specifications or other items submitted to the Committee pursuant to this Section shall not impose any liability or responsibility on the Committee or the Association with respect to either the compliance or non-compliance with any such plans, specifications, or other items (including any improvements or structures erected in accordance therewith) with applicable zoning ordinances, building codes or other governmental or quasi-governmental laws, ordinances, rules and regulations or defects in or arising from such plans, specifications or other items (including, without limitation, defects relating to engineering matters, structural and design matters and the quality or suitability of materials).

(e) Until such time as the Declarant notifies the owners of parcels within the project of its desire to appoint the Committee, the Declarant consisting of Richard Farrington, Jr., David A. Barefield, Henry Gorham and Kathryn Ferguson Gorham, shall serve as the Committee, and shall exercise the authority to approve plans and other matters set forth in this Article. At such time as Declarant notifies the parcel owners that they will appoint a Committee for the functions and purposes set forth herein, the Committee consisting of two to five persons, shall be appointed by the Declarant to each serve for a term of one year or until their successors have been duly appointed, in the event of the death, resignation or removal of a member of the Architectural Review Committee.

(f) With the submission of the plans and specifications, each parcel owner shall pay a non-refundable architectural review fee to the Declarant in such amount as may be established from time to time by the Declarant for the review of the plans and specifications, so long as the Declarant is acting as the Committee, and thereafter shall pay to the Committee such fee as may be approved from time to time for architectural review of the plans and specifications.

Section 2. Use Restrictions.

(a) All parcels within the project as defined herein shall be used for commercial, business, office, institutional and multi-family purposes only, in accordance with the Town of Cedar Point Zoning, Subdivision and Multi-Family Ordinances.

(b) Mobile homes, trailers, manufactured homes, modular homes, tents and all other structures of a temporary character are expressly prohibited from being placed, erected or maintained on any lot at any time. Provided, this prohibition shall not apply to shelters used by a Contractor or Builder during the construction of a building so long as the temporary shelter is not used at any time as a residence and said temporary shelter is immediately removed following completion of the building. As used herein, the term "mobile home" and "manufactured home" shall have those definitions and meanings set forth in G.S. 41-2.5, G. S. 143-143.9(6), and G.S. 143-145(7). Provided, that the width and length of a manufactured home, or mobile home shall be irrelevant and inapplicable as it is the intent of these covenants to prohibit manufactured homes, modular homes and mobile homes of all sizes regardless of length or width.

(c) Only stick built buildings shall be permitted on any of the parcels within the project. No buildings or structures of any kind shall be permitted on any parcel within the project unless first submitted to and approved in advance by the Architectural Control Committee.

(d) All fuel tanks or similar storage receptacles shall be prohibited from being exposed to view, and any such receptacles may only be installed within the main building, within a permitted accessory building, within a screened area, or buried underground. Provided, the Declarant shall be permitted to erect, place or permit the placement of tanks, equipment or other apparti within the project for uses related to the provision of sewage, water, pool, stormwater and similar utilities and uses within the project.

(e) Radio and television antennas and similar communication devices are prohibited unless the plans for the same are first submitted to and approved by the Architectural Review Committee. Nothing herein shall require the approval of television satellite dishes not exceeding eighteen (18) inches in diameter so long as the same are installed at such location or screened from view so that the same are not visible from the street or adjoining parcels.

Section 3. Minimum Building Requirements.

(a) No building shall be erected or allowed to remain on any parcel in said project unless the same shall meet the front, side, and rear setbacks of the Town of Cedar Point Zoning and Building Ordinances, or a minimum front setback of 20 feet, a rear setback of 20 feet, and a side setback of 10 feet, whichever is greatest.

(b) The exterior of all structures shall be completed within twelve (12) months after construction is commenced, except under such circumstances where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities. No building may be occupied or used unless it has been built substantially in accordance with the approved plans and specifications as approved by the Committee and a certificate of completion has been issued by the appropriate governmental inspector.

(c) Each parcel owner shall provide receptacles for garbage and trash in a screened area not generally visible from the street or common areas on which the parcel fronts or adjoining parcels. All fuel tanks shall be enclosed within a fence, wall or plant screen so that the same shall not be visible from the street or adjoining parcels, or the fuel tank shall be placed underground.

(d) Each parcel owner shall provide sufficient parking spaces in accordance with the Town of Cedar Point Zoning and Building Regulation Ordinances on the parcel and off the street prior to the use and occupancy of any building constructed on the parcel.

(e) With regard to the two access streets (Currituk Drive and Bodie Drive) as well as other stormwater ditches or swales along any parking areas, property perimeters, or other locations, each parcel owner shall be required to install a culvert and driveway over the swales or stormwater ditching for continuous flow of stormwater. Parcel owners shall pipe either of the treatment swales that receive stormwater runoff from pipes "A" and "D" as shown on the plan without prior approval of a stormwater plan revision from Division of Water Quality. No parcel owner shall fill in or alter any drainage system ditches or swales of the project without the written approval of the Declarant.

(f) No fencing shall be erected, placed or allowed to remain on any portions of the project unless the location, type of screening, screening design and other particulars are first submitted to and approved by the Architectural Control Committee. The Architectural Control Committee is authorized to permit decorative fencing or screening for landscaping, courtyard or similar decorative purposes, or to screen the perimeter of the project from adjoining highways or properties.

Section 4. Nuisances, Inoperable Vehicles, Etc.

(a) No unserviceable motor vehicles, appliances or other assorted junk and useless materials may be kept on any parcel. All parcels shall be maintained free and clear of rubbish and debris.

(b) No noxious or offensive activity shall be carried on upon any parcel, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to adjoining parcel owners or the businesses being conducted thereon.

(c) All buildings, structures and their appurtenances shall be maintained in a reasonable state of repair. In the event of damage to a building or other structure by fire or other casualty, the exterior of a building or structure shall be repaired within six (6) months or the building structure shall be demolished and the premises cleared of debris within six (6) months of the date the damage occurred.

Section 5. Signs. All signage shall be in accordance with the Town of Cedar Point's Signage and Zoning Regulations. All signage for all uses and buildings on any parcel within The Village at Magens Bay P.U.D. shall first be submitted to and approved by the Declarant or the Architectural Control Committee. The Declarant retains the right to prescribe the style, texture, size and design of all signage.

Section 6. Mailboxes. Each parcel's proposed use of mailboxes and newspaper receptacles shall first be submitted to and approved by the Architectural Control Committee. For each parcel having more than one single use thereon and requiring two or more mailboxes, one central location together with uniformity of design and configuration shall be used, subject to guidelines and design format approved by the Declarant or Architectural Review Committee.

Section 7. Subdividing. Except as to any parcel still owned by the Declarant, no parcel shall be further subdivided, or its boundary lines changed, except with the prior written consent of the Declarant. Likewise, no parcel shall be used as a street, road, lane, way or easement over which access may be obtained from another parcel within the project to adjacent properties without the specific written consent of the Declarant. In the event the Declarant hereafter determines it necessary

to alter or change any boundary lines of a parcel, then a revised plat of said project or section thereof subject to the alteration or change shall be recorded, and all such parcels thereon shall be subject to the terms and conditions of these covenants.

Section 8. Restrictions on Built-Up Area. In order to comply with the rules and regulations of the North Carolina Department of Environment and Natural Resources, Division of Water Quality, and other state agencies with regard to stormwater runoff, each Owner of a parcel shall be restricted to clearing, constructing and using as "built-upon" area the percentages or areas set forth herein, and the impervious surfaces restrictions for each parcel, including asphalt, concrete, gravel, brick, stone, slate, and coquina, but excluding uncovered wood decking or the water surface of swimming pools. The restrictions upon the built-upon area shall be as follows:

A. For multi-family residential uses proposed on the southern 8.4 acres adjoining Magens Bay Subdivision, the maximum allowable built-upon area for the 6 phased condominium project shall be 25% of the square footage of the combined 8.4 acres on which the condominiums are proposed to be built. This allotted amount includes any built-upon area constructed within the lot property boundaries for the specific use and that portion of the right-of-way between the front lot line and the edge of the pavement.

B. For commercial, business, office and institutional uses on the tracts along Highway 24, there shall be a maximum of 25% of the square footage of a particular tract for a low density stormwater project, or the tract shall have an engineered stormwater system approved by the Division of Water Quality for a high density project or parcel proposed for commercial, business, office or institutional use. This allotted amount includes any built-upon area constructed within the lot property boundaries and that portion of the right-of-way between the front lot line and the existing sidewalk.

This covenant is intended to insure continued compliance with the stormwater permit issued by the State of North Carolina for the multi-family residential projects proposed on the southern 8.4 acres of The Village at Magens Bay project. This covenant may not be changed or deleted without the consent of the State of North Carolina. The State of North Carolina shall be a third party beneficiary to the provisions of this paragraph and may enforce the same through proceedings, at law or in equity. However, Declarant reserves the right to amend these covenants to specifically list and set out any impervious area restrictions in order to comply with State of North Carolina and specifically Division of Stormwater requirements.

Section 9. Filling of Drainage Features and Compliance with Environmental Regulations.

No owner may fill in or pipe any roadside or parcel-line swale, except as necessary to provide a minimum driveway crossing. No one may pipe, fill in or alter any parcel line swales used to meet North Carolina Stormwater Management permit requirements. Each parcel owner is required to maintain at all times in a manner consistent with all State and Federal regulations, that portion of any ditching, drainage facilities, or stormwater system within the parcel lines of the owner's parcel as shown on The Village at Magens Bay P.U.D. plat.

The owner of a parcel shall be prohibited from altering any of the drainage features or portions of the drainage plan as shown on the approved drainage plan for the project except with the prior written approval of the Declarant as well as the Division of Water Quality, State of North Carolina.

Section 10. Vegetated Buffer and Roof Drains. Each parcel fronting on or abutting the southernmost property line as shown on the recorded plat adjoining Magens Bay Subdivision, said southern line being the closest boundary to the waters of Bogue Sound, shall be required to maintain a 30-foot wide vegetated buffer between all impervious surfaces and the southernmost property line.

The owner, builder or developer of any building placed on any of the tracts or parcels of the project shall be required to terminate all roof drains at least 30 feet from all ditches or canals that drain into the surface waters of Bogue Sound.

ARTICLE VII - STREETS, EASEMENTS AND STORMWATER

SYSTEM FEATURES AND IMPROVEMENTS

A. Streets. The two streets and accesses off NC Highway 24 unto the project property are known as Bodie Drive and Currituk Drive as shown on the recorded plat. Declarant reserves unto themselves a perpetual, alienable and releaseable easement and right-of-way on and over said drives for continued access to and from NC Highway 24 for any portions of the subject property. Both drives may be used for access to and from Highway 24 to any business, office, commercial or institutional developments placed on or other the northern portion of the subject property. Additionally, Declarant reserves the right to transfer and convey to the Grantees of the various tracts constituting the southern portion of the project hereafter developed into one or more residential condominium developments easements for access which shall be appurtenant to each tract conveyed for residential condominium development, and shall grant to the developer of each condominium project as well as the purchasers of each individual unit therein and the heirs, successors in interest and assigns of said purchaser, a perpetual easement over the two drives for access to and from Highway 24.

In the event any such easements are not included in deeds from the Declarant to the various tracts to be hereafter developed over the southern portion of the property for single-family condominium use, then the developer of each condominium project over the southern portion of the project property, as well as the purchasers of units within each condominium project, shall have a

perpetual easement appurtenant to said project and each unit for access to and from NC Highway 24 to each condominium property over the access drives.

As Currituk and Bodie Drives are private streets, Declarant reserves the right to convey the private streets to The Magens Bay Village Master Association, Inc., a non-profit master association already formed through the filing of Articles of Incorporation with the North Carolina Secretary of State. The Declarant and then the Association to which the street easements and right-of-ways are hereafter assigned, shall have the authority to establish, adopt and enforce annually a separate budget for all costs associated with the maintenance, upkeep, operation, replacement and related costs associated with the streets and roads, and the Master Association shall further have the authority to assess the costs related to the same among and between the various tracts or parcels of The Village at Magens Bay project, based upon the size each tract or parcel bears to the total area or size of the project as set forth in Paragraph G hereafter. The owner, developer or condominium association to which costs of maintenance, repair or operation are charged, shall have the continuing obligation to pay the same, and the Master Association upon default as to payment of the same, shall have the right to file liens and to foreclose the same for non-payment for the assessments and charges.

B. Utility Easements. The Declarant reserves unto themselves, a perpetual, alienable and releasable easement and right-of-way on, over, under, through and upon the ground with men and equipment to erect, maintain, inspect, repair and use electrical and telephone poles, wires, cables, conduits, sewers, water mains, pipes and other suitable equipment for the conveyance and use of electricity, telephone equipment, television, gas, sewage, water and community utilities or conveniences in and over the following areas:

1. With regard to each parcel hereafter sold and split out from the project property, in and over the front 10 feet of each parcel, 8 feet along each sideline of each parcel, and along the rear 10 feet of each parcel;

2. Along the northernmost 20 feet and the southernmost 20 feet of the perimeters of the project property as shown on the recorded plat, and along the easternmost and westernmost 10 feet of the project property;

3. 10 feet on each side of Currituk Drive and Bodie Drive.

Declarant further reserves the right to cut drainways for surface water within the utility easement areas reserved herein whenever action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. The easements reserved herein include the right to cut trees, bushes or shrubbery, to grade soils, or to take similar actions reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Declarant further reserves the right to assign said easements to one or more public or private utility companies for utility services to each parcel within the project properties in the future.

C. Street Lighting. Declarant reserves the right to subject the real property in this project to a contract with Carteret-Craven Electrical Cooperative or such other utility companies furnishing electrical services for the installation of underground electrical cables which may require an initial contribution and/or the installation of street lighting, and which may require a continuing monthly payment to the applicable electrical utility company by the owner of each building and/or parcel, until such time as assumed by either the Town of Cedar Point or the Master Association.

D. Drainage and Stormwater Easements. Declarant reserves unto themselves a perpetual, alienable, and releaseable easement and right-of-way for stormwater collection and drainage

purposes over those swales, ditches, pipes, sediment traps, catch basin areas, and other portions of the stormwater and sedimentation control as shown on the plans and plats recorded as referenced above. These easements are reserved for the collection, storage and movement of stormwater and surface waters within and without the project. Declarant reserves the continuing right to maintain, widen, replace, reconstruct, or modify all such stormwater and sedimentation easements and areas, and further reserves the right to transfer and assign all such easements to the Mogens Bay Village Master Association, Inc. for further maintenance, repair, replacement and management of the stormwater easement areas and system. The cost of such maintenance, repair and replacement shall again be provided for by the Master Association and the costs assessed between and among the various parcels of the project in accordance with Paragraph G thereafter.

Each tract or parcel owner hereafter shall be obligated to keep free and clear any and all drainage easements shown on the recorded plats, and each owner as well as each owner's tenants, guests and invitees, shall be prohibited from obstructing, blocking or impeding the flow of surface waters through said stormwater and drainage easements, and in the event any such easements are obstructed or blocked so as to impede the flow of water, then the Declarant, Master Association, or other owners of the project property shall have the right to clear said drainage easements and to recover from the party responsible the cost of clearing of such obstruction or blockage as a result of such deliberate acts or negligence of the responsible party.

E. Project Identification Signs and Entrance Areas. The Declarant reserves the right to place signs, fencing, brick or stucco walls, shrubs or other appropriate structures identifying the various sites, businesses, condominium projects, or uses within the project, on or near either Currituk or Bodie Drive, or along the northern perimeter or border of the project property. The Declarant

further reserves a continuing easement for access to and from said signs or entrance area features so as to repair, maintain, replace or reconstruct said signs or landscaping features.

F. Responsibility for Costs Relating to Streets, Stormwater Easements and Utility Easements. Until such time as The Magens Bay Village Master Association, Inc. has been conveyed either the streets, utility easements or stormwater and drainage easements, or the responsibility for maintenance and upkeep of the same has been assigned, it shall be the affirmative obligation of the Declarant, and the Declarant's successors and assigns, to continue to own, maintain and manage the streets, utility easements, and stormwater and drainage easements and facilities, all in accordance with the requirements of the North Carolina Department of Environment and Natural Resources (herein NCDENR), including any stormwater permits and soil erosion permits issued in conjunction therewith. Declarant, its successors and assigns, and the Master Association once responsibility has been so assigned, shall at all times provide the operation and maintenance necessary to ensure that the permitted stormwater detention easements and facilities function at ultimate efficiency, that the approved operations and maintenance plans are followed in their entirety and that maintenance occurs at the scheduled intervals, including but not limited to periodic scheduled inspections, sediment removal, mowing and revegetation of side slopes, the repair of eroded areas, the maintenance of side slopes in accordance with plans and specifications, the removal of debris and the unclogging of outlet structures, orifice devices, catch basins, piping, and the like, and access to the outlet structures must be made available at all times.

Additionally, it shall be the responsibility of the Declarant and its successors and assigns, as well as the Master Association once responsibilities have been assigned, to maintain current records of maintenance activities so that the same are available upon request to authorized personnel for the Town of Cedar Point and the North Carolina Division of Water Quality, with the records indicating

the date, activity, names of persons performing work, and all actions so taken. It shall further be the responsibility of the Declarant, the Declarant's successors and assigns, and then the Master Association once responsibility has been assigned, to provide through its annual budget sufficient revenues and funds for the continued maintenance, operations, upkeep, reconstruction, and repair of the streets, stormwater easements and facilities, and utility easements within and for the project property.

G. Shared Costs. Declarant first and then the Master Association once responsibility for the same have been assigned, shall establish, adopt and enforce annually a separate budget for all costs associated with the maintenance, upkeep, operations, utilities, repairs, and replacement costs associated with the project's streets, utility easements and facilities, drainage and stormwater facilities, as well as all common utilities associated therewith. Said separate budget shall reflect all costs associated with or related to the maintenance, upkeep, operation, management, repair, replacement or reconstruction of the streets, utility easements and facilities, stormwater easements and stormwater system for the project property, including but not limited to engineering fees, repair costs, utilities, insurance, cost of contractors or third parties, mowing, maintenance, capital reserves, projected cost of replacement, professional fees, etc. Annually, the Declarant or the Master Association shall prepare a budget as to all such common expenses relating to the streets, stormwater system and utility systems, and shall forward to each owner of a tract or parcel within the project, a copy of the proposed budget for review and input from each such parcel or tract owner a minimum of 30 days before final adoption of the budget by either the Declarant or the Master Association. After review by each parcel or tract owner and any input therewith, either the Declarant first or the Master Association once responsibilities have been so assigned, shall adopt a final budget setting forth the common expenses relating to the streets, common areas, utility easements and systems and

the stormwater easements and project stormwater system, and each tract or parcel owner to include the Declarant as to all unsold parcels, shall be required to pay the pro-rata portions of the common expenses, upkeep and maintenance, based upon the size each individual parcel bears to the total area or size of the project. With regard to condominium projects which may be hereafter developed over the southernmost 8.40 acres of the project, each condominium association shall be deemed to be the owner of a parcel subject to the duty to share or pay its pro-rata costs, and each association shall as part of its budget assess such common expenses among and between each condominium unit owner of that particular project or parcel.

The total area for The Village at Magens Bay project consists of 15.18 acres. It is contemplated by the Declarant that 8.40 acres along the southern portion of the property shall be developed into six separate condominium projects with separate developers and separate condominium owners association for each project. Accordingly, the six condominium projects to be developed on the 8.40 acres shall be responsible for 55.34% of the total common expenses related to or associated with the streets, utility systems and stormwater areas and facilities. Declarant proposes to either develop for commercial, business or institutional purposes the remaining 6.78 acres along the northern portion of the project property, and the 6.78 acres reserved for commercial, office or institutional uses, shall pay 44.66% of the common expenses associated with the streets, utility systems, and stormwater easements and facilities. Each residential condominium unit shall each pay 1/6 of the 55.34% interest the condominium developments are to pay with regard to the total common expenses relating to the streets, utility systems, and stormwater easements and facilities.

With regard to the remaining commercial acreage of 6.78 acres for which the owners of the commercial acreage shall pay 44.66% of the common expenses relating to the streets, utility

easements and stormwater planning and facilities, as each portion of the 6.78 acres are sold and divided, each separately sold or divided portion of the commercial acreage shall be required to pay its pro-rata portion of the 44.66% based upon the size each commercial tract or lot bears to the total area or size of the commercial acreage of 6.78 acres.

The Declarant and then the Master Association shall have the ultimate responsibility for assessing each owner of a tract or parcel within the project using the guidelines set forth herein, and the assessments of the common expenses as determined by the Declarant and/or the Master Association shall be binding upon all owners of parcels within the project hereafter.

H. Failure to Pay Prorata Share of the Common Expenses; Creation of Lien. Each owner of a tract or parcel within the project shall be required to pay its pro-rata share of the separate annual budget as adopted by the Declarant or the Master Association for the common expenses as required by these Covenants, and the Declarant or the Master Association shall provide that each parcel owner shall pay its pro-rata share through monthly, quarterly, or semi-annual payments. In the event any owner of a tract or parcel should fail to pay its share of the common expenses in a timely fashion, then the Declarant or the Association following ten (10) days written notice and failure to thereafter cure said default, shall have the right to file a lien against the parcel owner and such parcel, which lien may be enforced in accordance with Chapters 44, 44A and 47F of the North Carolina General Statute, including the right of the Declarant or the Master Association, or its assignee, to foreclose the lien for non-payment of the common expenses. Upon default by any parcel or tract owner, then the amount in default together with interest at 12% per annum, and the Declarant or Master Association's costs and reasonable attorney's fee, may be collected, by either including the same in any lien filed against the parcel and parcel owner, or in a lawsuit filed in the appropriate division of the General Court of Justice in Carteret County, North Carolina. The Declarant, Master Association,

or its Assignee is authorized to file in the Office of the Clerk of Superior Court an instrument suitable for recordation which shall set forth the name of the record owner of each parcel, the parcel description, the amount of the common expenses owed, the date the common expenses were due, the fact that the parcel owner has failed to pay said expenses, and the amount of the common expenses, costs and attorney's fees claimed. Following the recordation of the lien, the Declarant, Master Association or its Assignee is authorized to institute an appropriate action in the Court having jurisdiction over the subject matter and the parties, in order to collect the common expenses, interests, costs and attorney's fees, and to effect a sale of the parcel to satisfy the lien for the delinquent common expenses.

All sums collected by the Declarant, responsible Association or its Assignee for common expenses pursuant to the separate common expenses budget shall be used exclusively for the purpose of maintaining, operating, managing, and administering the streets, utility systems and equipment, and stormwater easements and facilities, insurance, upkeep, maintenance and replacement of said facilities and equipment associated therewith, replacement or reconstruction costs, capital reserves, costs of manpower, utilities, contracting, and professional fees, and other expenses as may be determined appropriate or necessary by the Declarant, Master Association, or their Assignee, using good business practices.

I. Easements of Enjoyment. Every owner of a parcel within the project as well as its agents, employees, invitees and guests, shall have the right and easement of enjoyment in and from NC Highway 24 over Bodie Drive and Currituk Drive, as well as the right to connect to and use all drainage easements, ditching, swales and other drainage system features, for the purpose of transporting and diverting all stormwater and surface water runoff to the various stormwater easement areas and facilities as shown on the recorded plats.

ARTICLE VIII - COVENANTS RUN WITH THE LAND

These Covenants and Restrictions shall run with the project and inure to the benefit of the parcel owners for a term of twenty-five (25) years from the date these Covenants are recorded. Thereafter, said Covenants shall be automatically renewed and extended for successive periods of ten (10) years each. These Covenants and Restrictions may be amended by an instrument executed by parcel owners who collectively are responsible for the payment of not less than 66 2/3's percent of the common expenses of the streets, utility systems and stormwater easements and drainage system in accordance with Article VII, Paragraph G. Until such time as all of the parcels have been sold by the Declarant, Declarant reserves the right to amend these restrictions as a matter of right and such amendments shall be binding on all parcel owners thereto and all future purchasers on and after the recordation of the amendments. No amendment adopted hereafter shall have the effect of making a building, structure or architectural plan non-conforming if the same has been originally approved by the Architectural Control Committee.

ARTICLE IX - VIOLATIONS

In the event of a violation or breach of any of these Covenants by any parcel owner or other person, the Declarant, or any one or more Owners of parcels in the project, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms and conditions set forth herein, and to prevent the violation or breach of these covenants, and to recover damages as compensation for a breach or violation of these covenants. Any failure to enforce any right, reservation, or conditions contained in these covenants, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach, or as to a breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement.

ARTICLE X - INVALIDATION

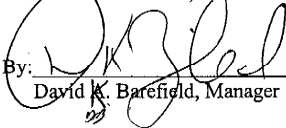
The invalidation by a Court or other public agency of any of the provisions of these covenants shall not in any way affect any of the remaining provisions, and the same shall remain in full force and effect.

ARTICLE XI - BINDING EFFECT

These Covenants and Restrictions shall be binding on the Declarant, each parcel owner, any Association hereafter formed for the purposes set forth herein, as well as the heirs, successors in interest and assigns, of the named parties herein.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the day and year first above written.

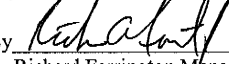
DAB ENTERPRISES, LLC

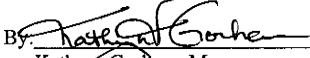
By: 
David K. Barefield, Manager

RBF ASSOCIATES, LLC

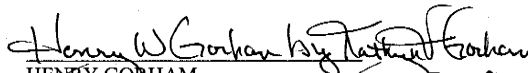
By: 
Richard Farrington, Manager

CEDAR POINT ASSOCIATES, LLC

By: 
Richard Farrington Manager

By: 
Kathryn Gorham, Manager


KATHRYN FERGUSON GORHAM


HENRY GORHAM P.O.A.

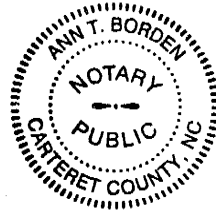
STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, Ann T Borden, a Notary Public for said County and State, certify that David A. Barefield, Manager, appeared before me and executed the foregoing instrument on behalf of DAB Enterprises, LLC

Witness my hand and seal this 26th day of July, 2005.

Ann T Borden
Notary Public

My Commission expires: 4-12-2010



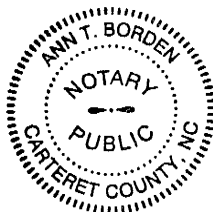
STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, Ann T Borden, a Notary Public for said County and State, certify that Richard A. Farrington, Manager, appeared before me and executed the foregoing instrument on behalf of RBF Associates, LLC

Witness my hand and seal this 26th day of July, 2005.

Ann T Borden
Notary Public

My Commission expires: 4-12-2010



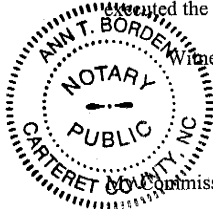
STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, Ann T Borden, a Notary Public for said County and State, certify that Kathryn Ferguson Gorham, Manager, and Richard Farrington, Manager, appeared before me and executed the foregoing instrument on behalf of Cedar Point Associates, LLC.

Witness my hand and seal this 26th day of July, 2005.

Ann T Borden
Notary Public

My Commission expires: 4-12-2010



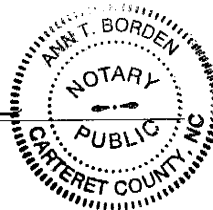
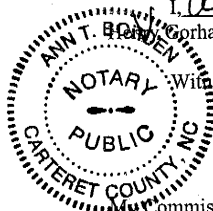
STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, Ann T Borden, a Notary Public for said County and State, certify that Kathryn Ferguson Gorham appeared before me and executed the foregoing instrument.

Witness my hand and seal this 26th day of July, 2005.

Ann T Borden
Notary Public

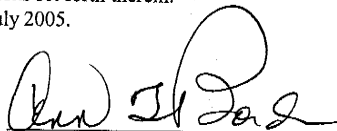
My Commission expires: 4-12-2010

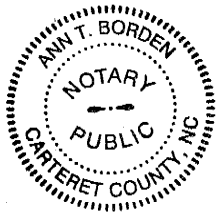


State of North Carolina
County of Carteret

Before the undersigned notary personally appeared Kathryn F. Gorham aka Kathryn V. Gorham individually and as attorney in fact for Henry Gorham who acknowledged the due execution of the foregoing instrument, and Kathryn V. Gorham did state that her authority for execution of the same for and on behalf of Henry Gorham as attorney in fact is set forth in Book 1113, page 122, Carteret County Registry, and that she did execute the same as attorney in fact for Henry Gorham pursuant to the express powers and terms and conditions set forth therein.
Witness my hand and notarial seal this 26th day of July 2005.

My Commission expires: 7-12-2010


Notary Public



Prepared by and return to Richard L. Stanley

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