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PROTECTIVE COVENANTS OF THE ARBORS AT WESTGATE

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

THESE PROTECTIVE COVENANTS, made this the 4 day of April, 2003, by Brunswick Land Holdings, LLC, a North Carolina limited liability company, its successors and assigns, whether one or more, hereinafter referred to as "DECLARANT".

WITNESSETH:

WHEREAS, DECLARANT is the owner of certain real property in Brunswick County, North Carolina, which is more particularly described as THE ARBORS AT WESTGATE in that map recorded in Map Cabinet 27, Pages 401, 402 and 403 of the Brunswick County Registry.

NOW, THEREFORE, DECLARANT hereby declares that all of the properties described above shall be held, sold and conveyed subject to The Planned Community Act, set forth in Chapter 47F of the North Carolina General Statutes and to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1

Definitions

Section 1. Articles shall mean the Articles of Incorporation of THE ARBORS AT WESTGATE ASSOCIATION, INC.

Section 2. Association shall be used to mean and refer to THE ARBORS AT WESTGATE ASSOCIATION, INC., a private non-profit corporation formed or to be formed by the DECLARANT primarily as a Homeowners' Association for the Lot Owners in THE ARBORS AT WESTGATE, all of whom shall be Members of the Association.

Section 3. Bylaws means the Bylaws of THE ARBORS AT WESTGATE ASSOCIATION, INC.

Section 4. Common Elements shall mean all real property and facilities owned by the Association for the common use and enjoyment of the Owners.

Section 5. Common Expenses means and includes actual and estimated expenses of maintaining and operating the Common Elements, including Stormwater Retention Facilities, Conservation and Buffer Areas and landscaped areas within road right of ways and operating the Association for general purposes, including any insurance, reasonable reserve and utilities, as may be found necessary and appropriate by the Executive Board pursuant to these

Protective Covenants, the Bylaws and the Articles of Incorporation of the Association, including the following:

- a. All sums lawfully assessed by the Association against its members;
- b. Expenses of administration, maintenance, repair or replacement of the Common Elements and the stormwater system;
- c. Expenses declared to be Common Expenses by the provisions of these Protective Covenants or the Bylaws;
- d. Expenses agreed by the members to be Common Expenses of the Association; and
- e. Any ad valorem taxes and public assessments levied against the Common Elements.

Section 6. DECLARANT shall be and refer to Brunswick Land Holdings, LLC, a North Carolina limited liability company, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the DECLARANT for the purpose of development.

Section 7. Executive Board shall be the elected Executive Board governing the Association and managing the affairs of the Association.

Section 8. Limited Common Elements shall mean that certain real property and facilities intended for the exclusive use or primary benefit of one or more but less than all of the Lots as shown and designated on any maps of sections of the Subdivision which are or may be recorded in the Brunswick County Registry or which may be designated in any amendment to the Protective Covenants annexing additional properties.

Section 9. Limited Common Expenses shall mean and include actual and estimated expenses of maintaining, operating, repairing, and replacing the Limited Common Elements, including insurance, reasonable reserves and utilities as may be found necessary and appropriate by the Executive Board pursuant to these Protective Covenants, the Bylaws and the Articles of Incorporation of the Association for the benefit of the Limited Common Elements."

Section 10. Lot shall mean and refer to any of the numbered Lots as shown on the plat of THE ARBORS AT WESTGATE recorded as aforesaid, in the Brunswick County Registry together with the single family structure or dwelling, and any other numbered lots which may be shown on maps which may be recorded in the future showing additional sections of THE ARBORS AT WESTGATE and which are annexed into the Subdivision in accordance with Article 3, Section 1 and Article 10.

Section 11. Member shall mean and refer to each and every person and entity who or which owns a Lot in THE ARBORS AT WESTGATE SUBDIVISION.

Section 12. Misconduct shall have the meaning set forth in Chapter 47F of the North Carolina General Statutes and in addition shall also include violations of Article 6, Section 1c.; Article 8; Article 9, Sections 6, 7 and 8b.; and Article 11 herein.

Section 13. Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. Person shall mean and refer to an individual, corporation, limited liability company or partnership, partnership or limited partnership, association, trustee, or other legal entity.

Section 15. Properties shall mean and refer to that certain real property which is described as THE ARBORS AT WESTGATE in that map recorded in Map Cabinet 27, Pages

401, 402 and 403 of the Brunswick County Registry and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 16. Protective Covenants shall mean this instrument as it may be from time to time amended or supplemented.

Section 17. Subdivision means all of that real property known collectively as THE ARBORS AT WESTGATE as shown on that map recorded in Map Cabinet 27, Pages 401, 402 and 403, of the Brunswick County Registry and all maps which may be recorded in the future showing additional sections of THE ARBORS AT WESTGATE and which are annexed into the Subdivision in accordance with Article 3, Section 1 and Article 10.

## ARTICLE 2

### Property Rights

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements and every Owner whose Lot has assigned to it a Limited Common Elements shall have a right and easement of enjoyment in and to the Limited Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right to the Association to limit the number of guests of Members;
- b. The right of the Association to suspend the voting rights and right to use the Common Elements and the Limited Common Elements and the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations in accordance with that procedure set forth in Article 11;
- c. The right of the Association to dedicate or transfer all or part of the Common Elements and the Limited Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association;
- d. The right of the Association to formulate, publish and enforce rules and regulations for the use and enjoyment of the Common Elements and the Limited Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements and the Limited Common Elements and the right of the Association in accordance with the procedure set forth in Article 4 to establish penalties for any infractions thereof.
- e. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and the Limited Common Elements and carrying out its maintenance responsibilities and in aid thereof to mortgage said property, and the rights of such mortgages in said properties shall be subordinate to the rights of the Lot Owners hereunder.
- f. Easements as provided in Article 4 hereof.

Section 2. Delegation of Use. Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Elements and, if applicable, the Limited Common Elements to the Members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Common Elements. The Common Elements cannot be mortgaged or conveyed without the consent of at least eighty percent (80%) of the Owners, except that

conveyance of certain portions of the common areas to correct alignment of right of ways, permits or other development matters may be accomplished by action of the Board of Directors of the Association if permitted by the Planned Community Act.

### ARTICLE 3

#### DECLARANT'S Rights

Section 1. The DECLARANT hereby reserves the right to annex and subject to these restrictions the real property which is located within a 1 mile radius of, and is adjacent to and contiguous with that property described in Map Cabinet 27, Pages 401, 402 and 403, of the Brunswick County Registry, in order to extend the scheme of these Protective Covenants to other property to be developed and thereby bring such additional Properties within the jurisdiction of the Association. Each additional parcel or tract of land, with the improvements thereon, or to be placed thereon, which is subject to these Protective Covenants shall be designated consecutively as "Section 2", "Section 3", and such other similar designations for any additional phases added.

Section 2. The rights reserved by DECLARANT in Section 1 and all annexed Sections include the right to change, alter or designate Lot(s), roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment of the DECLARANT, be necessary or desirable. The rights reserved in this Section specifically include the right of DECLARANT to redesignate, change, or alter any platted Lot(s) into road(s).

### ARTICLE 4

#### Easements

Section 1. Easements are reserved as necessary in the Common Elements and the Limited Common Elements for installation and maintenance of underground utilities, drainage facilities and signage.

Section 2. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, shall have a perpetual easement over and upon the Common Elements within the Subdivision for each and every purpose or use to which such Common Elements were intended as determined by their type, or for which such Common Elements generally are used, including, but not limited to, easement of access, maintenance, repair or replacement of the Common Elements. Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Subdivision, whether or not specifically included in a deed thereto. Every Owner of a Lot within the Subdivision which is assigned to a Limited Common Elements, as an appurtenance to such Lot, shall have a perpetual easement over and upon such Limited Common Elements for each and every purpose or use to which such Limited Common Elements is intended by its type, or for which such Limited Common Elements is generally used, including, but not limited to, easement of access, maintenance, repair or replacement of such Limited Common Elements. Such easements shall be appurtenant to and shall pass with the title to every Lot assigned to such Limited Common Elements, whether or not specifically included in the deed thereto.

Section 3. The Association hereinafter may grant easements for utility purposes for the benefit of the Subdivision and the Lots now or hereafter located thereon, over, under, along and through the Common Elements and the Limited Common Elements. Provided, however that no such grant of easement shall have a material adverse effect on the use, enjoyment or value of any Lot.

Section 4. Any Owner may delegate, in accordance with the rules and regulations, his right of enjoyment to the Common Elements and, if applicable, to the Limited Common Elements, to the members of his family, his tenants, and contract purchasers who reside on the property.

Section 5. Easements and rights of way over and upon the rear, front and side ten (10) feet of each Lot for drainage and the installation and maintenance of utilities and services are reserved to DECLARANT and its successors and assigns for such purposes as DECLARANT may

deem incident and appropriate to its overall development plan. The easements and right of way areas reserved by DECLARANT on each Lot pursuant hereto shall be maintained continuously by the Owner, but no structures or plantings or other material shall be placed or permitted to remain upon such 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 problems. Improvements within such areas also shall be maintained by the respective Owner except those for which a public authority or utility company is responsible. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary in the opinion of the DECLARANT to provide an economical and safe installation. The DECLARANT shall have no maintenance responsibilities for such easement areas.

Section 6. Every Owner shall have a right and easement of enjoyment in and to any and all other Common Elements which are owned or leased by the Association for the enjoyment of the Owners; this right and easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot.

Section 7. The rights reserved by DECLARANT in Article 3 and all annexed Sections include the right to change, alter or designate Lots, roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment of the DECLARANT, be necessary or desirable. Except as allowed in Article 3, the DECLARANT shall have no right to change, alter or redesignate the character of the use of the Lots within the Subdivision.

Section 8. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the Lots, Common Elements and Limited Common Elements in the performance of their duties.

Section 9. The real property in this Subdivision is subject to a contract with Brunswick Electric Membership Corporation for the installation of underground electrical utilities which may require an initial contribution and/or the installation of street lighting, which will subject each Owner to a continuing monthly payment to Brunswick Electric Membership Corporation.

Section 10. An easement is hereby established over all Lots, Common Elements and Limited Common Elements for the benefit of applicable governmental agencies for the setting, removing and reading of water meters, maintaining and replacing water, drainage and drainage facilities, fire fighting, law enforcement, garbage collection and the delivering of mail.

Section 11. An exclusive easement is hereby established in favor of DECLARANT over all Common Elements and Limited Common Elements for access to adjacent properties for the purposes of future development and the installation of streets and public utilities, and require development facilities.

Section 12. DECLARANT reserves the right to grant an easement for ingress and egress to adjoining property owners over the roads of The Arbors at Westgate Subdivision.

Section 13. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on all undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the benefit of and be binding on the undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement 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 these Protective Covenants.

ARTICLE 5  
Association

Section 1. Purpose An Association named THE ARBORS AT WESTGATE ASSOCIATION, INC. has been or will be formed pursuant to the requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina. Its purposes are to own, manage, maintain and operate the Common Elements and facilities located upon the Common Elements, and Limited Common Elements and facilities located upon the Limited Common Elements, Conservation, Buffer Areas, areas with similar designations and landscaped areas within road right of ways; the stormwater runoff system, sign easements areas, and fences or other property maintained by the Association to enforce the Protective Covenants contained herein, and to make and enforce rules and regulations governing the Owners' use and occupation of Lots.

Section 2. Membership. Every person who is record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of the Association. Ownership of such interest shall be the sole qualification for such membership; there shall be only one vote per Lot in such Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The Executive Board may make reasonable rules regarding proof of ownership.

Section 3. Voting Rights. The Association shall have two classes of voting memberships.

- a. Class "A". Class A Members shall be all Owners with the exception of the DECLARANT and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. If only one of the multiple owners of a Lot is present at a meeting of the Association, the Owner who is present is entitled to cast all the votes allocated to that Lot. If more than one of the multiple owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners. Majority agreement is conclusively presumed if any one of the multiple owners casts the votes allocated to that Lot without protest being made to the person presiding over the meeting by any of the other Owners of the Lot.
- b. Class "B". Class B Member(s) shall be the DECLARANT 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 on the happening of either of the following events, whichever occurs earlier:
  - (1) When the DECLARANT owns twenty-five percent (25%) or less of the planned residential lots in the subdivision, including any property which may be annexed to the subdivision, or
  - (2) On December 31, 2013.

Section 4. Only those Lot Owners subject to assessments under Article 6 Section 1.c.(1) or (2) shall vote on issues affecting such assessments or property subject to such assessments. The number of votes required on any issue shall be the same as required for comparable votes on issues affecting general assessments or Common Elements.

Section 5. The DECLARANT shall have the right to appoint and remove the members and officers of the Executive Board until (i) December 31, 2013, or (ii) the DECLARANT turns control of the Association over to the Class A Members; or (iii) DECLARANT owns twenty-five percent (25%) or less of the planned residential lots in the subdivision, whichever first occurs.

Section 6. The Association shall have the following powers:

- a. Adopt and amend bylaws and rules and regulations;
- b. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from Lot Owners;
- c. Hire and discharge managing agents and other employees, agents, and independent contractors;
- d. Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community.
- e. Make contracts and incur liabilities;
- f. Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- g. Cause additional improvements to be made as a part of the Common Elements;
- h. Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to applicable law;
- i. Grant easements, leases, licenses, and concessions through or over the Common Elements;
- j. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Lot Owners;
- k. Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of 30 days or longer;
- l. Impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to lots) for reasonable periods for violations of the Protective Covenants, Bylaws, and Rules and Regulations of the Association;
- m. Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to these Protective Covenants or statements of unpaid assessments;
- n. Provide for the indemnification of and maintain liability insurance for its officers, Executive Board, directors, employees and agents;
- o. Assign its right to future income, including the right to receive common expense assessments;
- p. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and
- q. Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 7. Common Elements. The Common Elements and Limited Common Elements may be mortgaged or conveyed as required or permitted by law.

Section 8. Management and Administration. The management and administration of the Common Elements and Limited Common Elements of the Subdivision and

the Association shall be the sole right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of these Protective Covenants, the Articles of Incorporation and Bylaws of the Association, but may be delegated or contracted to manager(s) or a management service.

Section 9. Assignment to Association. All water, sewer, land use, stormwater system, and utility permits, agreements and easements between DECLARANT and any municipal or governmental agency or department or public or private utility company shall be assumed by the Association upon the assignment of all such permits, agreements and easements to the Association by DECLARANT. The Association shall thereafter be responsible for and assume all duties, obligations, and rights and privileges of DECLARANT under such permits, agreements and easements, including all maintenance responsibilities.

## ARTICLE 6

### Covenants for Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The DECLARANT, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. General assessments or charges for Common Expenses, and
- b. Special assessments for capital improvements, or special assessments as established by the Executive Board, and
- c. Individual assessments against a specific Lot or Lots or Property, as follows: (1) for the payment of Limited Common Expenses associated with the maintenance, repair, replacement of a Limited Common Elements as defined in ARTICLE 1 herein against the Lot or Lots to which that Limited Common Elements is assigned; or (2) any common expense or portion thereof benefiting fewer than all of the Lots; or (3) to cover the costs incurred in bringing the Lot or Common Elements or Limited Common Elements into compliance with the terms of these Protective Covenants, the Articles, Bylaws or Rules and Regulations of the Association caused by the failure of Owner, or the Owner's agents, lessees, invitees, guests, or invitees to comply with such provisions, including, without limitation, any acts of negligence or Misconduct. The Association, through its Executive Board, may perform such required tasks or remedy such matter, or assess a fine for such failure to comply and may levy the cost of such fine, performance, or remedy against the Owner(s) and the Owners' Lot or property as an individual assessment. Individual Assessment levied under (1) and (2) herein shall be equal as to all Lots subject to such assessment.

The general, special and individual assessments, together with fees, charges, late charges, fines, other charges, permitted hereunder or under Chapter 47F of the North Carolina General Statutes, interest, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to any successors in title unless specifically assumed by them.

PROVIDED, the DECLARANT shall not pay the general assessment for any of its unsold Lots in THE ARBORS AT WESTGATE. The DECLARANT, however, shall until such time as it no longer control the Association Board of Directors or, in the exercise of its sole discretion pays assessments on unsold lots, pay the difference between the amount of assessment collected on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvements and maintenance of the Common Elements and Limited Common Elements and to pay the taxes and other municipal charges or fees of the Common Elements and Limited Common Elements.

Section 3. Initial General Assessment. The initial general assessment, due and payable to the Association, shall be prorated and paid at the time of closing of the purchase of a Lot by an Owner, so that all payments thereafter shall be due on January 1 of each year or the due date(s) which may be set by the Executive Board as is more fully set forth in Section 6 of this Article. All general assessments shall be fixed to a uniform rate for all Lots.

Section 4. Special Assessments for Capital Improvements. In addition to the general assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including easement areas, fixtures, and personal property related thereto provided that any such assessment shall have the assent of the majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Special assessments for the maintenance of sewer lines and other Elements of the sewer system, the drainage and stormwater runoff systems, and other utility systems, as required by government permits or regulations, may be assessed by the Executive Board without a vote of the members. All special assessments for capital improvements shall be fixed to a uniform rate for all Lots.

In addition to the general assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon a Limited Common Elements, including easement areas, fixtures, and personal property related thereto provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of those Members whose Lots are assigned to the Limited Common Elements who are voting in person or by proxy at a meeting duly called for this purpose. Special assessments for the maintenance of sewer lines and other elements of the sewer system, the drainage and stormwater runoff systems, and other utility systems located in a Limited Common Elements as required by government permits or regulations, may be assessed by the Executive Board without a vote of the Members. All special assessments for capital improvements to such Limited Common Elements shall be fixed to a uniform rate for all Lots assigned to the Limited Common Elements.

Section 5. Working Capital Assessment. At the time title is conveyed to an Owner by DECLARANT, each Owner shall contribute to the Association as working capital an amount equal to the amount of one year's general assessment. Such funds shall be used for initial operating and capital expenses of the Association, such as prepaid insurance, supplies, and the Common Elements, furnishings, and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. All working capital funds shall become part of the general operating funds of the Association.

Section 6. Notice and Quorum for any Action Authorized Under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of all the votes of each class of membership shall constitute a quorum. The required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of General Assessments and Due Dates. The general assessments provided for herein shall commence on the date of conveyance of each Lot to an Owner other than DECLARANT. The first general assessment shall be adjusted according to the number of months remaining in the calendar year. The Executive Board shall fix the amount of the general assessment against each Lot at least thirty (30) days in advance of each general assessment period. The budget shall be presented to the Members in accordance with N.C.G.S.

§47F-3-103(c). Written notice of each general assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Executive Board. The Executive Board shall require the general assessments to be paid at least annually, but may require the general assessments to be paid more often. 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 8. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the maximum rate allowed by law, costs of collection, court costs, late charges, charges for reasonable attorney's fees and other charges permitted by statute, including fees, charges and fines, shall constitute a lien against the Lot upon which such assessments are levied upon filing of record notice of the same in the office of the Clerk of Superior Court of Brunswick County. The claim of lien filed under this Section 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. The Association may file a suit to collect such delinquent assessments and charges. The Association may file Notice of Lis Pendens, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Elements, the Limited Common Elements or abandonment of his Lot or for any other reason. Costs and reasonable attorney's fees shall be awarded to the prevailing party in any action brought pursuant to this Article. An action brought to enforce a lien pursuant to this Article must be instituted within three (3) years after the docketing of the claim of lien in the Office of the Clerk of Superior Court of Brunswick County.

The Association, upon receipt of written request, shall furnish to a Lot Owner or the Lot Owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a Lot. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board, and every Lot Owner. The Executive Board may establish a reasonable charge for preparing the statement required in this Section.

Section 9. Subordination of the Lien to Mortgages. The lien under this Article 6 is 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. This subsection does not affect the priority of mechanics' or materialmen's liens. Where the holder of a first mortgage or first 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 such Lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from the Lot Owners including such purchaser, its heirs, successors and assigns. Unless otherwise provided herein, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Surplus Funds. Any excess of association income over Common Expenses, which expenses are defined in ARTICLE 1, Section 5 and which shall include reasonable reserves, shall be applied against the subsequent tax year's general assessments.

## ARTICLE 7

Architectural Control

Section 1. No structures, buildings, or improvements shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, including change of color, until the plans and specifications showing the nature, kind, shape, heights, materials, 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 DECLARANT, or by an architectural committee composed of three (3) or more representatives appointed by the DECLARANT. Structures, buildings and improvements shall include, but not be limited to any dwelling, garage, fence, wall, sidewalk, hedge, mass planting, change in grade or slope, drainage pipe, drainage canal, ditch, swale, catch basin, swimming pool, treehouse, playhouse, sign, flag pole, exterior illumination, monument or marker, outdoor statuary, exterior lights, security lights, storm door, well utility facility, mailbox, patio, deck, screening for outdoor trash cans or other purposes, sprinkler system, driveway, outdoor decorative objects, shrubbery or landscaping. In the event said DECLARANT, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after complete plans and specifications have been received by it, and notification of receipt of plans and specifications has been sent to the submitting Owner(s), approval will not be required and this Article will be deemed to have been fully complied with. DECLARANT shall notify Owner if complete plans and specifications have not been received. DECLARANT, subject to the provisions of Section 2 hereinafter, may assign these duties to the Executive Board of the Association or to an architectural committee composed of three (3) or more representatives appointed by the Executive Board.

Section 2. All duties and responsibilities conferred upon the Executive Board or the Architectural Control Committee by these Protective Covenants or the Bylaws of the Association may be exercised and performed by the DECLARANT or its Designee at its discretion, so long as DECLARANT shall own any Lot in the Properties or any additions annexed thereto by Supplemental Protective Covenants or Amendment to these Protective Covenants.

Section 3. In addition to its duties of review and approval of external harmony and design, the Committee shall monitor the compliance with all use restrictions, design and architectural control provisions and conditions and other restrictions. The Committee shall report such violations as may come to its attention to the DECLARANT or the Association for appropriate actions of enforcement.

Section 4. The Committee shall be composed of a minimum of three members of the Association. Until such time as the Committee has been established, the DECLARANT shall perform the functions as outlined above and elsewhere herein. Where the term "The Declarant" or "The Committee" have been used, this term shall be construed to mean that only one of the two entities will perform the duties and function, and when the Committee is established, that Committee will perform the duties and functions as outlined above. Upon the appointment and organization of the Committee, the Committee shall adopt such administrative procedures as will insure the submission, review and approval of any and all buildings and/or improvements constructed.

Section 5. No construction, which term shall include within its definition clearing, excavation, grading and other site work, shall take place except in strict compliance with this Article, and until the approval of the Committee or DECLARANT has been obtained.

Section 6. Since the establishment of standard inflexible building setback lines in location of homes on Lots tends to force construction of homes directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related concerns, no specific setback lines are established by these protective covenants. In order to assure, however, that the foregoing considerations are given maximum effect, the DECLARANT reserves the right to select the precise site location of each house or other structure on each Lot in its sole discretion and to arrange the same in such manner and for such reasons as the DECLARANT deems sufficient, provided, however, the DECLARANT shall make such determination so as to insure that the development of the Lots subject to these PROTECTIVE COVENANTS is consistent with the provisions set forth herein. The placement of homes is meant to create a sense of spaciousness and to avoid monotony. For such purposes it is the

DECLARANT'S intent that setback lines may be staggered where appropriate. In any event, no house shall be erected closer to the front Lot line or nearer to any side Lot line than the minimum distances established by applicable governmental ordinances.

Section 7. Any installation of a drainage pipe must be approved by DECLARANT or Committee in accordance with the terms of this Article. In addition, all such installations must comply with all applicable governmental statutes, ordinances and regulations, including, but not limited to, the State of North Carolina Department of Transportation standards.

Section 8. All improvements, driveway connections, and plantings, including, but not limited to, drainage pipes, landscape materials, irrigation systems, walls, and fences, located within the road right-of-way must meet North Carolina Department of Transportation ("DOT") specifications and must be approved by DECLARANT or Committee. Lot Owner shall be responsible for all roadway repairs required because of damage caused by Lot Owners for failure to comply with this paragraph, whether such damage occurs before or after the road has been accepted and approved by DOT as a public road. DECLARANT shall not be responsible for any such roadway repairs.

Section 9. The Committee or DECLARANT shall have jurisdiction over all original construction on any Lot and later changes or additions after initial approval thereof together with any modifications, additions or alterations subsequently to be constructed on any Lot or made to any improvements initially approved, including any exterior change or alteration and change of color.

Section 10. The Committee or DECLARANT shall have the right to disapprove any plans, specifications and details submitted to it in the event the same are not in accordance with any of the provisions of these PROTECTIVE COVENANTS and any architectural guidelines which may be in effect at the time.

Disapproval of plans, location, specifications or details may be based upon any grounds, including purely aesthetic considerations which the Committee or DECLARANT, in its sole and uncontrolled discretion, shall deem sufficient, however, approval of plans shall not be unreasonably withheld.

An Owner shall have the right to appeal disapproval of plans, location, specification and details to the Executive Board. The decision by the Executive Board shall be final and not subject to appeal or review.

Section 11. The Committee, or its agent, or the DECLARANT shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans, specifications and details.

Section 12. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of any residence or permitted pertinent structures, or to paint the interior of the same any color desired.

Section 13. Neither the DECLARANT nor the Committee nor the Executive Board or any architecture agent thereof shall be responsible in any way for any defects in plans, specifications or details submitted, revised or approved in accordance with the provisions contained herein or in the guidelines, nor for any structural or other defect in any construction.

Section 14. Owner(s) shall be responsible for compliance with all applicable governmental statutes, ordinances and regulations, including, but not limited to, land use, zoning, and building regulations.

## ARTICLE 8

### Maintenance

Section 1. If, in the opinion of the Association or the DECLARANT, any Owner shall fail to maintain any Lot owned by him in a manner which is reasonably neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all

in the sole opinion of the Association or the DECLARANT, the Association in its discretion, by the affirmative vote of a majority of the members of the Executive Board, or the DECLARANT, in its discretion, and following ten (10) days written notice to Owner, may enter upon and make or cause to be made repairs to such improvements and perform such maintenance on the Lot as the removal of trash, cutting of grass, pruning of shrubbery, weeding and items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. The reasonable cost incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such cost, shall be added to and become an individual assessment to which such Lot is subject as provided in Article 6 herein.

Section 2. The Owner of each Lot shall keep the Lot mowed regularly, including that area from the lot line to the edge of the paved street and clear of any unsightly objects, and in the event that the Owner of any Lot within the said Subdivision breaches this restriction, the DECLARANT and Association reserve the right to enter upon the Lot and mow the grass, clean up the Lot and remove unsightly structures and objects at property Owner's expense as provided in Section 1 above. Where Lots border on or contain ditches, drainage canals or swales, the Owner of each Lot shall keep that area, including the slopes, down to the edge of the water, mowed and maintained regularly. Washouts or erosions on the Lots adjoining ditch banks and swales to pavement shall be properly tended to by the respective Lot Owner. This obligation and right may be enforced by the Association or any Owner as provided in Article 11 herein.

Section 3. The Association shall be responsible to maintain the Common Elements and facilities located upon the Common Elements, Conservation and Buffer Areas, and areas with similar descriptions, landscaped areas within road right-of-ways, the stormwater runoff systems, sign easement areas, and fences or other property designated to be maintained by the Association.

## ARTICLE 9

### Restrictions on Use and Occupancy

Section 1. No Lot shall be used except for single family residential purposes. No commercial use shall be permitted on any Lot. No structure shall be erected, placed or permitted to remain on any Lot other than one (1) detached, single family residence dwelling not to exceed two and one-half stories in height above floor or piling level and such outbuildings as are usually accessory to a single family residence dwelling, including a private enclosed garage.

Section 2. Any dwelling constructed on a Lots subject to these Protective Covenants shall contain not less than 1000 square feet of fully enclosed and heated floor space all devoted to living purposes (exclusive of roofed or unroofed porches, breezeways, terraces, porches, steps, walks, garages and any outbuildings). In computing the number of square feet allowed as provided herein, no square footage in any part of the dwelling that is constructed over a garage will be counted, unless it is an integral part of the living space and approved by DECLARANT.

Section 3. All Lots are subject to the State of North Carolina rules and regulations concerning stormwater runoff as these rules and regulations are amended from time to time. These regulations currently provide that the Lots shown on that map recorded in Map Cabinet 27, Pages 401, 402 and 403, of the Brunswick County Registry shall be subject to the following:

- a. The maximum built-upon area per lot is 2,600 square feet, inclusive of that portion of the right-of-way between the lot line and the edge of pavement, structures, pavement, walkways of brick, stone, or slate, but not including open wood decking.
- b. The covenants pertaining to stormwater regulations may not be changed or deleted without concurrence of the State.
- c. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the State.
- d. Lots within CAMA's Area of Environmental Concern may be subject to a reduction in their allowable built-upon area due to CAMA regulations.

e. All runoff 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 and directing them into the pond or street. Lots that naturally drain into the system are not required to provide these measures.

DECLARANT reserves the right to recalculate the maximum allowable built upon area in accordance with the stormwater runoff rules and regulations of the State of North Carolina. All drainage swales or drainage patterns used to treat stormwater runoff as required by the State of North Carolina may not be filled in, piped or changed without the consent of the DECLARANT, its designee, the Association, or the State of North Carolina and shall be maintained as set forth in Article 8 herein. For curb and gutter projects, no one may pipe, fill in, or alter any lot line swale used to meet North Carolina Stormwater Management Permit requirements. The State of North Carolina is hereby made a beneficiary of these Protective Covenants to the extent necessary to enforce its stormwater runoff regulations as the same may be amended from time to time. This paragraph cannot be changed or deleted without the consent of the State of North Carolina.

Section 4. No swimming pool on any Lot shall be placed or constructed without the approval of the DECLARANT or Committee and shall not be located nearer than twenty (20) feet from the side or rear lot lines.

Section 5. No Lot or Lots shall be subdivided except to enlarge an adjoining Lot, but any Lot so enlarged cannot be improved with more than one single family dwelling. An Owner of a Lot and a portion or all of an adjoining and contiguous Lot or Lots may construct a dwelling and/or other structures permitted hereunder upon and across the dividing line of such adjoining and contiguous Lots, and thereafter such combinations of Lots or portions thereof shall be treated for all purposes under these Protective Covenants as a single Lot.

Section 6. All Lots shall be well maintained and no accumulation of rubbish or debris shall be permitted. The Owners of all unbuilt upon Lots in the Subdivision shall clear their Lots of underbrush at least one time each year. If the Owners do not clear their Lot as required by this paragraph, the Association shall have the authority to clear any such Lot of underbrush and separately assess the cost of such work against each Owner. Such charge shall be an individual assessment against the Owner and his Lot(s) and may be enforced in accordance with the provisions of Article 6 herein.

Section 7. Owners shall be responsible for any damage done to any streets, roadways, accessways, Common Elements, Limited Common Elements or property of other Owners within the Subdivision which may be caused by any Owner, his agents, employees, guests, licensees or invitees. The Association shall have the authority to assess any Owner for such damage and such charge shall be an individual assessment against the Owner and his Lot(s) and may be enforced in accordance with the provisions of Article 6 herein and N.C.G.S. 47F-3-115.

Section 8. The following general prohibitions and requirements shall apply and control the improvements, maintenance and use of all Lots:

a. No mobile home, trailer, tent, or temporary house, temporary garage or other temporary outbuildings shall be placed or erected on any Lot, provided, however, that the Committee or DECLARANT may grant permission for temporary structures for storage of materials during construction.

b. Once construction of a dwelling or other improvements are started on any Lot, the improvements must be substantially completed in accordance with the approved plans and specifications within twelve (12) months from commencement. Failure to complete construction within twelve (12) months from commencement date may result in a fine being imposed in the minimum amount of \$500.00 per month, which fine shall be payable to DECLARANT until all Lots in the Subdivision have been sold, at which time the fine shall be payable to the Association. The fine imposed under this Section shall be an individual assessment enforceable in accordance with Article 6 herein.

c. During construction of improvements on any Lot, adequate portable sanitary toilets must be provided for the construction crew.

d. Construction activity on a Lot shall be confined within the boundaries of said Lot. Each Lot Owner shall have the obligation to collect and dispose of all rubbish and trash resulting from construction on his Lot.

e. All dwellings and permitted structures erected or placed on any Lot shall be constructed of material of good grade, quality and appearance, and all construction shall be performed in good workmanship manner and quality. The covering for all roofs shall be shingles or materials approved by the Committee or DECLARANT. Materials and colors for the exterior of all dwellings and permitted structures must be approved by the Committee or DECLARANT. No used structures shall be relocated or placed on any Lot and no structures shall have an exterior constructed of asbestos or asphalt siding, aluminum siding, paper composition, it being intended that only wood siding, manufactured lap siding, vinyl, brick, claybrick, or stucco exteriors be constructed on Lots subject to these Protective Covenants. Modular and prefabricated homes may not be erected or placed on any Lot, without approval of the Committee or DECLARANT.

f. Except structures erected by the DECLARANT, no structure erected upon any Lot may be used as a model exhibit or model house unless prior written permission to do so shall have been obtained from the Committee or DECLARANT.

g. Any dwelling or improvement on any Lot that is destroyed in whole or in part by fire or other casualty shall be either rebuilt or torn down and all debris removed and the Lot restored to a slightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three (3) months.

h. No stripped, partially wrecked, junk motor vehicle, or part thereof, or any motor vehicle not displaying a current valid inspection sticker shall be permitted to be parked or kept on any Lot.

i. Parking of vehicles on any street in the Subdivision shall be allowed only in accordance with the policy determined by the Executive Board. No truck nor other vehicle in excess of a three-quarter (3/4) ton load capacity, boat, vessel, motorboat, camper, trailer, motor or mobile home, or similar type vehicle or apparatus shall be parked or kept overnight or longer, on any street or on any Lot unless it is stored in an enclosed garage and in such a manner as to not be visible to the Owners of other Lots or the users of a street or recreation area. All tools or other materials stored in vehicles for overnight parking shall be kept out of sight. No customized vehicles which are unsightly in appearance as determined by the Executive Board or the DECLARANT shall be allowed.

j. No outdoor poles, clotheslines and similar equipment shall be erected or located upon any Lot.

k. All trash receptacles and garbage cans shall be screened so as not to be visible by the Owners of other Lots or the users of any street or recreation area. All such screening shall be approved by the DECLARANT or the Committee.

l. No fuel tanks or similar storage receptacles may be exposed to view. The placement of any such receptacles may be approved by the Committee or DECLARANT and may only be located within the main dwelling house, within an accessory building, within a screened area, or buried underground.

m. Each Lot in the Subdivision shall have only one (1) mailbox and one (1) paper box which shall be mounted on a single post and all such boxes must be approved by the DECLARANT or Committee. Such mailboxes or paper boxes may be provided by the DECLARANT or builder. Any boxes provided by the DECLARANT or builder shall be considered an improvement and must remain with the Lot and must be maintained by the Lot Owner. Boxes damaged beyond repair shall be replaced by the Lot Owner.

n. No advertising signs or billboards or other advertising structure(s) of any kind shall be erected on any Lot or displayed to the public on any Lot subject to these restrictions except that one sign of not more than six square feet in area may be used to advertise a completed dwelling for sale or rent. No "For Sale" signs are allowed on any vacant Lots except

with approval by DECLARANT or Committee. This covenant shall not apply to signs erected by the DECLARANT used to identify and advertise the Subdivision as a whole, or construction identification signs approved by the Committee or DECLARANT showing Lot numbers and name of builder, or for a homeowner for the purposes of identifying the homeowner as the resident on said Lot. Said identification sign shall not exceed in size a total of six square feet. All signs permitted by these Protective Covenants must be approved by DECLARANT or Committee.

o. No outside antennas or satellite dishes shall be erected on any Lot or structure unless and until permission for the same has been granted by the Committee or DECLARANT in accordance with applicable governmental regulations.

p. All dwelling connections for all utilities, including, but not limited to, water, electricity, gas, telephone, and television shall be run underground from the proper connecting points to the dwelling structure in such manner as may be acceptable to the appropriate utility authority. The cost for such underground service shall be shared by the Owner and utility company in conformity with existing utility company policy, if any.

q. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats 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 and are at all times properly leashed and personally escorted and shall not become a nuisance or bother to other Owners. No animals, livestock or poultry of any kind may be raised, bred or kept in any Common Elements or Limited Common Elements. Pets must be restrained or confined within the Lot. Owners must promptly remove any and all animal excrement from any and all Common Elements, Limited Common Elements and Lot(s) and keep such area(s) clean and free of pet debris. All animals must be properly tagged for identification. All parties are hereby notified that, in the event any dog kept or maintained on a Unit or in any dwelling on the Properties barks excessively, continuously or in a manner that constitutes a nuisance, the Board may require such dog to wear a collar designed to reduce or control such excessive barking (provided that such action shall in no event limit any other rights or remedies for such situation that may be available to the Board or to any other parties at law or in equity).

r. No fence shall be erected or hedge grown on any Lot unless approved by the DECLARANT or Committee in accordance with Article 7 herein. Fences facing or parallel to the street shall be wood construction or other material approved by DECLARANT or Committee except that no chain link fences shall be allowed. No fence and no hedge shall be permitted nearer the front lot line than 15 feet as measured from the rear of the house constructed on the Lot unless approved by DECLARANT or Committee. All fences constructed hereunder shall be maintained in its original condition by the Lot Owner.

s. No immoral, improper, illegal, noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof tending to cause embarrassment, discomfort, annoyance or nuisance to the DECLARANT or any Owners. There shall not be maintained any plants or animals, or device or anything of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the Owners thereof. All laws, orders, rules, regulations, ordinances or requirements of any government agency having jurisdiction thereof, relating to any parties of the property, shall be complied with, by or at the sole expense of Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the property.

t. No outdoor statuary or other decorative objects may be placed on any Lot without the written approval of the DECLARANT or the Committee.

u. Burning as a means of clearing brush shall not be permitted. Burning may be allowed under appropriate circumstances if approved by the DECLARANT or the Committee and the Owner has obtained all necessary government permits.

v. No yard sales or garage sales shall be permitted upon any Lot in this Subdivision.

w. No repairs to any vehicle may be made in driveways unless such repairs may be completed in one day. During the course of repair work, no vehicle shall be permitted to remain in any driveway on any type of jacks or stands for more than one day.

x. In certain instances, conservation areas or green ways, or vegetated buffers may be conveyed with a Lot to an Owner. Such areas are for conservation purposes and as such, not for Owner's private use. No fences or structures of any type may be erected in said areas and no type of vegetation may be removed.

y. All light bulbs or other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white, or non-frost lights or bulbs. No colored bulbs or lights will be allowed except during generally recognized holiday periods. The DECLARANT or the Association shall have the sole and absolute right to regulate and/or prohibit excessive holiday lighting or any other lighting in the sole discretion of the DECLARANT or the Association.

z. To insure consistency and attractiveness within the Subdivision, white window treatments, must be installed in all of the windows of all homes within ten (10) days of occupancy, such that the total view of all windows from the outside of the house is white window coverings. Window treatments inside of the house and not visible from the outside of the house or unit are in the discretion of the homeowner. Bedsheets, towels, blankets, etc. are not considered acceptable window treatments and are not allowed in the Subdivision.

Notwithstanding the foregoing, any area identified as a Conservation or Buffer Area on any map or revision of lots map of SUBDIVISION may be conveyed with a Lot or Lots in said Subdivision or may be conveyed to one or more Lot Owners, or may be conveyed to the Association in said Subdivision. These area(s) are for conservation or buffer purposes and, as such, not for the Owner(s)' private use. No structures other than those fences, signs, entranceway structures, landscaping or similar construction by the DECLARANT shall be permitted in these Area(s). In the case of conveyance of a Conservation or Buffer Area as set forth herein the Association shall have an easement to go upon the Area(s) to maintain such Areas. DECLARANT and Association further reserve the right and an easement to change, reconstruct or construct any fences, signs, entranceway structures, landscaping or the equivalent in and over the Conservation or Buffer Area(s).

If Owner(s), his agents, guests, lessees or licensees shall in any way disturb or damage any vegetation or structure, including fences and signs located in any Conservation or Buffer Area, as determined by the Executive Board, the Executive Board may impose a fine in the minimum amount of \$2,500.00, which fine shall be payable to the Association. The Association shall pay \$500.00 of this fine to DECLARANT until all Lots in the Subdivision have been sold. In addition, the Owner(s) shall be required to install replacement plant materials and/or restore any structure or pay for the cost of replacement for restoration by the Executive Board within 30 days of notification by the Executive Board.

aa. Nothing shall be kept and no activity shall be carried on in any building or home or on the Common Elements or Limited Common Elements which will increase the rate of insurance, applicable to residential use, for the property or the contents thereof. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his home or on the Common Elements or Limited Common Elements which will result in the cancellation of insurance on any portion of the property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Elements or Limited Common Elements.

bb. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements or Limited Common Elements except at the direction of and with the express written consent of the Association or DECLARANT.

cc. The Common Elements or Limited Common Elements shall be used only for the purposes for which they are intended and reasonably suited and which are incident to

dd. the use and occupancy of the homes, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

ee. All lawn mowers, bicycles, toys, grills and other similar objects must be stored when not in use so as not to be visible by the Owners of other Lots or the users of any street or recreation area.

ff. All wells and pumps which are permitted under the terms of Article 13, Section 1 must be located so as not to be visible from any street or recreation area or Common Elements and must be screened from view. The design and location of the well, pump, and screening facilities shall be approved by the DECLARANT or Committee and the well, pump and screening facilities must be kept free from discoloration, including rust.

gg. DECLARANT does not grant permission or recommend that any material be buried on any Lot in THE ARBORS AT WESTGATE, including, but not limited to any easement area, Common Elements, Limited Common Elements, or area where any structure shall be constructed. If any material is buried on any Lot, it is recommended that all subsequent purchasers be advised of the location and type of material(s) deposited. No hazardous, illegal, or governmental regulated material(s) shall be deposited on any Lot in THE ARBORS AT WESTGATE.

Section 9. This Article and these PROTECTIVE COVENANTS shall not apply to any sales office which may be maintained by the DECLARANT within the THE ARBORS AT WESTGATE SUBDIVISION.

## ARTICLE 10

### Annexation of Additional Properties

Section 1. Except as provided in Sections 2 and 3, below, annexation of additional property shall require the assent of sixty-seven percent (67%) of the Class A Members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

Section 2. If the DECLARANT, its successors or assigns, shall develop all or any portion of any land which is located within a 1 mile radius of and is adjacent to or contiguous with that property described in Map Cabinet 27, Pages 401, 402 and 403 of the Brunswick County Registry, such additional tract or tracts may be annexed to said Properties without the assent of the Class A Members, provided however, the development of the additional tract or tracts described in this section shall be in accordance with the same general scheme of development as THE ARBORS AT WESTGATE.

Section 3. The rights of DECLARANT reserved in Article 3 and Article 10 Section 2 shall expire automatically on December 31, 2013, if not exercised prior thereto.

## ARTICLE 11

### Compliance with these Protective Covenants, the Articles and the Bylaws of the Association

In the case of failure of an Owner or occupant to comply with the terms and provisions contained in these Protective Covenants, the Articles, the Bylaws or Rules and Regulations of the Association, the following relief shall be available:

Section 1. The Association, the DECLARANT and any Owner, an aggrieved Owner within the Subdivision on behalf of the Association or any Owner on behalf of all the Owners within the Subdivision shall have the right to enforce by any proceeding at law or in equity, all of the conditions, covenants and restrictions of these Protective Covenants and the Articles, Bylaws and rules and regulations of the Association and any and all laws hereinafter imposed pursuant to the terms of these Protective Covenants. The prevailing party shall be entitled to collect all costs thereof, including reasonable attorney's fees as determined by the Court.

Section 2. The Association shall have the right to remedy the violation and assess the costs of remedying same against the offending Owner as an individual assessment as provided in Article 6 herein.

Section 3. For any violation by an Owner, including, but not limited to, the nonpayment of any general, special or individual assessment, the Association shall have the right to suspend the offending Owner's voting rights and the use by such Owner, his agents, lessees, employees, licensees and invitees of the Common Elements or Limited Common Elements in the Subdivision for any period during which a violation continues except that such penalties may not be for more than sixty (60) days for violation of any of the Association's published rules and regulations. Within five (5) days of the date written notification is sent by the Association to Owner informing Owner of the suspension of his rights in accordance with this Section, Owner may request, in writing, an appeal to the Executive Board. The Executive Board shall set a date for the hearing, which hearing may be conducted over the telephone at the discretion of the Executive Board, and the Owner shall be given an opportunity to be heard and to present evidence at such hearing. The Executive Board shall notify Owner of its decision within thirty (30) days of the hearing. The suspension shall remain in effect during the pendency of the appeals process.

Section 4. The Association may establish a schedule of fines for the violation of these Protective Covenants, the Articles, Bylaws and rules and regulations. Within five (5) days of the date written notification is sent by the Association to Owner informing Owner of the imposition of the fine in accordance with the schedule of fines established by the Association in accordance with this Section, Owner may request, in writing, an appeal to the Executive Board. The Executive Board shall set a date for the hearing, which hearing may be conducted over the telephone at the discretion of the Executive Board, and the Owner shall be given an opportunity to be heard and to present evidence at such hearing. The Executive Board shall notify Owner of its decision within thirty (30) days of the hearing. The fine shall continue to accrue and remain in full force and effect during the pendency of the appeals process. If an Owner does not pay the fine within 15 days of the imposition of the fine, the fine shall be an individual assessment against the property and may be enforced by the Association in accordance with Article 6 herein. If the Owner prevails at the appeals hearing and the fine is removed, the Association shall remove and cancel any lien of record filed in accordance with this Section.

Section 5. All rights, remedies and procedures mandated, required or permitted by Chapter 47F of the North Carolina General Statutes unless these Protective Covenants provide otherwise.

Section 6. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.

Section 7. The failure of the Association or any person or Owner to enforce any restriction contained in these Protective Covenants, the Articles, the Bylaws or the rules and regulations shall not be deemed a waiver of the right to do so thereafter.

## ARTICLE 12

### Duration, Amendment & Termination

Section 1. Lots, Persons and Entities Subject to the Protective Covenants. All present and future Owners, tenants, and occupants of Lots and their guests or invitees, licensees, employees or agents, shall be subject to, and shall comply with the covenants, conditions, restrictions and affirmative obligations set forth in these Protective Covenants, and as the Protective Covenants 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 these Protective Covenants are accepted and ratified by such Owner, tenant or occupant and that they will fully comply with the terms and conditions of said Protective Covenants. The covenants, conditions, restrictions, and affirmative obligations of these Protective Covenants shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date these Protective Covenants are recorded in the Brunswick County

Registry, after which date these Protective Covenants shall be extended for successive periods of twenty (20) years, unless eighty percent (80%) of the then Owners agree to revoke the same, and the covenants, restrictions, conditions and affirmative obligations of these Protective Covenants shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot as though such provision were made a part of each and every deed of conveyance or lease.

Section 2. Amendment. At any time prior to December 31, 2019 or until all Lots are sold, these Protective Covenants may be amended by DECLARANT in its discretion. Retention of this right by the DECLARANT is not intended to affect the general or common scheme of development for the property herein described but to correct and/or modify situations or circumstances which may arise during the course of development. These Protective Covenants may also be amended by vote of not less than sixty-seven percent (67%) of the Owners and an instrument must be recorded at the Brunswick County Registry for such an amendment to be effective. In no event may the Protective Covenants be amended so as to alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein, or so as to deprive DECLARANT, its designee or successors and assigns of any rights herein granted or reserved unto DECLARANT. In addition, the DECLARANT may amend these Protective Covenants to annex additional property and make it subject to the terms, conditions, restrictions, obligations and covenants of these Protective Covenants as provided in Article 3 and Article 10 herein.

## ARTICLE 13

### General Provisions

Section 1. Municipal Water, Sewer Service and Utilities. Municipal sewer service shall be provided by Brunswick County or other municipal agency or department. Water service for the Subdivision may be provided by a municipal agency or department, or by licensed utility company. If water service to the Lot is available from a municipal agency or department or a licensed utility company, all Owner(s) must tie into and use such system and shall not use a private well. No private well shall be permitted on any Lot except for irrigation purposes or if municipal or community water service is not available. DECLARANT shall not be responsible for loss of service or failure of any utility company to provide service to any Lot. A well for irrigation purposes shall only be allowed with the approval of any private community water system, which approval shall not be unreasonably withheld, and the consent of the DECLARANT or Committee.

Section 2. Amenities and Facilities. Every park, recreation area, recreation facility, dedicated access and other amenities appurtenant to the Subdivision, whether or not shown and delineated on any recorded plat of the Subdivision, shall be considered private and for the sole and exclusive use of the Owners of Lots within the Subdivision. Neither DECLARANT'S execution nor the recording of any plat nor any other act of DECLARANT with respect to such area is, or is intended to be, or shall be construed as a dedication to the public of any such areas, facilities, or amenities.

Section 3. HUD/VA Approval. Annexation of additional properties, dedication of Common Elements(s), and amendment of these restrictions requires HUD/VA approval as long as there is a Class B. Membership.

Section 4. Waiver. No provision contained in these Protective Covenants, the Articles of Incorporation or the Bylaws of the Association shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

Section 5. Variances. The Executive Board or DECLARANT in its discretion may allow reasonable variances and adjustments of these Protective Covenants in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lots owned in fee by various persons with each such Owner having an easement upon areas owned by the Association.

Section 6. Conflict. In the event of any irreconcilable conflict between these Protective Covenants and the Bylaws of the Association, the provisions of these Protective Covenants shall control.

Section 7. Severability. Invalidation of any one of these covenants or restrictions by judgment or any court, agency or legislative order shall in no way affect any other provision, covenants, conditions or restrictions contained in these Protective Covenants.

Section 8. Captions. The captions preceding the various Articles of these Protective Covenants are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Protective Covenants. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout these Protective Covenants, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and feminine.

Section 9. Assignability of Rights and Liabilities. DECLARANT shall have the right to sell, lease, transfer, assign, license and in any manner alienate or dispose of any rights, interests and liabilities retained, accruing and reserved to it by these Protective Covenants. Following any such disposition, DECLARANT in no way shall be liable or responsible to any party with regard to any such right, interest, or liability or any claim or claims arising out of same in any manner.

Section 10. Liberal Construction. The provisions of these Protective Covenants shall be construed liberally to effectuate its purpose of creating a Subdivision of fee simple ownership of Lots and buildings governed and controlled by rules, regulations, restrictions, covenants, conditions, reservations and easements administered by an Owners' Association with each Owner entitled to and burdened with the rights and easements equivalent to those of other Owners.

IN WITNESS WHEREOF, Brunswick Land Holdings, LLC, the DECLARANT, has caused this instrument to be executed as of the day and year first above written.

BRUNSWICK LAND HOLDINGS, LLC

By: Bobby W. Harrelson  
Manager

STATE OF NORTH CAROLINA

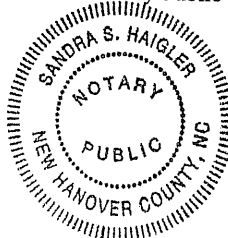
COUNTY OF New Hanover

I, Sandra S. Haigler, a Notary Public for said County and State, do hereby certify that Bobby W. Harrelson, Manager of Brunswick Land Holdings, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official stamp or seal, this 4 day of April, 2003.

Sandra S. Haigler  
Notary Public

My Commission Expires: 3/10/2008

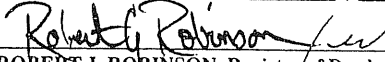


**STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK**

The Foregoing (or annexed) Certificate(s) of SANDRA S HAIGLER

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Notary(ies) Public is (are) Certified to be Correct.  
This Instrument was filed for Registration on this 7th Day of April, 2003  
in the Book and page shown on the First Page hereof.

  
\_\_\_\_\_  
ROBERT J. ROBINSON, Register of Deeds