

*Ward
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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
STERLING FARMS

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
STERLING FARMS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR STERLING FARMS ("Declaration") is made this 7 day of December, 2006, by OGDEN HIGHWAY LLC, a North Carolina limited liability company (herein referred to as the "Declarant"); SUNTRUST BANK, a national banking association ("Lender"); and ALL PROSPECTIVE PURCHASERS AND OWNERS of real property within the planned community generally known as "Sterling Farms."

WHEREAS, Declarant is the owner in fee simple of the real property described in Exhibit "A", which is attached hereto and incorporated herein by reference, and desires to create a planned community pursuant to the provisions of Chapter 47F (the "Act") of the General Statutes of North Carolina and impose upon the Property (as defined in Article 1) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property; and,

WHEREAS, Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article 1) shall be held, sold, used and conveyed subject the Act and to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the desirability of, and which shall run with, the real property subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns.

Article 1. Definitions.

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Act": Chapter 47F of the General Statutes of North Carolina designated as the North Carolina Planned Community Act.

1.2 "Articles": The Articles of Incorporation of Sterling Farms Owners Association, Inc., as filed with the North Carolina Secretary of State and recorded in the Register of Deeds.

1.3 "Assessment": Assessments levied on all Lots to fund the Common Expenses. The Assessment for all Lots owned by Declarant shall be one-third (1/3) of the Assessment established for all Lots pursuant to Section 10.3.

1.4 "Association": Sterling Farms Owners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

1.5 "Association Documents": Collectively the Articles of Incorporation of the Association, the Bylaws of the Association, this Declaration, any Supplemental Declaration as may be applicable to separate portions of the Property, the Rules and Regulations, the Design Guidelines adopted by the Association, and any resolutions adopted by the Board, all as may be amended, restated and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

1.6 "Benefited Assessment": Assessments levied under Section 10.5.

1.7 "Board of Directors" or "Board": The body responsible for administration of the Association selected as provided in the Bylaws.

1.8 "Builder": Any Person who purchases one or more Lots for the purpose of constructing Dwelling Units for resale to consumers in the ordinary course of its business, or who purchases one or more parcels of land within the Property or Contiguous Property for further development and/or sale resale in the ordinary course of its business.

1.9 "Business and Trade": Shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.10 "Bylaws": The Bylaws of the Association as they may be amended from time to time.

1.11 "Common Elements": All real and personal property in which the Association now or hereafter owns, leases or otherwise holds possessory or use rights for the common use and enjoyment of the Owners, including easements held by the Association for those purposes. The term shall include, without limitation, any Recreational Facilities (hereinafter defined) (if constructed by Declarant and transferred to the Association as provided in Section 2.2), signage and/or landscape easements as the same may be depicted on the Map, as that term is defined in Section 2.3 herein, landscape medians, roads, cul de sacs, lakes, ponds, rivers, streams, wetlands and preservation areas. The term shall also include any utilities facilities owned or operated by the Association as described in Article 18 herein. The term shall also include any and all permits and other such intangible property including, but not limited to, the Stormwater Management Permit.

1.12 "Common Expenses": Any and all expenditures made by or financial liabilities and obligations of the Association, together with any allocations to reserves.

1.13 "Community-Wide Standard": The standard of conduct, upkeep, or other activity generally prevailing throughout the Property. The standard shall be established initially by Declarant thereafter shall be determined by the Board of Directors and the Architectural Committee. The standard may contain both objective and subjective elements, and may evolve and change as development progresses and as the needs and desires within the Property change.

1.14 "Contiguous Property": Any property of which a portion adjoins or borders the Property or which is separated from the Property only by roads, rights-of-way, waterways, or natural boundaries.

1.15 "Covenant to Share Costs": Any declaration of easements and covenant to share costs executed by Declarant and recorded in the Register of Deeds which creates easements for the benefit of the Association and the present and future owners of the real property subject to the Declaration and which obligates the Association and such owners to share the costs of maintaining certain property described therein.

1.16 "Declarant": Ogden Highway, LLC, a North Carolina limited liability company, or any successor, successor-in-title, or assignee thereof, which has or takes title to any portion of the Property described on Exhibit "A" or any Contiguous Property made subject to this Declaration for the purpose of development and/or resale in the ordinary course of business and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.17 "Declaration": This Declaration, any Supplemental Declaration as may be applicable to separate portions of the Property, any exhibit, schedule or amendment thereto, all as may be amended, restated and revised from time to time.

1.18 "Design Guidelines": The architectural, design, development, and other guidelines, standards, controls, and procedures including but not limited to, application and review procedures, adopted pursuant to Article 11 and applicable to the Property.

1.19 "Development Period": The period ending on the earliest of (a) twenty-five (25) years from the date this Declaration is recorded in the Register of Deeds; provided, that if Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond Declarant's control, then the aforesaid period shall be extended for the length of the delay plus an additional two (2) years upon written notice to the Association of such extension; or (b) the date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date so stated.

1.20 "Dwelling Unit": Any building or structure or portion of a building or structure situated upon a Lot which is intended for use and occupancy as an attached or detached residence for a single family.

1.21 "Landscaping": Living plants, shrubs, trees, vegetation, ground coverings (including grass and sod) and appurtenant live/growing vegetative materials, straw, mulches, composting materials, pools (other than swimming pools), ornamental ponds, ornamental structures and any other living or non-living material or structure reasonably constituting a part of any or all of the foregoing installed upon a Lot.

1.22 "Limited Common Elements": A portion of the Common Elements allocated by this Declaration or by operation of law for the exclusive use of one (1) or more but fewer than all of the Lots. Limited Common Elements may also be shown on any map of the Project recorded in the Register of Deeds.

1.23 "Lot": A portion of the Property, whether improved or unimproved, other than Common Elements and property dedicated to the public, which may be independently owned and conveyed and which is separately identified on a map of all or any portion of the Property recorded in the Register of Deeds. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon.

For all purposes set forth in the Association Documents, a Lot comes into existence on the later of recordation in the Register of Deeds of (i) a map or plat depicting said Lot or (ii) a Supplemental Declaration defining and subjecting the proposed Lot to the same and this Declaration.

1.24 "Member": A Person having membership in the Association consistent with Section 3.2 of this Declaration.

1.25 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.26 "Mortgagee": A beneficiary or holder of a Mortgage.

1.27 "Owner": One or more Persons who hold the record title to any Lot, except Persons holding an interest merely as security for the performance of an obligation in which case the equitable owner will be considered the Owner.

1.28 "Permit": The North Carolina Stormwater Management Permits No. SW8060127 issued for the real property described in Exhibit "A", and any additional North Carolina Stormwater Management Permits, applicable to the Property, and any amendments, additions or replacements thereof.

1.29 "Person": A natural person, corporation, limited liability company, partnership, trust, or any other legal entity.

1.30 "Project": The Sterling Farms development located on the Property.

1.31 "Property": The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article 9.

1.32 "Register of Deeds": The office of the Register of Deeds of Onslow County, North Carolina.

1.33 "Stormwater Management Facilities": All areas consisting of ditches and swells, retention ponds and other improvements which are constructed pursuant to, and regulated by, the Permit.

1.34 "Supplemental Declaration": An amendment or supplement to this Declaration filed pursuant to Article 9 which subjects additional property to this Declaration and identifies the Common Elements within the additional property, if any, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein

1.35 "Upkeep": Care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

1.36 "Use Restrictions": The rules and use restrictions are more fully defined as set forth in Section 12.

1.37 "Utility Company": A public or private company or entity duly licensed and authorized by the North Carolina Utilities Commission to provide utility services within a specified franchise area and any entity providing utility services on behalf of a body politic, municipality or other governmental body or entity.

Article 2. Property Rights.

2.1 Common Elements: Every Owner shall have a right and nonexclusive easement, in common with all other Owners, of use, access, and enjoyment in and to the Common Elements, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) All applicable provisions of the Act including, but not limited to, the following:
 - (i) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Elements, including rules restricting use of Recreational Facilities (as hereinafter defined) within the Common Elements to Owners, their families, lessees and guests, and

rules limiting the number of occupants and guests who may use the Common Elements;

- (ii) The right of the Association to dedicate or transfer all or any part of the Common Elements to governmental entities pursuant to Section 4.3;
- (iii) The right of the Board to impose reasonable requirements and charge reasonable admission, or other fees for the use of any Recreational Facility or other improvements situated upon the Common Elements;
- (iv) The right of the Board to permit use of any Recreational Facilities situated on the Common Elements by Persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (v) The right of the Board to create, enter agreements with, grant easements to and transfer portions of the Common Elements to tax-exempt organizations under Section 4.9;
- (vi) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred by the Association; and
- (vii) The right of the Association to convey or encumber portions of the Common Elements as provided in the Act.

(d) The right of the Board to suspend the privilege of an Owner to use Recreational Facilities within the Common Elements.

(e) The right of the Association to rent or lease portions of the Common Elements including the Recreational Facilities (as defined in Section 2.2 herein) on a short-term basis to any Owner for the exclusive use of such Owner and such Owner's family and guests.

2.2 Recreational Facilities. Declarant may, but has no obligation to, construct community center/clubhouses, swimming pools, and other recreational improvements and facilities within the Common Elements (the "Recreational Facilities"). If constructed, the Recreational Facilities will be provided for the benefit of Owners of Lots, their families, tenants and guests within the Property described on Exhibit A. The Recreational Facilities shall be maintained as part of the Common Elements out of assessments imposed on all Owners who have the right of access to and the use of the present Recreational Facilities in accordance with the provisions of Section 2.1. The Association may impose reasonable regulations regarding the

use of any such Recreational Facilities to insure accessibility, safety, harmony and preservation of any such Recreational Facilities. The cost of the management, operation, maintenance, repair, servicing, replacement and renewal of the Recreational Facilities shall be deemed Common Expenses as to all Owners who have the right of access to and use of said Recreational Facilities.

DECLARANT HAS NO OBLIGATION TO CONSTRUCT ANY RECREATIONAL FACILITIES, THE CONSTRUCTION OF THE SAME BEING IN THE SOLE DISCRETION OF DECLARANT.

Article 3. Association Function, Membership and Voting Rights.

3.1 Function of Association. The Association shall be the entity responsible for management, Upkeep, operation and control of the Common Elements. The Association shall be the primary entity responsible for enforcement of the Association Documents. The Association shall perform its functions in accordance with the Association Documents and North Carolina law. The Association shall have all powers reasonably necessary to perform its functions and obligations described in the Association Documents including, but not limited to, all powers set forth in N.C. Gen. Stat. Chapter 55A and the Act.

3.2 Membership. Every Owner shall be a Member of the Association. If a Lot is owned by more than one Person, all co-Owners shall be Members and share the privileges of such membership, subject to reasonable Board regulation, such reasonable fees as may be established under Section 2.1, and the restrictions on voting set forth in Section 3.3 and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is a corporation, limited liability company, partnership or other legal entity may be exercised by any officer, director, manager, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3 Voting. All Owners shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 3.2; provided, there shall be only one (1) vote per Lot.

Declarant may, by Supplemental Declaration, create additional classes of membership for the Owners of Lots within any additional property made subject to this Declaration, with such rights, privileges and obligations as may be specified in such Supplemental Declaration in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

Except as otherwise specified in this Declaration or the Bylaws or as required by law, the vote for each Lot shall be exercised by the Owner. In any situation in which there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such notice to the Association, the Lot vote shall be suspended if

more than one Person seeks to exercise it. If the co-Owners are unable to agree on how the vote should be cast, it will be disregarded.

Article 4. Association Rights, Obligations and Services.

4.1 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Property, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Elements by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed, including but not limited to restrictions governing the use of such property.

4.2 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Association Documents or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in the Association Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.3 Dedication of Common Elements. The Association may dedicate or grant easements over portions of the Common Elements to any local, state, or federal governmental entity or any Utility Company.

4.4 Disclaimer of Liability. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote the health, safety and welfare of Owners and occupants of any Lot.

(a) Notwithstanding anything contained herein or in the Association Documents or the Act, neither the Association, the Board, the management company of the Association, Declarant nor any successor Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Property, including all Recreational Facilities.

(b) Neither the Association, the Board, the management company of the Association, Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Property. Each Owner and occupant of a Lot and each family member, tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that the Association, the Board, the management company of the Association, Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any family member, tenant,

guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

(c) No provision of the Association Documents shall be interpreted as creating a duty of the Association, the Board, the management company of the Association, Declarant nor any successor Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the management company of the Association, if any, Declarant and any successor Declarant, their directors, officers, committee and Board members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

4.5 Safety. The Association may maintain or support certain activities within the Property designed to provide a greater level of safety than exists within the Property.

(a) Neither the Association, any management company of the Association, Declarant, nor any successor declarant shall in any way be considered insurers or guarantors of safety within the Property. Neither the Association, any management company of the Association, Declarant, nor any successor declarant shall be held liable for any loss or damage for failure to provide adequate safety or ineffectiveness of safety measures undertaken.

(b) All Owners and occupants of any Lot, and all family members, tenants, guests, and invitees of any Owner, acknowledge that the Association, its Board of Directors, and Association committees, the management company of the Association, Declarant, any successor declarant, and the Architectural Committee and the MC (as defined in Section 11.2(b) hereof) do not represent or warrant that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any safety system that may be designated by or installed according to guidelines established by Declarant or the Architectural Committee or the MC may not be compromised or circumvented; nor that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems will in all cases provide the detection or protection for which the system is designed or intended.

(c) All Owners and occupants of any Lot, and all family members, tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board and committees, the management company of the Association, Declarant, or any successor declarant are not insurers of safety within the Property. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants of its Lot that the

Association, its Board and committees, and Declarant not guarantors of security or safety and that each person using Property within the Project assumes all risks of personal injury and loss or damage to property including Lots, improvements thereon and the contents thereof, resulting from acts of third parties.

(d) All Owners and occupants of any Lot and all family members, tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board and committees, the management company of the Association, Declarant, or any successor declarant have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems recommended or installed or any safety measures undertaken within the Property.

4.6 Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. This paragraph shall be specifically construed to allow the Association to enter into a contract for the overall management of the Association with any individual or corporation. The Association or its managing agent shall also be permitted to provide services to any Subsidiary Association or Owners where it deems it to be in the interest of the Association to do so.

4.7 Change of Use of Common Elements. Upon (a) adoption of a resolution by the Board stating that, in the Board's opinion, a service provided by the Association pursuant to Section 4.6 or the then present use of a designated part of the Common Elements is no longer in the best interest of the Owners or is no longer necessary or appropriate for the purposes intended, and (b) the consent of Declarant during the Development Period, the Board shall have the power and right to terminate such service or change the use of any Common Elements (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided that any such new use (i) shall be for the benefit of the Owners, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Elements.

4.8 View Impairment. Neither Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. Neither Declarant nor the Association shall have the obligation to prune or thin Landscaping except as set forth in Article 5. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

4.9 Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Elements to, or transfer portions of the Common Elements to non-profit, tax-exempt organizations, including but not limited to organizations that provide facilities or services designed to meet the physical or social needs of a particular group or class of persons, for the benefit of the Property, the Association, its Members and residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

Article 5. Maintenance.

5.1 Association's Responsibility. The Association shall provide Upkeep for the Common Elements, which shall include, but need not be limited to:

- (a) all Common Elements, all improvements upon the Common Elements, and the Stormwater Management Facilities;
- (b) all Landscaping, signage, and improvements, including any parks, structures, bike, pathways and trails, situated upon the Common Elements;
- (c) all private streets, including any asphalt repairs thereto, situated upon the Common Elements;
- (d) all walls and fences constructed by Declarant on any Lots which serve as perimeter walls for the Property or which separate any Lot from Common Elements;
- (e) Landscaping, sidewalks, street lights, irrigation systems, and signage within public streets or other rights-of-way abutting the Property;
- (f) Landscaping within any public utility easements and scenic or access easements within the Common Elements (subject to the terms of any easement agreement relating thereto);

(g) access easements for the benefit of enumerated Lot owners as depicted on the map of the Project in the Register of Deeds, provided, however, that the cost and expenses of such Upkeep shall be levied as a Benefited Assessment to the benefited Owners;

(h) any additional property included within the Common Elements as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, any plat of any portion of the Property, or any contract or agreement for maintenance thereof entered into by the Association; and

(i) any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members and identified by written notice from Declarant to the Association until Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may also maintain and improve other property which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law.

Except as otherwise specifically provided herein, all costs for Upkeep of the Common Elements shall be a Common Expense allocated among all Lots as part of an Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for, such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

5.2 Owner's Responsibility. Each Owner shall provide for the Upkeep of his or her Lot (with the exception of those areas designated as common maintenance responsibility on the recorded maps), and Dwelling Unit, and all other structures, parking areas, Landscaping, and other improvements upon the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such responsibility for Upkeep is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her Upkeep responsibility, the Association may perform such work for Upkeep and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 10.5. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Standard of Performance. Upkeep may include irrigation as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All Upkeep shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board.

Portions of the Property are environmentally sensitive and/or may provide greater aesthetic value than other portions of the Property. The Board may establish a higher Community-Wide Standard for such areas and require additional Upkeep for such areas to reflect the nature of such property.

Notwithstanding anything to the contrary contained herein, neither the Association, nor any Owner shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

Article 6. Insurance and Casualty Losses.

6.1 Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect if reasonably available the following types of insurance:

(a) Blanket property insurance covering risks of physical loss on an "all-risk" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Elements to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at a reasonable cost, then "broad form named perils" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property. This provision for Blanket property insurance shall not be construed to require the Association to obtain coverage for any structure owned by any party other than the Association. The Association may elect to provide insurance for said structures with the approval of a majority of the Owners or if such individual coverage is not available,

(b) Commercial general liability insurance on the Common Elements, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf and including coverage for non-owned automobile liability. If generally available at reasonable cost, the commercial general liability insurance shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(c) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(d) Directors and officers' liability insurance or equivalent association liability insurance;

(e) Commercial crime insurance, including employee fidelity insurance, in an amount determined by its best business judgment which shall not be less than one-sixth of the annual Assessments on all Lots plus reserves on hand for employee fidelity insurance. Such commercial crime insurance shall cover funds held by the Association's

management company, unless such management company's insurance insures the Association against crimes committed by or against such management company. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation;

(f) Such additional insurance, including but not limited to flood, earthquake and hurricane insurance, as the Board in its best business judgment determines advisable; and

(g) The Association shall have no insurance responsibility for any portion of any Lot except as stated in paragraph 6.1(a).

If the insurance described in subsection (a) of this Section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners.

6.2 Association Policy Requirements. Prior to the renewal of any insurance policy, the Association shall arrange for a review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the Onslow County, North Carolina, area.

Premiums for all insurance on the Common Elements shall be Common Expenses and shall be included in an Assessment. In the event that insurance costs increase during the fiscal year, the Board may levy an Assessment for the increased costs pursuant to Section 10.3 herein, and such Assessments shall become effective upon approval by the Board.

The policies may contain a reasonable deductible as determined by the Board and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners, their family members, guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots in accordance with Section 10.5.

- (a) All insurance coverage obtained by the Board shall
 - (i) Be written with a company authorized to do business in the State of North Carolina which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board requires;

- (ii) Be written in the name of the Association as trustee for the benefited parties. Policies on the Common Elements shall be for the benefit of the Association and its Members;
- (iii) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;
- (iv) Include an agreed amount endorsement if the policy contains a co-insurance clause; and
- (v) Contain replacement cost coverage.
- (vi) Contain a waiver of subrogation as to any claims against the Association's Board, officers, committees, employees, and its manager and the Owners;
- (vii) Make the Lot Owners as additional insured's under the policy.
- (viii) Contain an endorsement preventing the Association's insurance carrier from invoking its "other insurance" clause to obtain any contribution from any insurance maintained by individual Owners;
- (ix) Provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy.
- (x) Provide that if, at the time of a loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides the primary insurance coverage.

(b) In addition, the Board shall secure, if reasonably available and as applicable, insurance policies providing the following:

- (i) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (ii) An endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (iii) A cross liability provision;

- (iv) A provision vesting the Board with exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited *from* participating in the settlement negotiations, if any, related to the loss; and

6.3 Owner's Insurance. By virtue of owning a Dwelling Unit upon a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance covering risks of physical loss for both the Dwelling Unit and any other insurable improvements on the Lot for the full insurable replacement cost thereof, less a reasonable deductible, unless any Subsidiary Association having jurisdiction over such Owner's Dwelling Unit and Lot carries such insurance pursuant to any Supplemental Declaration or otherwise. Such property insurance shall include windstorm and hail coverage, and, if full insurable replacement cost is not reasonably available for such coverage, actual cash value may be substituted. Each Owner shall, upon request from the Association, provide evidence of insurance coverage to the Association.

Each Owner further covenants and agrees that in the event of damage to or destruction of the Dwelling Unit or any other structures on or comprising his or her Lot, he or she shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 11 of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

6.4 Loss Adjustment, Repair and Proceeds. With respect to any loss covered by the policy (or policies) of the Association, it shall be adjusted by the Association and matters pertaining to the disbursement of proceeds of such insurance and the repair or replacement, including termination of the Project, shall be governed by the provisions of Chapter 47F-3-113(d) and (g) of the Act.

Article 7. No Partition.

Except as permitted in this Declaration, the Common Elements shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

Article 8. Permit: Transfer, Responsibilities and Covenants.

8.1 Transfer to and Acceptance by Association. 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 Property by Declarant to the standards required by the Permit. Upon completion of the initial construction of the Stormwater Management Facilities, Declarant shall transfer the Permit and Declarant's responsibilities under the Permit to the Association and the Association shall accept such transfer. Thereafter, upon

completion of the initial construction of the Stormwater Management Facilities required by the applicable Permit for any additional property annexed by Declarant into the Property pursuant to this Declaration, Declarant shall transfer the applicable Permit and Declarant's responsibilities under the Permit applicable to the property annexed by Declarant into the Property to the Association. The Association shall accept the transfer from Declarant of the applicable Permit and responsibilities under the Permit. Transfers of any such Permit shall occur on or about the date the North Carolina Department of Environment and Natural Resources allows the transfer of the Permit to occur; or, a later date elected by the Declarant in Declarant's sole discretion.

Prior to any such transfer of the Permit, the Stormwater Management Facilities for the Property, including any property annexed by Declarant into the Property, shall be certified to the Association and the State of North Carolina, either by state inspection or by a licensed engineer, as being in compliance with the applicable Permit prior to such assignment or transfer.

8.2 Association Indemnification. 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 responsible party under the Permit and any Permit applicable to any property annexed into the Property from and after the date Declarant tenders transfer of its responsibilities under the Permit. 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 holder of the Permit from and after the date 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 Section 8.2.

8.3 Administration of Permit. From and after the transfer of Declarant's responsibilities under the Permit applicable to the property annexed into the Property and from and after transfer of the Permit from Declarant to the Association, the oversight, supervision, management and administration of the Permit shall be the sole responsibility of the Association. The Association's duties with respect to the Permit shall be carried out in accordance with the terms and conditions of the Association Documents, and the Permit.

8.4 Easement for Upkeep and Enforcement. The Association hereby is granted and conveyed an easement over, under and upon each Lot for the purpose of access to and Upkeep of all Stormwater Management Facilities and to enforce all requirements of the Permit. In the event Declarant annexes additional property into the Property and transfers the applicable Permit and Declarant's responsibilities under the Permit to the Association, the Association shall have, and hereby is granted and conveyed, an easement over, under and upon each annexed Lot for the purpose of access to and Upkeep of all Stormwater Management Facilities located upon such additional property and to enforce all requirements of the Permit.

8.5 Permit Covenants. To ensure ongoing compliance with the Permit as issued by the Division of Water Quality under NCAC 2H.1000 the following covenants and restrictions are hereby imposed upon the Property:

(a) The maximum allowable built-upon area for each Lot is described on Exhibit C attached hereto. The allotted amount includes any built-upon area constructed within the property boundaries of a Lot and that portion of the right-of-way between the front Lot line and the edge of the pavement of any street abutting such Lot. Built-upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools. Built-upon area in excess of the permitted amount above-stated will require a modification of the Permit.

(b) Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings is strictly prohibited by any persons.

(c) Each Lot will maintain a 30' wide vegetated buffer between all impervious areas and surface waters.

(d) All roof drains shall terminate at least 30' from the mean high water mark.

(e) Each development area, whose ownership is not retained by the Declarant, must submit a separate Stormwater Management Permit application package to the Division of Water Quality and receive a permit prior to any construction on the lot. Individual, single-family residences are not required to submit a separate Stormwater Management Permit application package.

(f) No alteration of the drainage for the Stormwater Management Facilities designated in the Permit and shown on any accompanying approved plans shall occur without the prior written consent of the Division of Water Quality.

The State of North Carolina is made a beneficiary of the covenants above-stated to the extent necessary to maintain compliance with the Permit, and such covenants run with the Property and shall be binding on all Persons and parties claiming under them. The covenants set forth in this Section 8.5 pertaining to stormwater management may not be altered, rescinded, or modified without the express written consent of the State of North Carolina, Division of Water Quality.

8.6 Conservation Areas. In accordance with the United States Clean Water Act, the areas shown on the recorded plat of the Property and any subsequent plats of the Property, identified as conservation areas shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- activities;
- (a) Fill, grade, excavate or perform any other land disturbing
 - (b) Cut, mow, burn, remove or harm any vegetation;
 - (c) Construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures;
 - (d) Drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area;
 - (e) Dump or store soil, trash or other waste;
 - (f) Graze or water animals or use for any agricultural or horticultural purposes.

The covenants set forth in this Section 8.6 are intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, US Army Corp of Engineers, Wilmington District, and may be enforced by the United States of America. These covenants run with the land and shall be binding on the Owners and all parties claiming under it. The covenants set forth in this Section 8.6 may not be amended without the express written consent of the United States Army Corp of Engineers, Wilmington District.

Article 9. Annexation and Withdrawal of Property.

9.1 Annexation Without Approval of Membership.

- (a) During the Development Period, Declarant may unilaterally subject any Contiguous Property to the provisions of this Declaration. Nothing in this Declaration or otherwise shall be construed to require Declarant, or any successor, to develop any Contiguous Property in any manner whatsoever.
- (b) Declarant may transfer or assign this right to annex property, provided that such transfer is memorialized in a written, recorded instrument executed by Declarant and recorded in the Register of Deeds. Nothing in this Declaration shall be construed to require Declarant or any successor to annex or develop any Contiguous Property in any manner whatsoever.
- (c) Such annexation shall be accomplished by filing a Supplemental Declaration in the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the recording of such Supplemental Declaration in the Register of Deeds unless otherwise provided therein.

9.2 Annexation With Approval of Membership. The Association or Declarant may subject any Contiguous Property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Owners representing 67% of the votes of the Association represented at a meeting duly called for such purpose, and the consent of Declarant during the Development Period.

Such annexation shall be accomplished by recording a Supplemental Declaration in the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon the recording unless otherwise provided therein.

9.3 Withdrawal of Property. Declarant reserves the right to amend this Declaration without prior notice and without the consent of any Person, for the purpose of removing property then owned by Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Property.

9.4 Additional Covenants and Easements. Declarant may unilaterally subject any portion of the Property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property and shall require the written consent of the owner(s) of such property, if other than Declarant.

9.5 Amendment. This Article shall not be amended without the prior written consent of Declarant during the Development Period.

9.6 Additional Members. Any property annexed into the Association by the provisions of this Declaration shall be subject to all conditions and privileges of the Association and Owners of any such annexed property shall be members of the Association.

Article 10. Assessments.

10.1 Creation of Assessments. The Association shall levy assessments against each Lot for Common Expenses as the Board may specifically authorize from time to time. There shall be two (2) types of assessments for Association expenses: (a) Assessments to fund Common Expenses for the general benefit of all Lots; and (b) Benefited Assessments as described in Section 10.5. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Lot within any portion of the Property is deemed to covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Association (not to exceed the highest rate allowed by North Carolina

law), late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is levied until paid, as more particularly provided in Section 10.7. Each such assessment, together with interest, late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment was levied. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance. No first Mortgagee which obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

All assessments shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, an Assessment for each Lot shall be due and payable in advance each year on the first day of the fiscal year of the Association.

The Association shall, upon request by an Owner, furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether assessments for such Owner's Lot have been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself or herself from liability for assessments, by non-use of Common Elements, abandonment of his or her Lot or Dwelling Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it or for inconvenience or discomfort arising from repairs or improvements or other action taken by it.

10.2 Declarant's Obligation for Assessments. During the Development Period, Declarant may annually elect either to pay (i) the annual Assessment attributable to all of its unsold Lots or (ii) the shortage for such fiscal year. The "shortage" shall be the difference between

(a) the amount of all income and revenue of any kind received by the Association, including but not limited to, assessments collected on all other Lots, use fees, advances made by Declarant, and income from all other sources, and

(b) the amount of all actual expenditures incurred by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds. Calculation of the shortage shall be performed on a cash basis of accounting. Unless Declarant otherwise notifies the Board in writing at least sixty (60)

days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities for payment of Common Expenses. After termination of the Development Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

10.3 Computation of Annual Assessment. Not less than sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.4, but shall not include expenses incurred during the Development Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Owners representing a majority of the votes of the Association and Declarant. In determining the budget, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under Section 10.6 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

Within thirty (30) days after adoption of any proposed budget by the Board, the Board shall provide to all Owners a summary of the budget and notice of a meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary of the budget and notice of the meeting. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless, at that meeting, seventy-five percent (75%) of all the Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

The Assessment for the fiscal year shall be determined based upon the budget adopted by the Board and ratified by the Owners. In addition to Assessments for the fiscal year, the Board may levy Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Assessments shall be approved at a meeting of the Board and shall become effective upon approval by the Board, unless disapproved by Declarant during the Development Period. Such Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which such Assessment is approved. The amount of each Assessment shall be levied equally against all Lots, subject to the provisions of Section 1.5.

10.4 Reserve Budget and Special Reserve Assessment. The Board shall prepare, on an annual basis, reserve budgets for general purposes which take into account the

number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. Such reserve budgets may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in the Assessments reserve contributions in amounts sufficient to meet these projected needs, if any.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes. During the Development Period, neither the Association nor the Board shall adopt, modify, limit or expand such policies without Declarant's prior written consent.

10.5 Benefited Assessments. The Board may levy Benefited Assessments against particular Lots for expenses incurred or to be incurred by the Association, as follows:

(a) to cover the costs, including overhead and administrative costs, of Upkeep and replacement of any Limited Common Elements;

(b) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, Landscape maintenance, caretaker service, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(c) to cover costs incurred in bringing the Lot into compliance with the terms of the Association Documents and the Act or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their family members, tenants, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying a Benefited Assessment under this subsection (c).

10.6 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day of the month following (a) the date the Lot is made subject to this Declaration, or (b) the date the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Assessments against each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

10.7 Lien for Assessments. All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied, as provided in N.C. Gen. Stat. § 47F-3-116, as amended, until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of interest (subject to the limitations of North Carolina law), late charges, and costs of collection (including attorneys' fees, lien fees and administrative costs). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over