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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HAWKESWATER AT THE RIVER SUBDIVISION

**Prepared By and Return to:**  
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STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR HAWKESWATER AT THE  
RIVER SUBDIVISION**

THIS DECLARATION, made the 24 day of February, 2008, by Hawkeswater I Development, Inc., a North Carolina corporation, Hawkeswater II Development, Inc., a North Carolina corporation, Hawkeswater III Development, Inc., a North Carolina corporation, and Riverside Land Holdings, LLC, a North Carolina limited liability company, collectively hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated;

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real property in Brunswick County, North Carolina, known as **HAWKESWATER AT THE RIVER SUBDIVISION**, which is shown on a plat recorded in the Office of the Register of Deeds of Brunswick County, North Carolina, in Map Book 48, Page 27 (the "Plat"), to which reference is made for a more particular description (the "Property").

NOW, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants and conditions:

**ARTICLE I  
DEFINITIONS**

In addition to other terms defined herein, the following capitalized terms shall have the following meanings as used herein:

**SECTION 1.** Additional Property shall mean and refer to any lands which are now owned or may be hereafter acquired or developed by Declarant, in addition to the above-described Property, and annexed to and made a part of the Planned Community.

**SECTION 2.** Allocated Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

**SECTION 3.** Association shall mean and refer to Hawkeswater Homeowners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns, the owners' association organized pursuant to the Act for the purposes set forth therein.

**SECTION 4.** Common Elements shall mean and refer to all lands and easements within or appurtenant to the Planned Community owned by the Association, other than a Lot, and intended for the common use and enjoyment of the Owners, including, without limitation, any



private roads, greenways, open spaces, parks and stormwater infiltration basins within the Planned Community.

**SECTION 5.** Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

**SECTION 6.** Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise.

**SECTION 7.** Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to Hawkeswater 1 Development, Inc., Hawkeswater II Development, Inc., Hawkeswater III Development, Inc., and Riverside Land Holdings, LLC, their successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right.

**SECTION 8.** Declarant Control Period shall have the meaning set forth in Article III hereof.

**SECTION 9.** Declaration shall mean this instrument as it may be from time to time amended or supplemented.

**SECTION 10.** Executive Board shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this Declaration or otherwise to act on behalf of the Association.

**SECTION 11.** Limited Common Elements shall mean areas and facilities within any Lot which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration.

**SECTION 12.** Lot(s) shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner.

**SECTION 13.** Lot Owner shall mean the Declarant or other Person who owns a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**SECTION 14.** Master Association means a master association as defined in the Act.

**SECTION 15.** Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

**SECTION 16.** Planned Community shall mean and refer to the Property plus any Additional Property made a part of the Planned Community by the exercise of any Special Declarant Right.

**SECTION 17.** Purchaser means any Person, other than the Declarant or a Person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than twenty (20) years, or (ii) as security for an obligation.

**SECTION 18.** Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

**SECTION 19.** Special Declarant Rights means rights reserved for the benefit of the Declarant including, without limitation, the right (i) to complete improvements intended or planned by Developer for the Property or Additional Property, (ii) to exercise any development or other right reserved to the Declarant by this Declaration or otherwise, (iii) to maintain within the Planned Community sales offices, management offices, construction offices/trailers, signs advertising the Planned Community, and models, (iv) to use the Common Elements for the purpose of making improvements within the Planned Community, (v) to make the Planned Community part of a larger planned community or group of planned communities, (vi) to make the Planned Community subject to a Master Association, or (vii) to appoint or remove any officer or Executive Board member of the Association or any Master Association during the Declarant Control Period.

**SECTION 20.** Stormwater Permit shall mean the State Stormwater Permit No. SW8 060354MOD issued by the North Carolina Division of Water Quality (DWQ), Department of Environment and Natural Resources (DENR).

**ARTICLE II**  
**PROPERTY RIGHTS AND EASEMENTS**

**SECTION 1.** Owner's Property Rights and Easement of Enjoyment. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners.

(b) The Association may grant a security interest in or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least eighty percent (80%) of the Members, excluding the Developer, provided, however, that the Association may, without the consent of the Owners, grant easements, leases, licenses and concessions through or over the Common Elements. No conveyance or encumbrance of Common Elements shall deprive any Lot of its rights of access or support.



(c) The owners of any lands adjacent to the Planned Community to which private streets within the Planned Community abut shall be entitled to use such private streets for ingress and egress. Such right of use shall be subject to any rules and regulations adopted by the Association. The Association shall not erect any road gates within the Planned Community nor in any way restrict such use.

**SECTION 2. Easements in Favor of Declarant and the Association.** The following easements are reserved to Declarant and the Association, their agents, contractors, employees, successors and assigns:

(a) easements as necessary in the lands constituting the Common Elements and the front fifteen feet (15') and side five feet (5') and the rear ten feet (10') of each Lot for the installation and maintenance of utilities and drainage facilities, including the right to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the Office of the Register of Deeds of the county where the Planned Community is located, the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance, the right to cut any trees, bushes or shrubbery, the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance, and the right to locate fences, wells, pumping stations and tanks within residential areas, or upon any Lot with the permission of the Owner of such Lot. No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. These easement areas (whether or not shown on the recorded plats for the Planned Community), but not the improvements within such areas, shall be maintained by the respective Owner except those for which a public authority or utility company is responsible;

(b) easements over all private streets, if any, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress to, and the installation of, utilities for any Additional Property;

(c) an easement of unobstructed access over, on, upon, through, around and across each Lot and the Limited Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Lot and/or Limited Common Elements required or authorized by this Declaration; and

(d) all easements shown on the Plat.



**SECTION 3. Other Easements.** The following additional easements are granted by Declarant:

(a) an easement to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties;

(b) in case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the immediate right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners; and

(c) the Association is granted an easement over each Lot for the purposes of providing Lot maintenance as contemplated by Article III, Section 5, hereof or when an Owner fails to provide maintenance and upkeep in accordance with this Declaration.

**SECTION 4. Nature of Easements.** All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Planned Community, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

**ARTICLE III  
HOMEOWNERS' ASSOCIATION**

**SECTION 1. Formation of Association.** The Association shall be incorporated no later than the date the first Lot in the Planned Community is conveyed. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

**SECTION 2. Membership.** Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

**SECTION 3. Voting Rights.** The Association shall have two (2) 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 (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members.



The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

Class B. The Declarant shall be a Class B Member and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership upon the happening of any of the following events, whichever occurs earlier:

- (a) when the total vote outstanding in the Class A Membership equals the total vote outstanding in the Class B Membership, or
- (b) on December 31, 2018, or
- (c) upon the voluntary surrender of all Class B Membership by the holder thereof.

The period during which there is Class B Membership is sometimes referred to herein as the "Declarant Control Period."

**SECTION 4. Governmental Permits.** After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

**SECTION 5. Common Elements.** The Association shall, at its sole cost and expense, be responsible for the operation and maintenance of each Common Element within the Planned Community from the date of completion of its construction or improvement by the Developer, whether or not (i) such Common Element has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Element has been transferred from the Declarant to the Association or assumed by the Association. If the Declarant is required by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within thirty (30) days after Declarant renders a bill to the Association therefore. The Association agrees to levy a Special Assessment to cover the amount of such bill if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment.

The Association may, in its discretion, cause a landscaping service or other lawn care maintenance company to provide lawn care services to each Lot, including mowing the front and side yards and trimming and bedding of shrubs or bushes which are not in fenced backyard areas, or which are visible from any street within the Planned Community. Notwithstanding the foregoing, it shall be the continuing responsibility of the Owner of each Lot to assure that the Lot is mowed regularly, including the area between the lot line and the edge of the paved street, and to maintain in a neat condition all landscaping and plant materials contained within their respective fenced backyard areas or other inaccessible areas, if any. Additionally, each Owner shall keep the Lot clear of any unsightly objects, and in the event that the Owner of any Lot within the Planned Community breaches this restriction, the Declarant and the Association reserve the right, and an easement, to enter upon the Lot to take such action as is necessary to clean up the Lot and remove unsightly structures and objects at the Owner's expense as provided herein. Where Lots border on or contain ditches, drainage canals or swales, ponds or detention/retention ponds, the Owner of each Lot shall maintain that area, including the slopes, down to the edge of the water in a neat well kempt condition. Washouts or erosions on the Lots adjoining ditch banks, channels, ponds, and swales shall be properly tended to by the respective Lot Owner. Notwithstanding the foregoing, no Lot Owner may do anything, or as the case may be, neglect to take any action, which may cause any modification of the storm water management system constructed in the Planned Community. This obligation and right may be enforced by the Association or any Owner as provided in Article VIII herein.

**SECTION 6. Limited Common Elements.** Any fencing constructed along the perimeter of a Lot by the Declarant or a Builder acquiring an unimproved Lot from Declarant shall be deemed Limited Common Elements appurtenant to such Lot. Maintenance and repair of such fencing shall be the responsibility of the Association. The expenses of such maintenance and repair shall be paid by Lot Owner for such repairs or maintenance peculiar to the fencing located on a particular Lot or Lots and the expenses of any repairs or maintenance necessitated by the actions of a Lot Owner shall be the responsibility of that Lot Owner.

**SECTION 7. Insurance.** The Executive Board on behalf of the Association, as a Common Expense, may at all times keep the Common Elements and other assets of the Association, if any, insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. At a minimum, the Executive Board shall maintain the insurance coverage required by the Act.

**SECTION 8. Architectural Review Committee.** The Executive Board shall perform all duties of the Architectural Review Committee if no such committee is appointed by it, subject, however, to the Special Declarant Rights. Any Architectural Review Committee appointed by the Executive Board shall consist of at least three (3) members, at least two (2) of which shall be Lot Owners.

**ARTICLE IV**  
**COVENANTS FOR ASSESSMENTS**

**SECTION 1. Creation of the Lien and Personal Obligation of Assessments.** Each Lot Owner covenants and agrees to pay to the Association the following assessments (collectively, the "Assessments"):

- (a) Annual Assessments,
- (b) Special Assessments,
- (c) Insurance Assessments,
- (d) Ad Valorem Tax Assessments, and
- (e) Working Capital Assessments.

The Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. Assessments shall not be due and payable from approved builders who purchase Lot(s) for the purpose of constructing residence(s) on a Lot(s) for a period of one year from the date of the builder's purchase of the Lot or the builder's sale of the Lot, whichever date arrives first. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**SECTION 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Planned Community and for the maintenance, repair and replacement of the Common Elements and any Limited Common Elements. The funds arising from said assessments or charges may be used for any or all of the following purposes: operations, maintenance and improvement of the Common Elements, and any Limited Common Elements, including payment of utilities, enforcing this Declaration, paying taxes, insurance premiums, legal and accounting fees and governmental charges; paying the cost of any lawn maintenance provided by the Declaration in accordance with Article III, Section 5, hereof; establishing working capital; paying dues and assessments to any organization or Master Association of which the Association is a member; and, in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Elements and Limited Common Elements in good operating order and repair.

**SECTION 3. Annual Assessments.** The Executive Board shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget for the Association, the Executive Board shall provide to all of the Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The Executive Board shall set a date for a



meeting of the Lot Owners to consider ratification of the budget, such meeting to be held not less than ten (10) days nor more than sixty (60) days after mailing of the summary and notice. The budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Executive Board. The Executive Board shall have the authority to require the Assessments to be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

**SECTION 4. Special Assessments.** In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the following purposes:

(a) To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements and any Limited Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

(b) Without a vote of the Members, to provide funds to reimburse the Declarant as provided for in Article III, Section 5, hereof.

**SECTION 5. Insurance Assessments.** All premiums on insurance policies purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may at any time levy against the Owners equally an "Insurance Assessment," in addition to the Annual Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

**SECTION 6. Ad Valorem Tax Assessments.** All ad valorem taxes levied against the Common Elements, if any, shall be a common expense, and the Association may at any time levy against the Owners equally an "Ad Valorem Tax Assessment," in addition to the Annual Assessments, which shall be in an amount sufficient to pay ad valorem taxes not included as a component of the Annual Assessment.

**SECTION 7. Working Capital Assessments.** At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of \$200.00 to the Association as working capital to be used for operating and capital expenses of the Association. Such amounts paid for

working capital are not to be considered as advance payment of the Annual or any other Assessments.

**SECTION 8. Rate of Assessment.** The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

**SECTION 9. Commencement of Assessments.** Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant except for the builder exception set forth in **Section 1** above.

**SECTION 10. Effect of Nonpayment of Assessments and Remedies of the Association.** Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments in accordance with North Carolina Law.

**SECTION 11. Lien for Assessments.** The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of thirty (30) days or longer.

(a) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the Office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 of the Act are enforceable as Assessments.

(b) The lien under this section shall be prior to all liens and encumbrances on a Lot except: (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

(c) The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing of the claim of lien in the Office of the Clerk of Superior Court.



(d) Any judgment, decree or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(e) Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

(f) A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

## **ARTICLE V** **RIGHTS OF DEVELOPER**

The Declarant shall have, and there is hereby reserved to the Declarant, the Special Declarant Rights as herein defined and the following rights, powers and privileges which shall be in addition to the Special Declarant Rights and any other rights, powers and privileges reserved to the Declarant herein:

**SECTION 1. The Architectural Review Committee/Executive Board.** All duties and responsibilities conferred upon the Architectural Review Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property. The Declarant is entitled during the Declarant Control Period to appoint and remove the officers and members of the Executive Board.

**SECTION 2. Plan of Planned Community.** The right to change, alter or re-designate the allocated planned, platted or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter or re-designate road, utility and drainage facilities and easements and to change, alter or re-designate such other present and proposed amenities, Common Elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts or Lots shown on any such subdivision plat into two (2) or more Lots; to recombine one (1) or more tracts or Lots or a tract and Lots to create a larger tract or Lot (any Lot resulting from such recombination shall be treated as one Lot for purposes of Assessments); to eliminate from this Declaration or any plats of the Planned Community Lots that are not otherwise buildable or are needed or desired by Declarant for access or are needed or desired by Declarant for use as public or private roads or access areas, whether serving the Planned Community or other property owned by the Declarant or others, or which are needed for the installation of utilities, Common Elements or amenities; and to take such steps as are

reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Elements.

**SECTION 3. Amendment of Declaration by the Declarant.** This Declaration may be amended without Member approval by the Declarant, or the Board of the Association, as the case may be, as follows:

- (a) In any respect, prior to the sale of the first Lot.
- (b) To the extent this Declaration applies to Additional Property.
- (c) To correct any obvious error or inconsistency in drafting, typing or reproduction.
- (d) To qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.
- (e) To incorporate or reflect any platting change as permitted by this article or otherwise permitted herein.
- (f) To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction of standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Department of Veterans Affairs, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this section.

**SECTION 4. Annexation of Additional Property.** Declarant may annex to and make a part of the Planned Community any other real property which Declarant now owns or which Declarant may hereafter acquire or develop (the "Additional Property"). Annexation of Additional Property to the Planned Community shall require the assent of sixty-seven percent (67%) of the Class A Members who are voting in person or by proxy at a meeting called for this purpose; provided, however, Additional Property may be annexed to the Planned Community without the assent of the Members so long as the Additional Property is developed in accordance



with the same general scheme as the other portions of the Planned Community. Nothing herein shall require the Developer to annex any lands to the Planned Community.

**ARTICLE VI**  
**USE RESTRICTIONS, ARCHITECTURAL**  
**CONTROL AND MAINTENANCE**

**SECTION 1. Approval of Plans for Building and Site Improvements.** No dwelling, wall, fence or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Committee. If the Architectural Review Committee fails to approve or disapprove such design and location 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. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Architectural Review Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Architectural Review Committee for its records. The Architectural Review Committee shall not be responsible for any structural or other defects in plans and specifications submitted to it or in any structure erected according to such plans and specifications.

**SECTION 2. Minimum Standards for Site Improvements.**

(a) Each single-story dwelling shall have a minimum of 1,800 square feet of enclosed, heated dwelling area and each multi-story dwelling shall have a minimum of 2,050 square feet of enclosed, heated dwelling area at least 1,400 square feet of which shall be on the first floor of the dwelling; provided, however, the Architectural Review Committee may permit a dwelling to have less than the above-stated footage if the Committee, in its sole discretion, finds that the variance will not adversely impact property values within the Planned Community. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches and like areas.

(b) Since the establishment of inflexible building setback lines for location of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines are established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the Architectural Review Committee; provided, however, that no structure shall be constructed closer to a Lot line than is permitted by applicable governmental regulations.



(c) No clearing, maintenance or disturbance of the natural condition of a Lot may be undertaken until Owner or builder has received approval for such action from the Architectural Review Committee.

(d) The exterior of all dwellings and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency, natural calamities, or the complexity of design and construction.

(e) All service utilities, fuel tanks and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Architectural Review Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes shall be uniform in design. Design for mail and newspaper boxes shall be furnished by the Architectural Review Committee. Fences shall be permitted on any Lot; provided, however, that the design, placement and materials of any fence must be approved by the Architectural Review Committee prior to commencement of construction of same. Clothes lines are not permitted on any Lot.

(f) Off-street parking for not less than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot which parking areas and the driveways thereto shall be constructed of concrete, brick, asphalt, turf stone or any other material approved by the Architectural Review Committee.

(g) All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be clear, white or non-frost lights or bulbs.

(h) All roofing products shall be natural wood shakes, asphalt shingles (30 year or better), slate or standing seam metal.

(i) Exterior siding materials shall be brick, natural wood, Hardiplank and/or vinyl.

### **SECTION 3. Use Restrictions.**

(a) Land Use and Building Type. No Lot shall be used for any purpose except for residential purposes, subject, however, to the rights of the Declarant contained herein. All numbered Lots are restricted for construction of one single-family dwelling, plus a detached garage, if there is not one attached to the residence, and such other accessory buildings as may be approved by the Architectural Review Committee.

(b) Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of



any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkempt condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area.

(c) Temporary Structures. No structure of a temporary character shall be created or allowed to remain on any Lot, and no trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently.

(d) Vehicles/Boats. No boat, motor boat (including "wave runners" and other personal watercraft), camper, trailer, motor or mobile homes, tractor/trailer, or similar type vehicle shall be permitted to remain on any Lot or on any street at any time, without the written consent of the Association. No inoperable vehicle or vehicle without current registration and insurance will be permitted on any Lot, street or Common Element. The Association shall have the right to have all such vehicles towed away at the owner's expense. No repairs to any vehicle may be made on streets or in driveways, but only in garages or other areas and not visible from the street.

(e) Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that cats, dogs or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, bark excessively, and are at all times kept properly leashed or under the control of their owner, and do not become a nuisance.

(f) Statuary, TV Satellite Dishes and Outside Antennas; Flags. No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Architectural Review Committee, provided, however, that satellite dishes not over 18" in diameter which cannot be seen from the street and are integrated within a dwelling on the Lot and the surrounding landscape are permitted. With regard to the regulation of flags, no outdoor flag may be placed on any Lot or dwelling unit unless and until permission for the same has been granted by the Architectural Review Committee. Notwithstanding any other provision herein, the United States Flag and/or the North Carolina flag having the maximum dimensions of four feet by six feet (4' x 6') may be displayed on an Owner's own Lot. Any flags will be displayed in accordance with traditional rules and patriotic customs set forth in 4 U.S.C. §§5-10, as amended, governing the display and use of the flag of the United States.

(g) Construction in Common Elements. No Person (with the exception of Declarant in connection with the exercise of its Special Declarant Rights) shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.



(h) Signs. No signs (including “for sale” or “for rent” signs) shall be permitted on any Lot in the Common Elements without permission of the Executive Board; provided, however, the Declarant may, so long as Declarant owns any Lot, maintain for sale signs on Declarant’s Lots and maintain signs on the Common Elements advertising the Planned Community. With regard to the regulation of political signs, the Association, pursuant to the provisions of the Act, may (i) prohibit the display of political signs on a Lot earlier than forty-five (45) days before the day of an election and later than seven (7) days after an election day, and/or (ii) regulate the size and number of political signs that may be placed on a Lot (but only to the extent the Association’s regulation is no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property). If the local government in which the applicable property is located does not regulate the size and number of political signs on residential property, the Association shall permit at least one (1) political sign with the maximum dimensions of 24 inches by 24 inches (24” x 24”) on a Lot. For the purposes of this paragraph, a “political sign” means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

(i) Subject to any rights reserved to the Declarant herein, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the Declarant Control Period and thereafter by the Board of Directors.

**SECTION 4. Maintenance.** Each Lot Owner shall obtain prior approval of the Architectural Review Committee of the proposed species of grass sod to be used on the Owner’s Lot. The Owner shall sod all portions of the Lot other than areas upon which the dwelling, outbuildings, driveway, sidewalks, wetland areas as shown on the Plat and approved landscaped beds at the sole expense of the Owner. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. All shrubs, trees, grass and plantings shall be kept neatly trimmed and properly cultivated.

## **ARTICLE VII** **STORMWATER PERMIT/FACILITIES**

**SECTION 1. Stormwater Permit.** The Association and each of its Members agree that at any time after (i) all work required under the Stormwater Permit has been completed (other than operation and maintenance activities), and (ii) the Declarant is not prohibited under DENR regulations from transferring the Stormwater Permit for the Planned Community to the Association, the Association’s officers without any vote or approval of Lot Owners, and within ten (10) days after being requested to do so, will sign all documents required by DENR for the Stormwater Permit to be transferred to the Association, provided, however, that at the time the Developer requests that the Association accept transfer of the Stormwater Permit, the Developer has delivered to the Association a certificate from an engineer licensed in the State of North Carolina, dated no more than forty-five (45) days before the date of the request, that all stormwater retention ponds, swales and related facilities are constructed in accordance with the plans and specifications therefore. If the Association fails to sign the documents required by this paragraph, the Developer shall be entitled to specific performance in the courts of North Carolina requiring that the appropriate Association officers sign all documents necessary for the



Stormwater Permit to be transferred to the Association. Failure of the officers to sign as provided herein shall not relieve the Association of its obligations to operate and maintain the stormwater facilities covered by the Stormwater Permit.

**SECTION 2. Stormwater Facilities Operation and Maintenance.** Any stormwater infiltration basins and related facilities for the Planned Community which have or are to be constructed by or on behalf of Declarant constitute Common Elements and, subject only to the provisions of Section 3 of this Article VII, the Association, at its sole cost and expense, is responsible for the operation and maintenance of such facilities. Except as provided in Section 3 of this Article VII, the Association shall indemnify and hold harmless the Declarant from any obligations and costs under the Stormwater Permit for operation and maintenance of the stormwater retention ponds and related facilities.

**SECTION 3. Damage to Stormwater Facilities.** The Declarant shall, at its sole cost and expense, be responsible for repairing any damage to stormwater facilities caused by Declarant's development activities. The Declarant shall not be responsible for damages to stormwater retention ponds and related facilities caused by any other cause whatsoever, including, but not limited to, construction of residences or other activities by Owners, their agents and contractors upon their Lots, acts of God, and the negligence of others. Lot Owners shall be responsible for damages to such stormwater facilities caused by construction of buildings or other activities upon the Owner's Lot. Each Owner shall, within thirty (30) days after receipt of notice of damage to stormwater facilities, repair the damage at the Owner's sole cost and expense to return them to the state required by the stormwater plans and specifications for the Planned Community. If the Lot Owner fails to do so within said thirty (30) day period, the Association shall perform the work and the cost of the work shall be added to the Annual Assessment due from the Lot Owner.

**SECTION 4. Enforcement of Stormwater Management Regulations.** The following covenants are intended to ensure ongoing compliance with the Stormwater Permit. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Permit. These covenants are to run with the land and be binding on all persons and parties claiming under them. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the DWQ. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the DWQ.

The maximum allowable built-upon area per Lot is 4,500 square feet. This allotted amount includes any build-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. The build-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. All runoff from the built-upon areas on the Lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the Lot to drain toward the street, or grading perimeter swales to collect lot runoff and directing them into the stormwater system or into the street. Lots that will naturally drain into the system are not required to provide these additional measures. The provisions of

the Stormwater Permit are incorporated herein by reference and each Owner is required to refrain from taking any action which would be in violation of the Stormwater Permit.

**ARTICLE VIII**  
**LOTS SUBJECT TO DECLARATION/ENFORCEMENT**

**SECTION 1. Lots Subject to Declaration.** The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of the Planned Community and the Lots. All present and future Owners, tenants and occupants of Lots, and their guests or invitees, shall be subject to and shall comply with the provisions of the Declaration, as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, their heirs, successors and assigns, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless altered or amended as set forth in Section 5 of Article IX hereof.

**SECTION 2. Enforcement and Remedies.** The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The Executive Board shall be entitled to enforce its Articles of Incorporation, Bylaws and Rules and Regulations. In addition to the remedies otherwise provided for herein concerning the collection of Assessments, the following remedies shall be available:

(a) **Association to Remedy Violation.** In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Charter or Rules and Regulations, the Executive Board, after thirty (30) days' notice, may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner, and such entry shall not be deemed a trespass. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot, including collection costs and reasonable attorneys' fees. Such amounts shall be due and payable within thirty (30) days after Owner is billed. If not paid within said thirty (30) day period, the amount thereof may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common or Limited Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot.



(b) Fines. The Association may, in accordance with the procedures set forth in the Act and Bylaws, establish a schedule of and collect fines for the violation of this Declaration or of the Association’s Articles of Incorporation, Bylaws or Rules and Regulations. If an Owner does not pay the fine when due, the fine shall immediately become a part of and be added to the Annual Assessment against the Owner’s Lot and may be enforced by the Association as all other Assessments provided for herein.

(c) Suspension of Services and Privileges. The Association may, in accordance with the procedures set forth in the Act, suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner’s lot remain unpaid for at least thirty (30) days or for any period that the Owner or the Owner’s Lot is otherwise in violation of this Declaration or the Association’s Charter, Bylaws or Rules and Regulations.

**SECTION 3. Miscellaneous.** Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.

**ARTICLE IX**  
**RESTRICTIONS ON JURISDICTIONAL WETLANDS**

Maintaining Wetlands. The areas shown as wetlands on that plat prepared by Cape Fear Engineering, Inc. dated February 15, 2008 entitled “Hawkeswater at the River Phase 1-A” recorded in Map Book 48 at Page 27 of the Brunswick County Register of Deeds shall be maintained in perpetuity in their natural condition. No person or entity shall fill, grade, excavate, or perform any other land disturbing activities; nor cut, mow, burn, remove or harm any vegetation; nor construct any structures, nor allow animal grazing or watering or any other agricultural use on such wetlands. This covenant is intended to ensure continued compliance with the authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Declarant and all parties claiming under it.

**ARTICLE X**  
**GENERAL PROVISIONS**

**SECTION 1. Rights of Institutional Note Holders.** Any institutional holder of a first lien on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Planned Community or the property securing its loan, (e) receive written notice of any sixty (60) day delinquency in the payment of Assessments or charges owed by any



Owner of any property which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

**SECTION 2. Utility Service.** Declarant reserves the right to subject the Property to contracts for the installation of utilities, cable TV and street lighting, which may require an initial payment and/or a continuing monthly payment by the Owner of each Lot. Each Lot Owner will be required to pay for any water connections, sewer connections, street lighting, impact fees or any other charges imposed by any entity furnishing water, sewer, street lighting or other utility service to the Lots and Common Elements. In the alternative, the Developer may collect such connection, impact and other fees, and charges directly from the Lot Owners. All Lot Owners shall be required, for household purposes, to use water and sewer supplied by the companies/governmental units servicing the Planned Community. Separate water systems for outside irrigation and other outdoor uses shall not be permitted without the consent of the Architectural Review Committee.

**SECTION 3. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**SECTION 4. Amendment of Declaration.** Except in cases of amendments that may be executed by the Declarant under this Declaration or by certain Lot Owners under the Act, this Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or by the Declarant if necessary for the exercise of any Special Declarant Right or development or other right reserved to the Declarant herein.

**SECTION 5. FHA/VA Approval.** So long as there is Class B membership, annexation of Additional Properties, dedication of Common Elements and/or amendments to this Declaration must be approved by the Federal Housing Administration and/or the Department of Veterans Affairs, as the case may be, if either of those agencies has approved the making, insuring or guaranteeing of mortgage loans within the Planned Community.

**SECTION 6. North Carolina Planned Community Act.** It is the intent of the Declarant to comply with the requirements imposed on the Planned Community by the Act and to the extent any of the terms of this Declaration violate the Act, the terms of the Act shall control.

**SECTION 7. Joinder.** Cooperative Bank joins in the execution of this Declaration for the purpose of consenting to the terms and conditions contained herein, and for the additional purpose of subordinating, except as herein set forth, the Deed of Trust recorded in Book 2606, Page 37, and the Assignment of Leases and Rents recorded in Book 2606, Page 49, Deed of Trust recorded in Book 2606, Page 72, and the Assignment of Leases and Rents recorded in Book 2606, Page 92, Deed of Trust recorded in Book 2606, Page 106, and the Assignment of Leases and Rents recorded in Book 2606, Page 121, Deed of Trust recorded in Book 2605, Page



1340, and the Assignment of Leases and Rents recorded in Book 2605, Page 1361, all in the Brunswick County Registry, as the same may have been modified from time to time, to the provisions of this Declaration and by affixing its duly authorized signature hereto, does hereby specifically subordinate, except as herein set forth, said Deed of Trust recorded in Book 2606, Page 37, and Assignment of Leases and Rents recorded in Book 2606, Page 49, Deed of Trust recorded in Book 2606, Page 72, and the Assignment of Leases and Rents recorded in Book 2606, Page 92, Deed of Trust recorded in Book 2606, Page 106, and the Assignment of Leases and Rents recorded in Book 2606, Page 121, Deed of Trust recorded in Book 2605, Page 1340, and the Assignment of Leases and Rents recorded in Book 2605, Page 1361 to the terms of this Declaration. Except for said subordination, the liens of said Deeds of Trust shall remain in full force and effect until released by Cooperative Bank by instrument duly recorded in the Brunswick County Registry.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its corporate name by its president pursuant to authority of Declarant's Board of Directors as of the day and year first above written.

**HAWKESWATER I DEVELOPMENT, INC.**

By:  \_\_\_\_\_

**HAWKESWATER II DEVELOPMENT, INC.**

By:  \_\_\_\_\_

**HAWKESWATER III DEVELOPMENT, INC.**

By:  \_\_\_\_\_

**RIVERSIDE LAND HOLDINGS, LLC**

By:  \_\_\_\_\_



COOPERATIVE BANK

By: [Signature]  
Its: Vice President

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Marsha K. Cowart, a Notary Public of the County and State aforesaid, certify that John R. Lancaster personally appeared before me this day and acknowledged that he is a \_\_\_\_\_ President of Hawkeswater I Development, Inc., a North Carolina corporation, and that he, as a \_\_\_\_\_ President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 20<sup>th</sup> day of February, 2008.

My commission expires: 2-2-2009

Marsha K Cowart  
Notary Public



STATE OF NORTH CAROLINA

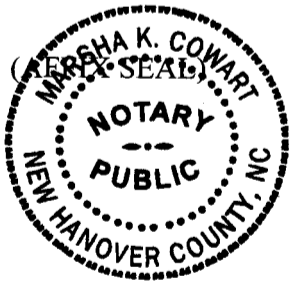
COUNTY OF NEW HANOVER

I, Marsha K. Cowart, a Notary Public of the County and State aforesaid, certify that John A. Elmore II personally appeared before me this day and acknowledged that he is a \_\_\_\_\_ President of Hawkeswater II Development, Inc., a North Carolina corporation, and that he, as a \_\_\_\_\_ President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 20<sup>th</sup> day of February, 2008.

My commission expires: 2-2-2009

Marsha K Cowart  
Notary Public





STATE OF NORTH CAROLINA

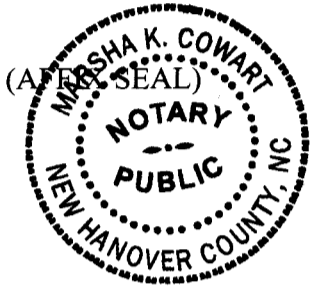
COUNTY OF NEW HANOVER

I, Marsha K. Cowart, a Notary Public of the County and State aforesaid, certify that Lionel L. Yow personally appeared before me this day and acknowledged that he is a \_\_\_\_\_ President of Hawkeswater III Development, Inc., a North Carolina corporation, and that he, as a \_\_\_\_\_ President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 20<sup>th</sup> day of February, 2008.

My commission expires: 2-2-2009

Marsha K Cowart  
Notary Public



STATE OF NORTH CAROLINA

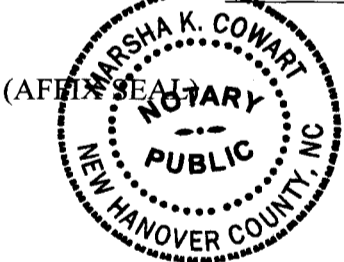
COUNTY OF NEW HANOVER

I, Marsha K. Cowart, a Notary Public of the County and State aforesaid, certify that John R. Lancaster personally appeared before me this day and acknowledged that he is a Member Manager of Riverside Land Holdings, LLC., a North Carolina limited liability company, and that he, as a Member Manager being authorized to do so, executed the foregoing on behalf of the limited liability company.

Witness my hand and official stamp or seal, this the 20<sup>th</sup> day of February 2008.

My commission expires: 2-2-2009

Marsha K Cowart  
Notary Public





STATE OF NORTH CAROLINA

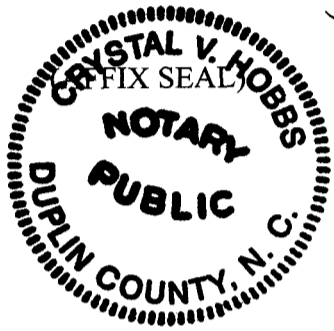
COUNTY OF NEW HANOVER

I, Crystal V. Hobbs, a Notary Public of the County and State aforesaid, certify that G. B. Church personally appeared before me this day and acknowledged that he is Vice President of Cooperative Bank, a North Carolina banking corporation, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 21<sup>st</sup> day of February, 2008.

My commission expires: May 7, 2011

Crystal V. Hobbs  
Notary Public





25 William Bard JS  
 Date 8/6 Rev \_\_\_\_\_ Int \_\_\_\_\_  
 C. \$ 86 Ck# 320 Cdn. \$ \_\_\_\_\_  
 Refund: \_\_\_\_\_ Cash \$ \_\_\_\_\_ F. Taxable \_\_\_\_\_  
 Entire record document and fee paid due to recording  
 Document contains seal verified by original  
 instrument recording office and recorded

**DECLARATION OF  
 COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR THE VILLAGE AT HAWKESWATER SUBDIVISION**

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**Prepared By and Return to:  
 R. Jay Short, Jr.  
 1213 Culbreth Drive, Suite 143  
 Wilmington, NC 28405**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY  
 OF THE FLAG OF THE UNITED STATES OF AMERICA  
 OR STATE OF NORTH CAROLINA.  
 THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY  
 OF POLITICAL SIGNS**

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STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR THE VILLAGE AT  
HAWKESWATER**

THIS DECLARATION, made the 2<sup>nd</sup> day of March, 2009, by Hawkeswater I Development, Inc., a North Carolina corporation, Hawkeswater II Development, Inc., a North Carolina corporation, Hawkeswater III Development, Inc., a North Carolina corporation, and Riverside Land Holdings, LLC, a North Carolina limited liability company, collectively hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated;

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real property in Brunswick County, North Carolina, known as **THE VILLAGE AT HAWKESWATER, PHASE 3-A, SECTION 1**, which is shown on a plat recorded in the Office of the Register of Deeds of Brunswick County, North Carolina, in Map Book 56, Page 36 (the "Plat"), to which reference is made for a more particular description (the "Property").

NOW, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants and conditions:

**ARTICLE I  
DEFINITIONS**

In addition to other terms defined herein, the following capitalized terms shall have the following meanings as used herein:

**SECTION 1.** Additional Property shall mean and refer to any lands which are now owned or may be hereafter acquired or developed by Declarant, in addition to the above-described Property, and annexed to and made a part of the Planned Community.

**SECTION 2.** Allocated Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

**SECTION 3.** Association shall mean and refer to Hawkeswater Homeowners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns, the owners' association organized pursuant to the Act for the purposes set forth therein.

**SECTION 4.** Common Elements shall mean and refer to all lands and easements within or appurtenant to the Planned Community owned by the Association, other than a Lot, and intended for the common use and enjoyment of the Owners, including, without limitation, any



private roads, greenways, open spaces, parks and stormwater infiltration basins within the Planned Community.

**SECTION 5.** Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

**SECTION 6.** Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise.

**SECTION 7.** Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to Hawkeswater I Development, Inc., Hawkeswater II Development, Inc., Hawkeswater III Development, Inc., and Riverside Land Holdings, LLC, their successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right.

**SECTION 8.** Declarant Control Period shall have the meaning set forth in Article III hereof.

**SECTION 9.** Declaration shall mean this instrument as it may be from time to time amended or supplemented.

**SECTION 10.** Executive Board shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this Declaration or otherwise to act on behalf of the Association.

**SECTION 11.** Limited Common Elements shall mean areas and facilities within any Lot which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration.

**SECTION 12.** Lot(s) shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner.

**SECTION 13.** Lot Owner shall mean the Declarant or other Person who owns a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**SECTION 14.** Master Association means a master association as defined in the Act.

**SECTION 15.** Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.



**SECTION 16.** Planned Community shall mean and refer to the Property plus any Additional Property made a part of the Planned Community by the exercise of any Special Declarant Right.

**SECTION 17.** Purchaser means any Person, other than the Declarant or a Person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than twenty (20) years, or (ii) as security for an obligation.

**SECTION 18.** Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

**SECTION 19.** Special Declarant Rights means rights reserved for the benefit of the Declarant including, without limitation, the right (i) to complete improvements intended or planned by Developer for the Property or Additional Property, (ii) to exercise any development or other right reserved to the Declarant by this Declaration or otherwise, (iii) to maintain within the Planned Community sales offices, management offices, construction offices/trailers, signs advertising the Planned Community, and models, (iv) to use the Common Elements for the purpose of making improvements within the Planned Community, (v) to make the Planned Community part of a larger planned community or group of planned communities, (vi) to make the Planned Community subject to a Master Association, or (vii) to appoint or remove any officer or Executive Board member of the Association or any Master Association during the Declarant Control Period.

**SECTION 20.** Stormwater Permit shall mean the State Stormwater Permit No. SW8 060354MOD issued by the North Carolina Division of Water Quality (DWQ), Department of Environment and Natural Resources (DENR).

**ARTICLE II**  
**PROPERTY RIGHTS AND EASEMENTS**

**SECTION 1.** Owner's Property Rights and Easement of Enjoyment. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners.

(b) The Association may grant a security interest in or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least eighty percent (80%) of the Members, excluding the Developer, provided, however, that the Association may, without the consent of the Owners, grant easements, leases, licenses and concessions through or over the Common Elements. No conveyance or encumbrance of Common Elements shall deprive any Lot of its rights of access or support.



(c) The owners of any lands adjacent to the Planned Community to which private streets within the Planned Community abut shall be entitled to use such private streets for ingress and egress. Such right of use shall be subject to any rules and regulations adopted by the Association. The Association shall not erect any road gates within the Planned Community nor in any way restrict such use.

**SECTION 2. Easements in Favor of Declarant and the Association.** The following easements are reserved to Declarant and the Association, their agents, contractors, employees, successors and assigns:

(a) easements as necessary in the lands constituting the Common Elements and the front fifteen feet (15") and side five feet (5') and the rear ten feet (10') of each Lot for the installation and maintenance of utilities and drainage facilities, including the right to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the Office of the Register of Deeds of the county where the Planned Community is located, the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance, the right to cut any trees, bushes or shrubbery, the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance, and the right to locate fences, wells, pumping stations and tanks within residential areas, or upon any Lot with the permission of the Owner of such Lot. No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. These easement areas (whether or not shown on the recorded plats for the Planned Community), but not the improvements within such areas, shall be maintained by the respective Owner except those for which a public authority or utility company is responsible;

(b) easements over all private streets, if any, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress to, and the installation of, utilities for any Additional Property;

(c) an easement of unobstructed access over, on, upon, through, around and across each Lot and the Limited Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Lot and/or Limited Common Elements required or authorized by this Declaration; and

(d) all easements shown on the Plat.



**SECTION 3. Other Easements.** The following additional easements are granted by Declarant:

(a) an easement to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties;

(b) in case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the immediate right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners; and

(c) the Association is granted an easement over each Lot for the purposes of providing Lot maintenance as contemplated by Article III, Section 5, hereof or when an Owner fails to provide maintenance and upkeep in accordance with this Declaration.

**SECTION 4. Nature of Easements.** All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Planned Community, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

**ARTICLE III  
HOMEOWNERS' ASSOCIATION**

**SECTION 1. Formation of Association.** The Association shall be incorporated no later than the date the first Lot in the Planned Community is conveyed. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

**SECTION 2. Membership.** Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

**SECTION 3. Voting Rights.** The Association shall have two (2) 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 (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members.

The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

Class B. The Declarant shall be a Class B Member and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership upon the happening of any of the following events, whichever occurs earlier:

- (a) when the total vote outstanding in the Class A Membership equals the total vote outstanding in the Class B Membership, or
- (b) on December 31, 2018, or
- (c) upon the voluntary surrender of all Class B Membership by the holder thereof.

The period during which there is Class B Membership is sometimes referred to herein as the "Declarant Control Period."

**SECTION 4. Governmental Permits.** After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

**SECTION 5. Common Elements.** The Association shall, at its sole cost and expense, be responsible for the operation and maintenance of each Common Element within the Planned Community from the date of completion of its construction or improvement by the Developer, whether or not (i) such Common Element has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Element has been transferred from the Declarant to the Association or assumed by the Association. If the Declarant is required by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within thirty (30) days after Declarant renders a bill to the Association therefore. The Association agrees to levy a Special Assessment to cover the amount of such bill if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment.



The Association may, in its discretion, cause a landscaping service or other lawn care maintenance company to provide lawn care services to each Lot, including mowing the front and side yards and trimming and bedding of shrubs or bushes which are not in fenced backyard areas, or which are visible from any street within the Planned Community. Notwithstanding the foregoing, it shall be the continuing responsibility of the Owner of each Lot to assure that the Lot is mowed regularly, including the area between the lot line and the edge of the paved street, and to maintain in a neat condition all landscaping and plant materials contained within their respective fenced backyard areas or other inaccessible areas, if any. Additionally, each Owner shall keep the Lot clear of any unsightly objects, and in the event that the Owner of any Lot within the Planned Community breaches this restriction, the Declarant and the Association reserve the right, and an easement, to enter upon the Lot to take such action as is necessary to clean up the Lot and remove unsightly structures and objects at the Owner's expense as provided herein. Where Lots border on or contain ditches, drainage canals or swales, ponds or detention/retention ponds, the Owner of each Lot shall maintain that area, including the slopes, down to the edge of the water in a neat well kempt condition. Washouts or erosions on the Lots adjoining ditch banks, channels, ponds, and swales shall be properly tended to by the respective Lot Owner. Notwithstanding the foregoing, no Lot Owner may do anything, or as the case may be, neglect to take any action, which may cause any modification of the storm water management system constructed in the Planned Community. This obligation and right may be enforced by the Association or any Owner as provided in Article VIII herein.

**SECTION 6. Limited Common Elements.** Any fencing constructed along the perimeter of a Lot by the Declarant or a Builder acquiring an unimproved Lot from Declarant shall be deemed Limited Common Elements appurtenant to such Lot. Maintenance and repair of such fencing shall be the responsibility of the Association. The expenses of such maintenance and repair shall be paid by Lot Owner for such repairs or maintenance peculiar to the fencing located on a particular Lot or Lots and the expenses of any repairs or maintenance necessitated by the actions of a Lot Owner shall be the responsibility of that Lot Owner.

**SECTION 7. Insurance.** The Executive Board on behalf of the Association, as a Common Expense, may at all times keep the Common Elements and other assets of the Association, if any, insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. At a minimum, the Executive Board shall maintain the insurance coverage required by the Act.

**SECTION 8. Architectural Review Committee.** The Executive Board shall perform all duties of the Architectural Review Committee if no such committee is appointed by it, subject, however, to the Special Declarant Rights. Any Architectural Review Committee appointed by the Executive Board shall consist of at least three (3) members, at least two (2) of which shall be Lot Owners.

**ARTICLE IV**  
**COVENANTS FOR ASSESSMENTS**

**SECTION 1. Creation of the Lien and Personal Obligation of Assessments.** Each Lot Owner covenants and agrees to pay to the Association the following assessments (collectively, the "Assessments"):

- (a) Annual Assessments,
- (b) Special Assessments,
- (c) Insurance Assessments,
- (d) Ad Valorem Tax Assessments, and
- (e) Working Capital Assessments.

The Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. Assessments shall not be due and payable from approved builders who purchase Lot(s) for the purpose of constructing residence(s) on a Lot(s) for a period of one year from the date of the builder's purchase of the Lot or the builder's sale of the Lot, whichever date arrives first. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**SECTION 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Planned Community and for the maintenance, repair and replacement of the Common Elements and any Limited Common Elements. The funds arising from said assessments or charges may be used for any or all of the following purposes: operations, maintenance and improvement of the Common Elements, and any Limited Common Elements, including payment of utilities, enforcing this Declaration, paying taxes, insurance premiums, legal and accounting fees and governmental charges; paying the cost of any lawn maintenance provided by the Declaration in accordance with Article III, Section 5, hereof; establishing working capital; paying dues and assessments to any organization or Master Association of which the Association is a member; and, in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Elements and Limited Common Elements in good operating order and repair.

**SECTION 3. Annual Assessments.** The Executive Board shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget for the Association, the Executive Board shall provide to all of the Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The Executive Board shall set a date for a

meeting of the Lot Owners to consider ratification of the budget, such meeting to be held not less than ten (10) days nor more than sixty (60) days after mailing of the summary and notice. The budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Executive Board. The Executive Board shall have the authority to require the Assessments to be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

**SECTION 4. Special Assessments.** In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the following purposes:

(a) To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements and any Limited Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

(b) Without a vote of the Members, to provide funds to reimburse the Declarant as provided for in Article III, Section 5, hereof.

**SECTION 5. Insurance Assessments.** All premiums on insurance policies purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may at any time levy against the Owners equally an "Insurance Assessment," in addition to the Annual Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

**SECTION 6. Ad Valorem Tax Assessments.** All ad valorem taxes levied against the Common Elements, if any, shall be a common expense, and the Association may at any time levy against the Owners equally an "Ad Valorem Tax Assessment," in addition to the Annual Assessments, which shall be in an amount sufficient to pay ad valorem taxes not included as a component of the Annual Assessment.

**SECTION 7. Working Capital Assessments.** At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of \$200.00 to the Association as working capital to be used for operating and capital expenses of the Association. Such amounts paid for



working capital are not to be considered as advance payment of the Annual or any other Assessments.

**SECTION 8. Rate of Assessment.** The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

**SECTION 9. Commencement of Assessments.** Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant except for the builder exception set forth in **Section 1** above.

**SECTION 10. Effect of Nonpayment of Assessments and Remedies of the Association.** Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments in accordance with North Carolina Law.

**SECTION 11. Lien for Assessments.** The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of thirty (30) days or longer.

(a) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the Office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 of the Act are enforceable as Assessments.

(b) The lien under this section shall be prior to all liens and encumbrances on a Lot except: (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

(c) The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing of the claim of lien in the Office of the Clerk of Superior Court.



(d) Any judgment, decree or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(e) Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

(f) A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

**ARTICLE V**  
**RIGHTS OF DEVELOPER**

The Declarant shall have, and there is hereby reserved to the Declarant, the Special Declarant Rights as herein defined and the following rights, powers and privileges which shall be in addition to the Special Declarant Rights and any other rights, powers and privileges reserved to the Declarant herein:

**SECTION 1. The Architectural Review Committee/Executive Board.** All duties and responsibilities conferred upon the Architectural Review Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property. The Declarant is entitled during the Declarant Control Period to appoint and remove the officers and members of the Executive Board.

**SECTION 2. Plan of Planned Community.** The right to change, alter or re-designate the allocated planned, platted or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter or re-designate road, utility and drainage facilities and easements and to change, alter or re-designate such other present and proposed amenities, Common Elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts or Lots shown on any such subdivision plat into two (2) or more Lots; to recombine one (1) or more tracts or Lots or a tract and Lots to create a larger tract or Lot (any Lot resulting from such recombination shall be treated as one Lot for purposes of Assessments); to eliminate from this Declaration or any plats of the Planned Community Lots that are not otherwise buildable or are needed or desired by Declarant for access or are needed or desired by Declarant for use as public or private roads or access areas, whether serving the Planned Community or other property owned by the Declarant or others, or which are needed for the installation of utilities, Common Elements or amenities; and to take such steps as are



reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Elements.

**SECTION 3. Amendment of Declaration by the Declarant.** This Declaration may be amended without Member approval by the Declarant, or the Board of the Association, as the case may be, as follows:

- (a) In any respect, prior to the sale of the first Lot.
- (b) To the extent this Declaration applies to Additional Property.
- (c) To correct any obvious error or inconsistency in drafting, typing or reproduction.
- (d) To qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.
- (e) To incorporate or reflect any platting change as permitted by this article or otherwise permitted herein.
- (f) To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction of standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Department of Veterans Affairs, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this section.

**SECTION 4. Annexation of Additional Property.** Declarant may annex to and make a part of the Planned Community any other real property which Declarant now owns or which Declarant may hereafter acquire or develop (the "Additional Property"). Annexation of Additional Property to the Planned Community shall require the assent of sixty-seven percent (67%) of the Class A Members who are voting in person or by proxy at a meeting called for this purpose; provided, however, Additional Property may be annexed to the Planned Community without the assent of the Members so long as the Additional Property is developed in accordance



with the same general scheme as the other portions of the Planned Community. Nothing herein shall require the Developer to annex any lands to the Planned Community.

**ARTICLE VI**  
**USE RESTRICTIONS, ARCHITECTURAL**  
**CONTROL AND MAINTENANCE**

**SECTION 1. Approval of Plans for Building and Site Improvements.** No dwelling, wall, fence or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Committee. If the Architectural Review Committee fails to approve or disapprove such design and location 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. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Architectural Review Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Architectural Review Committee for its records. The Architectural Review Committee shall not be responsible for any structural or other defects in plans and specifications submitted to it or in any structure erected according to such plans and specifications.

**SECTION 2. Minimum Standards for Site Improvements.**

(a) Each single-story dwelling shall have a minimum of 1,400 square feet of enclosed, heated dwelling area and each multi-story dwelling shall have a minimum of 1,800 square feet of enclosed, heated dwelling area at least 1,000 square feet of which shall be on the first floor of the dwelling; provided, however, the Architectural Review Committee may permit a dwelling to have less than the above-stated footage if the Committee, in its sole discretion, finds that the variance will not adversely impact property values within the Planned Community. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches and like areas.

(b) Since the establishment of inflexible building setback lines for location of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines are established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the Architectural Review Committee; provided, however, that no structure shall be constructed closer to a Lot line than is permitted by applicable governmental regulations.



(c) No clearing, maintenance or disturbance of the natural condition of a Lot may be undertaken until Owner or builder has received approval for such action from the Architectural Review Committee.

(d) The exterior of all dwellings and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency, natural calamities, or the complexity of design and construction.

(e) All service utilities, fuel tanks and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Architectural Review Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes shall be uniform in design. Design for mail and newspaper boxes shall be furnished by the Architectural Review Committee. Fences shall be permitted on any Lot; provided, however, that the design, placement and materials of any fence must be approved by the Architectural Review Committee prior to commencement of construction of same. Clothes lines are not permitted on any Lot.

(f) Off-street parking for not less than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot which parking areas and the driveways thereto shall be constructed of concrete, brick, asphalt, turf stone or any other material approved by the Architectural Review Committee.

(g) All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be clear, white or non-frost lights or bulbs.

(h) All roofing products shall be natural wood shakes, asphalt shingles (30 year or better), slate or standing seam metal.

(i) Exterior siding materials shall be brick, natural wood and/or Hardiplank.

### **SECTION 3. Use Restrictions.**

(a) Land Use and Building Type. No Lot shall be used for any purpose except for residential purposes, subject, however, to the rights of the Declarant contained herein. All numbered Lots are restricted for construction of one single-family dwelling, plus a detached garage, if there is not one attached to the residence, and such other accessory buildings as may be approved by the Architectural Review Committee.

(b) Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly,



unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkempt condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area.

(c) Temporary Structures. No structure of a temporary character shall be created or allowed to remain on any Lot, and no trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently.

(d) Vehicles/Boats. No boat, motor boat (including "wave runners" and other personal watercraft), camper, trailer, motor or mobile homes, tractor/trailer, or similar type vehicle shall be permitted to remain on any Lot or on any street at any time, without the written consent of the Association. No inoperable vehicle or vehicle without current registration and insurance will be permitted on any Lot, street or Common Element. The Association shall have the right to have all such vehicles towed away at the owner's expense. No repairs to any vehicle may be made on streets or in driveways, but only in garages or other areas and not visible from the street.

(e) Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that cats, dogs or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, bark excessively, and are at all times kept properly leashed or under the control of their owner, and do not become a nuisance.

(f) Statuary, TV Satellite Dishes and Outside Antennas; Flags. No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Architectural Review Committee, provided, however, that satellite dishes not over 18" in diameter which cannot be seen from the street and are integrated within a dwelling on the Lot and the surrounding landscape are permitted. With regard to the regulation of flags, no outdoor flag may be placed on any Lot or dwelling unit unless and until permission for the same has been granted by the Architectural Review Committee. Notwithstanding any other provision herein, the United States Flag and/or the North Carolina flag having the maximum dimensions of four feet by six feet (4' x 6') may be displayed on an Owner's own Lot. Any flags will be displayed in accordance with traditional rules and patriotic customs set forth in 4 U.S.C. §§5-10, as amended, governing the display and use of the flag of the United States.

(g) Construction in Common Elements. No Person (with the exception of Declarant in connection with the exercise of its Special Declarant Rights) shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

(h) Signs. No signs (including "for sale" or "for rent" signs) shall be permitted on any Lot in the Common Elements without permission of the Executive Board;

provided, however, the Declarant may, so long as Declarant owns any Lot, maintain for sale signs on Declarant's Lots and maintain signs on the Common Elements advertising the Planned Community. With regard to the regulation of political signs, the Association, pursuant to the provisions of the Act, may (i) prohibit the display of political signs on a Lot earlier than forty-five (45) days before the day of an election and later than seven (7) days after an election day, and/or (ii) regulate the size and number of political signs that may be placed on a Lot (but only to the extent the Association's regulation is no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property). If the local government in which the applicable property is located does not regulate the size and number of political signs on residential property, the Association shall permit at least one (1) political sign with the maximum dimensions of 24 inches by 24 inches (24" x 24") on a Lot. For the purposes of this paragraph, a "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

(i) Subject to any rights reserved to the Declarant herein, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the Declarant Control Period and thereafter by the Board of Directors.

**SECTION 4. Maintenance.** Each Lot Owner shall obtain prior approval of the Architectural Review Committee of the proposed species of grass sod to be used on the Owner's Lot. The Owner shall sod all portions of the Lot other than areas upon which the dwelling, outbuildings, driveway, sidewalks, wetland areas as shown on the Plat and approved landscaped beds at the sole expense of the Owner. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. All shrubs, trees, grass and plantings shall be kept neatly trimmed and properly cultivated.

## **ARTICLE VII**

### **STORMWATER PERMIT/FACILITIES**

**SECTION 1. Stormwater Permit.** The Association and each of its Members agree that at any time after (i) all work required under the Stormwater Permit has been completed (other than operation and maintenance activities), and (ii) the Declarant is not prohibited under DENR regulations from transferring the Stormwater Permit for the Planned Community to the Association, the Association's officers without any vote or approval of Lot Owners, and within ten (10) days after being requested to do so, will sign all documents required by DENR for the Stormwater Permit to be transferred to the Association, provided, however, that at the time the Developer requests that the Association accept transfer of the Stormwater Permit, the Developer has delivered to the Association a certificate from an engineer licensed in the State of North Carolina, dated no more than forty-five (45) days before the date of the request, that all stormwater retention ponds, swales and related facilities are constructed in accordance with the plans and specifications therefore. If the Association fails to sign the documents required by this paragraph, the Developer shall be entitled to specific performance in the courts of North Carolina requiring that the appropriate Association officers sign all documents necessary for the Stormwater Permit to be transferred to the Association. Failure of the officers to sign as



provided herein shall not relieve the Association of its obligations to operate and maintain the stormwater facilities covered by the Stormwater Permit.

**SECTION 2. Stormwater Facilities Operation and Maintenance.** Any stormwater infiltration basins and related facilities for the Planned Community which have or are to be constructed by or on behalf of Declarant constitute Common Elements and, subject only to the provisions of Section 3 of this Article VII, the Association, at its sole cost and expense, is responsible for the operation and maintenance of such facilities. Except as provided in Section 3 of this Article VII, the Association shall indemnify and hold harmless the Declarant from any obligations and costs under the Stormwater Permit for operation and maintenance of the stormwater retention ponds and related facilities.

**SECTION 3. Damage to Stormwater Facilities.** The Declarant shall, at its sole cost and expense, be responsible for repairing any damage to stormwater facilities caused by Declarant's development activities. The Declarant shall not be responsible for damages to stormwater retention ponds and related facilities caused by any other cause whatsoever, including, but not limited to, construction of residences or other activities by Owners, their agents and contractors upon their Lots, acts of God, and the negligence of others. Lot Owners shall be responsible for damages to such stormwater facilities caused by construction of buildings or other activities upon the Owner's Lot. Each Owner shall, within thirty (30) days after receipt of notice of damage to stormwater facilities, repair the damage at the Owner's sole cost and expense to return them to the state required by the stormwater plans and specifications for the Planned Community. If the Lot Owner fails to do so within said thirty (30) day period, the Association shall perform the work and the cost of the work shall be added to the Annual Assessment due from the Lot Owner.

**SECTION 4. Enforcement of Stormwater Management Regulations.** The following covenants are intended to ensure ongoing compliance with the Stormwater Permit. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Permit. These covenants are to run with the land and be binding on all persons and parties claiming under them. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the DWQ. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the DWQ.

The maximum allowable built-upon area per Lot is 4,500 square feet. This allotted amount includes any build-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. The build-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. All runoff from the built-upon areas on the Lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the Lot to drain toward the street, or grading perimeter swales to collect lot runoff and directing them into the stormwater system or into the street. Lots that will naturally drain into the system are not required to provide these additional measures. The provisions of



the Stormwater Permit are incorporated herein by reference and each Owner is required to refrain from taking any action which would be in violation of the Stormwater Permit.

**ARTICLE VIII**  
**LOTS SUBJECT TO DECLARATION/ENFORCEMENT**

**SECTION 1. Lots Subject to Declaration.** The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of the Planned Community and the Lots. All present and future Owners, tenants and occupants of Lots, and their guests or invitees, shall be subject to and shall comply with the provisions of the Declaration, as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, their heirs, successors and assigns, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless altered or amended as set forth in Section 5 of Article IX hereof.

**SECTION 2. Enforcement and Remedies.** The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The Executive Board shall be entitled to enforce its Articles of Incorporation, Bylaws and Rules and Regulations. In addition to the remedies otherwise provided for herein concerning the collection of Assessments, the following remedies shall be available:

(a) **Association to Remedy Violation.** In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Charter or Rules and Regulations, the Executive Board, after thirty (30) days' notice, may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner, and such entry shall not be deemed a trespass. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot, including collection costs and reasonable attorneys' fees. Such amounts shall be due and payable within thirty (30) days after Owner is billed. If not paid within said thirty (30) day period, the amount thereof may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common or Limited Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot.



(b) Fines. The Association may, in accordance with the procedures set forth in the Act and Bylaws, establish a schedule of and collect fines for the violation of this Declaration or of the Association’s Articles of Incorporation, Bylaws or Rules and Regulations. If an Owner does not pay the fine when due, the fine shall immediately become a part of and be added to the Annual Assessment against the Owner’s Lot and may be enforced by the Association as all other Assessments provided for herein.

(c) Suspension of Services and Privileges. The Association may, in accordance with the procedures set forth in the Act, suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner’s lot remain unpaid for at least thirty (30) days or for any period that the Owner or the Owner’s Lot is otherwise in violation of this Declaration or the Association’s Charter, Bylaws or Rules and Regulations.

**SECTION 3. Miscellaneous.** Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.

**ARTICLE IX**  
**RESTRICTIONS ON JURISDICTIONAL WETLANDS**

Maintaining Wetlands. The areas shown as wetlands on that plat prepared by Cape Fear Engineering, Inc. dated June 30, 2008 entitled “The Village At Hawkeswater Phase 3-A, Section 1” recorded in Map Book 56 at Page 36 of the Brunswick County Register of Deeds shall be maintained in perpetuity in their natural condition. No person or entity shall fill, grade, excavate, or perform any other land disturbing activities; nor cut, mow, burn, remove or harm any vegetation; nor construct any structures, nor allow animal grazing or watering or any other agricultural use on such wetlands. This covenant is intended to ensure continued compliance with the authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Declarant and all parties claiming under it.

**ARTICLE X**  
**GENERAL PROVISIONS**

**SECTION 1. Rights of Institutional Note Holders.** Any institutional holder of a first lien on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Planned Community or the property securing its loan, (e) receive written notice of any sixty (60) day delinquency in the payment of Assessments or charges owed by any

Owner of any property which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

**SECTION 2. Utility Service.** Declarant reserves the right to subject the Property to contracts for the installation of utilities, cable TV and street lighting, which may require an initial payment and/or a continuing monthly payment by the Owner of each Lot. Each Lot Owner will be required to pay for any water connections, sewer connections, street lighting, impact fees or any other charges imposed by any entity furnishing water, sewer, street lighting or other utility service to the Lots and Common Elements. In the alternative, the Developer may collect such connection, impact and other fees, and charges directly from the Lot Owners. All Lot Owners shall be required, for household purposes, to use water and sewer supplied by the companies/governmental units servicing the Planned Community. Separate water systems for outside irrigation and other outdoor uses shall not be permitted without the consent of the Architectural Review Committee.

**SECTION 3. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**SECTION 4. Amendment of Declaration.** Except in cases of amendments that may be executed by the Declarant under this Declaration or by certain Lot Owners under the Act, this Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or by the Declarant if necessary for the exercise of any Special Declarant Right or development or other right reserved to the Declarant herein.

**SECTION 5. FHA/VA Approval.** So long as there is Class B membership, annexation of Additional Properties, dedication of Common Elements and/or amendments to this Declaration must be approved by the Federal Housing Administration and/or the Department of Veterans Affairs, as the case may be, if either of those agencies has approved the making, insuring or guaranteeing of mortgage loans within the Planned Community.

**SECTION 6. North Carolina Planned Community Act.** It is the intent of the Declarant to comply with the requirements imposed on the Planned Community by the Act and to the extent any of the terms of this Declaration violate the Act, the terms of the Act shall control.

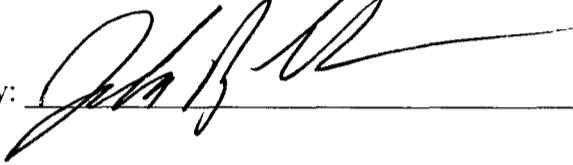
**SECTION 7. Joinder.** Cooperative Bank joins in the execution of this Declaration for the purpose of consenting to the terms and conditions contained herein, and for the additional purpose of subordinating, except as herein set forth, the Deed of Trust recorded in Book 2606, Page 37, and the Assignment of Leases and Rents recorded in Book 2606, Page 49, Deed of Trust recorded in Book 2606, Page 72, and the Assignment of Leases and Rents recorded in Book 2606, Page 92, Deed of Trust recorded in Book 2606, Page 106, and the Assignment of Leases and Rents recorded in Book 2606, Page 121, Deed of Trust recorded in Book 2605, Page



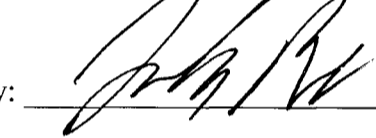
1340, and the Assignment of Leases and Rents recorded in Book 2605, Page 1361, all in the Brunswick County Registry, as the same may have been modified from time to time, to the provisions of this Declaration and by affixing its duly authorized signature hereto, does hereby specifically subordinate, except as herein set forth, said Deed of Trust recorded in Book 2606, Page 37, and Assignment of Leases and Rents recorded in Book 2606, Page 49, Deed of Trust recorded in Book 2606, Page 72, and the Assignment of Leases and Rents recorded in Book 2606, Page 92, Deed of Trust recorded in Book 2606, Page 106, and the Assignment of Leases and Rents recorded in Book 2606, Page 121, Deed of Trust recorded in Book 2605, Page 1340, and the Assignment of Leases and Rents recorded in Book 2605, Page 1361 to the terms of this Declaration. Except for said subordination, the liens of said Deeds of Trust shall remain in full force and effect until released by Cooperative Bank by instrument duly recorded in the Brunswick County Registry.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its corporate name by its president pursuant to authority of Declarant's Board of Directors as of the day and year first above written.

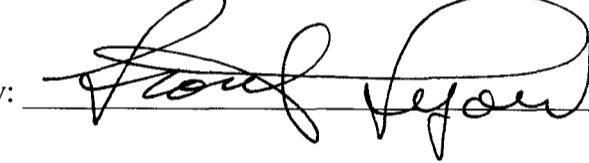
**HAWKESWATER I DEVELOPMENT, INC.**

By: 

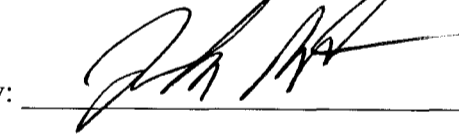
**HAWKESWATER II DEVELOPMENT, INC.**

By: 

**HAWKESWATER III DEVELOPMENT, INC.**

By: 

**RIVERSIDE LAND HOLDINGS, LLC**

By: 



COOPERATIVE BANK

By: [Signature]  
Its: G.B. CHUNCHY President

STATE OF NORTH CAROLINA

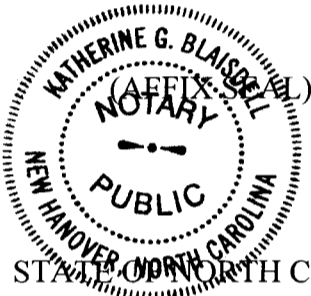
COUNTY OF NEW HANOVER KMB

I, Katherine G. Blaisdell KMB, a Notary Public of the County and State aforesaid, certify that John R. Lancaster personally appeared before me this day and acknowledged that he is a        President of Hawkeswater I Development, Inc., a North Carolina corporation, and that he, as a        President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 2<sup>nd</sup> day of March, 2009.

My commission expires: 5/30/2009

[Signature]  
Notary Public



STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Katherine G. Blaisdell a Notary Public of the County and State aforesaid, certify that John R. Lancaster personally appeared before me this day and acknowledged that he is a        President of Hawkeswater II Development, Inc., a North Carolina corporation, and that he, as a        President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 2<sup>nd</sup> day of March, 2009.

My commission expires: 5/30/2009

[Signature]  
Notary Public





STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Katherine G. Blaisdell, a Notary Public of the County and State aforesaid, certify that Lionel L. Yow personally appeared before me this day and acknowledged that he is a President of Hawkeswater III Development, Inc., a North Carolina corporation, and that he, as a President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 2<sup>nd</sup> day of March, 2009.

My commission expires: 5/30/2009

Katherine A. Blaisdell  
Notary Public



STATE OF NORTH CAROLINA

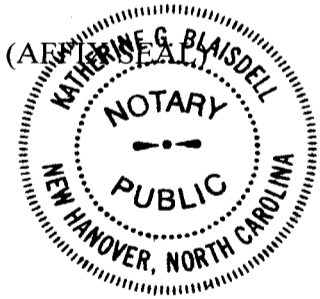
COUNTY OF NEW HANOVER

I, Katherine G. Blaisdell, a Notary Public of the County and State aforesaid, certify that John R. Lancaster personally appeared before me this day and acknowledged that he is a member of Riverside Land Holdings, LLC., a North Carolina limited liability company, and that he, as a member, being authorized to do so, executed the foregoing on behalf of the limited liability company.

Witness my hand and official stamp or seal, this the 2<sup>nd</sup> day of March, 2009.

My commission expires: 5/30/2009

Katherine A. Blaisdell  
Notary Public



STATE OF NORTH CAROLINA



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Brunswick County, NC Register of Deeds page 25 of 25

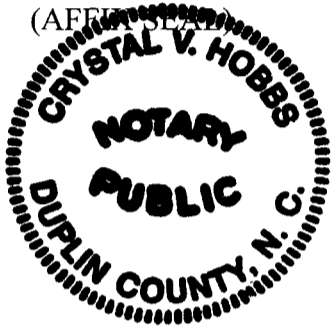
COUNTY OF ~~NEW HANOVER~~ DUPLIN

I, Crystal V. Hobbs, a Notary Public of the County and State aforesaid, certify that George Church personally appeared before me this day and acknowledged that he is Vice President of Cooperative Bank, a North Carolina banking corporation, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 2nd day of March, 2009.

My commission expires: May 7, 2011

Crystal V. Hobbs  
Notary Public





Presenter MIKE Ret: IS  
 Total 20 Rev. Int. 20  
 Ck \$ 20 Ch 2327 Cash \$ \_\_\_\_\_  
 Refund: \_\_\_\_\_ Cash \$ \_\_\_\_\_ Finance \_\_\_\_\_  
 Portions of document are illegible due to condition of original  
 Document contains seals verified by original instrument that cannot be reproduced or copied.

Prepared By & Return to: Charles D. Meier, Marshall, Williams & Gorham, LLP  
 P.O. Drawer 2088, Wilmington, NC 28402

STATE OF NORTH CAROLINA  
 COUNTY OF BRUNSWICK

**FIRST AMENDMENT TO THE DECLARATION OF  
 HAWKESWATER AT THE RIVER SUBDIVISION**

This First Amendment to the Declaration of Hawkeswater at the River Subdivision ("Amendment") is made and entered into as of this 13<sup>th</sup> day of February, 2013 by Hawkeswater Homeowners' Association, Inc. a North Carolina nonprofit corporation ("Association").

**WITNESSETH:**

A. The Association is the property owners' association charged with the responsibility for the operation of that certain real property known as Hawkeswater at the River Subdivision located in Brunswick County, North Carolina, and described in a Declaration recorded in Book 2745, Page 986, Brunswick County Register of Deeds ("Declaration"), as may have been previously amended from time to time, including, but not limited to, the addition of real property subject to said Declaration, this Amendment being effective and applicable to all such additions.

B. Said Declaration provides in Article X, Section 4, that the Declaration can be amended by an affirmative vote of not less than 67% of the votes of the Members, Lot/Unit Owners.

C. The amendment set forth below has been adopted by an affirmative vote of not less than 67% of the votes of the Members, Lot/Unit Owners in person, by proxy, or by ballot, and has otherwise been properly



adopted and approved as required by the Declaration, Bylaws and Articles of Incorporation, as applicable.

D. That the President or Vice-President of the Association has been duly authorized and empowered to execute this Amendment and to cause the same to be recorded in the Brunswick County Register of Deeds as the binding act of the Association, its Members, Lot/Unit Owners and Board of Directors.

Now therefore, in consideration of the recitals set forth above, and as the act and deed of the Association, its Members, Lot/Unit Owners and Board of Directors, the Declaration is hereby amended and modified as set forth below:

By deleting the first sentence of Article IV, Section 7 in its entirety and inserting in lieu thereof the following: At the time a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of \$1,000.00 to the Association as working capital to be used for operating and capital expenses of the Association.

By deleting Article VI, Section 2(i) in its entirety and inserting in lieu thereof the following: Exterior siding materials shall be brick, natural wood, Hardiplank and/or vinyl or beaded vinyl.

#### END OF AMENDMENTS

Except as amended, the Declaration, as may have been previously amended, shall remain in full force and effect.

The undersigned, being the \_\_\_\_\_ President of the Association, does, by his/her execution hereof, certify that this Amendment was duly adopted by an affirmative vote of at least 67% of the votes of Members of the Association in person, by proxy, or by ballot, was duly adopted by a vote of the Board of Directors (if required), and that all the procedures, steps and requirements necessary to amend said Declaration have been complied with, the day and year first above written.



Hawkeswater Homeowners'  
Association, Inc.

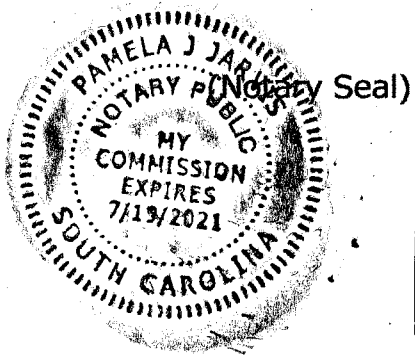
By: Bradford C. Brundage  
Hawkeswater HOA, President

===== <sup>South</sup> STATE OF NORTH CAROLINA  
COUNTY OF Henry =====

I, Pamela J Jarvis, notary public, do hereby certify that Bradford C Brundage (name of officer), personally appeared before me this day and acknowledged that he/she is President (title of officer) of the Association and that he/she, being authorized to do so, executed the foregoing on behalf of the Association.

Witness my hand and official seal this the 13<sup>th</sup> day of February, 2013.

Pamela J Jarvis  
Notary Public  
My Commission Expires: 7/19/21



**Pamela J Jarvis  
NOTARY PUBLIC  
State of South Carolina  
My Commission Expires 7/19/2021**



11  
 Presenter: D.R. Horton Inc. Ret: McNeil  
 Total: 200 Rev: \_\_\_\_\_ Int: Nil  
 Ck \$: 200 Ck #: 3137 Cash \$: \_\_\_\_\_  
 Refund: \_\_\_\_\_ Cash \$: \_\_\_\_\_ Finance: \_\_\_\_\_  
 Portions of document are illegible due to condition of original.  
 Document contains seals verified by original instrument that cannot be reproduced or copied.

Prepared By: Bagwell Holt Smith P.A., 111 Cloister Ct., Ste. 200, Chapel Hill, NC 27514  
 Return to: D.R. Horton, Inc., 503 Wando Park Blvd., Ste. 200, Mount Pleasant, SC 29464

**FIRST SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HAWKESWATER AT THE RIVER SUBDIVISION**

This First Supplemental Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision (this "First Supplemental Declaration") is made on the date hereinafter set forth by **D.R. HORTON, INC.**, a Delaware corporation, hereinafter referred to as the "Horton". Horton states and declares as follows:

A. Horton is the owner of that tract of real estate located in Brunswick County, North Carolina, described in **Exhibit A** attached hereto and incorporated herein (the "Townhome Property"). The Townhome Property is a portion of that planned community known as "Hawkeswater at the River Subdivision" (the "Master Community"). Horton intends to subdivide and develop the Townhome Property into residential Townhome Lots, Townhome Common Elements exclusively serving the Townhome Lots, and public rights-of-way.

B. Hawkeswater I, Development, Inc., a North Carolina corporation, Hawkeswater II Development, Inc., a North Carolina corporation, Hawkeswater III Development, Inc., a North Carolina corporation, and Riverside Land Holdings, LLC, a North Carolina limited liability company, previously made that certain Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision recorded in Book 2745 Page 986, Brunswick County Register of Deeds (the "Declaration"), as supplemented by that Annexation Declaration for Hawkeswater at the River Subdivision recorded in Book 3493 Page 659, Brunswick County Registry (collectively, the "Master Declaration"). The terms and provisions of the Master Declaration apply to the Townhome Property.

C. Section 4 of Article X of the Master Declaration provides that the Master Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

D. As of the date of this First Supplemental Declaration, Horton is the owner of sixty-three (63) of the eighty-nine (89) Lots which currently comprise the Master Community, and accordingly Horton holds seventy and 78/100<sup>th</sup> percent (70.78%) of the votes in the Association.

E. Horton now desires to amend and supplement the Master Declaration to establish the Townhome Property as a separately developed residential neighborhood within the Master Community to be known as Hawkeswater at the River Townhomes (the "Townhome Community"), designate the Townhome Common Elements within the Townhome Property as Limited Common Elements (as that term is defined under the Master Declaration) for the exclusive use of the Townhome Lots, and impose on the Townhome Property additional covenants, conditions and restrictions to protect and to promote the beneficial ownership, use and enjoyment of all Townhome Lots located within the Townhome Community, the terms of which shall supplement the covenants, conditions and restrictions of the Master Declaration.

THEREFORE, pursuant to Chapter 47F of the North Carolina General Statutes (the "Planned Community Act"), Horton hereby declares that all of the Townhome Property shall hereafter be designated as a separately developed neighborhood within the Master Community, the Townhome Common Elements within the Townhome Property shall be designated as Limited Common Elements for the exclusive use of the Townhome Lots, and the Townhome Property shall hereafter be held, sold and conveyed subject to the terms, restrictions, covenants, and conditions of the Master Declaration and the terms, restrictions, covenants, and conditions set forth in Articles I through VII below, which are for the purpose of enhancing and protecting the value and desirability of the Townhome Property, and which shall run with the Townhome Property and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns.

**Article I. Definitions.**

The definitions set forth the Master Declaration and in § 47F-1-103 of the Planned Community Act shall apply to this First Supplemental Declaration and are incorporated herein, except that the terms listed below shall have the specific meanings stated:

"Townhome Building" shall mean any building comprised of residences located upon Townhome Lots.

"Townhome Common Elements" shall mean all property, and any improvements thereon, wherever located, owned or leased by the Association or subjected to an easement or license in favor of the Association for the common use and enjoyment of Owners of the Townhome Lots. Townhome Common Elements shall include all water and sewer lines serving more than one Townhome Lot and located outside any public rights-of-way or utility easements. Townhome Common Elements shall include any drainage easements, stormwater pipes, detention and retention facilities serving more than one Townhome Lot and not accepted by any governmental authority for maintenance. Townhome Common Elements shall be designated as Limited Common Elements for the exclusive use of the Townhome Lots.

"Townhome Expenses" shall mean expenditures made by or financial liabilities of the Association in connection with the maintenance of the Townhome Property, together with any allocations to reserves.

"Townhome Lot" shall mean any separate parcel of land within the Townhome Community designated for construction and maintenance of a townhome residence and designated for separate ownership or occupancy and residential use.



## Article II. Townhome Assessments.

2.1 Townhome Base Assessments. All Townhome Expenses incurred, or anticipated to be incurred, by the Association for the exclusive benefit of the Owners of the Townhome Lots shall be shared among the Owners of all Townhome Lots as set forth in Section 2.4 below. The Association shall levy a Townhome Base Assessment, at least annually, equally against each Townhome Lot as its share of the Townhome Expenses incurred for the exclusive benefit of the Owners of the Townhome Lots.

2.2 Townhome Special Assessments. In addition to other authorized assessments, the Association may levy Townhome Special Assessments against each Townhome Lot to cover unbudgeted Townhome Expenses or Townhome Expenses in excess of those budgeted. Any Townhome Special Assessment shall require the affirmative vote or written consent of a majority of the Board of Directors of the Association. Townhome Special Assessments shall be payable in such manner and at such times as determined by the Board of Directors of the Association and may be payable in installments extending beyond the fiscal year in which the Townhome Special Assessment is approved.

2.3 Townhome Specific Assessments. The Board of Directors of the Association shall have the power to levy Specific Assessments against a particular Townhome Lot as follows:

a. to cover the costs, including overhead and administrative costs, of providing services to Townhome Lots upon request of an Owner pursuant to any menu of special services which the Association may offer; and

b. to cover costs incurred in bringing the Townhome Lot into compliance with the Master Declaration, this First Supplemental Declaration, the Bylaws of the Association, or any amendments and supplements thereto, or costs incurred as a consequence of the conduct of the Owner or occupants of the Townhome Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board of Directors of the Association shall give the Townhome Lot Owner prior written notice and, if required by the Master Declaration, this First Supplemental Declaration, the Bylaws of the Association, or any amendments and supplements thereto, an opportunity for a hearing before levying any Specific Assessment under this subsection 2.3(b).

### 2.4 Authority to Assess Owners; Time of Payment

The Association is hereby authorized to levy Townhome assessments as provided for in this Article and elsewhere in the Master Declaration. The obligation to pay assessments shall commence as to each Townhome Lot on the first day of the month following the later of: (a) the closing on the sale of a Townhome Lot to a person or entity other than Horton or (b) the issuance of a certificate of occupancy for a residential dwelling on such Townhome Lot. The first annual Townhome Base Assessment levied on each Townhome Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Townhome Lot.

Assessments shall be paid in such manner and on such dates as the Board of Directors of the Association may establish. The Board of Directors of the Association may require advance payment of assessments at closing of the transfer of title to a Townhome Lot and impose special requirements for Owners of Townhome Lots with a history of delinquent payment. If the Board of Directors of the Association so elects, assessments may be paid in two or more installments. Unless the Board of Directors of the Association provides otherwise, the Townhome Base Assessment shall be due and



payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Townhome Lot, the Board of Directors of the Association may require the outstanding balance on all assessments to be paid in full immediately.

#### 2.5 Liability for Assessments.

Each assessment levied by the Association, together with interest, late charges and the costs of collection thereof, including reasonable attorney's fees, shall be the personal obligation of all the Owners of each Townhome Lot. The Association shall have the power to take whatever action is necessary, at law or in equity, to enforce this First Supplemental Declaration and to collect the assessment, interest, late charges and costs. If the assessment remains unpaid for a period of thirty (30) days after the date of mailing of the notice that it is due, the Association may impose reasonable charges for late payment of assessments, not to exceed the greater of Twenty Dollars (\$20.00) per month from the date of mailing of the notice or ten percent (10%) of any assessment installment unpaid, and the assessment, together with the late charges thereon and the costs of collection thereof (including reasonable attorney's fees) shall constitute a lien on the delinquent Townhome Lot when a claim of lien is filed by the Association against the Townhome Lot in the Office of the Clerk of Superior Court of Brunswick County. The lien may be foreclosed by the Association as provided in § 47F-3-116 of the Planned Community Act.

The failure of the of Board of Directors of the Association to fix assessment amounts or rates or to deliver or mail each Owner of a Townhome Lot an assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay assessments. In such event, each Owner of a Townhome Lot shall continue to pay Townhome Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

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

The sale or transfer of any Townhome Lot shall not affect the assessment lien, or relieve such Townhome Lot from the lien for any subsequent assessments. However, the sale or transfer of any Townhome Lot pursuant to foreclosure pursuant to first lien mortgage shall extinguish the lien as to any installments of such assessments due prior to the mortgagee's foreclosure, except as otherwise provided in this Section. The subsequent Owner of the foreclosed Townhome Lot shall not be personally liable for assessments on such Townhome Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Townhome Expenses collectible from Owners of all Townhome Lots subject to assessment under Section 2.4, including the subsequent Owner of the foreclosed Townhome Lot.

2.6 HVAC Systems. All heating and air-conditioning systems (collectively, the "HVAC Systems") located in the Townhome Common Elements which serving one or more, but less than all, of the Townhome Lots shall be considered Limited Common Elements. The expenses of such maintenance



and repair for the HVAC Systems serving particular Townhome Lot(s) shall be the responsibility of the Owner(s) of those Townhome Lot(s).

2.7 Exempt Property.

The following property shall be exempt from payment of Townhome Base Assessments, Townhome Specific Assessments, and Townhome Special Assessments:

- a. all Townhome Common Elements;
- b. any property dedicated to and accepted by any governmental authority or public utility; and
- c. any and all property owned by Horton.

**Article III. Maintenance and Repair.**

3.1 General. All areas within the Townhome Property and all areas covered by easements or licenses owned or held by the Association shall be maintained to the standards stated in this First Supplemental Declaration, the Master Declaration, the Bylaws of the Association, and rules and regulations of the Association. The Association and the individual Owners of the Townhome Lots shall be responsible for such maintenance, as provided in this Article III.

3.2 Townhome Association Responsibility. The Association shall maintain all landscaped rights-of-way and all entry features; all streets and roadways within any easement or licenses owned or held by the Association, unless such streets or roadways are maintained by some governing authority; all Townhome Common Elements, and all landscaping, paving, streets, structures and improvements of any nature located thereon; and all ponds, streams and culverts located on the Townhome Property which serve as part of any drainage and storm-water retention system. In addition, the Association shall provide exterior maintenance to each Townhome Building and Townhome Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior Townhome Building surfaces, trees, shrubs, grass, walks and other exterior improvements and betterments; provided that the Association shall not be responsible for providing exterior maintenance of any improvements and betterments made and installed by individual Owners. Such exterior maintenance by the Association shall not include glass surfaces. In order to enable the Association to accomplish the foregoing, a perpetual easement in gross over all the Townhome Lots and Townhome Common Elements is hereby granted to the Association for the purpose of unobstructed access over and upon each Townhome Lot and Townhome Common Elements at all reasonable times to perform maintenance as provided in this Article. The Owner of any Townhome Lot may, at his or her election, plant harmonious trees, shrubs, flowers and grass in his or her rear yard and maintain portions or all of his or her rear yard, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the building and the remaining spaces. No such maintenance by an Owner shall reduce any assessments payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his or her rear yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period of not more than one year. In the event that the need for maintenance or repair by the Association pursuant to this subsection is caused through the willful or negligent act of any Owner, his or her family, guests, invitees or delegates, the cost of such maintenance and repair shall be assessed against the Townhome Lot(s) of such Owner(s) as a Specific Assessment pursuant to Article II above.



3.3 Owner's Responsibility. Except as provided in Section 3.2 above, each Owner shall be responsible for the routine cleanliness and general upkeep of his or her Townhome Lot.

3.4 Townhome Association's Right to Perform Owner's Responsibility. If any Owner or occupant of a Townhome Lot fails to perform any of the duties or responsibilities set forth in this Article, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in any official depository of the United States mail, addresses to the party to whom it is intended to be delivered at that party's current address as shown by the records of the Association, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, shall have the right and power to enter onto the Townhome Lot in question and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise at any person. All Owner(s) of a Townhome Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Association in performing such work computed at the rate of twelve percent (12.00%) per annum from the date(s) such amounts are expended until repaid to the Association and for all costs and expenses incurred in seeking the compliance of such Owner with his or her duties and responsibilities hereunder, and shall reimburse the Association on demand for such costs and expense (including interest as above provided). If such Owner shall fail to reimburse the Association within thirty (30) days after mailing to such Owner of a statement for such costs and expenses incurred by the Association, the Association may charge a Specific Assessment for such amounts against the Townhome Lot of such Owner(s), and proceed to collect such Specific Assessment as provided in Article II above.

3.5 Cost of Maintenance. All costs of the Association in maintaining Townhome Common Elements and Townhome Buildings and in meeting its responsibilities pursuant to this Article shall be Townhome Expenses.

**Article IV. Easements.** The Townhome Property and all portions thereof shall be held, sold and conveyed subject to the following easements:

4.1 Owners' Easement of Enjoyment. Except as limited by the Master Declaration, this First Supplemental Declaration, and the Planned Community Act, every Owner of a Townhome Lot shall have a right of use and enjoyment in and to the Townhome Common Elements which shall be appurtenant to and shall pass with the title to every Townhome Lot. Except as limited by the Master Declaration, this First Supplemental Declaration, and the Planned Community Act, any Owner of a Townhome Lot may delegate his rights of use and enjoyment of the Townhome Common Elements to the members of his family, his tenants, contract purchasers who reside on the Townhome Property, or his guests.

4.2 Easements for Encroachments. All Townhome Lots and Townhome Common Elements shall be subject to easements for the encroachment of initial improvements constructed on any Townhome Lots or Townhome Common Elements to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, exterior walls, roof, fence, and patios. In the event of an encroaching initial improvement, it shall be the responsibility of the Owner thereof to maintain the encroaching initial improvement in good condition and repair unless said responsibility is that of the Association as provided in the Master Declaration. Notwithstanding anything above to the contrary, this provision does not authorize any encroachments except those which exist by



virtue of original construction on a Townhome Lot that was approved pursuant to Article VI of the Master Declaration and is in compliance with any architectural guidelines promulgated by the Architectural Review Committee.

4.3 Easement for Utility Hookups and Conduits. An easement over each Townhome Lot is hereby reserved unto and established in favor of Horton and the Association, its successors and assigns, for the installation and maintenance of utility hookups and conduits to serve other Townhome Lots located within the same Townhome Building; however, such utility hookups and conduits shall be located so as to interfere to the minimal extent possible with the use and enjoyment of the Townhome Lot burdened by such easement.

**Article V. Insurance.**

5.1 Association's Responsibility. The Association shall purchase and maintain in force insurance coverage as provided by Article III of the Master Declaration.

5.2 Owner's Responsibility. Each Owner of a Townhome Lot shall be responsible for obtaining and maintaining at all times insurance at their own expense covering all portions of the Owner's Townhome Lot, including structures and improvements on the Townhome Lot and Owner's personal property. In addition, to the extent not insured by policies of the Association or the extent insurable losses result in the payment of deductibles under the Association's policies, every Owner shall obtain and maintain at all times insurance covering consequential damages to any other Townhome Lot or the Townhome Common Elements due to occurrences originating with the Owner's Townhome Lot and caused by the Owner's negligence, the Owner's failure to maintain the Owner's Townhome Lot or any other casualty within the Townhome Lot, which caused damage to any other Townhome Lot or Townhome Common Elements. Additionally, each Owner of a Townhome Lot may, at their option, obtain insurance at their own expense to cover their personal liability, and to provide such other coverage as they may desire.

At the Association's request, Owners shall file a copy of each individual policy or policies covering their Townhome Lot and personal property with the Board of Directors of the Association within ten (10) days after receiving such request. Such Owner shall promptly notify the Association in writing in the event such policy is canceled.

Upon resolution of the Board of Directors of the Association and at least sixty (60) days' prior written notice to each Owner, the Association may, but shall not be required to, obtain as a Townhome Expense, a blanket insurance policy providing property insurance coverage for all structure on Townhome Lots (exclusive of improvements made by Owners). In such event, the Owners shall be relieved of their insurance responsibility hereunder to the extent the Association assumes such responsibility. Following such an assumption of insurance responsibility, the Association may at any time, upon not less than thirty (30) days' written notice to each Owner, discontinue such blanket insurance coverage, and in such event, each Owner shall immediately obtain in his or her own name and at his or her own expense the insurance coverage for such Owner's Townhome Lot required hereunder.

In the event of damage or destruction to a Townhome Lot, the Owner shall have sixty (60) days to complete any necessary repairs or reconstruction. Such repair or reconstruction shall conform to the



architectural requirements set forth in the Master Declaration. The Owner shall pay any costs that are not covered by insurance proceeds.

**Article VI. Party Walls.**

Each wall which is built as a part of the original construction of a Townhome Building upon the Townhome Property and placed on a boundary line between Townhome Lots, and all reconstruction or extension of such walls, shall constitute party walls. Except as provided in this Article, the general rules of law regarding party walls, lateral support in below-grade construction and liability for property damage due to negligence or willful acts or omissions shall apply to party walls on the Townhome Property. The following rules and principles shall also apply to the party walls:

6.1 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be share by the Owners of Townhome Lots who make use of the wall or benefit therefrom in proportion to such use and benefit.

6.2 Construction and Reconstruction of Party Wall. The Owner of any Townhome Lot may construct, reconstruct, or extend a party wall in any direction (subject to and within the limitation of architectural control and other limitation of the Master Declaration) with the right to go upon the adjoining Townhome Lot to the extent necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Townhome Lot to as near the same condition as prevailed before the commencement of such construction as is reasonably practicable.

6.3 Weatherproofing. Notwithstanding any other provision of this Section, an Owner of a Townhome Lot who, by his negligence 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.

6.4 Right to Contribution Runs with Land. The right of any Owner of a Townhome Lot to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

6.5 Certification by Adjoining Townhome Property Owner that No Contribution is Due. If any Owner of a Townhome Lot desires to sell his Townhome Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charges; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

**Article VII. General Provisions.**

7.1 Parties Bound. All persons and entities acquiring any interest in any of the Townhome Lots, including but not limited to lessees, shall be bound by the provisions of this First Supplemental Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the Townhome Lots, shall likewise be bound.



7.2 Duration. The provisions of this First Supplemental Declaration shall run with and bind the Property perpetually, unless and until the Master Community is terminated pursuant to the Planned Community Act.

7.3 Amendment. This First Supplemental Declaration may be amended only by a written instrument executed by the Association and authorized by the affirmative vote of at least sixty-seven percent (67%) of all the Townhome Lots existing at that time, cast in person or by proxy at a meeting held in accordance with the Bylaws of the Association. Any amendment must be recorded to be effective.

7.4 Enforcement. Any Owner of a Townhome Lot and/or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and obligations imposed by this First Supplemental Declaration. The Association and/or any Owner of a Townhome Lot shall be entitled to recover reasonable attorney's fees incurred in bringing and prosecuting such action from the breaching or violating Owner(s).

7.5 Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained in this First Supplemental Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.

7.6 Variances. Notwithstanding anything to the contrary contained herein, the Association or its designee shall be authorized to grant individual variances from any of the provisions of this First Supplemental Declaration, the Bylaws of the Association and any rule, regulation or use restriction promulgated pursuant thereto if the Association determine that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Master Community.

7.7 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this First Supplemental Declaration, which shall remain in full force and effect.

7.8 Captions. The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this First Supplemental Declaration.

7.9 Law Controlling. This First Supplemental Declaration shall be construed and governed pursuant to the laws of North Carolina.

7.10 References to Statutes. All references herein to any statutory provision shall be construed to include and apply to any subsequent amendments to or replacements of such provision.

**SIGNATURES ON NEXT PAGE**



IN WITNESS WHEREOF, D.R. Horton, Inc. has caused this instrument to be executed by its duly authorized officer, all by order and authority duly granted by its corporate board of directors, as of the day and year first above written.

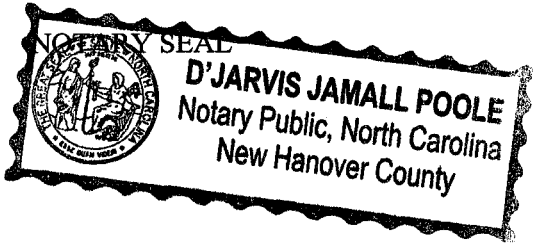
D.R. Horton, Inc.,  
a Delaware corporation

By: *David G. Lee*  
Print Name: DAVID G. LEE  
Title: Vice President

STATE OF North Carolina  
COUNTY OF New Hanover

I, D'Jarvis Jamall Poole, a Notary Public of the County and State aforesaid, certify that David G. Lee personally appeared before me this day and acknowledged that he/she is V.P. of D.R. Horton, Inc., a Delaware corporation, and that he/she, being duly authorized to do so, executed the foregoing for and on behalf of said corporation.

Witness my hand and official stamp or seal, this 7 day of July, 2014.



*D'Jarvis Jamall Poole*  
Signature of Notary Public  
My Commission Expires: June 20, 2018



**EXHIBIT A**

**Land Submitted**

Being all of that land known as Phase 2 and being 17.70 acres, more or less, on "Map for Hawkswater" by Cape Fear Engineering, Inc., bearing Project Number 410-01 and dated September 13, 2006; said property also being shown on a "Boundary Survey and Phase Map for: Hawkeswater at the River" recorded in Book 44, Pages 74 and 75 of the Brunswick County Register of Deeds.



Presenter Bagwell Holt Smith Ret: Mail  
 2 Total 26 Rev \_\_\_\_\_ Int. \_\_\_\_\_  
 Ck \$ 26 Ck # 3150 Cash \$ \_\_\_\_\_  
 Refund: \_\_\_\_\_ Cash \$ \_\_\_\_\_ Finance \_\_\_\_\_  
 Portions of document are illegible due to condition of original.  
 Document contains seals verified by original instrument that cannot be reproduced or copied.

Prepared by and return to:  
 Bagwell Holt Smith P.A.  
 111 Cloister Court, Ste. 200, Chapel Hill, NC 27514

Horton's Address:  
 503 Wando Park Blvd., Ste. 200, Mount Pleasant, SC 29464

**SECOND AMENDMENT TO DECLARATION FOR  
 HAWKESWATER AT THE RIVER SUBDIVISION**

This Second Amendment to Declaration for Hawkeswater at the River Subdivision (the "Second Amendment") is made this 21<sup>st</sup> day of JULY, 2014, by **D.R. HORTON, INC.**, a Delaware corporation, hereinafter referred to as "Horton." Horton states and declares as follows:

A. Hawkeswater I, Development, Inc., a North Carolina corporation, Hawkeswater II Development, Inc., a North Carolina corporation, Hawkeswater III Development, Inc., a North Carolina corporation, and Riverside Land Holdings, LLC, a North Carolina limited liability company previously made that certain Declaration of Covenants Conditions and Restrictions for Hawkeswater at the River Subdivision recorded in Book 2745 Page 986, Brunswick County Register of Deeds.

B. The Declaration of Covenants Conditions and Restrictions for Hawkeswater at the River Subdivision was subsequently modified by that First Amendment to the Declaration of Hawkeswater at the River Subdivision of record at Book 3380 Page 1230, Brunswick County Register of Deeds (the "First Amendment") and that Annexation Declaration for Hawkeswater at the River Subdivision of record at Book 3493 Page 659, Brunswick County Register of Deeds (the "Annexation Declaration"). The Declaration of Covenants Conditions and Restrictions for Hawkeswater at the River Subdivision as modified by the First Amendment and the Annexation Declaration is hereinafter referred to collectively as the "Declaration".

C. Article X, Section 4 of the Declaration provides that the Declaration may be amended by a written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

D. As of the date of this Second Amendment, Horton is the owner of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and, pursuant to Article X, Section 4 of the Declaration, Horton now desires to amend the Declaration.



NOW THEREFORE, the Declaration is hereby amended as follows:

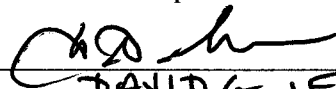
1. The first sentence of Article IV, Section 7 of the Declaration is deleted in its entirety and replaced with the following:

At the time a Lot is conveyed to an Owner after the Lot has been improved with a residence for which a certificate of occupancy has been issued, the Owner shall pay the sum of Two Thousand and No/100<sup>th</sup> (\$2,000.00) to the Association as working capital to be used for operating and capital expenses of the Association.

2. Except as amended herein, all terms and provisions of the Declaration remain unmodified. As amended herein, the Declaration remains in full force and effect.

IN WITNESS WHEREOF, the Horton has caused this Second Amendment to be executed as of the date first stated above.

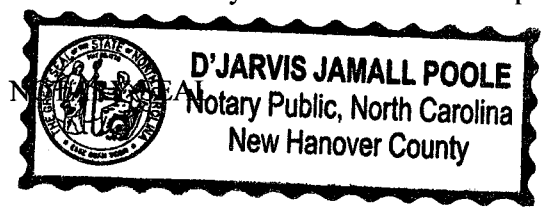
D.R. HORTON, INC.,  
a Delaware corporation

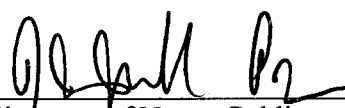
By:   
Name: DAVID G. LEE  
Title: Vice President

STATE OF North Carolina  
COUNTY OF New Hanover

I, D'Jarvis Jamall Poole, a Notary Public of the County and State aforesaid, certify that David G. Lee personally appeared before me this day and acknowledged that he is a Vice President of D.R. Horton, Inc., a Delaware corporation, and that he, being duly authorized to do so, executed the foregoing for and on behalf of said corporation.

Witness my hand and official stamp or seal, this 21 day of July, 2014.



  
Signature of Notary Public  
My Commission Expires: June 20, 2018



(4) Presenter DR Horton Ret: /mail  
 Total 26- Rev \_\_\_\_\_ Int. \_\_\_\_\_  
 Ck \$ 26- Ck # 1521 Cash \$ \_\_\_\_\_  
 Refund: \_\_\_\_\_ Cash \$ \_\_\_\_\_ Finance \_\_\_\_\_  
 Portions of document are illegible due to condition of original.  
 Document contains seals verified by original instrument that cannot be reproduced or copied.

Prepared By: Bagwell Holt Smith P.A., 111 Cloister Ct., Ste. 200, Chapel Hill, NC 27514  
 Return to: D.R. Horton, Inc., 503 Wando Park Blvd., Ste. 200, Mount Pleasant, SC 29464

**FIRST AMENDMENT TO SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HAWKESWATER AT THE RIVER SUBDIVISION**

This First Amendment to Supplemental Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision (this "First Amendment") is made on the date hereinafter set forth by **D.R. HORTON, INC.**, a Delaware corporation, hereinafter referred to as the "Horton". Horton states and declares as follows:

A. Hawkeswater I, Development, Inc., a North Carolina corporation, Hawkeswater II Development, Inc., a North Carolina corporation, Hawkeswater III Development, Inc., a North Carolina corporation, and Riverside Land Holdings, LLC, a North Carolina limited liability company, previously made that certain Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision recorded in Book 2745 Page 986, Brunswick County Register of Deeds (the "Declaration"), as supplemented by that Annexation Declaration for Hawkeswater at the River Subdivision recorded in Book 3493 Page 659, Brunswick County Registry (collectively, the "Master Declaration").

B. A Supplemental Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision was subsequently recorded in Book 3545 Page 211, Brunswick County Registry to be applicable as to the Townhome Property (the "Supplemental Declaration").

C. Section 4 of Article X of the Master Declaration provides that the Master Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

D. As of the date of this First Amendment, Horton is the owner of greater than sixty-seven percent (67%) of the votes in the Association.

E. Horton now desires to amend the Supplemental Declaration.

NOW THEREFORE, the Supplemental Declaration is hereby amended as follows:

1. The first sentence of Article III, Section 2 of the Supplemental Declaration is deleted in its entirety and replaced with the following:



3.2 Association Maintenance Responsibility. The Association shall maintain all landscaped rights-of-way and all entry features; all streets and roadways within any easement or licenses owned or held by the Association, unless such streets or roadways are maintained by some governing authority; all Townhome Common Elements, and all landscaping, paving, streets, structures and improvements of any nature located thereon; and all ponds, streams and culverts located on the Townhome Property which serve as part of any drainage and storm-water retention system.

In addition, the Association shall provide exterior maintenance to each Townhome Building and Townhome Lot which is subject to assessment hereunder, as follows: pressure wash exterior Townhome Building surfaces, perform an annual termite inspection on the exterior of each Townhome Building and renew termite bonds as necessary, maintain trees, shrubs, grass and walks, and irrigation of trees, shrubs and grass. Such exterior maintenance by the Association shall not include glass surfaces. In order to enable the Association to accomplish the foregoing, a perpetual easement in gross over all the Townhome Lots and Townhome Common Elements is hereby granted to the Association for the purpose of unobstructed access over and upon each Townhome Lot and Townhome Common Elements at all reasonable times to perform maintenance as provided in this Article.

Subject to prior written approval of the Architectural Review Committee pursuant to the Master Declaration, Owner of any Townhome Lot may, at his or her election, plant harmonious trees, shrubs, flowers and grass in his or her rear yard and maintain portions or all of his or her rear yard, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the building and the remaining spaces. No such maintenance by an Owner shall reduce any assessments payable by him to the Association.

If, in the opinion of the Association, any such Owner fails to maintain his or her rear yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period of not more than one year.

In the event that the need for maintenance or repair by the Association pursuant to this subsection is caused through the willful or negligent act of any Owner, his or her family, guests, invitees or delegates, the cost of such maintenance and repair shall be assessed against the Townhome Lot(s) of such Owner(s) as a Specific Assessment pursuant to Article II above.

Further, the Association shall be responsible for the repair and replacement of the exterior siding, roof, and roof decking of Units as may be determined necessary in the sole and exclusive discretion of the Association in a manner consistent with the then-current industry standards prevalent in Brunswick County. Nothing contained herein shall create an obligation or responsibility of the Association to repair, maintain or replace the exterior siding, roof, or roof decking of Units other than the replacement at the end of its useful life.



2. Except as amended herein, all terms and provisions of the Declaration and the Supplemental Declaration remain unmodified. As amended herein, the Declaration and Supplemental Declaration remains in full force and effect.

**The remainder of this page intentionally left blank.**



IN WITNESS WHEREOF, D.R. Horton, Inc. has caused this instrument to be executed by its duly authorized officer, all by order and authority duly granted by its corporate board of directors, as of the day and year first above written.

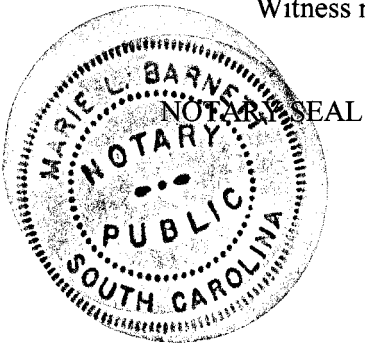
D.R. Horton, Inc.,  
a Delaware corporation

By: Brian F. Gardner  
Print Name: Brian F. Gardner  
Title: Division President

STATE OF South Carolina  
COUNTY OF Charleston

I, Marie L. Barrett, a Notary Public of the County and State aforesaid, certify that Brian F. Gardner personally appeared before me this day and acknowledged that he/she is Division President D.R. Horton, Inc., a Delaware corporation, and that he/she, being duly authorized to do so, executed the foregoing for and on behalf of said corporation.

Witness my hand and official stamp or seal, this 24<sup>th</sup> day of September, 2014



Marie L. Barrett  
Signature of Notary Public  
My Commission Expires: 9/25/15





B. The Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision was subsequently modified by those amendments of recorded in Book 3380, Page 1230, Book 3493, Page 659, Book 3545, Page 211, Book 3550, Page 465, and Book 3570, Page 978 Brunswick County Register of Deeds. The Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision as subsequently modified is hereinafter referred to collectively as the "Declaration".

C. Article X, Section 4 of the Declaration provides that the Declaration may be amended by a written agreement signed by owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

D. As of the date of this Amendment, Horton is the owner of Lots to which at least sixty-seven percent (67%) of this votes in the Association are allocated.

E. The Declaration, Article X, Section 4 provides for the amendment of the Declaration and Horton desires to amend the Declaration in part as set out below.

F. The Declaration, Article V, Section 4, expressly allows additional tracts or parcels of land to be made subject to the terms and conditions of said Declaration and Horton desires to annex additional tracts of land as set out below.

G. Horton has now completed certain improvements on that certain tract of land designated as RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4, which improvements include a Marina (as defined below) as shown on the plat or plats hereinafter referenced; and

H. Horton is the owner of that certain tract or parcel of land designated as RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4; and

I. Horton will convey the property described in RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4, subject to all those conditions, restrictions, reservations, liens and charges set forth in this Amendment and the Declaration, all of which is hereby incorporated by reference:

**PART I. ANNEXATION OF REAL PROPERTY:**

NOW THEREFORE, pursuant to Article V, Section 4 of the Declaration, Horton does hereby publish and declare all of the property described below (the "Additional Property") shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to all the terms and conditions set forth in the Declaration and this Amendment which are declared and agreed to in furtherance of the plan for the improvements of said property in the division thereof and shall be deemed to run with the land and shall be a burden and a benefit to Horton, its successors and assigns, and any person acquiring or owning any interest in the real property improvements, their Grantees, successors, heirs, executors, administrators, devisees and assigns.

DESCRIPTION OF ADDITIONAL PROPERTY: Being all of that property as described as follows:

**ERWIN & SIMPSON Attorneys, PLLC - Telephone: (910) 455-1800  
 825 Gum Branch Road, Suite 115, Jacksonville, NC 28540**



**BEING all of the property as shown on that plat for RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4, together with all of those "Boatslips" numbered 1 through 22, inclusive, in Dock A and all of those "Boatslips" numbered 1 through 20, inclusive, in Dock B, and all supporting and associated structures and rights of access thereto, as shown and designated on those plats for RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4, as recorded in Map Cabinet 94, Page 36 and Map Cabinet 95 Pages 29 and 30, Brunswick County Register of Deeds (collectively, the "Phase 4 Plats").**

**PART II: MODIFICATION/AMENDMENT OF DECLARATION:**

NOW, THEREFORE, pursuant to Article X, Section 4 of the Declaration, the Declaration is hereby amended as follows:

1. ARTICLE I, DEFINITIONS, Section 12 as set forth in the Declaration as recorded in Book 2745, Page 987, Brunswick County Registry, shall be deleted in its entirety and the following shall be inserted in lieu thereof:

12. Owner: "Owner" or "lot owner" shall include those "lot owners" as defined in NCGS 47F-1-103, and shall specifically include a person or entity who is the assignee of any Boatslip as defined hereafter.

2. ARTICLE I, DEFINITIONS as set forth in the Declaration as recorded in Book 2745, Page 987, Brunswick County Registry, shall be deleted in its entirety and the following shall be inserted in lieu thereof:

13. Lot: "Lot" shall have the meaning as defined in NCGS 47F-1-103, and shall specifically include that physical portion of the planned community designated for separate occupancy and referred to as a "Boatslip" or "Boat Slip" as defined hereafter.

3. Additional and new paragraphs shall be inserted in ARTICLE I, DEFINITIONS, as set forth in the Declaration as recorded in Book 2745, Page 987, Brunswick County Registry to be Sections 21 and 22 as follows:

21. Boatslip: "Boatslip" or "Boat Slip" shall mean a wet boatslip, which shall be a designated boatslip in the water adjacent to or in the area of the Marina. All "boatslips" shall be a component of the Marina facility and subject to the Declaration, this Amendment and any rules and regulations promulgated and shall be shown diagrammatically on the Phase 4 Plats described herein or other plats designating Boatslips or the Marina. "Restricted Boatslip" shall be a Boatslip which is designated for assignment only to a Regular Members as defined herein.



“Unrestricted Boatlip” shall be a Boatlip which may be assigned to any person or entity.

22. Marina: “Marina” shall mean those certain improvements shown and depicted on the Phase 4 Plats described herein, including without limitation the Fixed Pier Easement, the Floating Dock Easement, the Docks and the Boatlips.

4. ARTICLE III, HOMEOWNERS' ASSOCIATION, Section 2 Membership, as set forth in the Declaration as recorded in Book 2745, Page 987, Brunswick County Registry, shall be deleted in its entirety and the following shall be inserted in lieu thereof:

Section 2 Membership: Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership. "Regular Member" shall mean and refer to those persons entitled to membership in the Association by virtue of ownership of a Lot other than a Boatlip. "Marina Member" shall mean and refer to those persons entitled to membership in the Association as assignee of a Boatlip. Marina Members may be the assignee or Owner of a Restricted Boatlip or Unrestricted Boatlip(s) or both. A Regular Member who also owns a Restricted Boatlip shall be both a Regular Member of the Association and a Marina Member.

5. An additional and new paragraph shall be inserted in ARTICLE III, HOMEOWNERS' ASSOCIATION, as set forth in the Declaration as recorded in Book 2745, Page 987, Brunswick County Registry, to be Section 3.1 as follows:

SECTION 3.1 Special Provision Relating to Voting by Marina Members: A Regular Member who is also a Marina Member shall vote as a Regular Member of the Association and also shall vote as a Marina Member. *Marina Members shall only be entitled to vote with regard to the election of two (2) directors to the Board of Directors of the Association to represent the Marina membership.* However, Marina members shall be entitled to attend and shall be given notice of all meetings of the Association. and shall be entitled to participate in said meeting to the same extent as Regular Members, *except that the voting privileges of Marina members shall be limited to the election of two (2) directors to represent the Marina members and approvals required, if any, for special assessments.*

**PART III: MODIFICATION/AMENDMENT OF DECLARATION:**

1. MARINA AND BOATSLIPS EASEMENT: Each Common Element located within RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4 is burdened with an easement permitting any Owner and Marina Member to come upon any Common Element and



any area owned by the Association shown on the Phase 4 Plats and to use such property at reasonable times and in a reasonable manner in connection with their use of their Boatslip, including, recreation areas, bath facilities, parking areas, and areas necessary for access to the Boatslips, subject to the rules and regulations of the Association. All Marina Members and Owners of a Lot in HAWKESWATER AT THE RIVER SUBDIVISION shall have the obligation to obey all rules and regulations established from time to time by the Board of Directors. For the purposes of this Amendment and the Declaration, the following parcels of land shall constitute the Common Elements located within RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4, all as more specifically shown and designated on the Phase 4 Plats: (a) "TRACT 1"; (b) "20' UTILITY EASEMENT"; (c) "10' LANDSCAPE BUFFER"; (d) "20' STREET YARD BUFFER & UTILITY EASEMENT"; and (d) the land underlying the private right-of-way "BENDING RIVER WAY".

2. **BOATSLIPS TO BE ASSIGNED:** Horton proposes to construct or is in the process of constructing or has constructed a dock, pier or other watercraft or boat mooring facility containing Boatslips which may be individually assigned by Horton to a person or entity or to the Association by an instrument of assignment which shall be recorded in the Office of the Register of Deeds of Brunswick County. Notwithstanding that such assignment shall provide to the assignee the right to occupy a space at a dock, pier or other watercraft or boat mooring facility, such facility shall be and remain a Common Element of the Association and shall be maintained by the Association and subject to such rules and regulations as may be from time to time adopted for its use, including any surcharge imposed by the Association on such assignees.

There shall be a maximum of forty-two (42) Boatslips which shall be used by Marina Members for docking a watercraft owned by the Marina Member. Two (2) Boatslips will at all times be owned by the Association and the two (2) Boatslips shall be utilized as a "day dock" or "temporary" short term docking facility available to all Owners. Of the remaining Boatslips, fifteen (15) may be assigned only to Regular Members (designated as "Restricted Boatslip") and the remaining twenty-five (25) Boatslips may be assigned without restriction (designated "Unrestricted Boatslip").

Each assignment instrument shall clearly state that the Boatslip is or is not allowed to be transferred to an assignee other than a Regular Member, and shall show clearly and in bold letters that the Boatslip is or is not "Restricted." Any Boatslip designated as "Restricted" may be subsequently assigned but may only be assigned to a Regular Member. Any such instrument of assignment shall clearly state that Lot (other than the Boatslip) owned by the assignee. No Boatslip shall be transferred except by an instrument which shall be recorded in the Office of the Register of Deeds of Brunswick County.

In the event a Member ceases to be a Regular Member by the conveyance of a Lot other than a Boatslip, then the conveyance shall serve to transfer all Restricted Boatslips of which the Member may be assignee at the time of the conveyance, notwithstanding any intentions to the contrary expressed in the conveyance.

The Marina Member may not rent or permit the use of a Boatslip to a non-Owner, except together with and incident to the rental of his residential home situate upon a Lot in HAWKESWATER AT THE RIVER SUBDIVISION. All leases of such residence and Boatslips

shall provide a one (1) year minimum and a copy of any rental management agreement and all leases shall be provided to the Association. Except as specifically allowed by this paragraph, each Boat slip may be used by the Marina Member, his family and guests, only, and may not be rented, leased, loaned out, or used for any time period by a non-owner of a Lot in HAWKESWATER AT THE RIVER SUBDIVISION, subject to such additional rules and regulations as may be from time to time adopted for its use. By his acceptance of an assignment of a Boat slip, the Marina Member empowers the Association or its designee, as his attorney in fact, to bring a proceeding in summary ejectment to remove any person who is in violation of the provisions of this Declaration, the By-Laws, or any rules and regulations adopted by the Board of Directors pursuant thereto.

At Horton's option, Horton shall be entitled to assign or transfer all rights and duties of Horton under any permit applicable to the Marina or that certain Submerged Land Easement of record at Book 3750 Page 59, Brunswick County Registry, to any person or entity, including, without limitation, the Association, whereupon Horton shall have no further rights, duties, obligations or liabilities thereunder.

3. ASSESSMENT PROVISIONS FOR MARINA MEMBERS: The Association shall provide maintenance of the bulkhead, docks, piers, finger piers, walkways, pilings, and all other improvements associated with the Marina facility and the Boat slips. The Board of Directors may establish dues, assessments or charges for Marina Members pursuant to Article IV, Section 8 of the Declaration. All expenses of the Boat slips shall be, and for purposes of assessments, the common expense liability of the Boat slips shall be assessed against the Boat slips and are to be allocated equally among all Boat slips, including those owned by the Association. Said assessments, dues and charges shall be established and used by the Board of Directors for the use, upkeep insurance and maintenance of the bulkhead, docks, piers, finger piers, walkways pilings and all associated structures owned by the Association and part of the Boat slips or Marina facility. All expenses related to the parking lot located on Phase 4 of the Planned Community shall not be included in those assessments specially allocated to the Marina Members. The Association shall have all remedies available to it pursuant to Article IV of the Declaration with respect to the enforcement and nonpayment of any assessments for Marina Members.

Additionally, each Marina Member may be assessed in any calendar year a special assessment for the purpose of defraying in whole or in part, the costs of any insurance, construction, reconstruction, repair or replacement of capital equipment and/or improvements within the Boat slip or Marina facility, which assessment shall be made per Boat slip basis, including those owned by the Association. No such assessment shall require prior Marina Member approval if such assessment is for insurance. All other special assessments shall not require Marina Member approval, except that, if any such special assessment shall exceed the sum of \$2,500.00 per Marina Member in any one (1) year, such assessment shall have the assent therefore voted by two-thirds of the Marina Members of the Association, in person or by proxy at a special or regular meeting called for said purpose.

The initial annual maintenance and insurance assessment per Boat slip shall be \$ 600.00 per Boat slip for the year 2017.

4. INSURANCE: A Marina Member, prior to the use of a Boat slip, shall obtain and thereafter maintain a liability insurance policy which insures against any liability arising out of



the use, ownership, maintenance and control of any watercraft owned by an assignee, or arising from the Marina Member's possession and use, from or connected with any guests, visitors or others who may come onto the premises to visit the watercraft owner or boat, with limits of liability therefor of not less than \$1,000,000 per occurrence, and property damage coverage of \$300,000 which policy shall include an endorsement to cover liability of the Association to any person. A copy of the insurance policy shall be provided to the Association upon issuance and each renewal.

5. MORTGAGE OF BOATSLIPS: Any Marina Member may give a deed of trust or mortgage on a Boat slip without prior notice to or authorization by the Board of Directors of the Association; but, provided, however, that Marina Member giving a deed of trust or mortgage on a Boat slip, shall simultaneously with the recording thereof, record a Request for Notice as provided by law, providing that a foreclosing mortgagee shall provide notice of the institution of foreclosure proceedings to the Board of Directors of the Association.

6. CAPITALIZED TERMS: All capitalized terms not otherwise defined in this Amendment shall have the same meaning as those terms have in the Declaration.

7. USE RESTRICTIONS: The following restrictions shall apply to the Boat slips, the Marina and the Common Elements shown on the Phase 4 Plats:

a. All Boat slips shall be utilized for non-commercial pleasure watercraft only which shall at all times be owned by the Marina Member or his assignee. No commercial activity shall be undertaken by use of the Boat slips.

b. The type, size, and other matters relating to the watercraft may be regulated from time to time by the Association. In the event of any dispute as to whether a particular watercraft is permitted to be moored in a Boat slip or otherwise operated within the Marina, the determination of the Association made in its sole discretion shall be dispositive.

c. No watercraft moored, stored or operated in a Boat slip and/or the Marina may be used as a live-aboard or as a year-round or seasonal residence. No houseboat, floating home, house-like barge or seaplane shall be permitted within a Boat slip and/or the Marina.

d. A Boat slip shall not be used in a way that requires regular visits from the public or unreasonable levels of visits in general, or creates unreasonable utility burdens or trash.

e. Any watercraft moored in a Boat slip must fit within the boundaries of such Boat slip except that anchor extensions, bowsprits, booms, pulpits and other projections and overhangs from the bow of a watercraft may extend beyond the end of the Boat slip over the open water for a distance not to exceed ten percent (10%) of the length of the Boat slip.



f. Except during a period of temporary repairs not to exceed eight (8) days, any watercraft moored, stored or operated in a Boatslip and/or the Marina shall be fully operable, shall be safe and seaworthy, shall be equipped with all safety and other equipment required by federal, state and local laws and regulations, and shall comply with all license and registration requirements. An agent of the Association may periodically inspect any watercraft moored, stored or operated within a Boatslip and/or the Marina for compliance with the requirements set forth in this Section 7, and may order the removal of any watercraft that is not safe and seaworthy, that is not equipped with all safety and other equipment required by federal, state and local laws and regulations, and that does not comply with all license and registration requirements.

g. Any watercraft moored, stored or operated within a Boatslip and/or the Marina must be equipped with a sanitary holding tank (if required by applicable law or regulation) and shall not discharge sewage, trash, petroleum products or other waste into the waters within or adjacent to the Marina or the Common Elements.

h. No improvements shall be constructed or placed within any Boatslip, the Marina or the Common Elements by any Owner other than the Declarant and/or the Association.

i. Any watercraft sunk within the Marina or adjacent waters shall be removed by the owner of the watercraft within twelve (12) hours of sinking, or the Association may cause the removal of the sunken watercraft at the expense of the owner of the watercraft.

j. No immoral, improper, offensive or unlawful use shall be made of any Boatslip, the Marina, the Common Elements or any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Boatslips, the Marina and/or the Common Elements shall be observed. No Marina Member or Owner shall permit or suffer anything to be done or kept in or on the Boatslips, the Marina or the Common Element which will increase the rate of insurance on the Marina, the Common Element and the Association, or which will obstruct or interfere with the rights of the other Marina Members or Owners or annoy them by unreasonable noises, nor shall any Marina Member or Owner undertake any use or practice which shall create and constitute a nuisance to any other Marina Members or Owners or which interferes with the peaceful possession and proper use of the Boatslips, the Marina and/or the Common Elements.

8. INCORPORATION BY REFERENCE: All of the terms, conditions, provisions and rights as set forth in the Declaration as recorded in Book 2745, Page 987, Brunswick County Registry, and as amended thereafter, including those provisions set out herein, are incorporated herein by reference.



IN WITNESS WHEREOF, as the above date, Horton (whether person, corporation, limited liability company, general partnership, limited partnership, or other entity) has signed this instrument in the ordinary course of business, by the signature(s) below if its duly authorized representative(s), as the act of such entity.

**D. R. HORTON, INC.**

BY: [Signature]  
Print Name: MICHAEL LOIACONO  
Title: CITY MANAGER

STATE OF North Carolina  
COUNTY OF New Hanover

I certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated above: MICHAEL LOIACONO

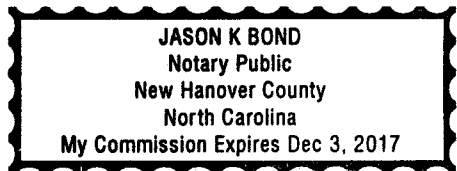
Date: 3/1/2017

[Signature]  
(Official Signature of Notary)

JASON K. BOND, Notary Public  
(Notary's printed or typed name)

(Official Seal)

My Commission Expires: Dec 3, 2017





8 Presenter Bagwell Holt Ret: now  
 Total 26 Rev \_\_\_\_\_ Int. nt  
 Ck \$ 26 Ck # 4033 Cash \$ \_\_\_\_\_  
 Refund: \_\_\_\_\_ Cash \$ \_\_\_\_\_ Finance \_\_\_\_\_  
 Portions of document are illegible due to condition of original.  
 Document contains seals verified by original instrument that cannot be reproduced or copied.

Prepared by:  
 FRANK W. ERWIN  
 ERWIN & SIMPSON ATTORNEYS, PLLC  
 825 Gum Branch Road, Suite 115  
 Jacksonville, NC 28540

Return to:  
 Bagwell Holt Smith P.A.  
 111 Cloister Court, Ste. 200  
 Chapel Hill, NC 27514

NORTH CAROLINA  
 BRUNSWICK COUNTY

**AMENDMENT TO AND REINSTATEMENT OF  
 AMENDMENT TO DECLARATION OF COVENANTS  
 CONDITIONS AND RESTRICTIONS AND  
 ASSIGNMENT RESTRICTIONS-BOATSLIPS FOR  
 HAWKESWATER AT THE RIVER SUBDIVISION  
 ANNEXATION PHASE 4, MAP CABINET 94, PAGE 36  
 AND MAP CABINET 95, PAGES 29 AND 30**

**THIS AMENDMENT TO AND REINSTATEMENT OF AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ASSIGNMENT RESTRICTIONS – BOATSLIPS FOR HAWKESWATER AT THE RIVER SUBDIVISION (the "Amendment"), made this the 3 day of April 2017, by **D. R. HORTON, INC., a Delaware Corporation, ("Horton")** whose address is P.O. Box 1545, Mount Pleasant, SC 29465. Horton states and declares as follows:**

A. Hawkeswater I Development, Inc., a North Carolina corporation, Hawkeswater II Development, Inc., a North Carolina corporation, Hawkeswater III Development, Inc., a North Carolina corporation, and Riverside Land Holdings, LLC, a North Carolina limited liability company, previously made that certain Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision of record at Book 2745 Page 986, Brunswick County Register of Deeds.

**ERWIN & SIMPSON Attorneys, PLLC - Telephone: (910) 455-1800  
 825 Gum Branch Road, Suite 115, Jacksonville, NC 28540**



B. The Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision was subsequently modified by that First Amendment to the Declaration of Hawkeswater at the River Subdivision of record at Book 3380 Page 1230, Brunswick County Register of Deeds (the "First Amendment"), that Annexation Declaration for Hawkeswater at the River Subdivision of record at Book 3493 Page 659, Brunswick County Register of Deeds (the "Annexation Declaration"), that First Supplemental Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision of record at Book 3545 Page 211, Brunswick County Registry of Deeds (the "First Supplement"), that Second Amendment to Declaration for Hawkeswater at the River Subdivision of record at Book 3550 Page 465, Brunswick County Registry of Deeds (the "Second Amendment") and that First Amendment to Supplemental Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision of record at Book 3570 Page 978, Brunswick County Registry of Deeds (the "First Amendment to Supplemental Declaration").

C. Recently, the Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision was again amended by that Amendment to Declaration of Covenants, Conditions and Restrictions and Assignment Restrictions – Boatslips for Hawkeswater at the River Subdivision Annexation Phase 4 of record at Book 3879 Page 254, Brunswick County Registry (the "Third Amendment"). The Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision, as modified by the First Amendment, the Annexation Declaration, the First Supplement, the Second Amendment, the First Amendment to Supplemental Declaration and the Third Amendment, is hereinafter referred to collectively as the "Declaration".

D. Article X, Section 4 of the Declaration provides that the Declaration may be amended by a written agreement signed by owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

E. As of the date of this Amendment, Horton is the owner of Lots to which at least sixty-seven percent (67%) of this votes in the Association are allocated.

F. Pursuant to Article X, Section 4 of the Declaration, Horton now desires to amend and reinstate the Third Amendment as set out below.

G. The Declaration, Article V, Section 4, expressly allows additional tracts or parcels of land to be made subject to the terms and conditions of said Declaration and Horton desires to annex additional tracts of land as set out below.

H. Horton has now completed certain improvements on that certain tract of land designated as RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4, which improvements include a Marina (as defined below) as shown on the plat or plats hereinafter referenced.

I. Horton is the owner of that certain tract or parcel of land designated as RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4.



J. Horton will convey the property described in RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4, subject to all those conditions, restrictions, reservations, liens and charges set forth in this Amendment and the Declaration, all of which is hereby incorporated by reference.

NOW THEREFORE, pursuant to Article X, Section 4 of the Declaration, all of the terms and provisions of the Third Amendment are hereby deleted in their entirety, and replaced and reinstated with the following:

**PART I. ANNEXATION OF REAL PROPERTY:**

NOW THEREFORE, pursuant to Article V, Section 4 of the Declaration, Horton does hereby publish and declare all of the property described below (the "Additional Property") shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to all the terms and conditions set forth in the Declaration and this Amendment which are declared and agreed to in furtherance of the plan for the improvements of said property in the division thereof and shall be deemed to run with the land and shall be a burden and a benefit to Horton, its successors and assigns, and any person acquiring or owning any interest in the real property improvements, their Grantees, successors, heirs, executors, administrators, devisees and assigns.

DESCRIPTION OF ADDITIONAL PROPERTY: Being all of that property as described as follows:

**BEING all of the property as shown on that plat for RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4, together with all of those "Boatslips" numbered 1 through 22, inclusive, in Dock A and all of those "Boatslips" numbered 1 through 20, inclusive, in Dock B, and all supporting and associated structures and rights of access thereto, as shown and designated on those plats for RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4, as recorded in Map Cabinet 94, Page 36 and Map Cabinet 95 Pages 29 and 30, Brunswick County Register of Deeds (collectively, the "Phase 4 Plats").**

**PART II: MODIFICATION/AMENDMENT OF DECLARATION:**

NOW, THEREFORE, pursuant to Article X, Section 4 of the Declaration, the Declaration is hereby amended as follows:

1. Additional and new paragraphs shall be inserted in ARTICLE I, DEFINITIONS, as set forth in the Declaration as recorded in Book 2745, Page 987, Brunswick County Registry to be Sections 21, 22 and 23 as follows:

21. Boatslip: "Boatslip" or "Boat Slip" shall mean a wet boatslip, which shall be a designated boatslip in the water adjacent to or in the area of the Marina. All "boatslips" shall be a component of the Marina facility and subject to the Declaration,



this Amendment and any rules and regulations promulgated and shall be shown diagrammatically on the Phase 4 Plats described herein or other plats designating Boatslips or the Marina.

22. Marina: "Marina" shall mean those certain improvements shown and depicted on the Phase 4 Plats described herein, including without limitation the Fixed Pier Easement, the Floating Dock Easement, the Docks and the Boatslips.

23. Marina Member: "Marina Member" shall mean and refer to those persons entitled to membership in the Association as the owner of a Lot and as assignee of a Boatslip.

2. Marina and Boatslips Easement: Each Common Element located within RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4 is burdened with an easement permitting any owner and Marina Member to come upon any Common Element and any area owned by the Association shown on the Phase 4 Plats and to use such property at reasonable times and in a reasonable manner in connection with their use of their Boatslip, including, recreation areas, bath facilities, parking areas, and areas necessary for access to the Boatslips, subject to the rules and regulations of the Association. All owners of a Lot in the Planned Community shall have the obligation to obey all rules and regulations established from time to time by the Board of Directors. For the purposes of this Amendment and the Declaration, the following parcels of land shall constitute the Common Elements located within RIVER BEND, HAWKESWATER AT THE RIVER, PHASE 4, all as more specifically shown and designated on the Phase 4 Plats: (a) "TRACT 1"; (b) "20' UTILITY EASEMENT"; (c) "10' LANDSCAPE BUFFER"; (d) "20' STREET YARD BUFFER & UTILITY EASEMENT"; and (d) the land underlying the private right-of-way "BENDING RIVER WAY".

3. Boatslips To Be Assigned: Horton proposes to construct or is in the process of constructing or has constructed a dock, pier or other watercraft or boat mooring facility containing Boatslips which may be individually assigned by Horton to a person or entity or to the Association by an instrument of assignment which shall be recorded in the Office of the Register of Deeds of Brunswick County. The instrument of assignment may be included as part of the deed for a Lot in the Planned Community. Notwithstanding that such assignment shall provide to the assignee the right to occupy a space at a dock, pier or other watercraft or boat mooring facility, such facility shall be and remain a Common Element of the Association and shall be maintained by the Association and subject to such rules and regulations as may be from time to time adopted for its use, including any surcharge imposed by the Association on such assignees.

There shall be a maximum of forty-two (42) Boatslips which shall be used by Marina Members for docking a watercraft owned by the Marina Member. Two (2) Boatslips will at all times be owned by the Association and these two (2) Boatslips shall be utilized as a "day dock" or "temporary" short term docking facility available to all owners in the Planned Community. The remaining forty (40) Boatslips may be assigned only to owners of Lots in the Planned Community. The use of all Boatslips shall be subject to such rules and regulations as may from time to time be adopted by the Association for use.



Each assignment instrument shall clearly state that the Boatslip is "Restricted" as to ownership and use as provided for in this Amendment. Any Boatslip may be subsequently assigned to an owner but may only be assigned to an owner of a Lot in the Planned Community. Any such instrument of assignment shall clearly state the Lot owned by the assignee. No Boatslip shall be transferred except by an instrument which shall be recorded in the Office of the Register of Deeds of Brunswick County.

In the event a person ceases to become an owner of a Lot by a conveyance of a Lot, then the conveyance of the last Lot owned shall serve to transfer all Boatslips of which he may be assignee at the time of the conveyance, notwithstanding any intentions to the contrary expressed in the conveyance. However, an owner shall be able to transfer a Boatslip separately so long as the assignee also owns a Lot in the Planned Community. Any attempted transfer of a Boatslip to a person who does not own a Lot in the Planned Community shall not transfer any rights to or ownership of said Boatslip.

The Marina Member may not rent or permit the use of a Boatslip to a non-owner, except together with and incident to the rental of his residential home situate upon a Lot in the Planned Community. All leases of such residence and Boatslips shall provide a one (1) year minimum lease term and a copy of any rental management agreement and all leases shall be provided to the Association. Except as specifically allowed by this paragraph, each Boatslip may be used by the Marina Member, his family and guests, only, and may not be rented, leased, loaned out, or used for any time period by a non-owner of a Lot in the Planned Community, subject to such additional rules and regulations as may be from time to time adopted for its use. By his acceptance of an assignment of a Boatslip, the Marina Member empowers the Association or its designee, as his attorney in fact, to bring a proceeding in summary ejectment to remove any person who is in violation of the provisions of this Declaration, the By-Laws, or any rules and regulations adopted by the Board of Directors pursuant thereto.

At Horton's option, Horton shall be entitled to assign or transfer all rights and duties of Horton under any permit applicable to the Marina or that certain Submerged Land Easement of record at Book 3750 Page 59, Brunswick County Registry, to any person or entity, including, without limitation, the Association, whereupon Horton shall have no further rights, duties, obligations or liabilities thereunder.

4. Special Assessment Provisions for Marina Members: The Association shall provide maintenance of the bulkhead, docks, piers, finger piers, walkways, pilings, and all other improvements associated with the Marina facility and the Boatslips. The Board of Directors may establish dues, assessments or charges for Marina Members pursuant to Article IV, Section 8 of the Declaration. All expenses of the Boatslips shall be, and for purposes of assessments, the common expense liability of the Boatslips shall be assessed against the Boatslips and are to be allocated equally among all Boatslips, including those owned by the Association. Said assessments, dues and charges shall be established and used by the Board of Directors for the use, upkeep insurance and maintenance of the bulkhead, finger piers, pilings and all associated structures owned by the Association and part of the Boatslips or Marina facility. All expenses related to the parking lot located on Phase 4 of the Planned Community shall not be included in those assessments specially allocated to the Marina Members. The Association shall have all



remedies available to it pursuant to Article IV of the Declaration with respect to the enforcement and nonpayment of any assessments for Marina Members.

Additionally, each Marina Member may be assessed in any calendar year a special assessment for the purpose of defraying in whole or in part, the costs of any insurance, construction, reconstruction, repair or replacement of capital equipment and/or improvements within the Boatslip or Marina facility, which assessment shall be made per Boatslip basis, including those owned by the Association. No such assessment shall require prior Marina Member approval if such assessment is for insurance. All other special assessments shall not require Marina Member approval, except that, if any such special assessment shall exceed the sum of \$2,500.00 in any one (1) year, such assessment shall have the assent therefore voted by two-thirds of the Marina Members of the Association, in person or by proxy at a special or regular meeting called for said purpose.

The initial annual maintenance and insurance assessment per Boatslip shall be \$600.00 per Boatslip for the year 2017.

5. Insurance: A Marina Member, prior to the use of a Boatslip, shall obtain and thereafter maintain a liability insurance policy which insures against any liability arising out of the use, ownership, maintenance and control of any watercraft owned by an assignee, or arising from the Marina Member's possession and use, from or connected with any guests, visitors or others who may come onto the premises to visit the watercraft owner or boat, with limits of liability therefor of not less than \$1,000,000 per occurrence, and property damage coverage of \$300,000 which policy shall include an endorsement to cover liability of the Association to any person. A copy of the insurance policy shall be provided to the Association upon issuance and each renewal.

6. Mortgage of Boatslips: Any Marina Member may give a deed of trust or mortgage on a Boatslip without prior notice to or authorization by the Board of Directors of the Association; but, provided, however, that Marina Member giving a deed of trust or mortgage on a Boatslip, shall simultaneously with the recording thereof, record a Request for Notice as provided by law, providing that a foreclosing mortgagee shall provide notice of the institution of foreclosure proceedings to the Board of Directors of the Association.

7. Capitalized Terms: All capitalized terms not otherwise defined in this Amendment shall have the same meaning as those terms have in the Declaration.

8. Use Restrictions: The following restrictions shall apply to the Boatslips, the Marina and the Common Element shown on the Phase 4 Plats:

a. All Boatslips shall be utilized for non-commercial pleasure watercraft only which shall at all times be owned by the Marina Member or his assignee. No commercial activity shall be undertaken by use of the Boatslips.

b. The type, size, and other matters relating to the watercraft may be regulated from time to time by the Association. In the event of any dispute as to whether a particular watercraft is permitted to be moored in a Boatslip or otherwise operated



within the Marina, the determination of the Association made in its sole discretion shall be dispositive.

c. No watercraft moored, stored or operated in a Boat slip and/or the Marina may be used as a live-aboard or as a year-round or seasonal residence. No houseboat, floating home, house-like barge or seaplane shall be permitted within a Boat slip and/or the Marina.

d. A Boat slip shall not be used in a way that requires regular visits from the public or unreasonable levels of visits in general, or creates unreasonable utility burdens or trash.

e. Any watercraft moored in a Boat slip must fit within the boundaries of such Boat slip except that anchor extensions, bowsprits, booms, pulpits and other projections and overhangs from the bow of a watercraft may extend beyond the end of the Boat slip over the open water for a distance not to exceed ten percent (10%) of the length of the Boat slip.

f. Except during a period of temporary repairs not to exceed eight (8) days, any watercraft moored, stored or operated in a Boat slip and/or the Marina shall be fully operable, shall be safe and seaworthy, shall be equipped with all safety and other equipment required by federal, state and local laws and regulations, and shall comply with all license and registration requirements. An agent of the Association may periodically inspect any watercraft moored, stored or operated within a Boat slip and/or the Marina for compliance with the requirements set forth in this Section 8, and may order the removal of any watercraft that is not safe and seaworthy, that is not equipped with all safety and other equipment required by federal, state and local laws and regulations, and that does not comply with all license and registration requirements.

g. Any watercraft moored, stored or operated within a Boat slip and/or the Marina must be equipped with a sanitary holding tank (if required by applicable law or regulation) and shall not discharge sewage, trash, petroleum products or other waste into the waters within or adjacent to the Marina or the Common Elements.

h. No improvements shall be constructed or placed within any Boat slip, the Marina or the Common Elements by any Owner other than the Declarant and/or the Association.

i. Any watercraft sunk within the Marina or adjacent waters shall be removed by the owner of the watercraft within twelve (12) hours of sinking, or the Association may cause the removal of the sunken watercraft at the expense of the owner of the watercraft.

j. No immoral, improper, offensive or unlawful use shall be made of any Boat slip, the Marina, the Common Elements or any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Boat slips, the Marina and/or the Common Elements shall be observed. No Marina

Member or Owner shall permit or suffer anything to be done or kept in or on the Boatslips, the Marina or the Common Elements which will increase the rate of insurance on the Marina, the Common Elements and the Association, or which will obstruct or interfere with the rights of the other Marina Members or owners or annoy them by unreasonable noises, nor shall any Marina Member or owner undertake any use or practice which shall create and constitute a nuisance to any other Marina Members or owners or which interferes with the peaceful possession and proper use of the Boatslips, the Marina and/or the Common Elements.

9. Incorporation By Reference: All of the terms, conditions, provisions and rights as set forth in the Declaration as recorded in Book 2745, Page 987, Brunswick County Registry, and as amended thereafter, including those provisions set out herein, are incorporated herein by reference.

IN WITNESS WHEREOF, as the above date, Horton (whether person, corporation, limited liability company, general partnership, limited partnership, or other entity) has signed this instrument in the ordinary course of business, by the signature(s) below if its duly authorized representative(s), as the act of such entity.

**D. R. HORTON, INC.**

By: [Signature]  
Print Name: MICHAEL LOIACONO  
Title: VICE PRESIDENT

State of North Carolina  
County of New Hanover

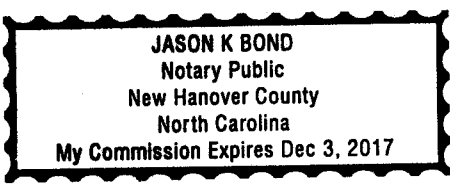
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated above: MICHAEL LOIACONO.

Date: April 3, 2017

[Signature]  
(Official Signature of Notary)

JASON K BOND, Notary Public  
(Notary's printed or typed name)

My Commission Expires: Dec 3, 2017  
(Official Seal)





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 Presenter *Bagwell Holt Smith*  
 Tr *26* Book *LA*  
 Cr \$ *26* CK # *4045*  
 R # \_\_\_\_\_ Cont # \_\_\_\_\_

Prepared by:  
 FRANK W. ERWIN  
 ERWIN & SIMPSON ATTORNEYS, PLLC  
 825 Gum Branch Road, Suite 115  
 Jacksonville, NC 28540

Return to:  
 Bagwell Holt Smith P.A.  
 111 Cloister Court, Ste. 200  
 Chapel Hill, NC 27514

NORTH CAROLINA  
 BRUNSWICK COUNTY

**RESTATED**  
**AMENDMENT TO DECLARATION OF COVENANTS**  
**CONDITIONS AND RESTRICTIONS AND**  
**ASSIGNMENT RESTRICTIONS-BOATSLIPS FOR**  
**HAWKESWATER AT THE RIVER SUBDIVISION**  
**ANNEXATION PHASE 4, MAP CABINET 94, PAGE 36**  
**AND MAP CABINET 95, PAGES 29 AND 30**

**THIS RESTATED AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ASSIGNMENT RESTRICTIONS – BOATSLIPS FOR HAWKESWATER AT THE RIVER SUBDIVISION (“Restated Third Amendment”), is made this the \_\_\_\_ day of May, 2017, by D. R. HORTON, INC., a Delaware Corporation, (“Horton”) whose address is P.O. Box 1545, Mount Pleasant, SC 29465. Horton states and declares as follows:**

A. Hawkeswater I Development, Inc., a North Carolina corporation (“Hawkeswater I”), Hawkeswater II Development, Inc., a North Carolina corporation (“Hawkeswater II”), Hawkeswater III Development, Inc., a North Carolina corporation (“Hawkeswater III”), and Riverside Land Holdings, LLC, a North Carolina limited liability company (“Riverside”), previously made that certain Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision of record at Book 2745 Page 986, Brunswick County Register of Deeds (the “Original Declaration”). Hawkeswater I, Hawkeswater II, Hawkeswater III and Riverside are hereinafter collectively referred to as the “Original Declarant.”

ERWIN & SIMPSON Attorneys, PLLC - Telephone: (910) 455-1800  
 825 Gum Branch Road, Suite 115, Jacksonville, NC 28540



B. The Original Declaration was subsequently modified by that First Amendment to the Declaration of Hawkeswater at the River Subdivision of record at Book 3380 Page 1230, Brunswick County Register of Deeds (the "First Amendment"), that Annexation Declaration for Hawkeswater at the River Subdivision of record at Book 3493 Page 659, Brunswick County Register of Deeds (the "Annexation Declaration"), that First Supplemental Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision of record at Book 3545 Page 211, Brunswick County Registry of Deeds (the "First Supplement"), that Second Amendment to Declaration for Hawkeswater at the River Subdivision of record at Book 3550 Page 465, Brunswick County Registry of Deeds (the "Second Amendment") and that First Amendment to Supplemental Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision of record at Book 3570 Page 978, Brunswick County Registry of Deeds (the "First Amendment to Supplemental Declaration"). The Original Declaration, as modified by the First Amendment, the Annexation Declaration, the First Supplement, the Second Amendment and the First Amendment to Supplemental Declaration, is hereinafter referred to as the "Declaration." Except as otherwise provided in this Amendment, capitalized terms defined in the Declaration shall have the same meanings when used herein.

C. Horton is the owner of all of those parcels of real property, including those areas shown as Tract 1 (2.73 acres), Lots 1 through 8 (inclusive), rights-of-way and utility easements, comprising a total of 7.25 acres, shown by plat of survey entitled, "REVISION PLAT FOR RIVER BEND HAWKESWATER AT THE RIVER PHASE 4," of record at Map Cabinet 95 Page 29, Brunswick County Registry (collectively, the "Phase 4 Tract"). Horton is also the owner and holder of those two easements over the Brunswick River depicted as FIXED PIER EASEMENT and FLOATING DOCK EASEMENT by plat of survey entitled, "EASEMENT PLAT RIVER BEND HAWKESWATER AT THE RIVER PHASE 4," of record at Map Cabinet 94 Page 36, Brunswick County Registry (collectively, the "River Easements"). Horton is also the owner of all improvements built within the River Easements, including but not limited to a fixed pier and a floating dock. The Phase 4 Tract, the River Easements and all improvements built within the River Easements are hereinafter collectively referred to as the "Phase 4 Property." The plats of survey of record at Map Cabinet 94 Page 36 and Map Cabinet 95 Page 29 are hereinafter collectively referred to as the "Phase 4 Plats."

D. Recently, Horton caused to be recorded at Book 3879 Page 254, Brunswick County Registry, a document entitled, "Amendment to Declaration of Covenants, Conditions and Restrictions and Assignment Restrictions – Boatslips for Hawkeswater at the River Subdivision Annexation Phase 4" as amended at Book 3892 Page 1233, Brunswick County Registry (the "Third Amendment"). The Third Amendment was executed and recorded by Horton in error.

E. All of the real property currently subject to the Declaration, together with the Phase 4 Tract, (collectively, the "Subject Property") was originally owned and held by the Original Declarant for the purpose of developing it into Hawkeswater at the River Subdivision (the "Subdivision").

F. All of the Subject Property was conveyed by the Original Declarant to trustees for the benefit of Cooperative Bank, a North Carolina bank, by Deeds of Trust of record at Book 2579 Page 889, Book 2605 Page 1340, Book 2606 Page 37, Book 2606 Page 72 and Book 2606 Page 106, Brunswick County Registry (collectively, the "Development Loan Deeds of Trust"),



as collateral for a loan or loans, the proceeds of which were to be used in the development of the Subdivision (collectively, the "Development Loan"). Subsequently, all of the assets of Cooperative Bank, including the Development Loan and the Development Loan Deeds of Trust, were acquired by First Bank, a North Carolina Bank. Subsequent to that acquisition, foreclosure proceedings were instituted under all of the Development Loan Deeds of Trust, which proceedings are of record at 11-SP-1620, 11-SP-1621, 11-SP-1622, 11-SP-1623 and 11-SP-1624, Office of the Brunswick County Clerk of Superior Court (collectively, the "Development Loan Foreclosures").

G. Pursuant to the Development Loan Foreclosures, First Troy SPE, LLC, a wholly owned subsidiary of First Bank, acquired all of the Subject Property other than certain individual residential lots within the Subdivision that had been released from the liens of the Development Loan Deeds of Trust in the ordinary course of business. All of the property acquired by First Troy SPE, LLC pursuant to the Development Loan Foreclosures is hereinafter collectively referred to as the "Remaining Development."

H. Subsequently, by Deed of Record at Book 3334 Page 510, Brunswick County Registry, First Troy SPE, LLC conveyed all of the Remaining Development to Horton, and Horton thereby became successor in interest to the Original Declarant in all of the Remaining Development.

I. Section 7 of Article I of the Declaration defines the "Declarant" as the Original Declarant, or any successor in interest to the Original Declarant in any undeveloped portion of the Subdivision or any Lots within the Subdivision "not previously disposed of" by the Original Declarant. Accordingly, upon its acquisition of all of the Remaining Development, Horton became the "Declarant" under the Declaration.

J. Article V, Section 4 of the Declaration expressly allows the Declarant to subject additional real property to the Declaration without the assent of the Members of the Association, so long as such additional real property is developed in accordance with the same general scheme of development as the other portions of the Planned Community.

K. Horton desires to annex the Phase 4 Property into the Planned Community as set out below. The Phase 4 Tract is part of the Remaining Development, and Horton intends to develop the Phase 4 Property in accordance with the general scheme of development of the Planned Community.

L. Article V, Section 3(b) of the Declaration provides that the Declaration may be amended by the Declarant without Member approval for the purpose of making Additional Property subject to the Declaration. Horton now desires to amend the Declaration for the purpose of subjecting the Phase 4 Property to the Declaration.

NOW THEREFORE, pursuant to Article V, Section 3(b) of the Declaration, all of the terms and provisions of the Third Amendment are hereby deleted in their entirety and replaced with and superseded by the terms and provisions of this Restated Third Amendment, including the following:



**PART I. ANNEXATION OF REAL PROPERTY:**

Pursuant to Article V, Section 4 of the Declaration, Horton, as Declarant, does hereby annex all of the Phase 4 Property into the Planned Community, and does hereby declare that all of the Phase 4 Property shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to all the terms and conditions set forth in the Declaration, as amended by this Amendment, which are declared and agreed to be in furtherance of the plan of development of the Subdivision, which shall be deemed to run with the land, and which shall be a burden and a benefit to Horton, its successors and assigns, and any person acquiring or owning any interest in any portion of the Phase 4 Property, their Grantees, successors, heirs, executors, administrators, devisees and assigns.

**PART II: MODIFICATION/AMENDMENT OF DECLARATION:**

Pursuant to Article V, Section 3(b) of the Declaration, Horton, as Declarant, hereby amends the Declaration as follows:

1. The following new Sections 21, 22 and 23 are added to Article I of the Declaration:

21. Boatslip: "Boatslip" or "Boat Slip" shall mean a wet boatslip, which shall be a designated boatslip in the water adjacent to or in the area of the Marina. All "boatslips" shall be a component of the Marina facility and subject to the Declaration, this Amendment and any rules and regulations promulgated and shall be shown diagrammatically on the Phase 4 Plats described herein or other plats designating Boatslips or the Marina.

22. Marina: "Marina" shall mean those certain improvements shown and depicted on the Phase 4 Plats described herein, including without limitation the Fixed Pier Easement, the Floating Dock Easement, the Docks and the Boatslips.

23. Marina Member: "Marina Member" shall mean and refer to those persons entitled to membership in the Association as the owner of a Lot and as assignee of a Boatslip.

2. The following new Article XI is added to the Declaration:

**ARTICLE XI  
MARINA AND BOATSLIPS**

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825 Gum Branch Road, Suite 115, Jacksonville, NC 28540



**SECTION 1. Marina and Boatslips Easement:** Each Common Element located within the Phase 4 Property is burdened with an easement permitting any owner and Marina Member to come upon any Common Element and any area owned by the Association shown on the Phase 4 Plats and to use such property at reasonable times and in a reasonable manner in connection with their use of their Boatslip, including, recreation areas, bath facilities, parking areas, and areas necessary for access to the Boatslips, subject to the rules and regulations of the Association. All owners of a Lot in the Planned Community shall have the obligation to obey all rules and regulations established from time to time by the Board of Directors. For the purposes of this Amendment and the Declaration, the following parcels of land shall constitute the Common Elements located within the Phase 4 Property, all as more specifically shown and designated on the Phase 4 Plats: (a) "TRACT 1"; (b) "20' UTILITY EASEMENT"; (c) "10' LANDSCAPE BUFFER"; (d) "20' STREET YARD BUFFER & UTILITY EASEMENT"; and (d) the land underlying the private right-of-way "BENDING RIVER WAY". Horton may convey to the Association at any time the Marina improvements and/or the Common Elements located within the Phase 4 Property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any of the Marina improvements or the Common Elements by a bill of sale or upon recordation with the Brunswick County Registry of a non-warranty deed conveying the interest in the real property, and the conveyed Marina improvements and Common Elements shall thereafter be maintained by the Association for the benefit of the Members of the Association and the Marina Members pursuant to the terms of the Declaration and this Amendment.

**SECTION 2. Boatslips To Be Assigned:** Horton proposes to construct or is in the process of constructing or has constructed a dock, pier or other watercraft or boat mooring facility containing Boatslips which may be individually assigned by Horton to a person or entity or to the Association by an instrument of assignment which shall be recorded in the Office of the Register of Deeds of Brunswick County. The instrument of assignment may be included as part of the deed for a Lot in the Planned Community. Notwithstanding that such assignment shall provide to the assignee the right to occupy a space at a dock, pier or other watercraft or boat mooring facility, such facility shall be and remain a Common Element of the Association and shall be maintained by the Association and subject to such rules and regulations as may be from time to time adopted for its use, including any surcharge imposed by the Association on such assignees.

There shall be a maximum of forty-two (42) Boatslips which shall be used by Marina Members for docking a watercraft owned by the Marina Member. Two (2) Boatslips will at all times be owned by the Association and these two (2) Boatslips shall be utilized as a "day dock" or "temporary" short term docking facility available to all owners in the Planned Community. The remaining forty (40) Boatslips may be assigned only to owners of Lots in the Planned Community. The use of all Boatslips shall be subject to such rules and regulations as may from time to time be adopted by the Association for use.

Each assignment instrument shall clearly state that the Boatslip is "Restricted" as to ownership and use as provided for in this Amendment. Any Boatslip may be subsequently assigned to an owner but may only be assigned to an owner of a Lot in the Planned Community. Any such instrument of assignment shall clearly state the Lot owned by the assignee. No



Boatslip shall be transferred except by an instrument which shall be recorded in the Office of the Register of Deeds of Brunswick County.

In the event a person ceases to become an owner of a Lot by a conveyance of a Lot, then the conveyance of the last Lot owned shall serve to transfer all Boatslips of which he may be assignee at the time of the conveyance, notwithstanding any intentions to the contrary expressed in the conveyance. However, an owner shall be able to transfer a Boatslip separately so long as the assignee also owns a Lot in the Planned Community. Any attempted transfer of a Boatslip to a person who does not own a Lot in the Planned Community shall not transfer any rights to or ownership of said Boatslip.

The Marina Member may not rent or permit the use of a Boatslip to a non-owner, except together with and incident to the rental of his residential home situate upon a Lot in the Planned Community. All leases of such residence and Boatslips shall provide a one (1) year minimum lease term and a copy of any rental management agreement and all leases shall be provided to the Association. Except as specifically allowed by this paragraph, each Boatslip may be used by the Marina Member, his family and guests, only, and may not be rented, leased, loaned out, or used for any time period by a non-owner of a Lot in the Planned Community, subject to such additional rules and regulations as may be from time to time adopted for its use. By his acceptance of an assignment of a Boatslip, the Marina Member empowers the Association or its designee, as his attorney in fact, to bring a proceeding in summary ejectment to remove any person who is in violation of the provisions of this Declaration, the By-Laws, or any rules and regulations adopted by the Board of Directors pursuant thereto.

At Horton's option, Horton shall be entitled to assign or transfer all rights and duties of Horton under any permit applicable to the Marina or that certain Submerged Land Easement of record at Book 3750 Page 59, Brunswick County Registry, to any person or entity, including, without limitation, the Association, whereupon Horton shall have no further rights, duties, obligations or liabilities thereunder.

**SECTION 3.** Special Assessment Provisions for Marina Members: The Association shall provide maintenance of the bulkhead, docks, piers, finger piers, walkways, pilings, and all other improvements associated with the Marina facility and the Boatslips. The Board of Directors may establish dues, assessments or charges for Marina Members pursuant to Article IV, Section 8 of the Declaration. All expenses of the Boatslips shall be, and for purposes of assessments, the common expense liability of the Boatslips shall be assessed against the Boatslips and are to be allocated equally among all Boatslips, including those owned by the Association. Said assessments, dues and charges shall be established and used by the Board of Directors for the use, upkeep insurance and maintenance of the bulkhead, finger piers, pilings and all associated structures owned by the Association and part of the Boatslips or Marina facility. All expenses related to the parking lot located on Phase 4 of the Planned Community shall not be included in those assessments specially allocated to the Marina Members. The Association shall have all remedies available to it pursuant to Article IV of the Declaration with respect to the enforcement and nonpayment of any assessments for Marina Members.

Additionally, each Marina Member may be assessed in any calendar year a special assessment for the purpose of defraying in whole or in part, the costs of any insurance,



construction, reconstruction, repair or replacement of capital equipment and/or improvements within the Boatslip or Marina facility, which assessment shall be made per Boatslip basis, including those owned by the Association. No such assessment shall require prior Marina Member approval if such assessment is for insurance. All other special assessments shall not require Marina Member approval, except that, if any such special assessment shall exceed the sum of \$2,500.00 in any one (1) year, such assessment shall have the assent therefore voted by two-thirds of the Marina Members of the Association, in person or by proxy at a special or regular meeting called for said purpose.

The initial annual maintenance and insurance assessment per Boatslip shall be \$600.00 per Boatslip for the year 2017.

**SECTION 4. Insurance:** A Marina Member, prior to the use of a Boatslip, shall obtain and thereafter maintain a liability insurance policy which insures against any liability arising out of the use, ownership, maintenance and control of any watercraft owned by an assignee, or arising from the Marina Member's possession and use, from or connected with any guests, visitors or others who may come onto the premises to visit the watercraft owner or boat, with limits of liability therefor of not less than \$1,000,000 per occurrence, and property damage coverage of \$300,000 which policy shall include an endorsement to cover liability of the Association to any person. A copy of the insurance policy shall be provided to the Association upon issuance and each renewal.

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**SECTION 6. Use Restrictions:** The following restrictions shall apply to the Boatslips, the Marina and the Common Elements shown on the Phase 4 Plats:

a. All Boatslips shall be utilized for non-commercial pleasure watercraft only which shall at all times be owned by the Marina Member or his assignee. No commercial activity shall be undertaken by use of the Boatslips.

b. The type, size, and other matters relating to the watercraft may be regulated from time to time by the Association. In the event of any dispute as to whether a particular watercraft is permitted to be moored in a Boatslip or otherwise operated within the Marina, the determination of the Association made in its sole discretion shall be dispositive.

c. No watercraft moored, stored or operated in a Boatslip and/or the Marina may be used as a live-aboard or as a year-round or seasonal residence. No houseboat, floating home, house-like barge or seaplane shall be permitted within a Boatslip and/or the Marina.



d. A Boatslip shall not be used in a way that requires regular visits from the public or unreasonable levels of visits in general, or creates unreasonable utility burdens or trash.

e. Any watercraft moored in a Boatslip must fit within the boundaries of such Boatslip except that anchor extensions, bowsprits, booms, pulpits and other projections and overhangs from the bow of a watercraft may extend beyond the end of the Boatslip over the open water for a distance not to exceed ten percent (10%) of the length of the Boatslip.

f. Except during a period of temporary repairs not to exceed eight (8) days, any watercraft moored, stored or operated in a Boatslip and/or the Marina shall be fully operable, shall be safe and seaworthy, shall be equipped with all safety and other equipment required by federal, state and local laws and regulations, and shall comply with all license and registration requirements. An agent of the Association may periodically inspect any watercraft moored, stored or operated within a Boatslip and/or the Marina for compliance with the requirements set forth in this Section 8, and may order the removal of any watercraft that is not safe and seaworthy, that is not equipped with all safety and other equipment required by federal, state and local laws and regulations, and that does not comply with all license and registration requirements.

g. Any watercraft moored, stored or operated within a Boatslip and/or the Marina must be equipped with a sanitary holding tank (if required by applicable law or regulation) and shall not discharge sewage, trash, petroleum products or other waste into the waters within or adjacent to the Marina or the Common Elements.

h. No improvements shall be constructed or placed within any Boatslip, the Marina or the Common Elements by any Owner other than the Declarant and/or the Association.

i. Any watercraft sunk within the Marina or adjacent waters shall be removed by the owner of the watercraft within twelve (12) hours of sinking, or the Association may cause the removal of the sunken watercraft at the expense of the owner of the watercraft.

j. No immoral, improper, offensive or unlawful use shall be made of any Boatslip, the Marina, the Common Elements or any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Boatslips, the Marina and/or the Common Elements shall be observed. No Marina Member or Owner shall permit or suffer anything to be done or kept in or on the Boatslips, the Marina or the Common Elements which will increase the rate of insurance on the Marina, the Common Elements and the Association, or which will obstruct or interfere with the rights of the other Marina Members or owners or annoy them by unreasonable noises, nor shall any Marina Member or owner undertake any use or practice which shall create and constitute a nuisance to any other Marina Members or



owners or which interferes with the peaceful possession and proper use of the Boatslips, the Marina and/or the Common Elements.

IN WITNESS WHEREOF, Horton, as Declarant, has executed this Restated Third Amendment as of the date first stated above.

**D. R. HORTON, INC.**

By: [Signature]  
Print Name: MICHAEL LOIACONO  
Title: VICE PRESIDENT

State of North Carolina  
County of New Hanover

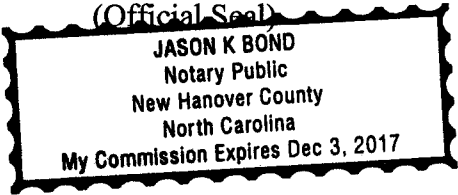
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated above: MICHAEL LOIACONO.

Date: May 22, 2017

[Signature]  
(Official Signature of Notary)

JASON K BOND, Notary Public  
(Notary's printed or typed name)

My Commission Expires: Dec 3, 2017





Prepared by:  
 Bagwell Holt Smith P.A.  
 111 Cloister Ct., Ste. 200  
 Chapel Hill, NC 27514

Return to:  
 Assignee

NORTH CAROLINA  
 BRUNSWICK COUNTY

*Bagwell Holt Smith PA*  
 Presenter Smith PA Ret: Mail  
 Total 26 Rev \_\_\_\_\_ Int. 8110  
 Ck \$ 26 Ck # 4583 Cash \$ \_\_\_\_\_  
 Refund: \_\_\_\_\_ Cash \$ \_\_\_\_\_ Finance \_\_\_\_\_  
 Portions of document are illegible due to condition of original.  
 Document contains seals verified by original instrument that cannot be reproduced or copied.

**ASSIGNMENT OF BOAT SLIP**  
**(HAWKESWATER AT THE RIVER SUBDIVISION, PHASE 4)**

THIS ASSIGNMENT OF BOAT SLIP (the "Assignment") is made on the 26<sup>th</sup> day of July, 2017, by and between **D. R. HORTON, INC., a Delaware Corporation**, ("Horton") whose mailing address is P. O. Box 1545, Mount Pleasant, SC 29465, and **HAWKESWATER HOMEOWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation**, ("Assignee") whose mailing address is P.O. Box 12051, Wilmington, NC 28405;

**BACKGROUND STATEMENT**

Pursuant to and as authorized by a State of North Carolina Department of Environment and Natural Resources and Coastal Resources Commission Permit issued to Horton on December 12, 2014, bearing the Permit Number 48-14 (the "Permit"), and a Submerged Land Easement granted to Horton dated January 29, 2016 and recorded on March 30, 2016 in Deed Book 3750 Page 59, Brunswick County Registry (the "Submerged Land Easement"), Horton has constructed certain improvements over the waters of the Brunswick River (collectively, the "Marina"). The easements underlying the Marina and the Marina itself are part of Phase 4 of Hawkeswater at the River Subdivision (the "Subdivision"). The Marina consists of a floating



dock that includes forty-two (42) wet boat slips and a pier or piers that connect the floating dock to that 2.73 acre parcel of land, also a part of Phase 4 of the Subdivision, shown as as TRACT 1 – COMMON AREA, HAWKESWATER AT THE RIVER PHASE 4, by plat of survey of record at Map Cabinet 100 Page 69, Brunswick County Registry (“TRACT 1”). The location of the Marina is shown by that plat of survey of record at Map Cabinet 94 Page 36, Brunswick County Registry (the “Marina Plat”). The Marina Plat also shows the layout of the floating dock, including the location of each of the 42 boat slips.

The Subdivision was created by that Declaration of Covenants, Conditions and Restrictions for Hawkeswater at the River Subdivision of record at Book 2745 Page 986, Brunswick County Register of Deeds, as subsequently modified and supplemented by that: (i) First Amendment to the Declaration of Hawkeswater at the River Subdivision of record at Book 3380 Page 1230, Brunswick County Register of Deeds, (ii) Annexation Declaration for Hawkeswater at the River Subdivision of record at Book 3493 Page 659, Brunswick County Register of Deeds, (iii) Second Amendment to Declaration for Hawkeswater at the River Subdivision of record at Book 3550 Page 465, Brunswick County Registry of Deeds, and (iv) that Restated Amendment to Declaration of Covenants, Conditions and Restriction and Assignment Restrictions – Boatlips for Hawkeswater at the River Subdivision of record at Book 3916 Page 857 Brunswick County Registry (collectively, the “Declaration”).

Assignee is the homeowners association for the Subdivision.

Horton desires to assign the exclusive right to use two (2) of the boat slips shown on the Marina Plat to Assignee in accordance with the terms of the Permit, the Submerged Land Easement and the Declaration, and Assignee desires to receive such assignment.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, Horton does hereby assign to Assignee the following:

**The exclusive right to use those certain boat slips designated Nos. 21 and 22, A-DOCK, as shown by plat of survey of record at Plat Cabinet 94 Page 36, Brunswick County Registry, (the “Boat Slips”) together with the nonexclusive right to use all other portions of the Marina, other than individual boat slips, for ingress and egress between the Boat Slips and TRACT 1.**

**The rights to use of the Boat Slips and the Marina granted hereunder shall at all times be subject to the provisions of the Permit, the Submerged Land Easement and the Declaration.**



The Assignee shall be entitled to utilize the Boat Slips as "day dock" or "temporary" short term docking facilities available to all Owners, as provided in the Declaration. The Assignee shall also be entitled to utilize all Common Elements (as defined in the Declaration) located in Phase 4 of the Subdivision, including but not limited to TRACT 1, for ingress and egress between the Marina and NC Highway 133 (River Road SE), subject to any rules and regulations governing use of the Marina and the Common Elements adopted by Horton or the Assignee from time to time.

By acceptance of the Assignment, Assignee acknowledges that the Boat Slips, the Marina and the Assignment are subject to the Permit, the Submerged Land Easement and the Declaration, and that Assignee shall personally be subject to all the provisions of the Permit, the Submerged Land Easement and the Declaration, including but not limited to provisions requiring payment of assessments to the Association. BY ACCEPTANCE OF THE ASSIGNMENT, ASSIGNEE FURTHER ACKNOWLEDGES THAT: (1) THE PERMIT, THE SUBMERGED LAND EASEMENT AND/OR THE DECLARATION MAY BE AMENDED FROM TIME TO TIME AS PROVIDED THEREIN, AND THAT THE AMOUNTS TO BE PAID BY ASSIGNEE TO THE ASSOCIATION MAY CHANGE ACCORDINGLY; (2) THE PERMIT AND/OR THE SUBMERGED LAND EASEMENT MAY EXPIRE OR BE TERMINATED BY THE STATE AND/OR FEDERAL AUTHORITIES HAVING JURISDICTION OVER THE BRUNSWICK RIVER; AND (3) IF THE PERMIT AND/OR THE SUBMERGED LAND EASEMENT EXPIRE OR ARE TERMINATED FOR ANY REASON, ASSIGNEE'S RIGHT TO USE THE BOAT SLIPS MAY TERMINATE, AND IN SUCH EVENT ASSIGNEE SHALL NOT BE ENTITLED TO A REFUND OF ANY PORTION OF THE ASSIGNMENT FEE OR OTHER CONSIDERATION PAID BY ASSIGNEE TO HORTON.

When reference is made to the parties, the singular shall include the plural and the masculine shall include the feminine or the neuter.

**SIGNATURES ON FOLLOWING PAGES**



IN WITNESS WHEREOF, as the above date, Horton (whether person, corporation, limited liability company, general partnership, limited partnership, or other entity) has signed this instrument in the ordinary course of business, by the signature(s) below if its duly authorized representative(s), as the act of such entity.

D. R. HORTON, INC.

By: [Signature]  
Print Name: MICHAEL COISCONO  
Title: ASSISTANT SEC.

STATE OF NC  
COUNTY OF New Hanover

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated above: Assistant Secretary

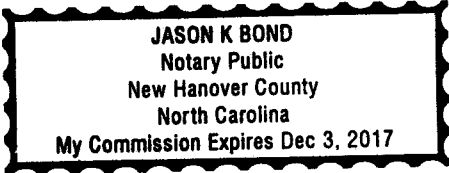
Date: July 26, 2017

[Signature]  
(Official Signature of Notary)

JASON K BOND, Notary Public  
(Notary's printed or typed name)

(Official Seal)

My Commission Expires: Dec 3, 2017





IN WITNESS WHEREOF, as the above date, Assignee has accepted the terms of this Assignment and has signed this instrument as provided below.

ASSIGNEE:

HAWKESWATER HOMEOWNERS' ASSOCIATION, INC.

By: [Signature]  
Print Name: MICHAEL COLEMAN  
Title: PRESIDENT

STATE OF NC  
COUNTY OF New Hanover

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated above: President

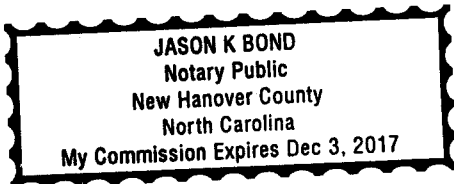
Date: July 26, 2017

[Signature]  
(Official Signature of Notary)

Jason K Bond, Notary Public  
(Notary's printed or typed name)

(Official Seal)

My Commission Expires: Dec 3, 2017



3 Return to Bagwell Holt Type Mail  
Total 26 Rev \_\_\_\_\_ Int. NR  
Ck \$ 26 Ck # 7279 Cash \$ \_\_\_\_\_  
Refund \_\_\_\_\_ Cash \$ \_\_\_\_\_ Finance \_\_\_\_\_

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- Document contains seals verified by original instrument that cannot be reproduced or copied.

Prepared by and return to:  
Michael R. Ganley, Attorney, Bagwell Holt Smith P.A.  
111 Cloister Court, Ste. 200, Chapel Hill, NC 27514

Horton's Address:  
131 Racine Drive, Suite 201, Wilmington, NC 28403

**THIRD AMENDMENT TO DECLARATION FOR  
HAWKESWATER AT THE RIVER SUBDIVISION**

This Third Amendment to Declaration for Hawkeswater at the River Subdivision (the "Second Amendment") is made this 11<sup>th</sup> day of October, 2018, by **D.R. HORTON, INC.**, a Delaware corporation, hereinafter referred to as "Horton." Horton states and declares as follows:

A. Hawkeswater I, Development, Inc., a North Carolina corporation, Hawkeswater II Development, Inc., a North Carolina corporation, Hawkeswater III Development, Inc., a North Carolina corporation, and Riverside Land Holdings, LLC, a North Carolina limited liability company (collectively, the "Original Declarant") previously made that certain Declaration of Covenants Conditions and Restrictions for Hawkeswater at the River Subdivision recorded in Book 2745 Page 986, Brunswick County Register of Deeds, as modified by: (i) that First Amendment to the Declaration of Hawkeswater at the River Subdivision of record at Book 3380 Page 1230, Brunswick County Register of Deeds; (ii) that Annexation Declaration for Hawkeswater at the River Subdivision of record at Book 3493 Page 659, Brunswick County Register of Deeds (the "Annexation Declaration"); and (iii) that Second Amendment to the Declaration of Hawkeswater at the River Subdivision of record at Book 3550 Page 465, Brunswick County Register of Deeds (collectively, the "Declaration").

B. All of the real property currently subject to the Declaration (the "Subject Property") was originally owned and held by the Original Declarant for the purpose of developing it into Hawkeswater at the River Subdivision (the "Subdivision").

C. All of the Subject Property was conveyed by the Original Declarant to trustees for the benefit of Cooperative Bank, a North Carolina bank, by Deeds of Trust of record at Book 2579 Page 889, Book 2605 Page 1340, Book 2606 Page 37, Book 2606 Page 72 and Book 2606 Page 106, Brunswick County Registry (collectively, the "Development Loan Deeds of Trust"), as collateral for a loan or loans, the proceeds of which were to be used in the development of the Subdivision (collectively, the "Development Loan"). Subsequently, all of the assets of Cooperative Bank, including the Development Loan and the Development Loan Deeds of Trust, were acquired by First Bank, a North Carolina Bank. Subsequent to that acquisition, foreclosure proceedings were instituted under all of the Development Loan Deeds of Trust, which proceedings are of record at 11-SP-1620, 11-SP-1621, 11-SP-1622, 11-SP-1623



and 11-SP-1624, Office of the Brunswick County Clerk of Superior Court (collectively, the "Development Loan Foreclosures").

D. Pursuant to the Development Loan Foreclosures, First Troy SPE, LLC, a wholly owned subsidiary of First Bank, acquired all of the Subject Property other than certain individual residential lots within the Subdivision that had been released from the liens of the Development Loan Deeds of Trust in the ordinary course of business. All of the property acquired by First Troy SPE, LLC pursuant to the Development Loan Foreclosures is hereinafter collectively referred to as the "Remaining Development."

H. Subsequently, by Deed of Record at Book 3334 Page 510, Brunswick County Registry, First Troy SPE, LLC conveyed all of the Remaining Development to Horton, and Horton thereby became successor in interest to the Original Declarant in all of the Remaining Development.

I. Section 7 of Article I of the Declaration defines the "Declarant" as the Original Declarant, or any successor in interest to the Original Declarant in any undeveloped portion of the Subdivision or any Lots within the Subdivision "not previously disposed of" by the Original Declarant. Accordingly, upon its acquisition of all of the Remaining Development, Horton became the "Declarant" under the Declaration.

J. Article V, Section 3(b) of the Declaration expressly allows the Declarant to amend the Declaration without Member approval to the extent that the Declaration applies to Additional Property.

K. Horton still owns Additional Property subject to the Declaration.

L. Horton now desires to amend the Declaration.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Article III, Section 3(b) of the Declaration is deleted in its entirety and replaced with the following:

(b) on December 31, 2021, or

2. Except as amended herein, all terms and provisions of the Declaration remain unmodified. As amended herein, the Declaration remains in full force and effect.



IN WITNESS WHEREOF, the Horton has caused this Third Amendment to be executed as of the date first stated above.

D.R. HORTON, INC.,  
a Delaware corporation

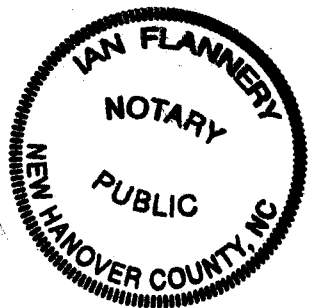
By: [Signature]  
Name: MICHAEL LOIACONO  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, IAN FLANNERY, a Notary Public of the County and State aforesaid, certify that MICHAEL LOIACONO personally appeared before me this day and acknowledged that he is a VICE President of D.R. Horton, Inc., a Delaware corporation, and that he, being duly authorized to do so, executed the foregoing for and on behalf of said corporation.

Witness my hand and official stamp or seal, this 11TH day of OCTOBER, 2018.

NOTARY SEAL



[Signature]  
Signature of Notary Public  
My Commission Expires: 04/27/2020

*Bagwell Holt Smith*  
 Return to \_\_\_\_\_ Type *office*  
 Total *50* Rev \_\_\_\_\_ Int. \_\_\_\_\_  
 Ck \$ *50* Ck # *15609* Cash \$ \_\_\_\_\_  
 Refund \_\_\_\_\_ Cash \$ \_\_\_\_\_ Finance \_\_\_\_\_

Prepared by and return to:  
 Michael R. Ganley, Attorney, Bagwell Holt Smith P.A.  
 111 Cloister Court, Ste. 200, Chapel Hill, NC 27514

Horton's Address:  
 131 Racine Drive, Suite 201, Wilmington, NC 28403

Portions of document are illegible due to condition of original.  
 Document contains seals verified by original instrument that cannot be reproduced or copied.

**FOURTH AMENDMENT TO DECLARATION FOR  
 HAWKESWATER AT THE RIVER SUBDIVISION**

This Fourth Amendment to Declaration for Hawkeswater at the River Subdivision (this "Fourth Amendment") is made this 21st day of JANUARY, 2019, by **D.R. HORTON, INC.**, a Delaware corporation, hereinafter referred to as "Horton." Horton states and declares as follows:

A. Hawkeswater I, Development, Inc., a North Carolina corporation, Hawkeswater II Development, Inc., a North Carolina corporation, Hawkeswater III Development, Inc., a North Carolina corporation, and Riverside Land Holdings, LLC, a North Carolina limited liability company (collectively, the "Original Declarant") previously made that certain Declaration of Covenants Conditions and Restrictions for Hawkeswater at the River Subdivision recorded in Book 2745 Page 986, Brunswick County Register of Deeds, as modified by: (i) that First Amendment to the Declaration of Hawkeswater at the River Subdivision of record at Book 3380 Page 1230, Brunswick County Register of Deeds; (ii) that Annexation Declaration for Hawkeswater at the River Subdivision of record at Book 3493 Page 659, Brunswick County Register of Deeds (the "Annexation Declaration"); (iii) that Second Amendment to the Declaration of Hawkeswater at the River Subdivision of record at Book 3550 Page 465, Brunswick County Register of Deeds; and (iii) that Third Amendment to the Declaration of Hawkeswater at the River Subdivision of record at Book 4113 Page 749, Brunswick County Register of Deeds (collectively, as amended and restated, the "Declaration").

B. All of the real property currently subject to the Declaration (the "Subject Property") was originally owned and held by the Original Declarant for the purpose of developing it into Hawkeswater at the River Subdivision (the "Subdivision").

C. All of the Subject Property was conveyed by the Original Declarant to trustees for the benefit of Cooperative Bank, a North Carolina bank, by Deeds of Trust of record at Book 2579 Page 889, Book 2605 Page 1340, Book 2606 Page 37, Book 2606 Page 72 and Book 2606 Page 106, Brunswick County Registry (collectively, the "Development Loan Deeds of Trust"), as collateral for a loan or loans, the proceeds of which were to be used in the development of the Subdivision (collectively, the "Development Loan"). Subsequently, all of the assets of Cooperative Bank, including the Development Loan and the Development Loan Deeds of Trust, were acquired by First Bank, a North Carolina Bank.

Subsequent to that acquisition, foreclosure proceedings were instituted under all of the Development Loan Deeds of Trust, which proceedings are of record at 11-SP-1620, 11-SP-1621, 11-SP-1622, 11-SP-1623 and 11-SP-1624, Office of the Brunswick County Clerk of Superior Court (collectively, the "Development Loan Foreclosures").

D. Pursuant to the Development Loan Foreclosures, First Troy SPE, LLC, a wholly owned subsidiary of First Bank, acquired all of the Subject Property other than certain individual residential lots within the Subdivision that had been released from the liens of the Development Loan Deeds of Trust in the ordinary course of business. All of the property acquired by First Troy SPE, LLC pursuant to the Development Loan Foreclosures is hereinafter collectively referred to as the "Remaining Development."

E. Subsequently, by Deed of Record at Book 3334 Page 510, Brunswick County Registry, First Troy SPE, LLC conveyed all of the Remaining Development to Horton, and Horton thereby became successor in interest to the Original Declarant in all of the Remaining Development.

F. Section 7 of Article I of the Declaration defines the "Declarant" as the Original Declarant, or any successor in interest to the Original Declarant in any undeveloped portion of the Subdivision or any Lots within the Subdivision "not previously disposed of" by the Original Declarant. Accordingly, upon its acquisition of all of the Remaining Development, Horton became the "Declarant" under the Declaration.

G. Article V, Section 3(f) of the Declaration expressly allows the Declarant to amend the Declaration without Member approval to conform this Declaration to the requirements of any governmental agency having legal jurisdiction over the Property during the Declarant Control Period.

H. The Declarant Control Period has not yet terminated.

I. Horton now desires to amend the Declaration to conform the Declaration to the requirements of the State of North Carolina, Division of Water Quality.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. The first sentence of the second paragraph of Article VII, Section 4 of the Declaration is deleted in its entirety and replaced with the following:

The maximum allowable built-upon area for Lot 6 through Lot 14, inclusive, Lot 16, Lot 18 and Lot 31 through Lot 80, inclusive, in Phase 1B/1C is 3,844 square feet per Lot. The maximum allowable built-upon area for Lots in Phase 3 Section 2C, except for Lot 3272, Lot 3275, Lot 3276, Lot 3278 through Lot 3280, inclusive, Lot 3287, Lot 3302 through Lot 3305, inclusive, Lot 3310 through Lot 3314, inclusive, Lot 3316, Lot 3317, and Lot 3324, is 3,768 square feet per Lot. Except as stated herein, the maximum allowable built-upon area for all remaining Lots is 4,500 square feet per Lot.

2. Except as amended herein, all terms and provisions of the Declaration remain unmodified. As amended herein, the Declaration remains in full force and effect.



IN WITNESS WHEREOF, the Horton has caused this Fourth Amendment to be executed as of the date first stated above.

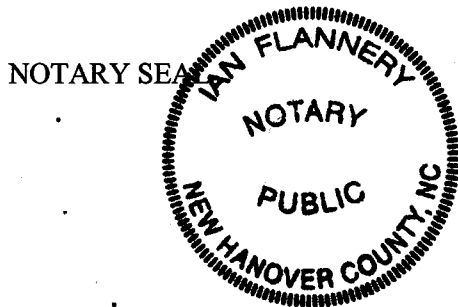
D.R. HORTON, INC.,  
a Delaware corporation

By: [Signature]  
Name: MICHAEL LOIACONO  
Title: VICE PRESIDENT

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, IAN FLANNERY, a Notary Public of the County and State aforesaid, certify that MICHAEL LOIACONO personally appeared before me this day and acknowledged that he is a VICE President of D.R. Horton, Inc., a Delaware corporation, and that he, being duly authorized to do so, executed the foregoing for and on behalf of said corporation.

Witness my hand and official stamp or seal, this 21ST day of JANUARY, 2019.



[Signature]  
Signature of Notary Public  
My Commission Expires: 04/27/2020