

RESTATED AND AMENDED BYLAWS OF  
KENMURE PROPERTY OWNERS ASSOCIATION, INC.  
A NORTH CAROLINA NONPROFIT CORPORATION  
UNDER THE LAWS OF THE  
STATE OF NORTH CAROLINA

ARTICLE I  
GENERAL

1.1 Identity. These are the Bylaws of the KENMURE PROPERTY OWNERS ASSOCIATION, INC., a North Carolina Nonprofit Corporation, (the "Association"), the Articles of Incorporation (the "Articles") of which have been filed in the Office of the North Carolina Secretary of State. The Association has been organized under, and these Bylaws conform with, the North Carolina Planned Community Act, 47F, North Carolina Statutes (the "Act").

1.2 Principal Office. The principal office of the Association shall be located in Henderson County, North Carolina, within the boundaries of the Community.

1.3 Seal. The Association shall have a corporate seal in circular form having within its circumference the words "Kenmure Property Owners Association, Inc., North Carolina Corporate Seal. Not-for-Profit." However, when any authorized Officer of the Association signs a document that requires a Seal, it shall be sufficient if it states "Corporate Seal" or "Seal" adjacent to the Officer's signature block.

1.4 Definitions. The words used in these Bylaws shall be given their normal commonly used meanings. Capitalized terms shall have the same meaning as set forth in the Amended and Restated Declaration of Restrictive Covenants governing Kenmure (the "Declaration") as currently amended or restated, unless defined herein or the context otherwise clearly requires.

ARTICLE II  
Qualifications and Responsibilities of Members

2.1. Members. Each owner of a Residential Lot or Family Dwelling Unit (herein collectively called "Unit") in Kenmure, a subdivision located in Henderson County, North Carolina, shall be a Member of the Association, and shall remain a Member until he/she ceases to be a Unit owner.

2.2. More Than One Owner. When there is more than one Unit owner of a Unit, all such persons shall be Members of the Association.

2.3. Prohibition of Assignment. The interest of a Member in the Association assets cannot be transferred or encumbered except as an appurtenance to his Unit.

ARTICLE III  
Members' Meetings and Voting

3.1. Place. Meetings of the Members shall be held at the registered office of the Association, or such other place within Henderson County, North Carolina as may be designated from time to time by the Board.

3.2. Annual Meeting. The Members shall meet at least once each year as specified in the notice of such meeting given pursuant to Section 3.4. At each annual meeting the Members shall elect members of the Board (the "Directors") and may transact any other business properly coming before them.

3.3. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board, and shall be called and held within thirty (30) days after written request therefor signed by Members of the Association entitled to cast at least ten (10) percent of the total votes in the Association is delivered to any officer or Director of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

3.4. Notices. Notice of all meetings of the Members, stating the time and place, and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each Member. Such notice shall be in writing and shall be hand-delivered or sent by United States mail to the Members at the addresses of their respective Units and to other addresses as any Member may have been designated to the President or Secretary, at least twenty-one (21) days in advance of any annual or regularly scheduled meeting and at least seven (7) days in advance of any other meeting.

3.5. Quorums: Adjournment if no Quorum. A quorum shall consist of Members present, in person or by proxy, entitled to cast forty (40) percent of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present pursuant to Section 47F-3-109 (c) of the Act.

3.6. Votes: Association Shall Not Vote. The votes allocated to a Unit may be cast as they shall determine. The votes allocated to a Unit shall not be split but shall be voted as a single whole. Where there is more than one Unit owner of a Unit and said Unit owners shall designate the person authorized to vote for said Unit. The Association shall not be entitled to cast the votes allocated to any Unit owned by it.

3.7. Manner of Casting Votes. Votes may be cast in person or by proxy. A proxy must be in writing, be signed by all Unit owners of the Unit, or the Unit owner authorized to vote for that Unit, the votes of which are subject to the proxy, be given only to another Member or to a Security Holder in that Unit, and be filed with the Secretary before the meeting. A proxy shall be valid until revoked in writing by the Unit owners, or the authorized Unit owner of such Unit and shall be automatically revoked if the Unit owners (or authorized Unit owner) appear in person and vote at the meeting.

3.8. Required Votes. All questions shall be decided by a majority of the votes cast on the questions unless the provisions of applicable law, the Declaration or these Bylaws require a greater vote.

3.9. Action by Members Without Meeting. Any action that may be taken at a meeting of the Members may be taken without a meeting if such action is authorized in a writing setting forth the action taken and is signed by all Members or if such action is taken in any other manner permitted by law.

3.10. Prohibition of Cumulative Voting. There shall be no cumulative voting.

#### ARTICLE IV Directors

4.1. First Board. The initial Board shall consist of the seven (7) persons whose names are set forth in the Articles or elected at the first annual meeting, and successors to any thereof or additional Directors elected by the Members.

4.2. Number and Qualifications of Directors. The Board shall consist of three (3), five (5), seven (7) or nine (9) natural persons who are full time residents of Henderson County, NC, as determined at any annual meeting by the Members. Each Director shall be either a Unit owner or the individual nominee of a Unit owner which is other than an individual.

4.3. Election of Directors. At the first annual meeting of the Members, and at each subsequent annual meeting, the Members shall elect the Directors in accordance with Article V herein.

4.4. Term. The terms of the Directors shall be staggered so that at least one (1) but not more than three (3) Directors are elected at any one meeting and so that no Director's term is less than one (1) year nor more than three (3) years. Directors shall establish rules to implement the provisions of this section. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

4.5. Removal. Any Director may be removed, with or without cause, by a vote of the Members entitled to cast at least fifty percent (50%) plus 1 of the total votes in the Association, at a special meeting called for such purpose, and a successor may then be elected by the Members to serve for the balance of the removed Director's term.

4.6. Vacancies. Any vacancy in the Board arising by incapacity, death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the remainder of the term of his predecessor in office.

4.7. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given

to each Director personally or by mail, telephone, or E-mail, at least seventy-two (72) hours prior to the meeting.

4.8. Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request therefor signed by two (2) Directors is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours notice of such special meeting shall be given personally or by mail, telephone, or E-mail to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

4.9. Quorum: Adjournment If No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

4.10. Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration or these Bylaws.

4.11. Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.

4.12. Compensation of Directors Restricted. Directors shall receive no compensation for their services but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

4.13. Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the Declaration, the common law, applicable statutes, the Articles, these Bylaws and the Act, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of the Declaration, applicable law, the Articles, these Bylaws and the Act, and shall include but not be limited to those stated in this Article 4.13. The Board may:

(a) Prepare and provide to Members the reports required by 47F-3-103 (c) and other Sections of the Act, including in addition at least the following each year:

(i) A statement of any capital expenditures in excess of two percent (2%) of the current budget or Five Thousand Dollars (\$5,000.00), whichever is greater, anticipated by the Association during the current year and succeeding two (2) fiscal years.

- (ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.
  - (iii) A statement of the financial condition of the Association for the last fiscal year.
  - (iv) A statement of the status of any pending suits or judgments in which the Association is a party.
  - (v) A statement of the insurance coverage provided by the Association.
  - (vi) A statement of any unpaid assessments payable to the Association, identifying the Unit and the amount of the unpaid assessment.
- (b) Adopt and amend budgets for revenues, expenditures and reserves and to determine, and collect assessments for the Common Expenses from the Members.
- (c) Regulate the use of, and to maintain, repair, replace, modify and improve the Common Elements.
- (d) Adopt and amend rules and regulations, and to establish reasonable penalties for infraction thereof.
- (e) Enforce the provisions of the Declaration, the Articles, these Bylaws, and Rules and Regulations by all legal means, including fines, injunctions and recovery of monetary penalties.
- (f) Hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these Bylaws or the Act, to be done by the Board or the Members.
- (g) Hire and terminate agents and independent contractors.
- (h) Institute, defend, intervene in, or settle, any litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Unit owners on matters affecting Kenmure as shown on the plats recorded in the Henderson County, NC Register's Office.
- (i) Establish and dissolve and liquidate, from time to time, reserve accounts for any purpose, except as restricted by Section 10.6.
- (j) Borrow money for the maintenance, repair, replacement, modification or improvement of the roadways and other common property used by all Unit owners in Kenmure and to pledge and use assessments, and any and all other revenue and income, for such purpose, provided however, any emergency borrowings for the purpose of modification or improvement of the roadways or other common property used by all Unit owners in Kenmure which exceed a cumulative total of \$75,000 or 12.5% of the annual budget for that year shall be approved by the Members at the annual meeting or a special meeting called for the purpose of approving said borrowing.
- (k) Grant leases, licenses, concessions and easements through and over the roadways within Kenmure.

(l) Impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the evaluation, preparation and recordation of amendments to the Declaration.

(m) Provide for indemnification of the Association's officers and Directors and permanent committee members and maintain Officers' and Directors' liability insurance.

(n) Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Units) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of 30 days or longer.

(o) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to Units) for reasonable periods for violations of the Declaration, these Bylaws and the Rules and Regulations of the Association.

## ARTICLE V ELECTION OF DIRECTORS

5.1 Written Ballot. Election of the Board shall be by written ballot as hereinafter provided.

5.2 Appointment of Election Committee. No later than 60 days before each annual meeting, the Board shall appoint in writing a five (5) member independent Election Committee composed of Members who are not members of the Board. The Election Committee shall serve until a successor Election Committee is appointed. The Election Committee shall elect one of its members to be the chairperson. It shall be the duty of the Election Committee to:

- a. seek and validate nominations;
- b. under the direction of the Secretary of the Association, cause ballots to be mailed; and
- c. under the direction of the Secretary of the Association, receive, store and validate the ballots and tabulate votes. The Chairperson of the Election Committee shall announce the results of the balloting at the annual meeting. No member of the Election Committee shall be a candidate for the office of Director.

5.3 Statements of Candidacy. Any voting Member in good standing may file with the Election Committee a statement of his/her candidacy for election as a Director of the Association for the term beginning immediately following the annual meeting of the Association held after the filing of such statement. The candidate shall include with such statement a biographical statement and statement of objectives (including any facts that might be considered a conflict of interest) as established by the Board of Directors. Said statement may be subject to verification by the Election Committee.

5.4 Certification of Candidates. No later than 30 days before the annual meeting, the Election Committee shall certify to the Secretary of the Association that all candidates have timely submitted valid nominating statements, biographical statements and a statement of objectives.

5.5 Annual Meeting Notice. The Secretary of the Association shall cause notice of each candidacy, along with a summary of each candidate's qualifications, ballots, notice of the annual meeting, and proxies to be mailed to each Member no later than twenty-one (21) days in advance of the annual meeting. The biographical statement, statement of objectives, and other detailed information regarding each candidate will be available upon request to the Association and shall be available for review in the office of the Association.

5.6 Eligibility to Vote. In each election of directors, each Member in good standing 30 days in advance of each annual meeting is entitled to vote.

5.7 Ballots. Written ballots for the election of director shall:

(a) describe the Vacancies to be filled; and

(b) set forth the names of the persons who have duly become candidates for the office of director in an order as determined by the Secretary of the Association and the Election Committee.

5.8 Voting. Each Member shall receive a ballot on which he/she will have one vote for each property for which he/she is the voting member for each vacancy to be filled. Each Member shall note on the space provided on the ballot the number of properties he/she owns. The Member shall then vote for one candidate for each vacancy to be filled. The Election Committee shall verify the number of properties owned by each Member and allot each candidate chosen by that Member the same number of votes as that Member has properties. No fractional votes may be cast, and if voted, will not be counted by the Election Committee. Candidates are elected by a plurality of the votes where a majority is not possible. The greatest number of votes received wins the election with no run-off election required. In case of a tie, a recount will be made, and, if necessary, a run-off election will be held.

5.9 Vacancies and Terms. The Secretary of the Association shall certify to the Election Committee the number of three (3) year term vacancies to be filled at the election as well as the number, if any, of two (2) year and/or one (1) year terms to be filled at the election. The three (3) year term(s) will be filled by the candidate(s) receiving the highest number(s) of votes. Then the two (2) year term(s), if any, will be filled by the candidate(s) receiving the next highest number(s) of votes. Then the one (1) year term(s), if any, will be filled by the candidates receiving the next highest number(s) of votes.

5.10 Ballot Mailing and Counting. Unless the Election Committee proposes a different procedure that is adopted by the Board, the following procedure for ballot mailing and counting shall be followed. Completed ballots shall be placed in the envelope provided with the ballot, sealed and mailed. Proxies, if any, should be delivered or mailed separate from the ballots. The number of units owned, the unit and/or Residential Lot number, the names of the voting Member designated for such Residential Lot, the signature of the voting Member, and such other information which the Board may determine shall appear on each ballot. The ballots must be returned to the Secretary of the Association no later than 5:00 p.m. of the fifth (5<sup>th</sup>) calendar day preceding the annual meeting to be counted in the election of directors. The unopened ballots shall remain in the custody of the Secretary of the Association until the fourth (4<sup>th</sup>) calendar day preceding the annual meeting, when the envelopes will be turned

over to the Election Committee for counting. All procedures shall be taken in such a manner that the vote of any Member shall not be disclosed to anyone, other than the Election Committee. The Chairperson of the Election Committee shall notify the President of the Association and all candidates of the results of the balloting immediately after the Election Committee has certified the results of the count. The Election Committee shall announce the results of the count at the annual meeting. The terms of office of the director/directors declared elected shall commence immediately following said annual meeting.

5.11 Voting Record Retention. All ballots, and statements of candidacy shall be retained by the Secretary of the Association in a sealed envelope for a period of one (1) year, after which they shall be destroyed.

## ARTICLE VI Officers

6.1. Designation of Officers. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. Each officer shall be a Unit owner or the individual nominee of a Unit owner, which is other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association.

The Board may elect an assistant treasurer, one or more assistant secretaries and such other officers as in its judgment may be necessary.

6.2. Election of Officers. Officers of the Association shall be elected by the Board. Election shall be held annually at the first meeting of the Board held after the annual meeting of the Members, except that the first Board shall elect officers as soon as practicable after they are elected.

6.3. Term. Each officer shall serve until his successor has been duly elected and has qualified.

6.4. Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

6.5. Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the remainder of the term of his predecessor in office.

6.6. Powers and Duties of Officers.

(a) President. The President shall be the chief executive officer of the Association, shall have all of the powers and duties incident to the office of a president of a corporation, including but not limited to, the duty to preside at all meetings of the Board and of the Members, and the general supervision of officers in the management of the business and affairs of the Association; and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice President. The Vice President shall perform such duties of the President as shall be assigned to him/her by the President, and in the absence of the President shall perform the duties and functions of the President.

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the Members; shall give all required notices to the Directors and Members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all money and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

6.7. Execution of Agreements, etc. All agreements, deeds, mortgages, or other Instruments shall be executed by the President or Vice President with an attest by the Secretary (or an Assistant Secretary if appointed), or by such other person or persons as may be designated by the Board.

6.8. Certification of Declaration Amendments. When duly approved by the Members in accordance with the Declaration, the Act, or otherwise in accordance with the law, the President shall prepare, execute, and certify amendments to the Declaration. The Secretary shall promptly cause the amendments to be recorded at the Henderson County Register of Deeds Office.

6.9. Compensation of Officers Restricted. No officer, who is also a Director shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his or her duties.

## ARTICLE VII COMMITTEES

7.1 Road Maintenance Committee. The Road Maintenance Committee (RMC) shall be a Permanent Committee of Board members and Members that will have primary responsibility for road surfaces, shoulders, drainage, rights-of-way, signs, road markings and striping, and speed attenuation devices owned or controlled by the Association (the "Road Systems"). The KPOA Board shall appoint the Chairman, Directors and members of the RMC to perform the duties outlined in the RMC Policies and Procedures, the Rules and Regulations of the Association and the Bylaws of the Association as they relate to the Road Systems. The KPOA retains the right to appoint all members of the RMC, who shall serve at the discretion of the

KPOA Board. The KPOA Board shall assign such other duties and functions as deemed necessary and not inconsistent with the provisions of the Declaration.

*(Amended by vote of Property Owners December 6, 2004)*

7.2 Election Committee. The Election Committee shall be a Permanent Committee of Members and shall have the duties and functions described in Article V herein.

7.3 Architectural Review Committee. The Architectural Review Committee shall be a Permanent Committee and have the duties and functions as provided in Paragraph 7 of the Declaration. It shall adopt written rules and regulations of general application governing its procedures subject to the approval of the Board. The KPOA Board retains the right to appoint the chairperson and members of the Architectural Review Committee who shall serve at the discretion of the KPOA Board. The KPOA Board shall assign such other duties and functions as deemed necessary and not inconsistent with the provisions of the Declaration. The committee shall advise the Board regarding its actions.

*(Amended by vote of Property Owners December 6, 2004)*

7.4 Judicial Committee. The Judicial Committee shall be an independent, Permanent Committee of three or five Members and shall have duties and functions as provided by resolution of the Board and as provided in the Declaration, the Articles, these Bylaws, and the published Rules and Regulations of the Association. The Board shall appoint all members of the Judicial Committee. The Judicial Committee shall elect one of its members to be the chairperson. The Judicial Committee shall advise the Board regarding its actions.

7.5 Security Committee. The Security Committee shall be a Permanent Committee and shall have duties and functions as provided by resolution of the Board and as provided in the Declaration, the Articles, these Bylaws, and the published Rules and Regulations of the Association. The KPOA Board retains the right to appoint the chairperson and all members of the Security Committee, who shall serve at the discretion of the KPOA Board. The KPOA Board shall assign such other duties and functions as deemed necessary and not inconsistent with the provisions of the Declaration. The Security Committee shall advise the Board regarding rules and regulations necessary to promote safety and security for the Members.

*(Amended by vote of Property Owners December 6, 2004)*

7.6 Appointment. The Board shall have the power to establish permanent or temporary committees as it deems necessary for the benefit of the Association. The Board shall appoint and, with the exception of the Election Committee and the Judicial Committee, have the power to remove, all persons and chairpersons of the Permanent Committees, and any other committees formed by the Board. Members of all committees shall be Members in good standing. Except as provided in Article V, Section 5.2, therein with respect to the appointment of the Election Committee, all committees shall be appointed by the Board as soon as practicable after each annual meeting, to serve from the close of such annual meeting until the next annual meeting. The Board shall stagger terms where applicable on the various committees and limit terms of any such committee members to three (3) consecutive years.

7.7 Volunteer Committees. Kenmure has enjoyed a wealth of volunteers over the years. These include the Newcomers and Welcoming Committee, the Beautification Committee, the

Quality of Life Committee and others. It is critical to the Community that these volunteers be encouraged and supported. Consequently, the Board will continue these committees and membership will be on a volunteer basis. The Association will provide support to their efforts as appropriate.

#### ARTICLE VIII

##### Indemnification of Directors, Officers and Permanent Committee Members

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the North Carolina General Statutes, as now enacted or hereafter amended. In addition, the Association is authorized to maintain Directors and Officers and other liability insurance to provide coverage for all such persons.

#### ARTICLE IX

##### Fiscal Management

9.1. Depository. The Board shall designate a depository for the funds of the Association, and may change such depository. Withdrawal of funds from such depository shall be only by checks signed by any two (2) officers of the Association, or any other two (2) persons authorized by the Board.

9.2. Fidelity Bond. Fidelity bonds shall be maintained by the Association, in an amount determined by the board, covering each Director and Officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association.

9.3. Payment Vouchers. Payment vouchers shall be approved by the Board, provided that the Board may delegate such authority to any officer or managing agent of the Association.

9.4. Annual Audit. An audit of the accounts of the Association shall be made annually by the Board of Directors and its accountants, as it may designate, and a copy of the report shall be furnished to the Members not later than April 1 of the year following the year in which the report is made.

9.5. Fiscal Year. The fiscal year of the Association shall be the calendar year, provided that the Board, from time to time, by resolution, may change the fiscal year to some other designated period.

#### ARTICLE X.

##### Assessments

10.1. Preparation of Budget and Levying of Assessment. For each fiscal year, beginning with the fiscal year beginning January 1, 2003, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the expenses of the Association,

together with amounts considered necessary by the Board for reserves. After preparation and adoption of each such budget, the Board shall provide each Member with a copy in accordance with Section 47F-3-103 (c) of the Act. After ratification of the budget by the Members, the Board shall give each Member notice of the assessment made against that Member's Unit based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice.

10.2. Special Assessments. In addition to the assessments levied pursuant to Section 10.1., the Board, in its discretion, may levy special assessments at such other and additional times as in its judgment are required for:

(a) Maintenance, repair, restoration and reconstruction of the roadways and other Common Elements within Kenmure.

(b) Modifications, improvements, and additions to the roadways and other Common Elements, provided, however, that any such special assessment for these purposes involving an expenditure in excess of One Hundred Thousand Dollars (\$100,000) shall be first approved by the Members entitled to cast at least fifty percent (50%) plus one (1) of the total votes in the Association at a regular or special meeting of the Association.

(c) Payment of costs and expenses incurred in curing defaults pursuant to Sections 11.1. and 11.3. hereof.

Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the Members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

10.3. Obligation of Members to Pay Assessments: Amount of Levy. Each Unit owner shall be personally and severally liable for the Annual Assessment, any special assessments and the Common Expenses that are levied against his/her Unit while a Unit owner. Each Unit shall be assessed in accordance with that schedule as authorized by the Declaration and any amendments thereto.

10.4. Assessment: A Lien. Every assessment shall constitute a lien upon each Unit assessed in accordance with the Declaration.

10.5. Payment of Assessments. Assessments shall become due and payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment and in accordance with the Declaration. Payments shall be made to the Association, or as the Board may from time to time otherwise direct.

10.6. Funds and Reserves. All sums collected by the Association from assessments, or otherwise, shall be accounted for as follows:

(a) Reserve Fund for Re-paving Roads. To this fund shall be credited all sums collected for the purpose of re-paving the roadways within Kenmure for which the Association is responsible and maintenance of the rights-of-way incidental to such re-paving, and shall not be used for any other purpose.

(b) Reserve Fund for Repairs and Replacements. To this fund shall be credited all sums collected for the purpose of effecting repairs and replacements to other Common Elements within Kenmure for which the Association is responsible, and shall not be used for any other purpose.

(c) General Contingency Reserve Fund. To this fund shall be credited all sums collected to fund a reserve to provide a measure of financial stability during period of special stress, and may be used to meet deficiencies from time to time as a result of delinquent payments of assessments and other contingencies.

(d) Operating Fund. To this fund shall be credited collections of assessments for all expenses for the current year and shall not to be credited to either of the above reserve funds except as provided in the Declaration.

10.7. Failure to Prepare Budget and Levy Annual Assessment: Deficiencies in Procedure. The failure of the Members to ratify any budget or the failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the Members obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 10.1., each Member shall continue to pay the assessment then previously levied pursuant to Section 10.1., in the same amount and at the same time as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of Members to pay such assessment.

10.8. Assessment Roll: Certificate. All assessments shall be set forth upon a roll of the Units, which shall be available in the office of the Association for inspection at all reasonable times by Members and Security Holders, and their duly authorized representatives. Such roll shall include, for each Unit, the name and address of the Member or Members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Unit owner, or his authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against his Unit. The certificate shall be furnished within seven (7) business days after receipt of the request and shall be binding upon the Association and all Unit owners. For such certificate a reasonable fee may be charged by the Board.

10.9. Default and Enforcement. If any assessment, or installment thereof, remains delinquent for ten (10) days, then that assessment, and all other assessments then a lien against that Unit, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided by Section 47F-3-116 of the Act. In addition to the foregoing, and without waiving its lien, the

Association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the Members so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees, with interest thereon at the same rate as charged on the assessments being collected from the dates incurred until paid. All such fees, late charges, attorneys fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

10.10. Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all delinquent sums shall bear interest at the rate set forth in the notice levying the assessment, not exceeding the rate of interest allowed by the Act, from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by the Act. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

10.11. Common Expenses. Common Expenses shall mean and include all sums incurred by the KPOA as necessary for the operation of Kenmure as a planned community or declared Common Expenses by these Bylaws or the Declaration, and shall include, without limitation, the following: premiums for any and all Insurance maintained by the Association, including any deductible or coinsurance amount not covered by Insurance; utility charges not charged directly to Unit owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 4.13(h) hereof; deficits remaining from any prior assessment period; the cost, including fees and interest, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VIII hereof.

## ARTICLE XI

### Enforcement, Suspension of Privileges, Fines and Penalties, Reviews

11.1 Enforcement of Covenants. Each person to whose benefit this Declaration inures, including the KPOA, and the Developer, may proceed at law or equity to prevent the occurrence, continuation or violation of any provisions of the Declaration, and the court in such action may award the successful party reasonable expenses in prosecuting such action, including attorney fees.

11.2. Suspension of Privileges. After notice and an opportunity to heard in accordance with Section 11.4, below, the Board may suspend all voting rights, if any, and all rights to use the Common Elements, of any Lot Owner for any period during which any Annual Assessment against such Lot Owner remains unpaid, or during the period of any continuing violation by such Lot Owner of the provisions of this Declaration, the Bylaws or the published Rules and Regulations. The right of ingress and egress of a Lot Owner to his/her Lot or Family Dwelling Unit shall not be affected by any suspension of privileges.

11.3. Fines and Penalties. In accordance with Sections 47F-3-102 (11) and (12) and 47F-3-107.1 of the Act, the Board may impose penalties for violations of the provisions of the Declaration, the By-laws and the published Rules and Regulations, after notice and an opportunity to heard in accordance with Section 11.4, below. Those penalties may include, but are not limited to, suspension of rights to use the Common Elements, and reasonable fines.

11.4. Enforcement Procedures. In accordance with Section 47F-3-107.1 of the Act the Board shall not suspend privileges or impose a fine or charge for damages against a Lot Owner unless and until the following procedure is followed:

(a) Demand. Written demand to cease and desist from an alleged violation of the Declaration, Bylaws, or Rules and Regulations shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is continuing one, or a statement that any further occurrence of the same violation may result in the imposition of sanction, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances that, in the Board's sole determination, pose a danger or nuisance to safety or property. Charges for late payments under Paragraph 35 of this Declaration are not to be regarded as fines that warrant a hearing under this subparagraph.

(b) Notice. Within twelve (12) months of such demand as stated above, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation is subsequently repeated, the Board may impose a fine or suspend privileges by giving the violator written notice. This notice shall state: (i) the nature of the alleged violation; (ii) the amount of the fine or privileges to be suspended; (iii) that the violator will have the opportunity to be heard by requesting within ten (10) days from the date of such notice, a hearing before the Judicial Committee to contest the fine; (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (v) that all rights to be heard or to have a fine or suspension of privileges reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(c) Hearing. If the hearing is requested, it shall be held before the Judicial Committee and the violator shall be given a reasonable opportunity to be heard. The Judicial Committee shall render its final decision regarding imposition of the fine or suspension of privileges no later than five (5) days after the hearing and inform the Board of its decision. The Board shall notify the violator of the Judicial Committee's decision in writing, including the date of that decision and a statement that all rights to appeal the decision to the Board are waived if a written notice of appeal is not delivered to the Board within fifteen (15) days of the date of the Judicial Committee decision. The notification letter shall also inform the violator that fines for violations that occur beyond five days after the decision by the Judicial Committee shall not be suspended during the appeal process and that the notice of appeal must state the reasons why the violator is appealing the decision.

*(Amended by vote of Property Owners December 6, 2004 & December 5, 2005)*

(d). Appeal. The Board is not required to take testimony or have the violator present during the appeal process, but shall review the record created during the hearing before the Judicial

Committee. A final decision of the Judicial Committee shall be affirmed unless the Board review determines from the record that the procedures specified in the Act, the Declaration, Bylaws and/or the Judicial Committee Procedures and Rules were not properly followed, or for any other reason the violator did not receive a fair hearing. If, after its review of the record, the Board determines that the violator did not receive a fair hearing, the Board may vacate or modify the prior decision of the Judicial Committee or remand the case to the Judicial Committee for further consideration and another hearing to determine if fines or suspension of privileges should be imposed.

*(Amended by vote of Property Owners December 6, 2004 & December 5, 2005)*

11.5. Injunction. The KPOA may obtain a temporary restraining order, injunction or similar relief, for any violation of the provisions of the Declaration, Bylaws or Rules and Regulations without first using the procedure established by Section 11.4 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

11.6. Recovery of Attorneys Fees and Costs. In any proceeding arising because of an alleged violation by a Member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at the higher of (1) 4% over the prime commercial lending rate announced by the Wachovia Bank and Trust Company, N.A. at the time the costs are incurred and (2) the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

11.7. Nonwaiver of Covenants. The failure of the Association or of any Member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, or the rules and regulations, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a Member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

11.8. Assessment Liens. Assessments liens shall be enforced pursuant to Article X hereof.

## ARTICLE XII. Rules and Regulations.

12.1 By the Board. The Board, including the first Board, may promulgate from time to time such rules and regulations as it deems reasonable and necessary for the operation of Kenmure as a planned community, including without limitation, covenant enforcement, security, garbage collection, traffic control and the administration, management, operation and use of the roadways, and any other Common Elements within Kenmure, so as to promote the common use and enjoyment thereof by Unit owners and occupants and for the protection and preservation thereof.

12.2 By the Association. Any such rule or regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by a majority vote of Members at an annual or special meeting of the Members. Any such act of

the Members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

12.3 Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Unit owners, occupants and Units, but need not be equally and uniformly applicable if it is determined that such unequal or non-uniform application is in the best interest of the Association or if equal and uniform application is not practicable.

12.4 Copies Furnished. Copies of all such rules and regulations and any amendments thereto shall be furnished to all Members, and a copy shall be posted or otherwise made available to Members at the office of the Association. However, failure to furnish, or post, or make available, such rules or regulations shall not affect in any way their validity or enforceability.

ARTICLE XIII  
Parliamentary Authority.

Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when not in conflict with these Bylaws or the Articles, or any statutes of the State of North Carolina applicable thereto. The chairman of the meeting shall have the authority to appoint a Parliamentarian.

ARTICLE XIV  
Compliance with the Act; Conflict; Severability.

These Bylaws are established in compliance with the Act, the Declaration and amendments thereto. In the case of any conflict between the provisions of these Bylaws and the Act, or the Declaration, the Act or the Declaration shall control. If any term, provision, limitation paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

ARTICLE XV  
Amendment of Bylaws.

These Bylaws may be amended by the affirmative vote of a majority of the votes entitled to be cast by Members, in person or by proxy, at the annual meeting or a meeting called for that purpose, provided that, those provisions of the Bylaws that are governed by the Articles, the Declaration or the Act may not be amended except as provided by the Declaration, the Act, or other applicable law.

ARTICLE XVI  
Notices.

Whenever in the Declaration or these Bylaws it shall be required or permitted that notice or demand be given or served on the Association or a Unit owner or a First Mortgagee or other party entitled to notice, such notice or demand shall be given in writing by registered or certified mail, postage prepaid, to the respective addresses as hereinafter set forth. All notices or demands provided under the terms of the Declaration or these Bylaws shall be effective when actually received by a party entitled to notice or when attempted to be delivered as authorized above. The addresses of a party entitled to notice may be changed, from time to time, by either party serving notice as above provided:

UNIT OWNER OR  
FIRST MORTGAGEE AT: THE ADDRESS GIVEN AND ON FILE WITH  
THE ASSOCIATION.

ASSOCIATION: Kenmure Property Owners  
Association, Inc.  
10 Kenmure Drive  
Flat Rock, NC 28731

IN WITNESS WHEREOF, the undersigned President of the Kenmure Property Owners Association certifies that these Restated and Amended Bylaws have been duly approved by the Members of the Association in accordance with the Bylaws at an Annual Meeting of the Association and has executed these Restated Bylaws this 6<sup>th</sup> day of December, 2004.

Kenmure Property Owners  
Association, Inc.

\_\_\_\_\_  
President

(Corporate Seal)

Attest:

\_\_\_\_\_  
Secretary

STATE OF NORTH CAROLINA  
HENDERSON COUNTY

I, \_\_\_\_\_, Notary Public for said County and State, certify that \_\_\_\_\_ personally came before me this day and acknowledged that (s)he is Secretary of the Kenmure Property Owners Association, a nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument

was signed in its name by its President, sealed with its corporate seal, and attested by herself/himself as its Secretary.

Witness my hand and official seal, this the \_\_\_\_ day of January, 2005.

(Seal)

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

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