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Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK **3678** PG **766-783**

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STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

**DECLARATION OF  
COVENANTS AND RESTRICTIONS FOR  
VIRGINIA'S LANDING AT CATHERINES LAKE (the "Declaration")**

**THIS DECLARATION** is made this 14 day of November, 2011, by **VIRGINIA'S LEGACY, INC.**, a North Carolina corporation, (the "Declarant").

**BACKGROUND STATEMENT**

**WHEREAS**, Declarant is the owner of all that certain tract of land situated in Richlands Township, Onslow County, North Carolina, being more particularly described as follows:

**BEING** all of that property designated Phase A, containing 1.28 acres, as shown and described on a plat entitled, "Final Plat Showing VIRGINIA'S LANDING AT CATHERINES LAKE (PHASE A)," dated October 6, 2011, prepared by John L. Pierce & Associates, P.A., and recorded in Map Book 63, Page 24, Slide O-57, in the Office of the Register of Deeds of Onslow County, North Carolina, hereinafter referred to as either the "Property", "Properties, "Virginia's Landing at Catherines Lake" or the "Subdivision"; and

**WHEREAS**, Declarant is constructing on the Property, a residential subdivision, which may include community facilities for the benefit of the community, with single family townhouses; and

**WHEREAS**, Declarant desires 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 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;

**WHEREAS**, Declarant desires to provide and allow for the annexation of additional

“phase(s)” to the subdivision as said “phase(s)” are, or may be, developed and completed, and to provide for equality of rights, privileges and obligations of all lot owners in all “phase(s)” of the subdivision by adding and annexing such “phase(s)” to the subdivision by recordation of “Supplemental Declarations” to this Declaration.

### **DECLARATION**

**NOW, THEREFORE**, it is hereby declared that the Property described herein is, and shall be, held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth

#### **SECTION 1. DEFINITIONS:**

**A. Association** shall mean and refer to “VIRGINIA’S LANDING HOA, INC.”, a North Carolina non-profit corporation, its successors or assigns.

**B. Board** shall mean and refer to the Board of Directors of the Association.

**C. Common Area** shall mean all real property owned by the Association, or upon which the Association has a perpetual easement, if any, for the common use, benefit and enjoyment of the Owners and designated as “Common Area”, “Access Easement”, “Private Street”, “Private Drive”, “Nitrification Easement”, “Sanitary Sewer Easement”, “Septic System Easement”, “Offsite Septic System Area”, “Wastewater Treatment Area” or “Repair Area” on any recorded subdivision map of any portion of the Property.

The Common Area to be conveyed or perpetual easement granted to the Association prior to the conveyance of the first Lot will be the private street or drive designated as “Virginia’s Landing Court”, “Phase A, Nitrification Easement”, and all portions of Phase A of the Subdivision designated as “Common Area” and “Natural Buffer”.

**D. Common Expenses** shall mean and refer to :

i. 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 By-Laws;

ii. 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 SW8 110404 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;

iii. all amounts expended by the Association for the maintenance, protection, repair and replacement of the wastewater collection, treatment and disposal systems installed for the use and benefit of the Property;

iv. all amounts expended by the Association for the maintenance, protection, repair and replacement of the Common Area, including, but not limited to the street(s) and drive(s).

**E. Declaration** shall mean the covenants, restrictions and easements and all other provisions set forth in this entire document, as may from time to time be modified or amended.

**F. Declarant** shall mean and refer to Virginia’s Legacy, Inc., a North Carolina corporation, or any successor in title or any successor in interest of Virginia’s Legacy, Inc..

G. **Living Unit or Unit** shall mean and refer to any portion of a structure situated upon Properties designed and intended for use and occupancy as a residence by a single family, including, without limitation, townhouse homes, single family homes, patio homes and condominium units.

H. **Lot** shall mean any separately described parcel of land or condominium unit, as defined in NCGS Section 47C-1-103, shown upon any recorded subdivision map of the Properties, with the exception of Common Area, Nitrification Easement Areas, Natural Buffers, Access and Sanitary Sewer Easement, and easements.

I. **Owner** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, but shall not include those having such interest solely as security for the performance of an obligation.

J. **Parcel** shall mean and refer to a portion or part of the real property, together with the improvements located thereon, which becomes subject to this Declaration. This term shall include any additions to the existing Properties as herein provided.

K. **Property or Properties** shall include that property described on Exhibit "A", all or part of which may from time to time be submitted to and made subject to the terms of this Declaration.

L. **Supplemental Declaration** shall mean and refer to any declaration of covenants, restrictions, easements, charges and liens recorded by the Declarant, or its successors and assigns, which applies to a specific tract of real property annexed to the Subdivision.

## **SECTION 2. ANNEXATION OF OTHER PROPERTY TO THE SUBDIVISION:**

The Declarant, for itself and its successors and assigns, hereby expressly reserves the right, but shall in no way be obligated, to expand the real property which is subject to this Declaration without the consent or joinder of any Owner or Owners of any Lot or Lots or person or entities having a lien or security interest in such Lot or Lots, by annexing, from time to time any real property adjacent to the Subdivision.

The Declarant may also identify and annex to the Subdivision by amendment hereto any other property as Declarant in its sole discretion may determine.

An amendment to this Declaration shall be made and recorded in the Office of the Register of Deeds of Onslow County, North Carolina, to include each portion of the real property which is to be subject to this Declaration, and each such portion of the real property shall constitute an addition to the Properties. The right of the Declarant, or its successors and assigns, to expand the Properties as herein provided shall expire fifteen (15) years following the date of recordation of this Declaration.

## **SECTION 3. SUPPLEMENTAL DECLARATION(S):**

The Declarant shall have the right, from time to time, to record Supplemental Declarations for other real property annexed to the Subdivision which may designate specific use and other restrictions within said annexed real property, may create Common Areas and Nitrification Easement Areas within such Parcel for the use only of Owners of Lots in said annexed real property, and may create a separate owners association exclusively for such annexed real property; provided, however, no Supplemental Declaration shall avoid membership in the Association by Owners of Lots in said annexed real property, nor shall any Supplemental Declaration

modify or amend the terms of this Declaration or any prior Supplemental Declaration for other portions of the Subdivision, without the required consent of Owners of all portions or phase(s) constituting the then existing Subdivision.

#### **SECTION 4. COMMON AREAS AND COMPLIANCE WITH STORMWATER PERMIT:**

A. Dedication: The Common Areas, Nitrification Easement Areas, and Repair Areas, if any, and Natural Buffers shall be dedicated as such by the Declarant, or its successors and assigns, before the first Lot in the Subdivision, or any annexed section, is conveyed to an Owner.

B. Maintenance and Compliance with Stormwater Permit: The Association shall be responsible for the exclusive management and control of the Common Areas, Nitrification Easement Areas, and all improvements located thereon (including recreational facilities, landscaping, sanitary sewer facilities, fixtures and equipment related thereto), except as may otherwise be provided for in a Supplemental Declaration. The paragraph specifically empowers, but does not limit other powers of, the Association to control and regulate the hours and periods of operation of all recreational facilities in the Common Area, Natural Buffers, and all maintenance, repair, and replacement of sanitary sewer facilities in the Common Area, and Nitrification Easement Areas, and all maintenance of landscaping in the Common Area, even if the areas are subject to a sub-association created by this Declaration, or any amendment to this Declaration and recording of a Supplemental Declaration. Additionally, the Association shall oversee, inspect, maintain, repair and replace the Stormwater Management Facilities constructed pursuant to the Stormwater Permit described in Section 12, *infra* (the "Permit"); to enforce the provisions of the Permit; to enforce each Lot owner's obligations with respect to the Stormwater Management Facilities pursuant to this Declaration; to enforce each Lot 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, Declarant transfers the Permit to the Association.

C. Owners' Easements of Enjoyment: Every Owner shall have a right and easement of enjoyment in and to the Common Area, together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Common Area, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) the right of the Association to suspend the voting rights and the right to use the recreational or other Common Area facilities, if any, by any Owner for a period during which any assessment against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(ii) the right of the Association 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 Members and an instrument of dedication, sale, lease, or transfer property 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 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 successors 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;

(iii) the right of the Association to limit the number of guest of Members;

(iv) the right of the Association, 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;

(v) the right of the Association, in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Common Area and improvements thereon, which rules and regulations may further restrict the use of the Common Area and create and restrict the use of Limited Common Area.

(vi) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified above, to the Property and all subsequent real properties annexed to the Subdivision.

#### SECTION 5. MEMBERSHIP AND VOTING RIGHTS:

A. Members. Every record Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot, which is subject to assessment.

B. Classes of Members. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, however, the vote for such Lot shall be exercised as they have among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited. For purposes of membership and voting rights under this paragraph, Declarant shall be deemed to own three (3) Lots for each undeveloped acre of land set out in Exhibit A.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned, including lots later added pursuant to annexation of additional Property as set forth in this Declaration. The Class B membership shall cease and be converted to Class A membership with one vote for each Lot on the happening of either the following events, whichever occurs earlier:

- (i) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership;
- (ii) on that date which is ten (10) years from the date of recording this Declaration;
- (iii) at the discretion of the Declarant.

C. Suspension of Voting Rights. The right of any Member to vote may be suspended by the Board of Directors of the Association for just cause pursuant to its rules and regulations, the Articles and Bylaws of the Association.

**SECTION 6. COVENANT FOR MAINTENANCE ASSESSMENTS/ LOT OWNERS FOR EACH SECTION OBLIGATION FOR MAINTENANCE OF RESPECTIVE Nitrification Easement IMPROVEMENTS:**

A. Purpose of Assessments: The 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, capital improvements and maintenance of the Common Area, Nitrification Easement Areas, and Access and Septic Easement area, with the highest priority for expenditures by the Association to be for the wastewater collection, treatment and disposal systems required to be maintained pursuant to that certain Septic System Agreement and Exclusive Easements, executed by the Onslow County Health Department, the Declarant and the Association recorded, or to be recorded, in the Office of the Register of Deeds of Onslow County, North Carolina (the "Tri-Party Agreement"), except for federal, state and local taxes and insurance, and for the use and enjoyment of the Common Area, 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 Area, including the Nitrification Easement Areas and Repair Areas, if any, and Access and Septic System Easement area, the providing for security to the Property, the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board, the employment of counsel, accountants, and other professionals for the Association when necessary, and such other needs as may arise. Further, said assessments shall be for 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; all amounts expended by the Association in enforcing the provisions of this Declaration, as may be amended; all amounts expended by the Association in the performance of its duties hereunder from and after the time Declarant transfers the Permit; and 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.

B. Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments or charges;
- (2) special assessments for extraordinary maintenance and capital improvements;
- (3) special assessments for purchase, construction or reconstruction of improvements; and
- (4) to the appropriate governmental taxing authority, a pro rata share of ad valorem taxes against, and assessments for private improvement to, the Common Area, Nitrification Easement Areas and private roads if the Association shall default in payment thereof.

The annual and special assessments, together with interest and costs, and reasonable

attorney's fees for collections, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

C. Lot Owners In Subdivision Obligated to Maintain Offsite Septic System Facilities Servicing Their Units. The costs and expenses for restoration, reconstruction, maintenance, repair and replacement of the offsite septic treatment and disposal systems, and Nitrification Easement Areas, together with the Repair Areas therein, or adjacent thereto, if any, shall be the primary responsibility and liability of the Owners of Lots serviced by such offsite septic systems in the Nitrification Easement. The Association may assess a separate annual or special assessment for such costs and expenses ("Nitrification Easement Assessment") to be paid by the Owners for which such restoration, reconstruction, maintenance, repair and replacement is performed.

D. Minimum Annual Assessment and Nitrification Easement Assessment: The initial annual assessment for the Common Area and Stormwater Permit compliance, not including any Nitrification Easement Assessment, shall be **Two Hundred Forty Dollars (\$240.00)** per Lot. The initial annual assessment for the Nitrification Easement Assessment for each Nitrification Easement Area shall be **Sixty Dollars (\$60.00)** per Lot. Until such time as there is no longer a Class B Membership, Declarant shall not be obligated to pay any assessment, but shall pay any Association expenses not otherwise covered by the annual assessments, Nitrification Easement assessments or any special assessments hereunder.

E. Increase of Annual Assessment: From and after January 1, 2012, the annual assessments for the Common Area and Limited Common Area, if any, Stormwater Permit compliance, Nitrification Easement Assessment, effective for any year (including 2012) may be increased from the preceding year by the Board of Directors, without a vote of the membership, by the percentage which may not exceed fifteen (15%) percent. From and after January 1, 2012, the annual assessments for the Common Area and Limited Common Area, if any, Stormwater Permit compliance and Nitrification Easement Assessment, may be increased by a percentage greater than that permitted to be made by the Board of Directors under this section 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.

F. Criteria for Establishing Annual Assessment: In establishing the annual assessments and Nitrification Easement assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment or Nitrification Easement assessment in an amount in excess of fifteen (15%) percent of the previous year's assessment, without the consent of the Members as required under this Section.

G. Special Assessments for Capital Improvements and Insurance: In addition to the annual 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, restoration, repair or replacement of a capital improvement upon the Common Area, Limited Common Area, if any, Stormwater Management Facility, and Nitrification

Easement Area with the highest priority for expenditures by the Association to be for the wastewater collection, treatment and disposal systems required to be maintained pursuant to that certain Tri-Party Agreement (except for federal, state and local taxes and insurance), any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, and any insurance premium, provided that any such assessments shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

H. 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, Limited Common Area, if any, Stormwater Management Facility, and Nitrification Easement Area which the Association may be obligated to maintain.

I. Notice and Quorum for Any Action Authorized Under Sub-Phase(s) D and F:

Written notice of any meeting called for the purpose of taking any action authorized under this Section shall be sent to all Members not less than 15 days nor more than 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 (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

J. Uniform Rate of Assessment and Separate Accounts: Both annual and special assessments for Common Area, Limited Common Area, if any, and Nitrification Easement Area 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 establish by the Board. The Board may establish separate bank accounts for the Common Area assessments and the Nitrification Easement Area assessments for each Section of the Subdivision. In the event separate bank accounts are not established, the Board shall maintain a separate set of books and accounts for the assessments collected and disbursements made for the Common Area and each Nitrification Easement Area Section.

K. Date of Commencement of Annual Assessments; Dues Date; Initial Working Capital: The annual assessments and Nitrification Easement 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 annual common area assessment and Nitrification Easement 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 annual common area assessments and Nitrification Easement assessments against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual common area assessments and Nitrification Easement assessments shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates. The Association shall, upon demand, and for reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

In addition to the regular assessments to be charged and paid hereunder, each Lot Owner shall, at the time of the initial sale of each Lot by Declarant to that Lot Owner, pay to the Association a



sum equal to two (2) months of the annual common area assessment on that Lot as additional working capital of the Association. These amounts need not be segregated, but may be commingled with regular assessment funds. This working capital amount shall be paid by the Lot Owner, notwithstanding the fact that Declarant may have paid Association expenses to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

L. 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 (18%) per annum. 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.

M. Subordination of the Lien to Mortgages and Ad Valorem Taxes: 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 or any proceeding in lieu thereof, 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.

N. Responsibility for Maintenance of Private Streets and Driveways: The maintenance responsibility of the private streets and driveways as shown on any recorded subdivision map of the Properties shall rest with the Association. In no case shall any governmental authority have jurisdiction over the Property, be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property and/or occupant when the failure is due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association or Owner.

## **SECTION 7. ARCHITECTURAL CONTROL:**

A. 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 Section, 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, bulkheads, 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.

B. 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.

C. 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 Lot 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 Lot Owner and shall be binding upon the Association and may be relied upon by third parties.

D. 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.

## SECTION 8. GENERAL RESTRICTIONS:

A. (i) 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.

No structure shall be erected, altered, place or permitted to remain on any Lot described and shown on a recorded subdivision map of the real property described in Exhibit A-1, other than one single family townhouse dwelling, not to exceed two and one-half stories in height, a private garage and such other outbuildings as may be reasonably appurtenant to the dwelling, provided that the same are constructed in line with general architectural design and construction standards used as the dwelling itself. This covenant shall not be construed as prohibiting the use of a new dwelling as a model home for sales purposes.

(ii) Dwelling quality and size: The ground floor area of the main structure, exclusive of open porches and garages, shall not be less than 496 square feet of enclosed heated area.

B. Prohibited Structure: 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.

C. Nuisances: 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 neighborhood. 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. 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. The washing and cleaning of all automobiles or other vehicles shall be conducted at such times so that not more than two (2) automobiles or other vehicles are being washed or cleaned simultaneously.

Declarant, or Association, its successors or assigns, reserves the right to enter upon and cut grass, weeds, or undergrowth on any Lot or easement, but shall be under no obligation to do so. Declarant, or Association, its successors or assigns, further reserve the right to impose such other rules and regulations to prohibit "group" or "party" car washes and other activities which it deems an unreasonable annoyance or nuisance to the community.

D. Animals: No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling, except that household pets may be kept, provided that said pet shall not exceed 45 pounds in weight and is not kept for breeding or commercial purposes. Any such household pet shall not be allowed off the Lot of the Owner of said pet, unless said pet is attended and on a leash. Each Owner shall be solely and absolutely liable for the acts of any pet kept on such Owner's Lot. Notwithstanding the foregoing, no full or mixed breed pit bull, rottweiler, wolf hybrid or any dog of any breed with traits of aggression as determined by a veterinarian selected by the

Board of Directors of the Association, or any dog with a record of vicious behavior shall be kept or maintained on any Lot, or in any dwelling, regardless of its weight.

E. 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 Architectural Committee. 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 Architectural Committee and, in any event, shall be kept in an enclosed area not subject to view from any person, from any direction.

F. Exterior Lights: All light bulbs or other lights installed in any fixture located on the exterior of any dwelling, 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 Architectural Committee approval.

G. Sight Distance at Interphase(s): No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet 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 25 feet 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 (10) feet 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.

H. 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 Architectural Committee reserves the right to approve the style, design, color and location prior to any original installation or replacement. Application shall be made to the Architectural Committee prior to installation or replacement. By accepting a deed to any Lot, the Owner gives the Architectural Committee the right to remove any nonapproved mailbox in a reasonable manner; all costs for same shall be paid by Owner, and all damages against the Architectural Committee are waived.

I. Signs: No sign, billboard, or other advertising of any kind, including without limitation professionally prepared "for sale" and "for rent" signs, shall be placed or erected on any Lot, save and except a professionally prepared "for sale" or "for rent" sign not to exceed six (6) square feet in size. Although approval by the Architectural Committee is not required prior to the display of such signs, the Architectural Committee may itself remove, have removed, or require the removal of any such sign which in its opinion adversely affects the appearance of the community. A valid easement shall exist on any Lot for such removal by the Architectural Committee or its agents. Provided, however, nothing shall prohibit or limit in any manner "construction" signs designating the job site and builder which may be placed upon a Lot during the period of the construction of a residential dwelling on the Lot, but must be immediately removed upon final completion of such construction. Notwithstanding the above, any additions to the Project Area in the Property may be further limited in regard to signs, billboards or advertising as set out in any Supplemental Declaration. Nothing herein shall prohibit any sign erected by the Declarant or its assigns.

J. Antennas: There shall be no exterior antennas of any kind for receiving and/or sending of television, radio, internet or other signals, unless same have first been approved by the Architectural Committee.

K. 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.

L. Vehicles, Boats, Storage, Travel Trailers, etc: No vehicle without current inspection sticker, vehicle over 5000 pounds empty weight, or bus shall be parked overnight on any Lot; provided, however, guests of an Owner may so park such vehicle for a period not to exceed seven (7) days each calendar year. Raw firewood, bicycles, motorcycles, or other items may be stored only on that part of any Lot away from the street lying beyond the front line of the dwelling so that it is not viewable from any street. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands.

M. 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.

N. Clotheslines: Clotheslines shall not be permitted, unless otherwise approved by the Architectural Control Committee.

O. Fence Minimum Requirements: No fences over 6 feet 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 act as a fence or privacy or security inducing structure. Architectural review requirements must be met prior to construction of any fence.

## SECTION 9. MULTI-FAMILY DWELLING SPECIAL PROVISIONS:

A. Conveyance of Multi-Family Unit and Encroachment Easements: Regardless of any provision in this Declaration to the contrary, nothing shall prohibit or prevent the conveyance of a part or portion of any Lot in order to convey one separate living quarters residence of a multi-family dwelling. Easements are hereby reserved, for the benefit of the Declarant, its successors, and assigns and the Owner of any Lot, upon any adjacent Lot or Common Area for the encroachment of all or any portion of the common Party Wall of such Lot, any portion of the roof overhang of any Unit and exterior walls and siding of any Unit.

### B. (1). Party Walls:

(i) General Rules of Law to Apply: Each wall which is built as a part of the original construction of the dwelling upon the Properties and placed between the separate living quarters of a multi-family dwelling shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(ii) Sharing of Repair and Maintenance: The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(iii) Destruction by Fire or Other Casualty: If a party wall is destroyed or damaged by

fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner(s) thereafter make use of the wall, they shall contribute to the costs of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution for the others under any rule of law regarding liability for negligent or willful acts or omissions.

(iv) Weatherproofing: Notwithstanding any other provisions of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(v) Right to Contribution Runs with Land: The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's heirs and successors in title.

(vi) Arbitration: In the event of any dispute arising concerning a party wall, or under any provisions of this Section, each party shall choose one arbitrator, who shall choose a third arbitrator to resolve such dispute. The decision shall be by a majority vote of all the arbitrators.

**B. (2). Roof Maintenance and Shared Roofs:**

(i) Roof Construction and Maintenance. The Declarant's intent is to construct, or have constructed, the townhouses in such a manner which will result in a continuous roof between clusters of several adjoining townhouse dwellings. Each Lot Owner shall be responsible for repairing, restoring and maintaining that portion of the roof situated solely upon his/her/their Lot in substantially the same condition it exists at the time of the original conveyance, normal wear and tear excepted.

(ii) Sharing of Repair and Maintenance of Joint Roof Area: The costs of reasonable repair and maintenance of that portion of a roof shared by adjoining Lot Owners shall be in proportion to such use.

(iii) Destruction by Fire or Other Casualty: If any portion of a roof, shared by Lot Owners, is destroyed or damaged by fire or other casualty, any Owner whose townhome is benefitted by such roof may restore it, and if the other Owners thereafter benefit from such restored roof, they shall contribute to the costs of restoration thereof in proportion to such benefit without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(iv) Weatherproofing: Notwithstanding any other provisions of this Section, an Owner who by his negligent or willful act damages or destroys a portion of any roof which benefits other townhouse dwellings shall bear the whole cost of repair or restoration.

(v) Right to Contribution Runs with Land: The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's heirs and successors in title.

(vi) Arbitration: In the event of any dispute arising concerning a damaged or destroyed roof, each party shall choose one arbitrator, who shall choose a third arbitrator to resolve such dispute. The decision shall be by a majority vote of all the arbitrators.

**C. Damaged or Destroyed Townhouse**. In the case of any damage to or destruction of a townhouse dwelling or any part thereof, the affected Lot Owner shall either (i) within sixty (60) days, rebuild, repair, or restore those portions of the townhouse that have been damaged and/or destroyed, or (ii) take such action as is necessary to prevent the deterioration and damage to any adjoining townhouse dwelling, including removal of any debris or unsightly conditions.

**SECTION 10. STREET LIGHTING AGREEMENT:** The Declarant reserves the right to subject all, or any portion of the Properties, 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 Lot Owners.

**SECTION 11. RESTRICTIONS ON FURTHER SUBDIVISION:** No Lot which has been designated as such by Declarant by recorded plat shall be further subdivided or separated into smaller Lots. This restriction shall not apply, however, to Declarant.

**SECTION 12. STORMWATER MANAGEMENT:**

(A) The following covenants and restrictions set forth in this Section are intended to insure continued compliance with State Stormwater Management Permit Number SW8 110405, as issued by the Division of Water Quality, under NCAC 2H.1000.

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

(C) The covenants set forth in this Section pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

(D) Alteration of the drainage as shown on the approved plans may not take place without the concurrence of the Division of Water Quality.

(E) The maximum allowable built-upon area ("BUA") per lot is 750 square feet. This allotted amount includes any built-upon area constructed within the Lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking or the water surface of swimming pools.

(F) For those lots within CAMA's regulated Area of Environmental Concern, where the DCM calculates a different maximum lot built-upon area ("BUA"), the governing lot BUA shall be the most restrictive of the two amounts.

(G) 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.

(H) Each Lot will maintain a fifty (50) foot wide vegetated buffer adjacent to surface waters.

(I) All roof drains shall terminate at least fifty (50) feet from surface waters.

(J) If permeable pavement credit is desired, the property owner must submit a request, with supporting documentation, to the permittee and receive approval prior to construction of the permeable pavement

(K) Built upon area in excess of the permitted amount requires a state stormwater permit modification prior to construction.

(L) These covenants are to run with the land and be binding on all persons and parties claiming under them.

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.

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.

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.

### **SECTION 13. RESERVATION OF EASEMENTS AND RIGHTS BY 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 Property, 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:

(A) 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, including the Nitrification Easement areas,



shown on any recorded map of the Properties or lying within the Property and the water and sewer easements lying within any Parcel or Common Area;

(B) 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 offsite septic 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;

(C) 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;

(D) 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;

(E) 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.

#### **SECTION 14. 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.

#### **SECTION 15. MODIFICATION:**

A. The Declarant may amend this Declaration in accordance with the provisions set forth herein to add/annex additional property to this Declaration.

B. 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 (67%) 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. If the Declarant owns sixty-seven (67%) percent or more of the subdivided lots, the Declarant may alter or amend these covenants without the consent of any other owner.

#### **SECTION 16. 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 or wastewater collection.

**SECTION 17. 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.

**IN WITNESS WHEREOF**, the Declarant has caused this instrument to be signed by its President, with authority duly given by its board of directors, the day and year first above written.

**VIRGINIA'S LEGACY, INC.**, a North Carolina corporation

By: Donnie D. Pierce  
Donnie D. Pierce  
its President

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

The undersigned, a Notary Public in and for said County and State, does hereby certify that DONNIE D. PIERCE, known to me or having provided satisfactory proof of his identity, personally came before me this day and acknowledged that (s)he is the President of VIRGINIA'S LEGACY, INC., a North Carolina corporation, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by him/her as its President for the purposes set forth therein and in the capacity indicated.

Witness my hand and official stamp or seal, this 14 day of November, 2011.

J. Dewey Edwards, Jr.  
Notary Public  
Printed Name: J. Dewey Edwards, Jr.

My Commission Expires: July 9, 2016

