

DECLARATION OF RESTRICTIONS  
AND  
PROTECTIVE COVENANTS  
FOR  
RUTLEDGE

6/7/05

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS  
FOR RUTLEDGE**

THIS DECLARATION is made this 1<sup>st</sup> day of June, 2005, by Holmes Development & Realty, LLC a North Carolina Limited Liability Company hereinafter called "Declarant".

**RECITALS**

The Declarant is the owner of certain real property located in Brunswick County, North Carolina, which is more particularly described in Exhibit "A" attached hereto and made a part hereof by reference.

The Declarant proposes to create on such property a subdivision ("the Properties"), containing Lots for single family detached houses.

The Declarant wishes to accomplish the following objectives for its benefit and the benefit of Owners of property in the Properties by the imposition of the covenants, restrictions and easements set forth herein:

- (a) To maintain the value and the residential character and integrity of the Properties,
- (b) To insure the attractiveness of the Properties and to prevent any impairment thereof,
- (c) To preserve, protect and enhance the quality and value of the natural amenities of the Properties,
- (d) To minimize or eliminate the possibility of any nuisances or disruptions of the peace and tranquility of the residential environment of the Properties,
- (e) To provide for the maintenance and upkeep of the property in the Properties,
- (f) To prevent the abuse or unwarranted alteration of the trees, vegetation, streams, marshes and other bodies of water and natural character of the land in the Properties,
- (g) To prevent any property Owner or any other persons from building or carrying on any other activity in the Properties to the detriment of any Owners of property in the Properties, and
- (h) To keep property values in the Properties high, stable and in a state of reasonable appreciation.

The Declarant wishes to maintain design and location criteria, construction specifications, and other controls to assure attainment of the foregoing objectives, and has established an architectural review board to which all plans and drawings for proposed construction within the properties must be submitted and from which written approval must be received for such plans and drawings prior to the start of any construction within the Properties, as is more fully set forth herein below.

The Declarant has deemed it desirable for the efficient preservation of the value and amenities in the properties to create an association to which should be delegated and assigned the powers of owning, maintaining, and administering the community properties, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents.

The Declarant will, within 12 months from inception of this declaration, incorporate under the laws of the State of North Carolina a non-profit corporation, known as ("the Association") for the purpose of exercising the aforesaid functions, among others.

## DECLARATION

NOW THEREFORE, the Declarant hereby declares that all of the Property described in Exhibit "A" shall be held, mortgaged, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants and conditions which are hereby imposed for the purpose of protecting the value and desirability of these lands and which restrictions, easements, conditions, and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described lands or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Declaration.

## ARTICLE I - DEFINITIONS

The following words and terms when used in the Declarations or any supplemental Declarations (unless the context shall clearly indicate otherwise) shall have the following meanings:

Section 1. "Annual Assessment" shall mean an equal assessment established by the Declarant/Board of Directors of the Association, for the common expenses as provided for herein or for the purpose of promoting the recreation, common benefit, and enjoyment of the Owners and occupants of all Lots.

Section 2. "Association" shall mean and refer to the North Carolina non-profit corporation, its successors and assigns, to be established within 12 months of inception of this declaration.

Section 3. "Common Area" shall mean the real property owned by the Declarant/Association for the common use and enjoyment of the Owners. The Common Area owned by the Declarant/Association shall include (but shall not necessarily be limited to) certain open areas as conveyed by the Declarant.

Section 4. "Declarant" shall mean and refer to Holmes Development & Realty, L.L.C., its successors and assigns.

Section 5. "Designated Builder" shall mean any person, firm, corporation, partnership, or other legal entity that is so designated by the Developer.

**Section 6.** "Eligible Mortgagee" refers to an institutional lender holding a mortgage or deed of trust ("Mortgage") encumbering a Lot that has notified the Declarant/Association in writing of its status, stating both its name and address and the address of the Lot its Mortgage encumbers, and requesting all rights under the Declarant/Association's governing documents and this Declaration.

**Section 7.** "Living Space" shall mean and refer to heated and cooled enclosed and covered areas within a residence on a Lot, exclusive of garages, unenclosed porches, porte-cocheres, carports, breeze-ways, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

**Section 8.** "Lot" shall mean and refer to any plot of land regardless of size appearing on a recorded subdivision map of the Properties which has been approved by Declarant as required by this Declaration (with the exception of any Common Area). Each Lot shall be undeveloped or shall contain one Residence. In the event any Lot is increased or decreased by re-subdivision, the same shall nevertheless be and remain a Lot for the purposes of this Declaration. This definition shall not imply, however, that a Lot may be subdivided if prohibited elsewhere in this Declaration. In the event that an Owner desired to combine two (2) or more adjoining Lots for the purpose of constructing and maintaining a single Residence thereon, the resulting combined Lots shall from that date forward be deemed one Lot for the purposes of this Declaration.

**Section 9.** "Member" shall mean and refer to every person or entity who holds membership in the Association, as provided by this Declaration and in the By-laws.

**Section 10.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

**Section 11.** "Properties" shall mean and refer to the real property as described in Article II, Section 1 hereof, and any additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Declarant/Association under the provisions of Article II hereof.

**Section 12.** "Residence" shall mean and refer to the improvements to a lot in the form of a single-family dwelling. Residence may, for the purposes of this Declaration, be referenced as building, structure, or home being constructed on any Lot within the Properties.

**Section 13.** "Setback" or "Building Setback" shall mean and refer to an area along the boundary of a Lot where no building or other structure, or part thereof, shall be permitted without the express written permission of the Declarant/Association.

**Section 14.** "Special Assessment" shall mean and refer to any assessment levied by the Declarant/Association in addition to the "Annual Assessment" as provided for herein.

**Section 15.** "Subsequent Amendment" shall mean an amendment to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of this Declaration.

**Section 16.** "Developer" shall mean and refer to Holmes Development & Realty, L.L.C.

## ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION AND JURISDICTION OF ASSOCIATION

The real property which is and shall be held, transferred, sold, conveyed, and/or occupied subject to this Declaration, and within the jurisdiction of the Association is located in Brunswick County, North Carolina, and more particularly described in the attached Exhibit "A".

## ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

**Section 1.** Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 2.** Articles of Incorporation and By-Laws. A copy of the Articles of Incorporation of the Association and By-Laws of the Association will be attached hereto and made a part hereof, within 12 months of inception of this declaration.

**Section 3.** The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two classes of Members with respect to voting rights:

- (a) **Class I Members.** Class I Members shall be owners, except the Class II Member as the same is hereinafter defined. Each Class I Member shall be entitled to one (1) vote for each Lot owned. In no event shall more than one vote be cast per lot owned by any Class I Member.
- (b) **Class II Member.** The sole Class II Member shall be the Declarant. The Declarant shall be entitled to total votes in an amount equal to twice the number of the Class I votes plus one. The Class II Membership shall cease to exist and be converted to Class I Membership when eighty percent (80%) of the Lots within the Properties, including any property subjected to these restrictions via subsequent amendment, have been conveyed to Class I Owners by Declarant, or at such earlier time when the Declarant, its successors or assigns, notifies the Association in writing that the Declarant has elected to cease being the Class II Member.

## ARTICLE IV - PROPERTY RIGHTS IN THE COMMON AREAS

**Section 1.** Members Easements. The Common Areas shall be for the common use and enjoyment of the Members of the Association, and each member shall have a permanent and perpetual easement for pedestrian traffic across all such portions of such tracts as may be regulated by the Declarant/Association. Provided however, that Owners will not be allowed to alter Common Areas in any way, including but not limited to, plantings, plant removals, plant cutting, and/or adding of any type of structural ornamentation. Further, swimming, wading, boating, floating, sunbathing and fishing, but not limited to these, shall be prohibited from the water featured areas. To the extent that all or any portion of a lake or pond is located within a home-site or abutting the property line of a home-site, the Owner of such home-site shall be responsible for maintaining the edge and bank of such lake or pond and for controlling erosion due to storm water run-off from within such home-site.

**Section 2.** Easements Appurtenant. The easements provided in Section 1 shall be appurtenant to and shall pass with the title to each Lot, regardless of whether such easements are expressly described in any instrument of conveyance.

**Section 3. Public Easements.** Fire, police, health, sanitation, and other public service personnel and vehicles shall have a permanent and perpetual non-exclusive easement for ingress and egress over and across the Common Areas.

**Section 4. Declarant's Easements.** Declarant reserves unto itself and its successors and assigns the right of ingress and egress over all Common Areas within the Properties, for the purposes of maintenance, construction, sales, development, and/or enjoyment. The easement herein reserved shall be in addition to, and not in lieu of, any other easements to which Declarant, its successors and assigns, may be entitled. This easement shall exist so long as Declarant retains any ownership in the Properties.

**Section 5. Maintenance.** The Association shall at all times maintain in good repair, and shall repair or replace as often as necessary, the paving, drainage structures, street lighting and fixtures, landscaping, amenities and watering system situated on the Common Areas. The Association will pay the electrical bill in connection with the sign and the water bill in connection with the common area grass and other plantings. The Board of Directors of the Association acting by a majority vote shall order all work to be done and shall pay for all expenses including but not limited to all common utilities on all Common Areas. All work pursuant to this Section 5 and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with Article V. Paving and maintenance of individual driveways shall be maintained by each Lot owner. The Association may delegate or transfer its maintenance obligations to a governmental authority under such terms and conditions as the Board of Directors may deem in the best interest of the Association.

The Association will maintain the landscape easement and entrance sign easement, as well as the entrance signage itself, which easements are set forth in Article VIII, Section 2 below.

**Section 6. Utility Easements.** Use of the Common Areas for utility easements shall be in accordance with the applicable provisions of this Declaration.

**Section 7. Delegation of Use.**

- (a) **Family.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owners' family who occupy the residence of the Owner within the Properties.
- (b) **Tenants.** The right of easement of enjoyment granted to every Owner in Section 1 of this Article IV may be delegated by the Owner to his tenants who occupy the residence within the Properties.

**Section 8. Ownership.** The Common Areas shall be conveyed to the Association upon the cessation of the Class II Member or earlier, at the discretion of the Declarant. The Association shall immediately accept such conveyance. The Association, prior to conveyance, shall, at the request of the Declarant, perform all work as outlined in Section 5 of this Article on any property that the Declarant intends to be conveyed as Common Areas and absorb the expense for the same in accordance with Section 5. Upon conveyance it is intended that all real estate taxes against the Common Areas shall be assessed against and payable by the Association, as shall any personal property taxes on any personal property owned by the Association. Declarant shall have the right from time to time to enter upon the Common Areas and adjoining properties during periods of construction for the purpose of construction of any facilities on the Common Areas which the Declarant elects to build. The Owner of a Lot shall have no personal liability for any damage for which the Association is legally liable or arising out of or connected with the existence or use of any Common Areas or any other property required to be maintained by the Association.

## ARTICLE V - COVENANT FOR MAINTENANCE AND ASSESSMENTS

**Section 1.** Creation of Liens and Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for matters as herein provided, and (3) special assessments established hereinafter providing for fines imposed upon offenders or violators of the rules and regulations of the Association, in the sole and uncontrolled discretion of the Association.

**Section 2.** Purposes of Assessments. The assessments levied by the Association shall be used to promote the comfort and livability of the residents of the Properties and for the acquisition, improvement and maintenance of properties, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Area, including but not limited to, the cost of repair, replacement and additions to the Common Areas, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance, the employment of attorneys to represent the Association when necessary, the employment of Accountants and other professionals when necessary, the establishment and maintenance of reasonable reserves for maintenance and improvement, and such other needs as may arise. The Owner shall maintain the structures and/or grounds on each Lot at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Declarant/Association may, at its option after giving the Owner ten (10) days written notice sent to the owner's last known address, or to the address of the subject premises, have the grass, weeds, shrubs, and vegetation cut when and as often as the same is necessary in the sole and uncontrolled discretion of the Declarant/Association. The Owner, by virtue of deed acceptance, agrees that all such expenses for such work and materials plus the maximum allowable interest rate by law shall be a lien and charge against the current Owner of such Lot. Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Declarant/Association may, at its sole and uncontrolled discretion, after giving the Owner thirty (30) days written notice sent to his last known address or the address of the subject premises, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Declarant/Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an assessment against the Lot as herein provided. The Declarant/Association's right to maintain the exterior of a structure or a Lot shall not be construed as its obligation. An entry upon the property for maintenance purposes shall not be deemed a trespass.

**Section 3.** Capital Contribution. Each Owner of a Lot shall be assessed an amount of \$200.00 for start-up costs which shall be designated a Capital Contribution to the Declarant/Association. If any adjoining Lots are combined at the time of closing as provided below, the Owner of such Lot shall be assessed one (1) Capital Contribution. The Capital Contribution shall be collected and transferred to the Declarant/Association only once for each Lot, at the time of the closing of the initial sale of each Lot by the Declarant. The Capital Contributions so collected shall be maintained in a separate account for the use and benefit of the Declarant/Association and shall be used to pay expenditures (including but not limited to funding the Declarant/Association's maintenance obligations), funding reserves, or to acquire equipment or services deemed necessary or desirable by the Board of Directors. All sums paid as Capital contributions are in addition to and not in lieu of regular assessments for common expenses.

**Section 4.** Annual Assessments. The Annual Assessments provided for in this Article shall commence upon the closing of each Lot. The Assessments shall be payable in advance in annual installments unless approved otherwise, in writing, by the Board of Directors. The annual assessment amount may be changed at any time by said Board from any other assessment that is adopted. The annual assessment shall be for the calendar year and shall be due at such time as prescribed by the Board. Any proration of the Annual Assessment due to the transfer of a Lot shall be due at closing and shall be equivalent to a proration of the number of full months remaining in the year.

Section 5. Duties of the Board of Directors. The Board of Directors (Declarant) of the Association shall fix the due date of commencement and the amount of the assessment against the Lots subject to the Declarant/Association's jurisdiction for each assessment at least thirty (30) days in advance of such date of period, and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Any increase in the Annual Assessment applicable to the Lots which is less than an increase of thirty percent (30%) over the immediately preceding year's assessment may be made by the Declarant/Board of Directors without the consent or approval of the Members and any such increase that exceeds thirty (30%), excluding insurance, reserves, utilities and Acts of God, shall be effective only if approved by not less than sixty-seven (67%) of the Voting Members representing votes appurtenant to each Class of Membership (Class I and Class II). Written notice of assessment shall be sent to every Owner subject thereto. The Declarant/Association shall, upon demand made by the Owner at any time, furnish to the Owner liable for an assessment a certificate in writing signed by the Declarant/Officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any assessment to the Declarant/Association therein stated to have been paid. The Declarant/Association shall, through the action of the Declarant/Board of Directors, have the power, but not the obligation to enter into an agreement or agreements from time to time with one or more persons, firms, or corporations for the management services of the Declarant/Association. The Association shall have all other powers provided in its Articles of Incorporation and its By-Laws.

Section 6. The Declarant/Board of Directors of the Association may employ a professional manager or managerial firm to supervise all the work, labor, services and material required in the operation and maintenance of the Common area and in the discharge of the Declarant/Association's duties.

Section 7. Effect of Non-payment of Assessments; the Personal Obligation of Lien, Remedies of the Declarant/Association. If any assessments are not paid when becoming a lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors, and assigns. Every Purchaser of a Lot shall be required to determine the status of the Lot Assessment at the time of purchase and hereby agrees to have assumed any and all outstanding assessment(s) not paid by the Seller at the time of closing. Any assessment not paid when due shall be delinquent and said assessment shall bear interest from the date which is due at the maximum allowable rate of interest and the Declarant/Association may bring an action at law against the Owner personally obligated to pay the same and/or may record a claim of lien against the property on which the assessment is unpaid, or may pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such assessment such attorneys fees and costs of preparing and filing the claim of lien and the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court together with the costs of the action, and the Declarant/Association shall be entitled to attorneys' fees in connection with any appeal of any such action. The Declarant/Board may, in its sole discretion, waive the imposition of interest as to any delinquent assessment. The Declarant/Board may bring an action at law against the Owner personally obligated to pay any assessments and interest or foreclose the lien created herein in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of deeds of trust. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Declarant/Association, then the Declarant/Association shall be further empowered to execute on that judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any mortgage or deed of trust representing a first lien on such Lot in favor of any bank, savings and loan association, insurance company or similar financial institution for the financing of construction or acquisition of improvements upon such Lot or for the refinancing of such improvements now or hereafter placed upon any Lot, provided that such first mortgage or deed of trust was recorded before the delinquent assessment was due. Sale or transfer of any Lot shall not affect the assessment lien, provided, however, that the sale or transfer of any Lot pursuant to a decree of foreclosure on a deed of trust or mortgage thereon or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or liens arising from assessments thereafter becoming due. Any portion of the Common Areas or Properties dedicated to, and accepted by, a local public authority may be exempt from the assessments created herein in the sole discretion of the Declarant/Board; provided, however, no land or improvements restricted to use as a Lot shall be exempt from such assessments except as otherwise provided for herein.

In addition to the rights of collection of assessments stated in this Section 7, the Owner and all persons acquiring the title to or an interest in a Lot as to which the assessment is delinquent, including, without limitation, persons acquiring title by operation of law and by judicial sales, shall not be entitled to the enjoyment and use of recreational facilities, if any, or to vote upon Association matters until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid and the account of the purchasing Owner are similarly satisfied. It shall be the duty, obligation, and responsibility of the Declarant/Association to enforce payment of all assessments hereunder in a timely fashion.

**Section 8.** Access During Reasonable Hours. For the purpose solely of performing the maintenance authorized by this Article, including without limitation all of the maintenance and work permitted under Section 2 of this Article, the Declarant/Association alone or through its duly authorized agents or employees or independent contractors, shall have the right, to enter upon any Lot at reasonable hours or at any time in case of emergency. Such entry shall not be deemed a trespass.

**Section 9.** Effect on Declarant. Notwithstanding any provision that may be contained to the contrary in the instrument, for as long as the Declarant is the Owner of any Lot in the Properties, the Declarant shall not be liable for any assessments against such Lot, provided that the Declarant funds any deficit in the annual operating expenses of the Association. Declarant may at any time and its sole discretion commence paying such assessments as to Lots that it owns and thereby automatically terminate its obligation to fund any and all deficits of the Association and be due a refund for any payment in excess of its per lot election. The Declarant shall have the right to select its method of payment on an annual basis after being provided an annual budget by the Association. Such budget shall be prepared by the Association assuming the Declarant will pay on a per lot basis although is not obligated to do so under the terms of this Section. 9.

**Section 10.** Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from each and every assessment, charge and lien created herein:

- (a) The grantee(s) in conveyances made for the purposes of granting road, access, ingress, drainage, water, sewer, utility, cable television or security system easements, or other easements for common purposes.
- (b) The Declarant as to any unsubdivided land and/or Units owned by the Declarant. Section 3 of Article V of this Declaration shall not apply to conveyances from the Declarant to any Designated Builder nor to conveyances from any Designated Builder to the Declarant, neither of which conveyances shall be deemed to be a "sale" within the meaning of Section 3 of Article V of this Declaration. Any reconveyance from a Designated Builder to another party (other than the Declarant) shall be deemed to be a "sale" within the meaning of Section 3 of Article V of this Declaration.

## ARTICLE VI - ARCHITECTURAL REVIEW

The Architectural Review Board (ARB) shall be annually appointed by the Declarant for as long as the Class II membership exists. The Board shall consist of at least two (2), but not more than five (5) members. The members do not have to be Owners. At such time as the Class II membership expires, the ARB shall be annually appointed by the Board of Directors of the Association with the Chairman of the ARB being appointed by the President of the Association. A majority of the ARB may take any action said Board is empowered to take, may designate a representative to act for the ARB, and may employ personnel and consultants to act for it in whole or in part. In the event of a vacancy on the ARB by death, disability, resignation by any member the remaining members, in the absence of the Class II members, shall have full authority to designate a successor.

Except for any improvements or construction made by the Declarant on any Lot or upon any other area of the Properties, which shall be exempt from the provisions of this Article, no building, wall, fence, ornamentation, structure, or improvements of any nature shall be erected, placed, or altered on any Lot until plans and specifications showing the same together with the location and landscaping improvements and/or changes as may be required by the ARB have been approved in writing by the ARB. Each of the above referenced items may only be placed and/or changed in accordance with the plans as approved by the ARB. Refusal of approval may be based on any grounds, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said ARB seem sufficient. Any change in the appearance of any building, wall, fence, or other structure or improvements and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The ARB shall, subject only to any provisions of this Declaration to the contrary, hereby be deemed to have the power to establish such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph.

The members of the ARB shall be entitled to reimbursement for expenses incurred by any of them for services rendered subject to the approval of the Chairman of the ARB and the Board of Directors of the Association. The ARB shall act (in writing) on any and all submissions to it within thirty (30) days after receipt of the same and receipt of any required fees as herein provided or else the submission shall be considered approved. Provided however, that no submissions of any nature, whatsoever, shall be considered approved should there exist any delinquency of assessments on the part of the Owner of the Lot on which the plans are submitted. All requests and submissions shall be in such form and contain such information as the ARB may require prior to its being required to act. The ARB may establish a fee to cover the expense of reviewing the plans and related information at the time the plans are submitted for review in order to compensate any consulting professionals, including but not limited to, architects, landscape architects, urban designers, and/or attorneys. The ARB shall adopt guidelines for the review of residence plans and specifications, including landscaping. Those guidelines, if reduced to writing, shall not in any way constitute the sole guidelines for the construction of a residence.

An Owner ruled upon has the right to appeal the decision of the ARB to the Board of Directors of the Association provided that all parties involved comply with the decision of the ARB until the decision of such appeal had been made by the Board of Directors of the Association. Appeals must be legibly written, state the grounds for the appeal and be submitted to the Association or its designee within ten (10) days of the date of notification of the ARB. The Board of Directors shall act upon the appeal by amending, reversing, or confirming the decision of the ARB within thirty (30) days of receipt of appeal petition. The Board of Directors decision shall be by majority vote and any Owner must exhaust this avenue of appeal prior to resorting to a court of law or equity for relief. No Owner, tenant, guest, invitee, or other person shall occupy a residence within the Properties until the residence has passed the final inspection of the ARB or the owner has gained written permission of the ARB that permission to occupy has been granted in advance of, but not in lieu of, their final inspection. A grant of occupancy prior to final inspection may be made by the ARB when, in its sole discretion, the aesthetic nature of the property per the plans and specifications previously approved has been substantially complied with. Such grant of occupancy shall carry the signature of the Chairman of the ARB and shall contain a date of final compliance with the plans and specifications. The Owner of the Lot shall sign the grant of occupancy and the same shall be considered an agreement between the Declarant/Association and the Lot Owner, that the Owner will complete the improvements to the lot on or before the compliance date so specified. This provision shall apply to the initial construction of a residence and not the remodeling thereof. The paint, stain, coating, and any other exterior colors and materials shall be maintained on all buildings by the Owner thereof as that originally approved by the ARB. Any change in exterior color or materials shall be deemed a change requiring approval.

## ARTICLE VII - USE RESTRICTIONS

Section 1. Land Use. All Lots shall be used for residential purposes only. Declarant may maintain sales offices, information centers, models, property management offices, design center offices, and construction offices upon any Lot owned by it and/or upon the Common Area until all Lots to be located on the Properties and any additions thereto have been sold. No Lot may be subdivided or its boundaries changed where the result would be a decrease in the size of any Lot without the prior written consent of the Declarant. In the event that an Owner combines two (2) or more adjoining Lots for the purpose of constructing a single residence thereon, from that date forward, the resulting Lots shall not be subdivided or its boundaries changed so as to result in a decrease in the size of the combined Lot without the written permission of the Declarant. No modular home, mobile home, manufactured home or geodesic dome shall be erected or allowed to remain on any homesite. Once construction of a dwelling has been commenced, it must be completed and ready for occupancy within twelve (12) months. All landscaping plans must be approved by the ARB. All landscaping shall be finished upon completion of the dwelling, weather permitting, and in no event later than sixty (60) days after the date the dwelling is occupied. No detached garage, shed, workshop, pool house or other outbuilding shall be erected, placed or allowed to remain on any Lot. No pool shall be constructed, placed or allowed to remain on any Lot, without express written consent of Declarant/Association.

Section 2. Nuisance. No noxious, illegal, or offensive activities shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood. The determination of noxious, offensive, annoyance and/or nuisance shall be in the sole and uncontrolled discretion of the Declarant/Board of Directors, its agents, or assigns. This section, however, shall not be construed as to grant permission for the Declarant/Association to enter upon any lot or into any dwelling without the permission of the owner except in the case of emergency or as otherwise provided for in this Declaration. Construction in the Properties will only be allowed between the hours of 7:00 am thru 7:00 pm.

**Section 3.** Pets. Owners may keep as pets only companion pets such as birds, domesticated cats, fish, dogs, and other small mammals. No Owner shall keep exotic cats, non-human primates, insects, horses or other farm livestock or zoo type animals on the Property. The maximum amount of pets, per household, shall be four (4). Pets must be on a leash or otherwise restrained when on Common Property or roadways. It shall be the Owner's obligation to safely dispose of waste material from pets. The Declarant/Board of Directors of the Association shall have the right to order the removal of any pet which, in either of their discretion, is considered a nuisance, and the same shall be done without compensation to the Owner. In such event, the Declarant/Board shall give written notice to the pet owner, and the pet shall immediately thereafter be permanently removed from the Property. An unrestrained pet on Common Property or on a Lot of another Owner shall be considered a nuisance. Failure to clean the waste material from a pet shall be deemed a nuisance. No animals will be kept outside on a leash or fastened in any way, unless being walked by an Owner or other individual. No outside kennels for pets or visible pet fences, but not limited to, unless expressly approved in writing by Declarant/Board.

**Section 4.** Gardens. No fruit or vegetable gardens or combination thereof may be planted or the ground prepared for planting without the express written consent of the ARB.

**Section 5.** Temporary Structures. No structure of a temporary nature shall be erected, placed, or allowed to remain on any lot unless and until written permission for the same has been granted by the ARB, or its designated agent or representative.

**Section 6.** Use of Common Area. The Common Area shall not be used in any manner except as shall be approved or specifically permitted by the Declarant/Association.

**Section 7.** Access to Lot. In addition to easements granted elsewhere, the Declarant/Association, its agents or employees shall have access to all Lots from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Area. The Declarant/Association or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Area, that Lot, or another Lot.

**Section 8.** Recreational Vehicles, Boats, Trailers, Commercial Vehicles. No campers, tents, recreational vehicles, trailers, boats, motorbikes, motorcycles, tractors, or other vehicles designated and/or designed as commercial type vehicles either by signs thereon or licensing may be parked or kept within the properties unless parked within an enclosed garage. If a question arises regarding the applicability of this Section 8 to a particular vehicle, the determination of whether that vehicle is subject to this provision shall be that of the Declarant/Board of Directors of the Association.

**Section 9.** Signs. No signs or other advertising devices shall be displayed upon any Lot, Common Area, or any structure thereon without the prior written permission of the Declarant/Association. Declarant, however, may post "For Sale" or other marketing related signs on the Properties until such time as all Lots owned by Declarant have been sold. Except for signs placed by the Declarant, any sign placed with the permission of the Declarant/Association must be in a form and contain wording or verbiage as approved by the Declarant/Association or its designee. Any sign or advertising device placed upon a Lot or the Common Areas without the prior written permission of the Declarant/Association shall be subject to removal by the Declarant/Association without prior notification to the Owner thereof. Any expense incurred by the Declarant/Association for removal shall be that of the Owner and shall, if not paid, constitute a lien against the Owner thereof.

**Section 10.** Mailboxes. Lot owner must purchase, install and use a mailbox and newspaper receptacle designed by the Developer. No deviation from the mailbox and newspaper receptacle designed by the Developer shall be permitted. Placement of mailboxes on Lot must also be pre-approved by Declarant/ARB.

**Section 11.** Garbage Disposal. At the time of construction/occupancy of a residence all garbage and debris from a Lot or residence thereon shall be safely stored within the garage of each residence until properly disposed. No trash, ashes, garbage, or other refuse shall be accumulated, dumped, stored, or allowed to remain on any lot either prior to or after the construction of a residence. No burning of garbage shall be allowed on the Properties. No noxious or offensive odors shall be allowed exit from any garage area where garbage is stored. If the public health authorities, other public agency, or the Declarant/Association shall require a specific method of garbage disposal, nothing herein contained shall prevent the compliance by Owners and such rules and regulations. Only ARB approved garbage receptacles will be allowed street-side and visible on day of trash pickup. The garbage receptacle will only be allowed to remain street-side a maximum of five (5) hours after collection has occurred.

**Section 12.** Antennae and Satellite Dishes. No exterior television antennae, radio antennae, or receptacle devices, including but not limited to "satellite dishes", shall be permitted upon any Lot without the express written consent of the ARB. Large dishes are not allowed, eighteen (18) inch dishes are allowed with ARB approval, but must not be visible from the road. Site of any such device, on any Lot, must have ARB approval. The Declarant, its successors and assigns, may locate such facilities upon the Common Areas.

**Section 13.** Regulations. Reasonable regulations governing the use of the Common Areas shall be promulgated by the Declarant and may be amended from time-to-time by the Declarant/Board of Directors of the Association.

**Section 14.** Fences. No chain link fences shall be permitted on any Lot or any part thereof. No fence, wall, or similar structure of any kind shall be located upon any lot or any part thereof without the prior written permission of the ARB, and so long as such does not extend beyond the rear corners of residence towards the street.

**Section 15.** Vehicle Storage. No inoperative vehicle, un-licensed, or vehicle in a state of noticeable disrepair (stripped, partially wrecked, junked, etc.) Shall be kept or stored upon any Lot or Common Area nor may any repair work be done to any motor vehicle, boat, trailer, or likewise upon any Lot or Common Area except for cleaning.

**Section 16.** Parking. Each Owner shall provide paved space for off-street parking. There shall be no parking upon any unpaved area. No parking shall be allowed upon the Common Area or roadways except as may be provided by the Declarant/Association.

**Section 17.** Water and Sewer Systems. No individual water system may be installed upon any Lot with the exception of lawn irrigation systems. Lawn irrigation water pump and the approved pump cover will be allowed upon prior written approval by Declarant/ARB. No pump covers are approved for use except one designated by ARB. Placement of pump on Lot, must have prior written consent of Declarant/ARB.

**Section 18.** Lighting. No mercury vapor or similar lighting of the kind used by public authorities for street type lighting shall be permitted on any lot without the prior written consent of the ARB, which may decline permission in its sole discretion and may, but shall not be obligated to, consider the feelings of any adjoining Lot Owners.

**Section 19.** Trees. Except as approved by the ARB in writing, no tree greater than four (4) inches in diameter shall be cut, removed, or intentionally damaged unless such tree interferes with the construction of improvements, is dead or diseased, or present a hazard to persons and/or property.

**Section 20.** Erosion Control. Each Owner shall be responsible for protecting such Owner's lot against soil erosion and/or sediment run-off onto other lots, Common Areas, or any roadway. Each Lot Owner shall take actions as necessary to prevent erosion during construction including, but not limited to, silt fencing or similar device. Erosion control devices must be in a form and manner approved by the ARB. Any erosion control devices installed upon any lot shall be removed prior to occupancy of said residence. Therefore, landscaping plans for each lot shall take into account that erosion control devices are temporary in nature and plan accordingly landscaping that will not contribute to lot erosion of that Lot or adjacent areas.

**Section 21. Tenants, Lessees, Renters, Boarders.** No residence shall be rented to or leased by any person except those residences rented by an Owner. No residence may be rented or leased for a period of less than twelve (12) consecutive months. It is the intention of this Section 21 to prohibit subletting of rooms within a residence or the occupancy of less than the entire residence by boarders or tenants that occupy via monetary compensation to the Owner, any portion of a residence less than the entire residence, including any garage or storage areas. Any Owner leasing his residence shall submit a signed statement to the Declarant/Association certifying the name(s) of the lessee, the mailing address of the lessee, and the beginning and ending dates of the lease within thirty (30) days of occupancy of the lessee or within thirty (30) days of execution of the lease, whichever shall come first. No renting or leasing of a Lot on which there is no residence shall be permitted. It shall be the responsibility of each Owner leasing a residence to provide the lessee therein a copy of all rules and regulations of the Association as well as a copy of this Declaration of Restrictions and Protective Covenants and any amendments thereof. Upon such Owner's failure to do so the Declarant/Association, at its sole option upon providing fifteen (15) days written notice to the Owner at such owner's last known address, may provide a copy of said materials to the lessee and may charge the owner for the preparation and delivery thereof. Fines levied against a tenant for violations of this Declaration or rules or regulations of the Declarant/Association shall be due and payable from the Owner and shall be a lien on the Owner's Lot if not paid to the Declarant/Association in a timely manner.

**Section 22. Minimum Living Area Requirements.** Every residence shall contain a minimum of one thousand six hundred (1,600) square feet of fully enclosed heated and cooled floor area devoted to living purposes. This area shall be exclusive of roofed or unroofed porches, terraces, decks, and/or garages. In all residences more than one story in height the first story shall contain a minimum of one thousand (1,000) square feet of heated and cooled floor area devoted to living purposes. In addition to the aforementioned minimum area requirements each residence shall contain an enclosed garage sufficient to contain at least two (2) large automobiles in their entirety. The ARB shall have the authority to determine minimum and/or maximum garage dimensions, should the same become necessary, in its sole discretion. All garage doors used must be of an architectural series, and approved by the ARB. Garages shall at all times be used as a garage and not enclosed as living space. The garage door(s) shall be in a down or closed position at all times, except when a motor vehicle is being placed inside or taken outside the garage.

**Section 23. Outdoor Elements.** No clothes lines, clothes poles, or similar equipment shall be allowed on any Lot. Any outdoor recreational equipment shall be approved by the ARB prior to placement. Any pumps, storage tanks such as propane or similar devices shall be located within the garage of the residence or underground in accord with government regulation. All utility services shall be contained underground. Ornamental or functional exterior features (including flags, planters, statues, lawn ornaments, bird feeders and bird baths), any of which ornamental or functional exterior features may be prohibited by the ARB.

**Section 24. Access.** There shall be no access allowed to any Lot within the Properties except that access provided by designated roadways within the Properties.

**Section 25. Prohibition Against "Time Sharing" Use.** No Lot or structure shall be "time shared", nor shall any Lot or structure be owned, used or operated in violation of the North Carolina Time Share Act, N.C.G.S. Section 93A-39 et. seq. as the same may be amended from time to time, nor shall any Lot or structure be owned, used or operated so as to constitute such Lot or structure as a "time sharing unit" required to be registered within the meaning of such statutory provisions.

**Section 26. Stormwater Management:**

- (a) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 050501, as issued by the Division of Water Quality under NCAC 2H.1000.
- (b) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management permit.
- (c) These covenants are to run with the land and be binding on all persons and parties claiming under them.
- (d) The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.
- (e) Alteration of the drainage as shown on the approved plans may not take place without the concurrence of the Division of Water Quality.
- (f) The maximum built-upon area per lot is three thousand two hundred eight-five (3,285) square feet for Lots 1-11, 35-66, and 69-86; and three thousand three hundred fifty-eight (3,358) square feet for Lots 12-31, 32-34, 67, 68, 87-115, and 116-198. This allotted amount includes any built-upon area constructed within the Lot property boundaries, and that portion of the right-of-way between the front Lot line and the edge of the pavement. Built-upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised and open decking.
- (g) Filling in or piping of any vegetative conveyances (ditches, swales, etc.) Associated with the development except for average driveway crossings, is strictly prohibited by any persons.
- (h) Each lot will maintain a thirty (30) foot wide vegetated buffer between all impervious areas and surface waters.
- (i) All roof drains shall terminate at least thirty (30) feet from the mean high water mark.

**Section 27. Exterior Appearance of the Dwellings.** Foundation height shall not be lower than thirty (30) inches at its lowest point, under heated living space. Heating and cooling units shall be enclosed by a continuing wall of the same foundation material as the house, thereby prohibiting visibility of the unit. Unenclosed garages or carports may not be utilized. No foil or other reflective materials shall be used on any window for sunscreens, blinds, shades, or other purpose, nor shall any window-mounted heating or air-conditioning units be permitted. All blinds, curtains and other window treatments must conform to the regulations established by the ARB.

**Section 28. Privacy.** The dwelling shall be constructed on the Lot in accordance with the guidelines set by the ARB. The single family residential building, including garage, shall be the only structure located on the Lot.

**Section 29. Bicycles, tri-cycles, skateboards, and other recreational items,** to also include but not limited to, children's toys, shall not be left outside, but must be stored inside when not in use. All playground equipment on any Lot must be approved by the ARB and must be located behind the rear line of the dwelling.

## ARTICLE VIII - EASEMENTS AND SETBACKS

**Section 1.** Easements for the installation and maintenance of driveway, walkway, parking area, water line, gas line, telephone, cable television, electric power line, sanitary and/or storm sewer drainage facilities, surface water drainage, and for other utility installations are reserved as outlined on the recorded plat and/or may be granted by the Declarant, its successors and assigns over any property owned by either of them, and the Declarant/Association may reserve and grant additional easements for the installation and maintenance of the aforementioned utilities, or other necessary purposes, over and across any Common Area. Within any such easements above provided for, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation of said utilities or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition the Declarant/Association shall have the continuing right (but not obligation) and easement to maintain all sewer and water lines located on any Lot as well as to direct the flow of surface water drainage along easement areas.

**Section 2.** There is also reserved a ten (10) foot landscape easement along Tar Landing Road and an easement for entrance signs, etc., which easements affect Lots 1-18 and 51, all as set forth on the plat of subdivision.

**Section 3.** Declarant further reserves unto itself, the Association, their respective successors and assigns, a perpetual alienable and releasable easement and right on, over, and under the ground upon any Lot to erect and/or maintain, in any manner, all items as outlined by Section 1 above. Said easements shall be ten (10) feet along either side of all front and rear lot lines and five (5) feet along either side of all side lot lines. Any entry upon a Lot or use of these easement areas, within these granted easement areas, by the Declarant or the Association, their successors, duly appointed representatives, and/or assigns, shall not be deemed a trespass.

**Section 4.** Building Setbacks. Building setback areas, over which no residence or other building or above-ground structure may be erected, shall be established by the Declarant for each Lot. Such setbacks shall be evidenced on a plat which is duly recorded in the appropriate governmental office in Brunswick County, North Carolina. Declarant shall have the right and privilege to modify any and/or all of the building setbacks on any and/or all of the Lots within the subdivision to the jurisdiction of the appropriate governmental authorities. Each Residence or other structure which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback requirements of any applicable zoning ordinances.

## ARTICLE IX - INSURANCE AND CASUALTY LOSSES

**Section 1.** The Declarant/Association's Board of Directors ("the Board"), or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements to or on the Common Area. This insurance, if practical, shall be in an amount sufficient to cover one hundred (100) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard within the Common Areas.

At the discretion of the Declarant/Board, it may also obtain a public liability policy covering the Common Area, the Association and its members for all damage or injury caused by the negligence of the Association or any of its Members or agents. If reasonably available, at the discretion of the Declarant/Board, the public liability policy shall have at least a One Million Dollar (1,000,000.00) single person limit with respect to bodily injury and property damage, a Three Million (3,000,000.00) limit per occurrence, and a One Million Dollar (1,000,000.00) minimum property damage limit.

At the discretion of the Board, it may also obtain a policy protecting its officers and directors from liability and every director and officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him/her in connection with any proceeding to which he/she may be a party, or in which he/she may become involved, by reason of his/her being or having been a director or officer of the Association, whether or not he/she is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of any and all other rights to which such director or officer may be entitled.

## ARTICLE X - NO PARTITION

Except as permitted in this Declaration or any amendment hereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the properties or any part thereof seek any such judicial partition, unless the Properties have been removed from the provisions of this Declaration. This article shall not be construed to prohibit the Board of Directors from acquiring and/or disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

## ARTICLE XI - RULES AND REGULATIONS

Section 1. Compliance by Owners. By virtue of taking title to a Lot subject to these restrictions and covenants, every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Association.

Section 2. Enforcement. Failure of an Owner to comply with such restrictions, covenants, and/or rules and regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or a combination thereof. Failure of the Declarant/Association to enforce any restriction, covenant, and/or rules and regulations at any point in time shall not be deemed a waiver of the right of the Declarant/Association to do so thereafter.

## ARTICLE XII - DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the office of the Register of Deeds of Brunswick County, North Carolina.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as the sale of Lots shall continue by the Declarant or the Declarant's assigns, it shall be expressly permissible for the Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned (or leased) by the Declarant, if any, and any which may be owned by the Association.

As long as the Declarant continues to have rights under this Article, no person or entity shall record any declaration of restrictions and protective covenants or similar instruments affecting any portion of the Properties without the Declarant's review and written consent thereto, and any attempted recordation without such compliance herewith shall result in such declaration or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

In the event the Owner of a Property, within the subdivision, desires to sell any vacant lot within the subdivision, then said Property shall be offered for sale to the Declarant at the same price at which the highest bona fide offer has been made for the Property. The Declarant shall have fifteen (15) days within receipt of such offer by the Property Owner within which to exercise its option to purchase said property at the offered price, then the Property Owner shall have the right to sell said subject Property, however, to all covenants, conditions and restrictions herein contained, at a price not lower than that at which it was offered to the Declarant.

This Article shall not be amended nor deleted by amendment to these restrictions and protective covenants except by the Declarant; provided, however, the rights contained in this Article shall terminate upon the expiration of the initial period of this Declaration.

### ARTICLE XIII - GENERAL PROVISIONS

**Section 1.** Severability. Invalidation of any of these covenants or restrictions, or any section thereof, or any rule or regulation the Declarant/Association by judgment or a court or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 2.** Term. The covenants and restrictions of this Declaration shall run with and bind the land for an initial term of thirty (30) years from the date of this Declaration after which time they shall automatically be extended for successive periods of ten (10) years.

**Section 3.** Amendment. This Declaration may be amended by an instrument signed by the Owners of not less than sixty-seven (67) percent of the Lots, or as otherwise provided for in this Section 3.

The Declarant, without the consent or approval of another, shall have the exclusive right and privilege to amend this Declaration to conform to the requirements of law or governmental agency having legal jurisdiction over the Property or to qualify the property or any Lots and/or improvements thereon for mortgage or similar loans from any source whatsoever. A letter from an official of any such governmental or lending agency requiring an amendment as condition of approval, or suggesting an amendment, shall be sufficient evidence of the approval of such amendment of such corporation of agency and shall permit the Declarant to amend in accord with such letter.

No amendment shall take effect until it is duly recorded in the office of the Register of Deeds for Brunswick County or similar governmental office of public records.

**Section 4.** Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Declarant/Association unless approved by not less than sixty-seven (67) percent of the members of the Board of Directors at a regular meeting or at a special meeting duly called therefor. This section, however shall not apply to (a) actions brought by the Declarant/Board to enforce the provisions of this Declaration, including, without limitation, the foreclosure of liens, (b) the imposition and collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) defenses, counterclaims or third-party claims brought by the Declarant/Association in proceedings instituted against the Declarant/Association.

**Section 5.** Pool. The pool and cabana will be constructed at the close of twenty-five (25) new lot sales, or two (2) years from the date of this Declaration, whichever comes first. This section does not apply to resell of lots.

Section 6. Amenity Center. The amenity center will be constructed at the close of seventy-five (75) new lot sales, or three (3) years from the date of this Declaration, whichever comes first. This section does not apply to resell of lots.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed by its Manager/Member the day and year first above written.

HOLMES DEVELOPMENT & REALTY, L.L.C.  
A Limited Liability Company

By: [Signature]  
Manager/Member

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

ACKNOWLEDGMENT

I, Parola J. Hewitt, a Notary Public, do hereby certify that Hubert L. Holmes, Manager/Member of Holmes Development & Realty, L.L.C., a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and notarial seal, this the 2 day of June, 2005.

[Signature] (SEAL)  
Notary Public  
My Commission Expires: 10-16-08

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

Re: Register of Deeds at Brunswick County

MORTGAGEE CONSENT

COASTAL FEDERAL BANK beneficiary under a Deed of Trust dated March 17, 2005, and recorded on March 18, 2005, in the Public Records at Book 2108, Page 959, (as amended from time to time, the "Security Deed"), for itself and its successors and assigns, consents to recordation of the foregoing Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Rutledge (the "Declaration"), and Coastal Federal Bank agrees and acknowledges that, upon recordation of the Declaration, the restrictive covenants contained in the Declaration will run with the land which serves as security for the debt evidenced by the Security Deed and further agrees that any foreclosure or enforcement of any other remedy available to Coastal Federal Bank under the Security Deed will not render void or otherwise impair the validity of the Declaration. Dated 6/3, 2005.

COASTAL FEDERAL BANK

[Signature]

Signature

Glenn Humbert

Print

Vice President

Title

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

I, Ramela J. Hewitt, certify that Glenn Humbert personally came before me this day and acknowledge that he/she is Vice President (title), of Coastal Federal Bank, a corporation and that he/she as Vice President (title), being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal or stamp, this the 3 day of June, 2005.

[Signature]

Notary Public

My Commission Expires: 10-16-08

## EXHIBIT "A"

Tract 1: BEING all of Lots 5A and 5B of Dionaea Subdivision as shown on that map survey by Jan K. Dale, RLS Dated July 17, 1986 and attached as Exhibit "A" to that deed recorded at Deed Book 657, Page 952 of the Brunswick County Registry.

Tract 2: BEING all of Tract A containing 6.50 acres and all of Tract B containing .82 acres as shown on a map entitled "Survey for Holmes Development & Realty, L.L.C., of Lots 5, 6, 7 and a Portion of Lot 4, Section 11, High Meadows Estates MC 15-29", recorded in Map Book 31, at Page 22, Brunswick County Register of Deeds.

Tract 3: BEING all of Lot 60 of Tar Landing Heights, according to a map of the same prepared by V.W. Marlevich in October and November 1959, which said map is duly recorded in Map Book 6 at Page 28 in the Office of the Register of Deeds of Brunswick County, North Carolina.

Tract 4: BEING all of Lot 62 of Tar Landing Heights, according to a map of the same prepared by V.W. Marlevich in October and November 1959, which said map is duly recorded in Map Book 6 at Page 28 in the Office of the Register of Deeds of Brunswick County, North Carolina.

Tract 5: BEING all of Parcel "B" as shown on recorded Plat Book M at Page 140 of the Brunswick County Registry containing 63.92 acres more or less. Less and excepting all property previously conveyed by the grantor from this tract.

Tract 6: BEING all of Lots 25 through 39 of Tar Landing Subdivision as shown on a plat recorded in Map Cabinet 6 at Page 28, of the Brunswick County Register of Deeds.

Tract 7: BEGINNING at a point where Sam's Branch crosses the Old Simon Hewett Road, runs thence with the center of the old Simon Hewett Road and Corbett Package Company's line eastwardly 1300 feet more or less to the run of a small branch; thence down and with the center of said branch 1100 feet more or less to the forks of said branch, which is the northeastern corner of a 102 acre tract of land conveyed by Hal Martin to S. Paul Meadows; thence with the northern line of said tract and down the run of said branch 1600 feet more or less to Sam' Branch; thence up and with the run of Sam's Branch 1400 feet more or less to the point of beginning, containing 26 acres more or less.

