

  
Doc ID: 008674610038 Type: CRP  
Recorded: 01/27/2011 at 02:17:10 PM  
Fee Amt: \$125.00 Page 1 of 38  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK 3544 PG 1-38

Prepared by / Mail to: Tantum & Humphrey, P.A.  
Attorneys & Counselors at Law  
604-C Cedar Point Boulevard  
Cedar Point, North Carolina 28584

Index in the Grantor Index:  
Cole's Farm West Subdivision  
Cole's Farm West Homeowners Association, Inc.  
Coda Land Development, LLC  
St. Thomas Homes, LLC  
Mid South Associates, Inc.  
Thomas Properties of Harnett County, LLC

NOTICE: THIS DOCUMENT REGULATES OR PROHIBITS THE USE AND  
DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA AND STATE OF  
NORTH CAROLINA AND ALSO REGULATES OR PROHIBITS THE USE AND  
DISPLAY OF POLITICAL SIGNS [SEE SECTIONS 7.16 & 7.17 BELOW].

STATE OF NORTH CAROLINA )  
 )  
COUNTY OF ONSLOW )

MASTER DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS FOR  
COLE'S FARM WEST SUBDIVISION

THIS MASTER DECLARATION OF COVENANTS, RESTRICTIONS AND  
EASEMENTS FOR COLE'S FARM WEST SUBDIVISION (the "Declaration")  
is made this 27 day of January 2010, by CODA LAND  
DEVELOPMENT, LLC, a North Carolina limited liability company  
(the "Declarant"), and ST. THOMAS HOMES, LLC, a North Carolina  
limited liability company; MID SOUTH ASSOCIATES, INC., a North  
Carolina corporation; and THOMAS PROPERTIES OF HARNETT COUNTY,  
LLC, a North Carolina limited liability company (collectively  
the "Purchasers").

- 1 -

W I T N E S S E T H:

WHEREAS, Declarant and Purchasers are the owners of certain tracts of land situated in Onslow County, North Carolina, being more particularly described on Exhibit "A" (the "Property" or "Subdivision"); and

WHEREAS, Declarant and Purchasers are constructing a residential subdivision which may include community facilities for the benefit of the community, with single family homes, hereinafter referred to as the "Project"; and

WHEREAS, Declarant and Purchasers desire to provide for the preservation and enhancement of the property values and amenities within said community and to provide for the maintenance of common areas, properties and improvements located thereon, and to this end desires to subject the Project property to the covenants, restrictions, easements, charges and liens as are hereinafter set forth, each and all of which are for the benefit of said real property and each present and future owner thereof; and

WHEREAS, Declarant desires to provide and allow for the annexation of additional "sections" to the Project as said "sections" are developed and completed, and to provide for equality of rights, privileges and obligations of all lot owners in all "sections" of the Project by adding and annexing such "sections" to the Project by recordation of Supplemental Declarations to this Declaration.

THEREFORE, the Declarant and Purchasers hereby declare that all of the Lots and Common Areas (defined below) located within the Subdivision are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of said Lots. All of these restrictions shall run with the land and shall be binding upon the Declarant and Purchasers and upon the parties having or acquiring any right, title or interest, legal or equitable in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of the Declarant and Purchasers and every one of the Declarant and Purchasers' successors in title to any of the Property.

ARTICLE I  
DEFINITIONS

- 2 -

Section 1.1. "Articles" or "Articles of Incorporation" shall mean those articles, filed with the Secretary of State of North Carolina, incorporating Cole's Farm West Homeowners Association, Inc., as a nonprofit corporation under the provisions of North Carolina State law, as the same may be amended from time to time.

Section 1.2. "Assessments" means Regular Assessments, Septic System Assessments, Special Assessments, Individual Assessments and Fine Assessments.

Section 1.3. "Association" shall mean and refer to COLE'S FARM WEST HOMEOWNERS ASSOCIATION, INC., formed as or to be formed as a non-profit corporation, its successors and assigns.

Section 1.4. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.5. "Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.

Section 1.6. "Class A Members" shall mean as defined in Section 4.5.1 below.

Section 1.7. "Class B Members" shall mean as defined in Section 4.5.2 below.

Section 1.8. "Constituent Documents" shall mean the Declaration, the Bylaws, the Articles of Incorporation and any other basic documents used to create and govern the Subdivision.

Section 1.9. "Common Areas" shall mean all the real estate (including retention ponds, storm drainage improvements, entrance signage, streets (including any dedicated streets prior to their acceptance for public maintenance) and all landscaping and other improvements thereon) owned by the Association for the common use and enjoyment of the Owners. Common Areas shall include, but not be limited to, parcels designated on the Subdivision plat as "Common Area", "Open Area", "Access Easement", "Septic Line & Access Easement", "Septic Easement", "Repair Area", and "System Area".

Section 1.10. "Common Expenses" shall mean, refer to, and include:

1.10.1. The actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Articles of Incorporation of the Association and its Bylaws;

1.10.2. All amounts expended by the Association in accordance with this Declaration in holding and being responsible for the obligations of the Stormwater Management Permit Number SW 8080328 and overseeing, supervising, administering, managing, repairing, replacing and insuring all Stormwater Management Facilities located within the Property as required by this Declaration and all amounts expended in enforcing the provisions of the Permit;

1.10.3. All amounts expended by the Association for the maintenance, protection, repair and replacement of the Common Areas, including, but not limited to the streets and drives.

Section 1.11. "Declarant" shall mean and refer to CODA LAND DEVELOPMENT, LLC, a North Carolina limited liability company, its successors and assigns as a Declarant.

Section 1.12. "Default" shall mean any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

Section 1.13. "Development Period" means the period commencing on the date on which this Declaration is recorded in the Onslow County Register of Deeds and terminating on the earlier to occur of (i) when Declarant no longer owns a Lot in the Subdivision; (ii) the date that Declarant relinquishes in writing Declarant's right to appoint Directors; or (iii) the occurrence of the date ten (10) years from the date of recording the Declaration, renewable for an additional ten (10) year period with the consent of a majority of Lot Owners other than the Declarant.

Section 1.14. "Dwelling Unit" shall mean and refer to the individual family living unit on an individual Lot designed and intended for use and occupancy as a single family residence.

Section 1.15. "Individual Assessment" means the charge established by Section 5.4 of this Declaration.

Section 1.16. "Lot" shall mean and refer to any parcel of land designated on the Plat upon which a Dwelling Unit has been or is to be constructed.

Section 1.17. "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article IV below.

Section 1.18. "Owner" shall mean and refer to the record owner, including Declarant, whether one or more persons or entities, of a fee simple title to any Lot located within the Subdivision, but shall not include those having such interest solely as security for the performance of an obligation.

Section 1.19. "Plat" shall mean and refer to the record plat of the Subdivision recorded by Declarant in Map Book 60, Page 78, Slide M-1632, Onslow County Registry, as the same may be amended or supplemented by Declarant from time to time.

Section 1.20. "Property" or "Subdivision" shall mean and refer to that certain real estate described in Exhibit "A," together with all structures and other improvements thereon, together with all other real estate that may be annexed into this Declaration and the Association by the Declarant.

Section 1.21. "Regular Assessment" means the charge established by Section 5.1 of this Declaration.

Section 1.22. "Resident" shall mean and refer to any person, not an Owner, living in the Owner's Dwelling Unit, including, but not limited to, temporary guests and tenants.

Section 1.23. "Restrictions" shall mean all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation, all notices, rules and regulations issued in accordance with this Declaration.

Section 1.24. "Rules and Regulations" shall mean and include the rules and regulations made from time to time by the Board of Directors as provided in Section 4.3 below.

Section 1.25. "Septic System" shall mean and refer to the individual wastewater collection, treatment and disposal system to serve each of the Dwelling Units on Lots 1-15 (inclusive), 28-30 (inclusive), and 39-45 (inclusive) in the Subdivision and

shall consist of the septic tanks, sewage pumps, sewer lines, electrical panels, drain fields, repair areas, easements and any and all other components which are necessary to the proper operation of the Septic Systems located within the Septic Easements as defined herein.

Section 1.26. "Septic System Easements" shall mean and refer to the easements dedicated for the Septic Systems for Lots 1-15 (inclusive), 28-30 (inclusive), and 39-45 (inclusive) in the Subdivision and denoted as "Septic Line & Access Easement", "Septic Easement", "Repair Area", and/or "System Area" on the recorded Plat.

Section 1.27. "Septic System Expenses" shall mean and refer to all amounts expended by the Association for the maintenance, repair, restoration and replacement of the septic systems situated within the septic and access easements dedicated for such purpose for Lots 1-15 (inclusive), 28-30 (inclusive), and 39-45 (inclusive) in Cole's Farm West as shown on the recorded Plat as defined herein.

Section 1.28. "Septic System Assessment" shall mean and refer to all charges, fees, costs and expenses to be collected from the Owners of Lots 1-15 (inclusive), 28-30 (inclusive), and 39-45 (inclusive) in Cole's Farm West for Septic System Expenses established by Section 5.3 of this Declaration.

Section 1.29. "Special Assessment" means the charge established by Section 5.2 of this Declaration.

When applicable for the sense of this instrument, the singular should be read as including the plural and the male, female, and neuter pronouns and adjectives should be read as interchangeable.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

The Property, each portion thereof, and all Dwelling Units thereon shall be held, transferred, sold, conveyed, leased, mortgage and occupied subject to the terms, provisions, covenants and conditions of this Declaration.

ARTICLE III  
COMMON AREAS

Section 3.1. Title to Common Areas. The Declarant shall convey by deed all Common Areas to the Association in fee simple absolute after the final platting of all Lots in the Subdivision.

Section 3.2. Owner's Easements of Enjoyment. Except as herein otherwise provided, each Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to his Lot. Such rights and privileges shall be subject, however, to the following:

3.2.1. Suspension. The Association shall have the right to suspend any Owners voting rights in Association matters and suspend the right of any Owner or the privilege of any Resident to use such of the Common Areas that are recreational in nature as determined by the Board for any infraction of the Rules and Regulations relating to the Common Areas for a period not to exceed sixty (60) days for each such infraction, or for any non-payment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such non-payment or delinquency.

3.2.2. Dedication; Transfer. The Association shall have the right to dedicate, sell, lease or transfer all or any part of the Common Area, or any interest therein, to any public agency, authority, or utility, or to any other person for such purpose and subject to such conditions as may be agreed upon by the Members. No such dedication, sale or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of Member entitled to vote and an instrument of dedication, sale, lease, or transfer properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of the Members entitled to vote have approved the dedication, sale, lease or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successor or assigns; provided however conveyances for general utility purposes, sanitary sewer, storm sewer, road rights-of-way and other conveyances for dedication to the public, as specified herein, may be made by the Association without consent of the Members.

3.2.3. Borrowing. The Association shall have the right, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage the Common Area, and the rights of such mortgagee in the common area shall be subordinate to the rights of the Members hereunder.

3.2.4. Rules and Regulations. The Association shall have the right to adopt and enforce and from time to time amend reasonable limitations upon use and Rules and Regulations pertaining to the use of the Common Areas, including regulations limiting guests of Owners and Tenants who may use the Common Areas at any one time.

3.2.5. Easements. Each Owner's rights in the Common Areas shall be subject to all applicable provisions of valid easements and/or agreements of the Association relating to the Common Areas.

3.2.6. Permits; Licenses. The Association shall have the right to grant permits, licenses and public or private easements over Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property.

Section 3.3. Use of Common Areas by Declarant. In addition to the specific rights and easements reserved herein, Declarant and its affiliates and associates shall have the same rights of use and enjoyment of the Common Areas as the Class A Members during the Development Period, and shall have the same right to use Common Areas for promotional, sales and similar purposes until all of the Lots have been sold.

#### ARTICLE IV HOMEOWNERS ASSOCIATION

Section 4.1. Homeowners Association. There is has been created a North Carolina non-profit corporation, known as Cole's Farm West Homeowners Association, Inc., which shall be responsible for the maintenance, management and control of the Common Areas and upon each Lot and Dwelling Unit as more specifically set forth in this Declaration.

Section 4.2. Board of Directors and Officers. The Board of Directors, and such officers as the may elected or appointed in accordance with the Articles or the Bylaws, shall conduct the affairs of the Association. The Board of Directors may also



appoint committees and managers or other employees and agents, who shall, subject to the general direction of the Board of Directors, be responsible for the day-to-day operation of the Association.

Section 4.3. Rules and Regulations. By a majority vote of the Board of Directors, the Association may, from time to time adopt, amend and repeal Rules and Regulations with respect to all aspects of the Association's rights, activities and duties under this Declaration. The Rules and Regulations may, without limitation, govern use of the Subdivision, including prohibiting, restricting or imposing charges for the use of any portion of the Subdivision by Owners, Residents or others, interpret this Declaration or establish procedures for operation of the Association or the administration of this Declaration; provided, however, that the Rules and Regulations shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be maintained in the office of the Association and shall be available to each Owner upon request.

Section 4.4. Membership of Association. Every Owner of a Lot shall be a Member of the Association. Such Owner and Member shall abide by the Association's Rules and Regulations, shall pay the Assessments provided for in this Declaration, when due, and shall comply with decisions of the Association's governing body. Conveyance of fee simple title to a Lot automatically transfers membership in the Association without necessity of further documents. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to Assessment.

Section 4.5. Classes of Membership. The Association shall have two (2) classes of Membership:

4.5.1. Class A Members. Every person, group of persons, or entity which is a record Owner of a fee interest in any Lot upon which a Dwelling Unit has been erected within the Property, shall automatically be a Class A Member of the Association except the Declarant during the Development Period; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot upon which a Dwelling Unit has been constructed that is subject to Assessment. Class A

Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot portion shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

4.5.2. Class B Members. The Class B Member during the Development Period shall be the Declarant. The Class B Membership shall cease and be converted to Class A membership upon the expiration of the Development Period.

4.5.3. Voting. Each Member shall have one (1) vote with respect to each Lot owned by such Member, but a Class A Member shall not be entitled to exercise any vote until the expiration of the Development Period.

4.5.4. Suspension of Voting Rights. The right of any Member to vote may be suspended by the Board for just cause pursuant to its Rules and Regulations, the Articles, and Bylaws of the Association.

Section 4.6. Maintenance Obligations of Association; Compliance with Stormwater Permit. The Association, at its expense, shall maintain, operate and keep in good repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the Common Areas and all improvements located thereon for the common benefit of the Subdivision. This shall include, without limitation, the maintenance, repair, replacement and painting of the following landscaping and improvements (to the extent that such improvements or landscaping are located upon or constitute Common Areas): (a) all private roadways, driveways, pavement, sidewalks, walkways and uncovered parking spaces; (b) all lawns, trees, grass and landscape areas, shrubs and fences, except as otherwise set forth herein below; (c) all conduits, ducts, utility pipes, plumbing, wiring and other facilities which are part of or located in, or for the furnishing of utility services to, the Common Areas and which are not for the exclusive use of a single Dwelling Unit.

The Association shall oversee, inspect, maintain, repair and replace the Stormwater Management Facilities constructed pursuant to the Stormwater Permit described in Section 11, infra

(the "Permit"); to enforce the provisions of the Permit; to enforce each Owner's obligations with respect to the Stormwater Management Facilities pursuant to this Declaration; to enforce each Owner's obligations with respect to all applicable North Carolina Sedimentation and Erosion Control Permits; said authority to be exercised, if and only if, and when and only when, the Declarant transfers the Permit to the Association.

The Association shall make the determination as to when maintenance, repair, replacement and care shall be done, and its determination shall be binding. Declarant shall have the right to employ a manager to oversee and implement the Association's maintenance obligations, and any such management fees incurred thereby shall be paid by the Association. The Association shall also perform the other duties prescribed by this instrument or the Association's Rules and Regulations.

Section 4.7. Maintenance Obligation of the Owners. The responsibilities of each Owner shall include:

4.7.1. On each Lot, the rights-of-way and easement areas reserved by Declarant or dedicated to public utilities purposes shall be maintained continuously by the Lot Owner and no structure, plantings or other material shall be placed or permitted to remain, or other activities undertaken which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of water through drainage channels in the easements, or which damage or interfere with established slope ratios or which create erosion problems. Furthermore, each Lot Owner is responsible for mowing the right-of-way of as exists in front of their respective Lot.

4.7.2. The costs and expenses for restoration, reconstruction, maintenance, repair and replacement of the Septic System shall be the primary responsibility and liability of the Owner of the Lot serviced by such Septic System. The Association may assess a Septic System Assessment to be paid by the Owner of the Lot for which such restoration, reconstruction, maintenance, repair and replacement is performed.

4.7.3. To clean, maintain, keep in good order, repair and replace at his or her expense all portions of his or her Lot and Dwelling Unit. Any repair, replacement and

maintenance work to be done by an Owner must comply with any Rules and Regulations of the Association including architectural control and visual harmony.

4.7.4. To perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the Subdivision.

4.7.5. Not to paint or otherwise alter, decorate or change the appearance of any exterior portion of his Dwelling Unit, without the written consent of the Association.

4.7.6. Not to impair the use of any easement without first obtaining the written consents of the Association and of the Owner or Owners for whose benefit such easements exists.

4.7.7. Each Owner shall be deemed to agree by acceptance of delivery of a deed to a Lot, to repair and/or replace at his or her expense all portions of the Common Areas which may be damaged or destroyed by reason of his or her own intentional or negligent act or omission, or by the intentional or negligent act or omission of any invitee, tenant, licensee family member, including, but not limited to any repairs necessary which result from damage incurred by pets or vehicles owned by the Owner, or owned by any guest, invitee, Tenant or licensee of such Owner. To the extent that any Common Area is damaged as an insurable loss and the proceeds from the Association's insurance policy are utilized to pay for the loss, the Owner shall be responsible for payment of the deductible as an Individual Assessment in accordance with Section 5.3 below.

#### ARTICLE V COVENANT FOR ASSESSMENTS

Section 5.1. Regular Assessments. The Regular Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and comply with all obligations imposed by the Stormwater Permit and Erosion and Sedimentation Control Permit; and, in particular, but not limited to, (i) capital improvements and maintenance of the Common Areas; (ii) for the use and enjoyment of the Common Areas, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of

taxes and public assessments assessed against the Common Areas; (iii) the providing for security to the Property; (iv) the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board; and (v) the employment of counsel, accountants, and other professionals for the Association when necessary, and such other needs as may arise. In addition, said Regular Assessments shall be for (i) payment of all amounts expended by the Association in holding and being responsible for the obligations of the Permit and overseeing, supervising, administering, managing, repairing, replacing and insuring all Stormwater Management Facilities located within the Subdivision as required by this Declaration; (ii) all amounts expended by the Association in enforcing the provisions of this Declaration, as may be amended; (iii) all amounts expended by the Association in the performance of its duties hereunder from and after the time Declarant transfers the Permit; and (iv) all amounts expended by the Association in legal, engineering or architectural fees and all similar fees which may be incurred by the Association from time to time in performing the functions delegated to the Association by this Declaration.

Section 5.2. Septic System Assessments. The Septic System Assessments levied by the Association shall be used exclusively for the maintenance, repair, restoration and replacement of the septic systems situated within the septic and access easements dedicated for such purpose for Lots 1-15 (inclusive), 28-30 (inclusive), and 39-45 (inclusive) in Cole's Farm West as shown on the recorded Plat.

Section 5.3. Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, or maintenance of the roads within the subdivision, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members of each class who are voting either in person or by proxy at a meeting duly called for such purpose.

Section 5.4. Individual Assessments. In the event that the need for maintenance, repair or replacement of any improvement on the Property, for which the Association has the maintenance, repair and/or replacement obligation, is caused through the willful or negligent act of an Owner, his family,

his pet(s), Resident, the cost of such maintenance, repairs or replacements shall be paid by such Owner. The Board shall have the maintenance, repair or replacement done and the cost thereof shall be provided by the Board to said Owner and shall be paid by said Owner within thirty (30) days thereafter, unless an earlier date is otherwise set forth herein.

Section 5.5. Creation of the Lien and Personal Obligation for Assessments.

5.5.1. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

5.5.1.1. Regular Assessments or charges as provided for above;

5.5.1.2. Septic System Assessments as provided for above;

5.5.1.3. Individual Assessments as provided for above;

5.5.1.4. Special Assessments as provided for above; and

5.5.1.5. To the appropriate governmental taxing authority, a pro rata share of ad valorem taxes against, and assessments for private improvements to, the Common Areas if the Association shall default in payment thereof.

Any such assessment or charge, together with interest costs, and reasonable attorney's fees, (as provided in N.C.G.S. §6-21.2) shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorney's fees (as provided in N.C.G.S. §6-21.2), shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 5.6. Minimum Regular Assessment. The initial minimum regular assessment shall be \$360.00 per year. So long

as there exists Class B Lots, the Declarant shall pay no dues or assessments but in lieu thereof the Declarant covenants and agrees to defray such deficit as may be required for maintenance up to the amount of twenty-five percent (25%) of the normal assessment on lots owned by the Declarant.

Section 5.7. Date of Commencement of Regular Assessments; Due Dates. The Regular Assessments provided for herein shall commence as to all Lots subject thereto, except such Lots owned by the Declarant, on the date of closing the transfer and conveyance of such Lot to the Owner. The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Regular Assessments against each Lot at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessments shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates.

Section 5.8. Increase of Regular Assessment. The Regular Assessments for the Common Areas and Stormwater Permit compliance may be increased from any preceding year by the Board of Directors, without a vote of the membership, by the percentage which may not exceed fifteen percent (15%). The Regular Assessments for the Common Area and Stormwater Permit compliance may be increased by a percentage greater than that permitted to be made by the Board of Directors under this Section 5.7 by an affirmative vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increased assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

Section 5.9. Replacement Reserve. The Board of Directors of the Association shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Area and Stormwater Management Facility which the Association may be obligated to maintain.

Section 5.10. Notice and Quorum for Any Action Authorized Under Sections 5.2 and 5.7. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of

Members or of proxies entitled to cast forty percent (40%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called pursuant to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.11. Uniform Rate of Assessment; Books and Records of the Association. Both Regular and Special Assessments for Common Areas must be fixed at a uniform rate for all Lots subject to such Assessments and may be collected on a monthly basis or other periodic basis established by the Board. The Association shall keep full and correct books of account. The Association shall make available to all Owners and the holders of all first mortgages on Lots, current copies of the books, records and financial statements of the Association upon reasonable request during normal business hours. All funds collected by the Association shall be held and expended solely for the purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Owners. All books and records must be kept in accordance with good accounting procedures.

Section 5.12. Assessment Certificate. The Association shall, upon demand, at any reasonable time, furnish to any Owner liable for Assessments a certificate in writing signed by an Officer or other authorized agent of the Association, setting forth the status of said Assessments; i.e., "current", and if not current, "delinquent" and the amount due. Such certificate shall be conclusive evidence of the payment of any Assessment therein stated to have been paid. A reasonable charge to cover labor and materials may be made in advance by the Association for each certificate.

Section 5.13. Effects of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed eighteen percent (18%) per annum or one and one-half percent (1.5%) per month. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, cost, late payments charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No Owner may waive or



otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court in the County in which the Property is located in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time following thirty (30) days after the due date of the Assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claim of lien shall include all Assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. An officer or agent of the Association shall sign such claim of lien. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 5.14. Late Charge. The Association may impose a charge against any Owner who fails to pay any amount assessed by the Association against his Lot within ten (10) days after such Assessments are due and payable and who fails to exercise his rights under this Declaration or under the laws of the State of North Carolina to successfully contest such Assessment. The amount of the late charge shall be the greater of: (a) Twenty and 00/100 Dollars (\$20.00), or (b) twenty percent (20%) of the delinquent amount, or such other amount as may be determined by the Association from time to time. Additionally, if an Owner shall be in Default in payment of an installment upon an Assessment or of a single monthly Assessment, the Association has the right to accelerate all monthly Assessments remaining due in the current fiscal year. The total of such Assessments, together with the delinquent Assessments shall then be due and payable by the Owner no later than ten (10) days after the delivery of written notice of such acceleration to the Owner or twenty (20) days after mailing of such notice to him by certified mail, whichever occurs first. If such acceleration amount is not paid by the due date, the above-described late charge may be imposed on the part of such accelerated amount not paid by the due date.

Section 5.15. Subordination of the Lien. The lien of the Assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure shall extinguish the lien of such assessments as to payment, which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability from any assessments thereafter becoming due or from the lien thereof.

Section 5.16. Street Disclosure Statements; Maintenance and Repair of Streets. All streets have been offered to the State for dedication to public use but have not been accepted by the State as of this date. The Declarant shall immediately petition the North Carolina Department of Transportation to accept the streets upon construction of the streets and satisfaction of the Department's residency requirements. The Declarant shall be responsible for maintenance of all streets and protection of rights of way until such streets are accepted into the State road system or other public system or until such streets are conveyed to the owners association, which association is then required to maintain the streets, if not accepted by the DOT or other public entity.

#### ARTICLE VI ARCHITECTURAL CONTROL

Section 6.1. Submission for Approval. Except for the original and initial construction, and subsequent modification of improvements by the Declarant on any Lot, which construction is and shall be exempt from the provisions of this Article, no site preparations (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or construction, erection, installation or modification of any improvements, including but not limited to, buildings, roofs, shingles, fences, signs, walls, bulkhead, screens, landscaping, exterior painting, siding, yard furniture, play areas, and play equipment or other equipment, furniture or structures shall be commenced, erected, placed, altered or maintained upon any Lot, nor shall any addition to, or change or alteration therein be made by any Owner, other than Declarant, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, type of siding, type of shingles, location and elevations of the proposed improvements or

landscaping or yard equipment or furniture shall have been submitted to, and approved in writing by, as to harmony of external design and location in relation to surrounding structures and topography, the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more persons appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such submission within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with; provided that plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved, notwithstanding the foregoing. Refusal of approval of such plans, location or specifications may be based upon any ground, including purely aesthetic or environmental, that in the sole discretion of the Board or Committee, it shall deem sufficient. The Association shall not be responsible for any defects in the plans and specifications submitted to it or in any structure erected according to such plans and specifications. Upon request, the Board shall provide any Owner with a letter stating that any such work plans and specifications have been approved and third parties may rely upon same.

Section 6.2. Right of Inspection. The Association, through the Board, the Committee or their appointed agents, shall have the right, at its election, but shall not be required, to enter upon any Lot during site preparation or construction, erection, or installation 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 approved methods and good quality materials.

Section 6.3. Variances; Adjustments. The Board or the Architectural Committee appointed by the Board, as the case may be, shall have power to, and may allow variances of, and adjustments of, the restrictions on use and building restrictions established herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the restrictions contained herein; provided, however, that variances or adjustments are done in conformity with the intent and purposes hereof; and, provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to the Property or other Lots in the immediate neighborhood. Variance and adjustments may be of the height, size, and setback requirements, but shall not be limited

thereto. In the event of the grant of any variance in the building or use restrictions, the Association shall execute a document attesting to such grant and the specific nature thereof in form suitable for recording, so that the Owner may record same in the Registry of the County in which the Lot is located. Such document shall be prepared at the cost of the Owner and shall be binding upon the Association and may be relied upon by third parties.

Section 6.4. References to Association. Any reference to "Association" in this Section or that on Use Restrictions or Building Restrictions shall mean the Board or the Architectural Committee, whichever shall be vested with approval authority by the Board.

#### ARTICLE VII GENERAL RESTRICTIONS

Section 7.1. Residential Use. No Lot, Lots, or portions thereof shall be put to any use other than for residential purposes, except that any Lot may be used by the Declarant for a street or roadway.

Section 7.2. Minimum Design Standards. All homes within the Subdivision shall be single family residences with a minimum constructed dwelling size of 2,000 square feet of heated space, exclusive of the garage area, whether heated or non-heated. A detached structure may be constructed so long as it is constructed in the same style and using the same materials as the residence. Exterior siding on any structure shall be either cement board siding, stone, or brick. No vinyl siding shall be permitted.

Section 7.3. Subdividing. No Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Association. However, the Declarant hereby expressly reserves to itself, its successors or assigns, the right to re-plat any two (2) or more lots shown on the plat of any subdivision in order to create a modified building lot or lots; and to take such steps as are reasonably necessary to make such re-platted lot suitable and fit a building site, said steps to include but not limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said re-platted lots.

Section 7.4. Use of Fill; Changes in Elevation. No changes in the elevations of the land shall be made on any Lot,

nor any fill placed within the Common Areas or within the regulatory setback lines; nor shall any Lot be increased in size by filling in the waters on which it abuts without prior written approval of the Association plus any applicable state and/or federal agency.

Section 7.5. Prohibited Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporary or permanently. No trailer, mobile home, camper or like vehicle, or any other structure which is finished or partially finished at a manufacturing unit or plant and transported for quick assembly or which is designed to be disassembled and relocated shall be used as a residence at anytime. It is specifically the intention and purpose of this covenant to prohibit the location of mobile homes, trailers, modular houses, relocatable houses, or similar type structures on the Property for use as a residence. This covenant shall not be construed as prohibiting the use of such a structure as a sales/rental model or office or construction site facility.

Section 7.6. Prohibited Activities. Except as otherwise provided in this Declaration, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, shall be conducted, maintained or permitted on any part of the Subdivision. The right is reserved by the Declarant to use any such unsold or unoccupied Dwelling Units or other structures in the Subdivision as models and/or offices in connection with the construction, sale or rental of Dwelling Units.

So long as the Declarant owns a Lot no action may be taken nor may any Rule or Regulation be adopted or amended that would (a) directly or indirectly alter the exterior appearance of any part of the Subdivision; (b) reduce or discontinue any maintenance standard or practice in effect as of the date when the Declarant no longer controls the Board; (c) adversely affect the Declarant's sale or leasing of any Lots; or (d) otherwise adversely affect the Declarant, any of its rights, or any Lot owned by it without, in each case, first obtaining the Declarant's written consent.

Section 7.7. Nuisance. No noxious, offensive, or illegal activity shall be carried on or conducted upon any Lot or Common Area nor shall anything be done on any Lot or Common Area that shall be or become an unreasonable annoyance or nuisance to the Property. All Lots, whether occupied or unoccupied, shall be

well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted to remain on a Lot.

Section 7.8. Animals and Pets. No animals of any kind shall be raised, bred, or kept on any Lot or in any Dwelling Unit or in the Common Areas, except that two dogs, two cats or one of each, or two other household pets may be kept in a Dwelling Unit, subject to the Rules and Regulations, provided that it is not kept, bred or maintained for any commercial purpose, and that it is kept subject to the Rules and Regulations of the Association. Dogs, cats or other household pets must be kept within the confines of the Owner's Dwelling Unit except when being held on hand leash by the pet owner of the animal. No Owner shall install a fence and/or electric fence on any portion of the Common Area without the prior written consent of the Board. No pet may be "staked", housed, tied up or otherwise left in any Common Area. An Owner shall be responsible for cleaning up after his household pet. Notwithstanding the above, the Association shall have the right to promulgate Rules and Regulations pertaining to the size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pets. Additionally, the right of an occupant to maintain an animal in a Dwelling Unit shall be subject to termination if the Board in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Subdivision or occupants. No dog house or other structure used or intended for the housing or keeping of animals may be constructed, placed or maintained on any part of the Common Areas.

Section 7.9. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be burned or disposed of on any Lot, and shall be kept in sanitary containers approved by the Association. All equipment for the storage prior to disposal of such material shall be kept in a clean and sanitary condition. The placement of containers shall be approved by the Association and, in any event, shall be kept in an enclosed area not subject to view from any person, from any direction.

Section 7.10. Antennas; Satellite Dishes or Discs. Except as hereinafter provided, no transmission or reception towers, antenna, dishes or discs shall be erected or maintained on any Lot.

7.10.1. Exceptions. The following are specifically permitted:

7.10.1.1. Any antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, of one (1) meter (39.37") or less in diameter;

7.10.1.2. An antenna designed to receive video programming services via multi-point distribution services, including multi-channel, multi-point distribution services, instructional television fixed services, or local multi-point distribution services, of one (1) meter (39.37") or less in diameter or diagonal measurement; or

7.10.1.3. An antenna designed to receive television broadcast signals.

7.10.2. Restrictions. A roof-mounted antenna may be mounted on the roof of a Dwelling Unit; provided, however, no antenna or related structures may be mounted on masts exceeding ten feet (10') in height above the highest roof line ridge of any Dwelling Unit. Any dish, disc, or antenna (with associated mast if any) shall be reasonably screened from view (so as not to be generally visible from the road or Common Areas), and shall not be located in the area between the street right-of-way line and the front of any Dwelling Unit or within the setbacks applicable to a Lot. No antenna, discs or like transmission or reception device shall be mounted within any of the Common Areas. No antenna, discs or like transmission or reception device shall be mounted on a freestanding tower without the express consent of the Association.

Section 7.11. Fuel Tanks and Similar Storage Receptacles. No fuel tanks or similar storage receptacles shall be exposed to view. Any such receptacles may be installed only within an accessory building with a screened area (so as not to be generally visible from the road, adjoining lots, or Common Areas) or buried underground; provided, however, that nothing contained herein shall prevent the Association from erecting, placing or permitting the placing of tanks, or other apparatus, on the property for uses related to the provision of utility or other service.

Section 7.12. Mechanical Equipment. Any exterior air conditioning, heating or other mechanical equipment must be screened from public view (so as not to be generally visible from the road, adjoining lots, or Common Areas) by a screening material or shrubbery sufficient in height when planted to obstruct the view of the equipment.

Section 7.13. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any Dwelling Unit, building or other structure located on any Lot shall be clear or white lights or bulbs. No mercury vapor or similar wide area lighting similar to street lights shall be allowed without prior Association approval.

Section 7.14. Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection, unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 7.15. Mailboxes. All mailboxes shall retain the same style, design, color and location of the mailboxes as originally provided at the time of initial construction. The Association reserves the right to approve the style, design, color and location prior to any original installation or replacement. Application shall be made to the Association prior to installation or replacement. By accepting a deed to any Lot, the Owner gives the Association the right to remove any non-approved mailbox in a reasonable manner; all costs for same shall be paid by Owner, and all damages against the Association are waived.

Section 7.16. Signs.

7.16.1. Permanent and Temporary Signs. No permanent sign of any character shall be displayed upon any



part of the property except a sign bearing the name of the owner and/or the street address without permission of the Association. Said signs shall not exceed the dimensions of five inches by twenty inches (5" x 20"). All temporary signs such as builders' signs, realty signs, etc., shall be approved by the Association. These signs should be placed in the center of the Lot, outside the street right of way. Under no circumstances may signs be nailed to trees or placed in the Common Areas.

7.16.2. Political Signs. All political signs are restricted as follows: (i) Must be displayed indoors or outdoors on individual Lots only; (ii) are limited to three (3) in number; (iii) May have maximum dimensions of twenty-four inches by twenty-four inches (24" x 24"); and (iv) are prohibited no earlier than forty-five (45) days before the day of the election and no later than seven (7) days after an election.

7.16.3. Sign Appearance. All signs must be clean, neat, and maintained in good repair.

7.16.4. Removal. Declarant and/or the Association shall have the right to immediately remove and dispose of those items in violation of this Declaration.

Section 7.17. Flags. No flag other than the United States Flag or the State of North Carolina Flag shall be displayed upon any part of the Property without permission of the Association. Any United States Flag or the State of North Carolina Flag displayed shall be: (i) not greater than four feet by six feet (4' x 6') in dimension; (ii) displayed in accordance with or in manner consistent with the customs set forth in 4 U.S.C. §§ 5-10, as amended; and (iii) displayed only on individual Lots, not in Common Areas, easements, and/or rights-of-ways.

Section 7.18. Fences. No fences over six feet (6') in height shall be constructed on any Lot. No fence shall be erected between any building and the Common Area, unless such fence shall be of an ornamental nature. Brick and split-rail fences shall be deemed to meet the requirements of this restriction. Any portion of any fence which can be viewed from the Common Area shall be of an ornamental nature. The term "fence" shall include but not be limited to, a wall, fence, landscaping, berm, or hedge which acts as a fence or privacy or security-inducing structure. Architectural review requirements must be met prior to construction of any fence.

Section 7.19. Automobiles. No stripped, partially wrecked, junked or inoperative motor vehicles nor any part thereof shall be permitted to be parked or kept on any street or Lot. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands, except in an enclosed garage.

Section 7.20. Other Vehicles. No vehicle, boat trailer or recreational vehicles may be parked outside of an enclosed garage or on the street within the subdivision more than seven (7) days during each calendar year and no vehicle, boat trailer or recreational vehicles may be parked or kept on any undeveloped Lot.

Section 7.21. Driveways; Parking. All driveways constructed on any Lot shall be paved with either asphalt or concrete. The use or construction of a headwall or other ornamental structure, gravel, rock or other material at or around the driveway culvert shall be prohibited. The earthwork extending from the driveway to each end of the culvert shall be gently sloped and sodded; as approved in each case. Each Owner shall be entitled to two (2) paved parking spaces within the Ingress, Egress Easement/Common Area in close proximity to the front of each Lot for the exclusive use of the Owner, his/her family, and invitees.

Section 7.22. Window Appearance. All draperies or other window dressings in each Dwelling Unit shall be white or off white or in lieu thereof shall have a white lining.

Section 7.23. Clotheslines. Clotheslines shall not be permitted, unless otherwise approved by the Association.

Section 7.24. Alteration of Common Areas. Nothing shall be altered or constructed in or removed from the Common Areas except as otherwise provided in this Declaration and except upon the written consent of the Association. In addition, a Lot Owner must obtain the prior written consent of the Board prior to installing and landscaping or planting any flowers, herbs or vegetables, on any portion of the Subdivision (including any Lot).

ARTICLE VIII  
STREET LIGHTING AGREEMENT

The Declarant reserves the right to subject all, or any portion of the Property, to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting, either or both which may require an initial payment and/or a continuing monthly payment to an electric utility company by the Owners.

ARTICLE IX  
STORMWATER MANAGEMENT

Section 9.1. The following covenants and restrictions set forth in this Section are intended to insure continued compliance with State Stormwater Management Permit Number SW 8080328, as issued by the Division of Water Quality, under NCAC 2H.1000:

9.1.1. State is Beneficiary. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit.

9.1.2. Amendment. The covenants set forth in this Article pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality. Alteration of the drainage as shown on the approved plans may not take place without the concurrence of the Division of Water Quality.

9.1.3. Filling/Piping Prohibited. Filling in or piping of any vegetative conveyances (such as ditches, swales, etc.) associated with the development, except for the minimum amount necessary under driveways to provide access to lots and the minimum amount necessary to direct runoff beneath an impervious surface such as a road, is strictly prohibited by any person.

9.1.4. Setbacks. Each Lot will maintain a thirty (30) foot wide vegetated buffer between all impervious areas and surface waters. All roof drains shall terminate at least thirty (30) feet from the mean high water mark of surface waters.

9.1.5. Covenants to Run with Property. These covenants are to run with the land and be binding on all persons and parties claiming under them.

9.1.6. Future Development. All permitted runoff from future development of the Subdivision shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the stormwater control system as permitted.

9.1.7. Right of Inspection. Declarant, the Association, the State of North Carolina and their respective successors and assigns, reserve and retain the right to go upon any Lot to inspect for the compliance of such Lot with the Permit and to maintain, repair, replace and construct ditches and devices necessary to insure that such Lot is in compliance with the Permit.

9.1.8. Construction; Transfer of Permit. The Declarant shall, at its sole cost and expense, initially construct all Stormwater Management Facilities required to be located upon the Property or upon any property annexed into the Subdivision by the Declarant to the standards required by the applicable Permit. Upon completion of the construction of said Stormwater Management Facilities, the Declarant shall transfer the applicable Permit to the Association and the Association shall accept the transfer of the applicable Permit from the Declarant upon the earlier to occur of (i) the date the North Carolina Department of Environment and Natural Resources allows such transfer to occur; or, (ii) the date upon which at least fifty percent (50%) of the Lots in the entire Subdivision are conveyed to owners other than Declarant. Prior to any such transfer, the Stormwater Management Facilities for the respective subdivision section, including any property annexed by Declarant into the Subdivision, shall be certified, either by state inspection or by a licensed engineer, as being in compliance with the applicable Permit prior to such assignment or transfer. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as the holder of the Permit occurring after Declarant tenders transfer of the Permit to the Association following the approval of such transfer by the North Carolina Department of Environment and Natural Resources and the certification of compliance as set

forth above. Further, Declarant may bring an action for specific performance of the obligations of the Association pursuant to this paragraph. From and after the transfer of the Permit from the Declarant following the approval of the North Carolina Department of Environment and Natural Resources, the oversight, supervision, management and administration of the Permit shall be the sole responsibility of the Association. The Association's duties with regard to the Permit shall be carried out in accordance with the terms and conditions of this Declaration, the Articles, the Bylaws and the Permit. The Association hereby is granted and conveyed an easement over, under and upon the Common Area, each Lot and future lots which may be annexed into the Subdivision for the purpose of access to and inspection, maintenance, repair and replacement of all Stormwater Management Facilities located upon the Common Area, each Lot and any future subdivided lot. In the event, the Declarant annexes additional property into the Subdivision and transfers the applicable Permit to the Association, the Association shall have, and hereby is granted and conveyed, an easement over, under and upon other Common Area, and each annexed lot for the purpose of access to and inspection, maintenance, repair and replacement of all Stormwater Management Facilities located upon the other Common Area and each annexed lot.

ARTICLE X  
RESERVATION OF EASEMENTS AND RIGHTS BY DECLARANT

Section 10.1. Easements and Rights of Declarant.  
Declarant hereby reserves for itself, its successors and assigns, for any purposes it deems useful to its development of the Properties, the development of other property in the Development Area, or the development of other property to which Declarant may grant the benefit of such easements, those easements shown on any recorded map of any Parcel, or subsequently annexed property, and the following additional easements and rights:

10.1.1. A perpetual easement for ingress, egress, regress, access, the installation and maintenance of utilities, further subdivision, and the right to dedicate to public use, over, under and upon all streets and drainage and utility easements shown on any recorded map of the Properties or lying within the Development Area and the water and sewer easements lying within any Lot or Common Area;

10.1.2. Perpetual, non-exclusive easements for access, installation, maintenance, and repair of sanitary wastewater treatment systems are reserved over, under and upon the Lots and other property as shown on the recorded Plat as "Septic Line Easement," "Septic Line & Access Easement," "Repair Area," and/or "System Area" for the benefit of Owners of Lots 1-15 (inclusive), 28-30 (inclusive), and 39-45 (inclusive). Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or repair of the sanitary wastewater treatment systems therein. The Declarant, or Association, as provided in the Septic System Agreement and Exclusive Easements for Cole's Farm West Subdivision recorded immediately following the recordation of this Declaration, shall repair any damage to any sanitary wastewater treatment facilities situated in, or under the easements and restore, as much as reasonably possible, the area in which repairs are made to the condition it existed prior to such damage and repair. Said easements shall be appurtenant to and run with title to said Lots regardless of whether or not the granting of said easements are included in the deeds of conveyance of said Lots.

10.1.3. The right to grant easements for the purposes of ingress, egress, regress, access, the installation, use and maintenance of utilities and further subdivision, over, under and upon (i) all streets shown on any recorded map of the Properties and (ii) the drainage and utility easements and easements for the water and wastewater treatment systems located within the Properties, to any property outside the Properties to which Declarant deems the grant of such easements desirable, whether or not the property to which the easements are granted is owned by Declarant;

10.1.4. A perpetual easement over, under and upon all streets and drainage and utility easements shown on any recorded map of the Properties for the purpose of establishing, constructing and maintaining any underground utility, conduits and wires for telephone, electric power and other purposes and of laying, installing and maintaining facilities for sewage, potable and non-potable water, gas, storm drainage and other utilities therein. This reservation shall not be construed as an obligation of Declarant to provide or maintain any such activity or services;

10.1.5. A perpetual access easement over, under and upon the Lots and Common Area to trim, cut and remove any

trees and brush necessary for the installation, operation and maintenance of utility lines, gas, water and sewer mains and other services for the convenience of the property owners and appurtenances thereto; and

10.1.6. A perpetual and exclusive easement for the installation and maintenance of radio and television transmission cables within the rights-of-way and easement areas reserved and defined above.

#### ARTICLE XI ENFORCEMENT

The Declarant (whether or not the Declarant is the owner of any Lot), any Lot Owner and any party to whose benefit this Declaration inures, including but not limited to the State of North Carolina or its assignees with respect to the Stormwater Management Permit, may proceed at law and in equity to prevent the violation or attempted violation of any term, covenant or provision of this Declaration, either to restrain violation or to recover damages for such violation and the court in any such action may award the successful party said party's reasonable expenses and costs in prosecuting such action, including reasonable attorney's fees.

#### ARTICLE XII MODIFICATION

Section 12.1. Addition of Property. The Declarant may amend this Declaration in accordance with the provisions set forth herein to add/annex additional property to this Declaration.

Section 12.2. Amendment of Declaration. These covenants, easements and restrictions are subject to being altered, modified, canceled or changed at any time as to the Property as a whole, or as to any subdivided lot or part thereof, by written document executed by the Declarant or its successors in title and by the owners of not less than sixty-seven percent (80%) of the subdivided lots to which these restrictions then apply, and recorded in the Office of the Register of Deeds of Onslow County, North Carolina provided, however, that if the Declarant owns sixty-seven percent (80%) or more of the subdivided lots, the Declarant may alter or amend these covenants without the consent of any other owner. Notwithstanding the foregoing, the covenants of this Declaration pertaining to stormwater

management may not be amended except as provided in Section 9.1.2 above.

ARTICLE XIII  
RIGHTS OF MORTGAGEES

Section 13.1. Notice of Action. A holder or insurer of a mortgage, upon written request to the Association (such request to state the name and address of such holder or insurer and the description of the secured properties) will be entitled to timely written notice of:

13.1.1. Any condemnation or casualty loss that affects either a material portion of the Project or the Lot securing its mortgage;

13.1.2. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot upon which it holds a mortgage;

13.1.3. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

13.1.4. Any proposed amendment to the Project instruments effecting a change in the boundaries of any Lot, ownership of Common Areas, if any, the number of votes in the Association pertaining to any Lots or any proposed change in the restrictive covenants on the Property.

ARTICLE XIV  
TERM

The covenants, easements and restrictions set forth herein are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration is recorded, after which such time said Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by sixty-seven percent (67.0%) of the then owners of the lots has been recorded, agreeing to change any provision herein, in whole or in part, with the exception of provisions regarding stormwater collection.



ARTICLE XV  
GENERAL PROVISIONS

Section 15.1. Severability. Invalidation of anyone of these covenants by judgment or Court Order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 15.2. Captions. The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration.

Section 15.3. Construction. Whenever the context so requires, the use herein of any gender shall be deemed to include the plural and the plural shall include the singular.

Section 15.4. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the membership and a majority of the Board of Directors. The Section 18.4 shall not apply, however, to:

15.4.1. Actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens);

15.4.2. The imposition and collection of Assessments;

15.4.3. Proceedings involving challenges to ad valorem taxation; or

15.4.4. Counterclaims brought by the Association in proceedings instituted against the Association.

This Section 15.4 shall not be amended unless such amendment is approved by the Declarant or is approved by the percentage votes and pursuant to the same procedures necessary to institute proceedings as provided above.

*[This Space Intentionally Left Blank]*

IN WITNESS WHEREOF, the undersigned have caused this instrument to be signed with authority duly given, the day and year first above written.

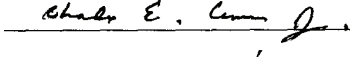
CODA LAND DEVELOPMENT, LLC

By:  (SEAL)  
\_\_\_\_\_, MEMBER/MANAGER

ST. THOMAS HOMES, LLC

By:  (SEAL)  
\_\_\_\_\_, MEMBER/MANAGER

MID SOUTH ASSOCIATES, INC.

By:  (SEAL)  
\_\_\_\_\_, PRESIDENT

THOMAS PROPERTIES OF HARNETT  
COUNTY, LLC

By:  (SEAL)  
\_\_\_\_\_, MEMBER/MANAGER

\*\*\*\*\*

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

I, the undersigned Notary Public of the County and State  
aforesaid, certify that William R Davis personally  
came before me this day and acknowledged that he/she is the  
MEMBER/MANAGER of CODA LAND DEVELOPMENT, LLC, a North Carolina  
LLC, and that by authority duly given and as the act of such  
entity, he/she signed the foregoing instrument in its name on  
its behalf as its act and deed.

Witness my hand and Notarial stamp or seal, this 27 day  
of January, 2010.

My Comm. Expires: 12-31-2013

Elizabeth M Eady  
Notary Public

(SEAL)

\*\*\*\*\*

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

I, the undersigned Notary Public of the County and State  
aforesaid, certify that \_\_\_\_\_ personally  
came before me this day and acknowledged that he/she is the  
MEMBER/MANAGER of ST. THOMAS HOMES, LLC, a North Carolina LLC,  
and that by authority duly given and as the act of such entity,  
he/she signed the foregoing instrument in its name on its behalf  
as its act and deed.

Witness my hand and Notarial stamp or seal, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2010.

My Comm. Expires: \_\_\_\_\_

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

(SEAL)

\*\*\*\*\*

\*\*\*\*\*

STATE OF NORTH CAROLINA

COUNTY OF ~~ONSLOW~~ Lee

I, the undersigned Notary Public of the County and State aforesaid, certify that Charles Eugene Cannon, Jr personally came before me this day and acknowledged that he/she is the MEMBER/MANAGER of CODA LAND DEVELOPMENT, LLC, a North Carolina LLC, and that by authority duly given and as the act of such entity, he/she signed the foregoing instrument in its name on its behalf as its act and deed.

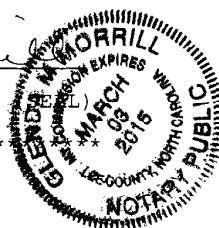
Witness my hand and Notarial stamp or seal, this 21st day of January, 2010.

My Comm. Expires:

March 3, 2015

Deenda M. Morrill

Notary Public



\*\*\*\*\*

STATE OF NORTH CAROLINA

COUNTY OF ~~ONSLOW~~ Chatham

I, the undersigned Notary Public of the County and State aforesaid, certify that Steve Thomas personally came before me this day and acknowledged that he/she is the MEMBER/MANAGER of ST. THOMAS HOMES, LLC, a North Carolina LLC, and that by authority duly given and as the act of such entity, he/she signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and Notarial stamp or seal, this 21st day of January, ~~2010~~ 2011

My Comm. Expires: 6/12/2015

Lerna W. Zayer

Notary Public

(SEAL)

\*\*\*\*\*

\*\*\*\*\*

STATE OF NORTH CAROLINA

COUNTY OF ~~ONSLOW~~ Lee

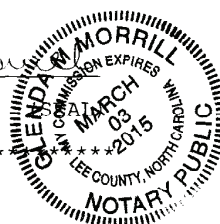
I, the undersigned Notary Public of the County and State aforesaid, certify that Charles E. Cannon, Jr personally came before me this day and acknowledged that he/she is the \_\_\_\_\_ PRESIDENT of MID SOUTH ASSOCIATES, INC., a North Carolina corporation, and that by authority duly given and as the act of such entity, he/she signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and Notarial stamp or seal, this 21st day of January, 2010.

My Comm. Expires: March 3, 2015

Glenda M. Morrill

Notary Public



\*\*\*\*\*

STATE OF NORTH CAROLINA

COUNTY OF ~~ONSLOW~~ Chatham

I, the undersigned Notary Public of the County and State aforesaid, certify that Steve Thomas personally came before me this day and acknowledged that he/she is the MEMBER/MANAGER of THOMAS PROPERTIES OF HARNETT COUNTY, LLC, a North Carolina LLC, and that by authority duly given and as the act of such entity, he/she signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and Notarial stamp or seal, this 21st day of January, 2010.

My Comm. Expires: 6/12/2015

Lerna V. Taylor

Notary Public

(SEAL)

\*\*\*\*\*

EXHIBIT "A"

BEING all of the property as depicted on that certain map or plat entitled "COLE'S FARM WEST SECTION I: A PLANNED RESIDENTIAL DEVELOPMENT" prepared by Parker & Associates, Inc., dated 07/08/09 and the same being recorded in Map Book 60, Page 78, Onslow County Registry.

- 37 -

101