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DECLARATION OF COVENANTS, CONDITIONS, AND  
 RESTRICTIONS FOR THE HOME PLACE OF SOUTHPORT



**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
THE HOME PLACE OF SOUTHPORT**

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

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL  
SIGNS.**



**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE HOME PLACE OF SOUTHPORT** (this Declaration") is made this 1st day of September, 2022, by THE HOME PLACE OF WILMINGTON, LLC, a limited liability company organized and existing under the laws of the state of North Carolina ("Declarant").

**Article I  
Creation of the Community**

**1.1. Purpose and Intent.**

Declarant, as the owner of the real property described in Exhibit A, which is attached hereto and incorporated herein by reference, intends by Recording this Declaration to establish a general plan of development for the planned community known as THE HOME PLACE OF SOUTHPORT, a community consisting of a residential tract. This Declaration provides for THE HOME PLACE OF SOUTHPORT's overall development, administration, maintenance and preservation. An integral part of the development plan is the creation of THE HOME PLACE OF SOUTHPORT HOA, INC., a North Carolina nonprofit corporation of which all owners of Lots in THE HOME PLACE OF SOUTHPORT shall be members, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration. The property described in Exhibit A shall be developed as residential with covenants permitting residential single-family home and townhome use, as expressed herein.

**1.2. Binding Effect.**

All property described in Exhibit A shall be owned, conveyed and used subject to the provisions of this Declaration, which shall run with the title to such property, and to the provisions of Chapter 47F of the North Carolina General Statutes, the "North Carolina Planned Community Act". This Declaration shall be binding upon the Declarant, THE HOME PLACE OF SOUTHPORT HOA, INC., and all other Persons having any right, title, or interest in any portion of THE HOME PLACE OF SOUTHPORT, their heirs, successors, successors-in-title, and assigns. This Declaration, as it may be amended, shall remain in effect and shall be enforceable by Declarant, THE HOME PLACE OF SOUTHPORT HOA, INC., any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of forty (40) years from the date this Declaration is Recorded. After such time, this Declaration shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by eighty (80%) percent of Votes of the Lots located in THE HOME PLACE OF SOUTHPORT has been recorded within the year preceding any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument. Nothing in this Section shall be construed to permit termination of any casement created in this Declaration without the consent of the holder of such casement.



**1.3. Governing Documents.**

THE HOME PLACE OF SOUTHPORT's Governing Documents consist of this Declaration, and any applicable amended declaration, amendment to declaration or supplemental declaration (however same may be titled or captioned); the Articles of Incorporation of THE HOME PLACE OF SOUTHPORT HOA, INC., and its By-Laws; the Architectural Design Standards, the Restrictions and Rules; Board resolutions; and Recorded Plats of THE HOME PLACE OF SOUTHPORT, all as they may be amended from time to time.

Nothing in this Section shall preclude any Amended Declaration, Amendment to Declaration or Supplemental Declaration or other Recorded covenants applicable to any portion of THE HOME PLACE OF SOUTHPORT from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control. THE HOME PLACE OF SOUTHPORT HOA, INC., may, but shall not be required to, enforce any such covenants, restrictions or other instruments.

The Governing Documents apply to all Owners and occupants of property within THE HOME PLACE, as well as to their respective tenants, guests and invitees. If a Lot is leased, the lease shall provide that the tenant and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents. Leasing of Lots shall be subject to Section 3.407 hereof. The Association shall be a third-party beneficiary of any lease with right to enforce the lease with regard to any failure of any tenant to comply with the Governing Documents. The Association shall have right to injunctive relief against the Owner and the tenant to enjoin further failure to comply with the Governing Documents or failure of the Owner to enforce the lease against the Tenant with regard thereto.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Throughout the Governing Documents, should there be diagrams to illustrate the concepts discussed as an aid in the reader's comprehension, such diagrams shall be for illustrative purposes only. In the event of a conflict between any diagram and the text of the Governing Documents, the text shall control.

Throughout the Governing Documents, the titles, captions and headings are inserted for convenience of reference only and are not intended to be a part of or to affect in any way the meaning or interpretation of the Governing Documents. As used in the Governing Documents, all pronouns shall include the masculine, feminine neuter, singular and plural thereof whenever the context and facts require such construction. All references to sections, schedules or exhibits are to sections, schedules or exhibits in or to the Governing Document in which the reference



is made, unless otherwise specified. All uses of the word "including" shall mean "including, without limitation," unless the context shall indicate otherwise. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in a Governing Document shall refer to the Governing Document in which the word appears as a whole and not to any particular provision of the Governing Document. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined and defined terms may be used in singular or plural form as defined terms. As used herein, the following shall be construed to mean that the act or action is mandatory. without need for modification by words such as "sole", "exclusive." "must" or "only": "will" "shall," and "must." As used herein, the following shall be construed to mean that the actor action is permissive: "may" and "can."

## **Article II Concepts and Definitions**

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

**"Affiliate of Declarant":** Shall mean a company owned and controlled by the Declarant.

**"Amendment to Declaration":** Shall mean an instrument Recorded pursuant to the terms of this Declaration which amends this Declaration, or creates or imposes other or additional easements, restrictions and obligations on the land described in such instrument, or any or all of the foregoing.

**"Architectural Design Standards":** Shall mean the guidelines and standards for architecture, design, construction, landscaping and exterior items of homes constructed on Lots or Townhome Lots adopted pursuant to Article IV, as they may be amended from time to time.

**"Area of Common Responsibility":** Shall mean the Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Amended Declaration, Amendment to Declaration or Supplemental Declaration, or other applicable covenants, contracts, other deed, or agreements.

**"Approved Builder":** Shall mean any person designated by Declarant, its successor or assigns, as an "Approved Builder" and who purchases one or more Lots for the purpose of constructing improvements for later sale to retail purchasers.

**"Articles":** Shall mean THE HOME PLACE OF SOUTHPORT HOA, INC.'s Articles of Incorporation, filed with the North Carolina Secretary of State, as they may be amended from time to time.

"Association": Shall mean THE HOME PLACE OF SOUTHPORT HOA, INC., a North Carolina nonprofit corporation, its successors or assigns.

"Base Assessment": Shall mean any assessment levied on all Lots subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Article VIII.

"Board of Directors" or "Board": Shall mean the body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.

"By-Laws": Shall mean the By-Laws of THE HOME PLACE OF SOUTHPORT HOA, INC., as they may be amended from time to time. Any Member will upon request to the Association be furnished a copy of the current By-Laws of the Association at no charge. "Bylaws" or "By-laws" shall have the same meaning as By-Laws.

"Class "B" Control Period": Shall mean the period of time during which the Class "B" Member is entitled to appoint the members of the Board, as provided in the By-Laws. The Class "B" Control Period shall terminate on the first to occur of the following:

(a) when 75% of the total number of Lots permitted by the approved site plan for the property described in Exhibit A have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders;

(b) December 31, 2031; or

(c) when, in its discretion, the Class "B" Member so determines and declares in an instrument Recorded in the Register of Deeds of Brunswick County, North Carolina.

"Common Area": Shall mean all real and personal property, including private roads, public roads not accepted for maintenance by the State of North Carolina, Brunswick County, or any municipality, and all easement areas for utilities or drainage, all drainage and stormwater facilities including but not limited to stormwater ponds, Conservation areas, and all other property and/or casements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the owners. The term shall include the Limited Common Area, as defined below.

"Common Expenses": Shall mean the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, together with any allocation to reserves, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless Voting Members representing a majority of the total Class "A" vote of the Association approve. Payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost.

"Community-Wide Standard": Shall mean the standard of conduct, maintenance, or



other activity generally prevailing at THE HOME PLACE OF SOUTHPORT, or the minimum standards established pursuant to the Architectural Design Standards, Restrictions and Rules, and Board resolutions, whichever is a higher standard. Declarant shall establish initially such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within THE HOME PLACE OF SOUTHPORT evolve. "Conservation Areas": Shall mean and refer to all lands within the area contained in THE HOME PLACE OF SOUTHPORT as shown on the plat and designated as "404 Wetlands," if any.

"Conservation Setbacks": Shall mean any adjacent "25 Wetland Setback" shown on the Plat, if any.

"Declarant": Shall mean THE HOME PLACE OF WILMINGTON, LLC, a North Carolina limited liability company, or any successor or assign who: 1) takes title to any portion of the property described in Exhibit A for the purpose of development and/or sale and 2) who or which is specifically granted some or all of Declarant's rights pursuant to a Recorded instrument executed by the immediately preceding Declarant.

"Governing Documents": Shall mean a collective term referring to this Declaration and any applicable Amended Declaration, Amendment to Declaration or Supplemental Declaration, the By-Laws, the Articles, the Architectural Design Standards, the Restrictions and Rules, Board resolutions, and Recorded Plat(s) of THE HOME PLACE OF SOUTHPORT, as any one or more of which may be amended from time to time.

"Limited Common Area": Shall mean a portion of the Common Area primarily benefitting one or more, but less than all, Lots, as more particularly described in Article XII.

"Lot(s)": Shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner and shown on a Recorded subdivision plat, and shall include both Single-family Lots and Townhome Lots.

"Lot Owner": Shall mean the Declarant or any one or more other persons who hold the record fee simple title to any Lot, including contract sellers, but excluding contract buyers and excluding those having such interest merely as security for the performance of an obligation.

"Member": Shall mean a Person subject to membership in the Association pursuant to Section 6.2.

"Mortgage": Shall mean a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage, and the term "Mortgagor" shall refer to any person who gives a Mortgage.

"Owner": Shall mean Lot Owner.

"Person": Shall mean a natural person, a corporation, a limited liability company, a partnership, a trustee, or any other legal entity.

"Planned Community Act" or "North Carolina Planned Community Act": Shall mean the North Carolina Planned Community Act, (N.C.G.S. §478-1-101 et. Seq.), as the same may be amended from time to time.

"Plat" shall mean the subdivision plat of THE HOME PLACE OF SOUTHPORT, a copy of which is attached hereto as Exhibit "A," as same may be amended, supplemented, or superseded by any additional plats or any revisions thereto which may be recorded by the Declarant.

"Record" "Recording" or "Recorded": Shall mean the filing of a legal instrument in the Brunswick County, North Carolina land records or such other place as may be designated as the official location for recording deeds, plats, and similar documents affecting title to real estate.

"Restrictions and Rules": Shall mean the initial restrictions and rules set forth in Exhibit "B" as they may be supplemented, modified, and repealed pursuant to Article III.

"Site Plan": Shall mean the "Site Development Plan for THE HOME PLACE OF SOUTHPORT," approved by the Brunswick County Planning Department as the same may be amended from time to time. The Site Plan is not required to be Recorded.

"Single-family Lot(s)": Shall mean the Lots on which unattached single-family dwellings are located or are to be located.

"Special Assessment": Shall mean Assessments levied in accordance with Section 8.3.

"Specific Assessment": Shall mean Assessments levied in accordance with Section 8.5.

"THE HOME PLACE OF SOUTHPORT": Shall mean the real property described in Exhibit A together with such additional property as may be subjected to this Declaration in accordance with Article IX.

"Townhome(s)": Shall mean the attached single-family dwelling(s) located on a Lot.

"Townhome Lot(s)": Shall mean the Lots on which attached single-family dwellings are located or are to be located, initially limited to Lots 1, 2, 4, 5, 28, 29, 31-36, 38-45, and 47-52.

"Townhome Maintenance Elements": Shall mean (1) the exterior of all Townhomes, including by way of illustration, but not limited to, roofs, exterior building surfaces, decks, porches, gutters and downspouts, and (ii) yards and other improvements, including by way of illustration, but not limited to, travelways, walkways, privacy fences for the sole use of a Lot, leaves, shrubs and grass but excluding that portion of the yard located within any privacy fencing. Declarant may, with regard to Additional Property, by amendment to this Declaration, add Townhome Maintenance Elements to the Planned Community without the consent of any Lot Owners (so long as the Owners of the Townhome Maintenance Elements pay the cost of their operation and maintenance through Annual Townhome Assessments as hereinafter defined).



"Voting Member": Shall mean the representative selected by the Class "A" Members to cast the Class "A" votes attributable to their Lot on all matters requiring a vote of the membership as designated pursuant to Section 6.3(c) (except as otherwise specifically provided in this Declaration and in the By-Laws). The term "Voting Member shall also refer to any alternate Voting Members so selected pursuant to Section 6.3(c), acting in the absence of the Voting Member.

### **Article III Use and Conduct**

#### **3.1. Framework for Regulation.**

As part of the general plan of development for THE HOME PLACE OF SOUTHPORT, the Governing Documents establish a framework of affirmative and negative covenants, easements, and restrictions that govern THE HOME PLACE OF SOUTHPORT. Within that framework, the Board and the Members have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. Therefore, this Article establishes the initial Restrictions and Rules set forth in Exhibit "B" and provides procedures for modifying and expanding said Restrictions and Rules. This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution pursuant to Section 7.1(c), nor to administrative policies which the Board may adopt to interpret, define, or implement the Restrictions and Rules.

#### **3.2. Rule Making Authority.**

(a) The Declarant hereby reserves during the "Class "B" Control Period" the right, power and authority to establish, adopt, revise, and restate from time to time such rules and regulations regarding the development, as it deems appropriate.

(b) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its members, the Board may modify, cancel, limit, create exceptions to add to or expand the Restrictions and Rules. The Board shall send notice to all Owners concerning any proposed action regarding the Restrictions and Rules at least five (5) business days prior to the Board meeting at which such action is to be considered. Voting Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective, after compliance with subsection (d), unless Voting Members representing more than sixty-seven (67%) percent of the total Class "A" votes in the Association and the Class "B" Member, if any, disapprove such action at a meeting. The Board shall have no obligation to call a meeting of the Voting Members to consider disapproval except upon receipt of a petition of the Voting Members as required for special meetings in the By-Laws. Upon such petition of the Voting Members prior to the effective date of any Board

action under this Section 3.2(b), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(c) Alternatively, Voting Members, representing more than sixty-seven (67%) percent of the total Class "A" votes in the Association at an Association Members' meeting duly called for such purpose, may vote to adopt rules that modify, cancel, limit, create exceptions to add to or expand the Restrictions and Rules then in effect. Such action shall require approval of the Class "B" Member, if any.

(d) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than thirty (30) days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(e) No action taken under this Article shall have the effect of modifying, repealing or expanding the Architectural Design Standards or any provision of this Declaration other than the initial Restrictions and Rules set forth in Exhibit "B." In the event of a conflict between the Architectural Design Standards and Restrictions and Rules, the Architectural Design Standards shall control.

(f) The procedures required under this Section 3.2 shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operations of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times.

### **3.3. Owners' Acknowledgment and Notice to Purchasers.**

All Owners are given notice that use of their Lots and the Common Area is limited by the Restrictions and Rules as modified from time to time. By acceptance of a deed, each Owner acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by this provision and that the Restrictions and Rules may change from time to time. All purchasers of Lots are on notice that the Association may have adopted changes. Copies of the current Restrictions and Rules may be obtained from the Association.

### **3.4 Protection of Owners and Others.**

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Restrictions and Rules set forth in Exhibit "B", all Restrictions and Rules shall comply with the following provisions:

- (a) Similar Treatment. Similarly situated Owners shall be treated similarly.
- (b) Displays; Political Signs; Flags. The rights of Owners to display religious and



holiday signs, symbols, and decorations inside their Lots of the kinds normally displayed inside dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place and manner restrictions with respect to displays visible from outside the dwelling.

The ARC (as defined in Section 4.2), shall have the authority to approve all signs to be displayed on Lots (other than in the interior of the dwellings and not visible from the street) prior to installation and may impose size limits and other reasonable restrictions. No advertising signs or billboards or other advertising structure(s) of any kind shall be displayed on any Lot without prior written approval of the ARC. This covenant shall not apply to signs erected by the DECLARANT, including signs used to identify and advertise the Properties as a whole. DECLARANT or ARC has the right to enter upon any Lot and remove any unapproved sign(s). Without limiting the foregoing, the Association shall issue guidelines from time to time outlining THE HOME PLACE OF SOUTHPORT's policy for the posting of "for sale" signs and similar temporary signs by or upon any Lot (which policy shall include the permitted dimensions and appearance of such signs and may even prohibit such signs altogether).

Notwithstanding anything to the contrary in the foregoing paragraph, and except as otherwise permitted by law, no rules shall regulate the content of political signs within THE HOME PLACE. To the extent permitted by law, rules may regulate the time, place and manner of posting such signs (including design criteria). With regard to the regulation of political signs, the Association, pursuant to both the rule-making authority established under Section 3.2 herein, and the provisions of the North Carolina Planned Community Act, may (i) prohibit the display of political signs earlier than forty-five (45) days before the day of an election and later than seven (7) days after an election day, and/or (ii) regulate the size and number of political signs that may be placed on a Lot (but only to the extent the Association's regulation is no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property). If the local government in which the applicable property is located does not regulate the size and number of political signs on residential property, the Association shall permit at least one (1) political sign with the maximum dimensions of 24 inches by 24 inches on a Lot. For the purposes of this paragraph, a "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. The provisions of this grammatical paragraph shall apply to Owners of property who display political signs on property owned exclusively by them and does not apply to Common Area, casements, rights of way, or other areas owned by others. No political signs shall be displayed on Common Area.

No outdoor statuary, flag or other decorative object may be displayed on any Lot unless it is in compliance with the Governing Documents, including the Architectural Design standards. Notwithstanding any other provisions herein, the American Flag and/or the North Carolina Flag having the maximum dimensions of four feet by six feet (4 feet x 6 feet) may be displayed on an Owner's own Lot. Any flags will be displayed in accordance with traditional rules and patriotic customs set forth in 4 U.S.C. § 5-10, as amended, governing the display and use of the American Flag.

(c) Household Composition. No rule shall interfere with the Owners' freedom to determine the composition of their households, except that to the extent permitted by law, the Association shall have the power to require that all occupants be members of a single housekeeping unit and limit the total number of occupants permitted in each dwelling on the basis of the size and facilities of the Lot and its fair use of the Common Area.

(d) Activities within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that, to the extent permitted by law, the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other dwellings, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(f) Alienation. No rule shall prohibit leasing or transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot, provided the Association or the Board may require a minimum lease term of up to twelve (12) months. The Association may require that Owners use lease forms approved by the Association but shall not impose any fee on the lease or transfer of any Lot greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(g) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot, and shall not apply to subsequent Owners who take title to the Lot after the adoption of the rule.

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop THE HOME PLACE OF SOUTHPORT.

(i) Interference with Private Amenities. No rule or action by the Association shall interfere with the use or operation of any Private Amenity.

The limitations in subsections (a) through (g) of this section shall only limit rule making authority exercised under Section 3.2; they shall not apply to amendment to this Declaration adopted in accordance with Article XVII.

## Article IV Architecture and Landscaping

### 4.1 General.

No structure or thing shall be placed erected, installed, or maintained upon any Lot and no improvement or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within THE HOME PLACE OF SOUTHPORT, except in compliance with this Article and the Architectural Design Standards. With regard to the provisions of this Article, the terms, "structures", "buildings" and "improvements shall include, but not be limited to any dwelling, garage, outbuilding, shed, fence, wall, sidewalk, hedge, mass planting, change in grade or slope, drainage pipe, drainage canal, ditch, swale, catch basin, swimming pool, tree house, 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.

Approval shall be required to repaint the exterior of a structure except repainting in accordance with the originally approved color scheme, and to repair or rebuild the exterior of a structure except repair or rebuilding in accordance with originally approved plans, specifications, and materials. Any Owner may remodel, paint, or redecorate the interior of his or her Lot without approval. However, modifications to the interior of screen porches, patios, and similar portions of a Lot visible from outside the structure shall be subject to approval.

All dwellings constructed on any portion of THE HOME PLACE OF SOUTHPORT shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion.

This Article shall not apply to Declarant's activities or to the Association's activities during the Class "B" Control Period. This Article may not be amended without the prior written consent of Declarant, so long as Declarant owns any portion of or has a right to expand THE HOME PLACE OF SOUTHPORT pursuant to Section 9.1.

### 4.2 Architectural Review.

(a) By Declarant. By accepting a deed or other instrument conveying any interest in any portion of THE HOME PLACE OF SOUTHPORT, each Owner acknowledges that as the developer of THE HOME PLACE OF SOUTHPORT and as an owner of portions of THE HOME PLACE OF SOUTHPORT as well as other real estate within the vicinity of THE HOME PLACE OF SOUTHPORT, Declarant has a substantial interest in ensuring that the improvements within THE HOME PLACE OF SOUTHPORT enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article shall commence on such Owner's Lot unless and until Declarant or its designee has given its prior

written approval for such activity, which approval may be granted or withheld in the Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of THE HOME PLACE OF SOUTHPORT, unless earlier terminated in an instrument the Declarant records in the public records of Brunswick County. Declarant may designate one or more Persons to act on its behalf in reviewing applications hereunder.

Declarant hereby delegates its responsibility for administration of the Architectural Design Standards and all other responsibilities under this Article IV to the Architectural Review Committee (the "ARC"), the members of which shall be appointed by the Board of Directors. All responsibilities delegated to the ARC herein shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the ARC shall be limited to such matters as Declarant specifically delegates as provided herein.

(b) Architectural Review Committee. The ARC shall consist of three persons (or the Declarant during the "Class "B" Control Period") and shall have exclusive jurisdiction over all construction and improvements described in this Article IV. The members of the ARC shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount if any, as the Board may establish.

(c) Fees: Assistance. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. For purposes of this article, the ARC, Declarant, or person(s) or entity(ies) employed by them to perform the review shall be referred to as the "Reviewer". The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application review by architects, engineers or other professionals. The Board may include all or a portion of the compensation of the Reviewer and the reasonable costs incurred by the Reviewer, including the fees of such architects, engineers or other professionals in the Association's annual operating budget, or may require the Owner requesting review to pay all or a portion of the compensation of the Reviewer and the reasonable costs incurred by the Reviewer, including the fees of such architects, engineers or other professionals.

#### **4.3 Standards and Procedures.**

(a) Architectural Design Standards. The Architectural Design Standards may contain general provisions applicable to all of THE HOME PLACE OF SOUTHPORT as well as specific provisions which vary from between Single-family Lots and Townhome Lots. The

Architectural Design Standards are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Architectural Design Standards are not the exclusive basis for decisions of the Reviewer and compliance with the Architectural Design Standards does not guarantee approval of any application.

Declarant may prepare the initial Architectural Design Standards. Declarant shall have sole and full authority to adopt, alter or amend the Architectural Design Standards as long as it or one of its Affiliates owns any portion of THE HOME PLACE OF SOUTHPORT, notwithstanding a delegation of review authority to the ARC. Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Design Standards subject to the approval of the Board.

Any amendments to the Architectural Design Standards shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Design Standards, and such amendments may remove requirements previously imposed or otherwise make the Architectural Design Standards less restrictive.

The Reviewer shall make the Architectural Design Standards available to Owners and Builders who seek to engage in development or construction within THE HOME PLACE OF SOUTHPORT. In Declarant's discretion, such Architectural Design Standards may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Design Standards was in effect at any particular time, but such amendments shall be effective regardless of whether also Recorded.

(b) Procedures. Except as otherwise specifically provided in the Architectural Design Standards, no activities shall commence on any portion of THE HOME PLACE OF SOUTHPORT until an application for approval has been submitted to and approved by the Reviewer. Such applications shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Design Standards and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation or obligation, the following: visual aesthetics, quality of workmanship and design, natural platforms and finish grade elevations, the suitability of the proposed building, improvements, structure, or landscaping and the materials of which it is to be built; the site upon which it is proposed to erect the same, the harmony of external design with surrounding structures and environment; and the effect thereof on the adjacent or neighboring property. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may

vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall use good faith efforts to make a determination on each application within thirty (30) days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any application within thirty (30) days after Reviewer's determination on such application. In the case of disapproval, the Reviewer may, but shall not be obligated to specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond within sixty (60) days after Reviewer's receipt of a completed application and all required information, approval shall be deemed to have been given. However, no approval, whether expressly granted or deemed granted shall be inconsistent with the Architectural Design Standards unless a written variance has been granted pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. However, personal delivery of such written notice shall be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which plans have been approved within one (1) year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one (1) year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article provided such activities are undertaken in strict compliance with the requirements of such resolution.

#### **4.4 No Waiver of Future Approvals.**

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Design Standards, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the



future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### **4.5 Variances.**

The Reviewer may authorize variances from compliance with any of its standards and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be effective if contrary to this Declaration; or (c) preclude the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency for the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance

#### **4.6 Limitation of Liability.**

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of THE HOME PLACE OF SOUTHPORT. They do not create any duty to any Person. Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the ARC, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder, any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a builder in THE HOME PLACE OF SOUTHPORT; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Association shall indemnify the Board, the ARC, and the members of each as provided in Section 7.7.

#### **4.7 Certificate of Compliance.**

Any Owner may request that ARC issue a certificate of architectural compliance certifying that there are no known violations of this article or the Architectural Design Standards. The Association, acting through the ARC shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall preclude the



Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

#### **4.8 Enforcement.**

(a) Once construction has been initiated on a Lot, the Owner thereof must complete such construction within one (1) year. If an Owner does not comply with such schedule, then Declarant, and/or the Association shall have the right (but not the obligation) to complete such construction on Owner's behalf and at such Owner's expense. In the event the Declarant or the Association exercises the right provided in the immediately preceding sentence, the Declarant or the Association (as the case may be) shall be entitled to collect from such Owner, in addition to a reimbursement of all costs expended in the completion of construction of the Lot, an administrative fee for such work, which fee shall be equal to twenty percent (20%) of the costs incurred by such party in completing the work. Any and all of the foregoing costs and fees that may be incurred by or payable to Declarant or the Association shall be a charge and continuing lien upon such Lot until paid, and Declarant, the Board and/or the Association may bring an action against such Owner, or foreclose the lien against the property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and in either event, interest, cost and reasonable attorney's fees of any such action shall be added to the amount owed.

(b) Any structure or improvement placed or made in violation of this Article or the Architectural Design Standards shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, then Declarant, the Board and the Association shall each have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at a fixed rate equal to the lesser of the then current Wall Street Journal Prime Rate as of the date of such entry, plus five percent (5%) or the maximum rate then allowed by law, may be assessed against the Lot's Owner and the benefitted Lot and collected as a Specific Assessment pursuant to Section 8.5. In the event the Declarant, the Board and/or the Association exercises any right provided hereto in this Section 4.8(b), then Declarant, the Board and/or the Association (as the case may be) shall be entitled to collect from the relevant Owner, in addition to a reimbursement of all costs expended in the removal of the violation and/or restoration of the property, an administrative fee for such work, which fee shall be equal to twenty percent (20%) of the costs incurred by such party in performing the work. Such fee shall bear interest from date invoiced to the Lot's Owner, at the same rate as such costs.

(c) Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Architectural Design Standards may be prohibited by the Board from entering and conducting any future activities within THE HOME PLACE OF SOUTHPORT. In such event, neither the Association, nor its



officers or its directors shall be held liable to any person exercising the rights granted by this subsection.

(d) The Association shall have the authority to establish and levy fines for violation of this Article and the Architectural Design Standards, including fines for continuing violations thereof. The fine amounts may be deducted from any bond posted. If the fines are not paid, the Association may levy a Specific Assessment in accordance with the provisions of Section 8.5.

(e) In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this article and the decisions of the ARC.

(f) The terms and conditions of this Section 4.8 shall not apply to Declarant or any affiliate of Declarant or to any property within THE HOME PLACE OF SOUTHPORT owned by Declarant or any affiliate of Declarant.

## **Article V Maintenance and Repair**

### **5.1. Maintenance of Single Family Dwellings.**

Each Owner shall maintain his or her dwelling and all landscaping and improvements on individual lots and Common Areas comprising the dwelling in a manner consistent with the Governing documents, the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Amended Declaration or other declaration of covenants applicable to such dwelling. Unless otherwise directed by the Declarant or the Association, each Owner shall also be responsible for maintaining and irrigating the landscape within that portion of the adjacent Area of Common Responsibility or public right of way lying between the Lot boundary and any wall, fence or curb located on an Area of Common Responsibility or public right of way within ten (10) feet of the Lot boundary, provided, there shall be no right to remove trees, shrubs, or similar vegetation from the area without prior approval pursuant to Article IV. Unless otherwise directed by the Declarant or the Association, each Owner shall also be responsible for maintaining and irrigating the Landscaping within that portion of any adjacent Area of Common Responsibility lying between the Lot boundary and any lakes, ponds, or streams located on an Area of Common Responsibility within ten (10) feet of the Lot boundary: provided, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article IV, and such maintenance shall comply with any applicable permits or Restrictions and Rules.

### **5.2 Intentionally deleted.**

### **5.3 Responsibility for Repair and Replacement.**

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance

shall include responsibility for repair and replacement, as necessary to maintain the property to a level consisted with the community-wide standard.

By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless either the Association carries such insurance (which it may, and initially will, but is not obligated to do hereunder).

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

## **Article VI**

### **The Association and its Members**

#### **6.1. Function of Association.**

The Association is the entity responsible for management, maintenance, operation and control of the area of Common Responsibility. The Association also is the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and North Carolina Law.

#### **6.2 Membership.**

Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The members rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the owner in a written instrument provided to the Secretary of the Association.

Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title to any one or more Lots. The date of Recordation in the Office of the Register of Deeds of Brunswick County of the conveyance of the Lot in question shall govern the date of ownership of each particular Lot. However, in the case of death, the transfer of ownership shall occur on the date of death in the case of intestacy or the date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

#### **6.3 Voting.**

The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member. If any, Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Lot. No Class "A" vote shall be exercised for any property that is exempt from assessments under Section 8.10. All Class "A" votes shall be cast as provided in Section 6.3(c).

(b) Class "B". The sole Class "B" Member shall be the Declarant. The Class "B" Member may appoint the members of the Board of Directors of the Association during the Class "B" Control Period, as specified in the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

The Class "B" membership shall terminate upon the earlier of:

(i) two years after expiration of the Class "B" Control Period pursuant to Article I herein; or

(ii) when, in its discretion, Declarant so determines and declares in an instrument Recorded in the Office of the Register of Deeds for Brunswick County.

The Class "B" Member shall be entitled to three (3) votes for each Lot within THE HOME PLACE which is owned by Declarant. Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Lot owned by a Class "A" Member shall be exercised by the Voting Member representing Lot.

In any situation where a Member is entitled personally to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the Co-Owners determine among themselves and advise the Association's Secretary in writing prior to the vote being taken. Absent such notice, the Lot's vote shall be suspended if more than one Person seeks to exercise it. Such notice may identify a Voting Member and an alternate Voting Member.

## **Article VII**

### **Association Powers and Responsibilities**

#### **7.1. Acceptance and Control of Association Property.**

(a) The Association may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property (including, without limitation, the Common Area), subject to the provisions of the Governing Documents. The Association may enter into leases, licenses or operating agreements for portions of the



Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of owners, occupants, and residents of THE HOME PLACE OF SOUTHPORT.

(b) Declarant and its designees may convey to the Association personal property or fee title, leasehold or other property interests in any real property, improved or unimproved, described in Exhibit A. Such property shall be accepted by the Association as "Common Area" and thereafter shall be maintained by the Association at its expense for the benefit of the Members. Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area which Declarant previously conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

#### **7.2. Maintenance of Area of Common Responsibility.**

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all portions of and structures situated on the Common Area;
- (b) landscaping within public or private rights-of-way within or abutting THE HOME PLACE (to the extent not maintained by governmental authorities); thus the Association shall maintain the public road shown on the Plat as Casa Court and any landscaping within the right of way thereof until such time as dedication thereof and maintenance thereof have been accepted by the State of North Carolina, Brunswick County, or any municipality.
- (c) such portions of any additional property included within the area of Common Responsibility as may be dedicated by this Declaration, any Amended Declaration, Amendment to Declaration or Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;
- (d) all drainage easements, drainage or stormwater pipes, and all ponds, streams, and/or wetlands located within THE HOME PLACE OF SOUTHPORT which serve as part of the stormwater drainage system including improvements and equipment installed therein or used in connection therewith; and
- (e) any property and facilities which Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the



Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

(f) All rights of way including but not limited to any dedicated but not accepted areas of public streets and roads.

The Association may maintain other property it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Voting Members representing seventy-five (75%) percent of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced except with Declarant's prior written approval as long as Declarant or any Affiliated Company of Declarant owns any property described in Exhibit A.

The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement for the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, or other Recorded covenants, or agreements with the owner(s) thereof.

### **7.3. Stormwater Operation, Repair and Maintenance, and Assignment to Association.**

(a) Declarant shall be entitled to assign all water, sewer, land use, stormwater system and utility permits, agreements and easements between Declarant and any governmental agency or department or public or private utility company to the Association, in which case the Association shall be required to assume and accept assignment of same. After such an assignment, the Association shall be responsible for and assume all duties, obligations, and rights and privileges of the Declarant under such permits, agreements and easements, including all maintenance responsibility. Subject to the provisions of NCGS 8143-214.7(c2), Declarant shall have the right to transfer the stormwater permit(s) to the Association and the State of North Carolina shall allow such transfer so long as: (a) the Common Elements related to the operation and maintenance of the stormwater management system have been conveyed to the Association; (b) Declarant has conveyed at least fifty percent (50%) of the Lots to Owners other than Declarant; and (c) the stormwater management system is in substantial compliance with the stormwater permit(s). Therefore, the Association and each of its Members agree that at any time after the Declarant (i) has notified the Association of its intent to transfer the stormwater permit(s); (ii) has delivered to the Association a certificate from an engineer



licensed in the State of North Carolina, dated no more than forty-five (45) days before the date of the request that all stormwater retention ponds, swales and related facilities are constructed in substantial compliance and accordance with the plans and specifications therefor, and (iii) is not prohibited under NCGS §143-214.7(c2) from transferring the stormwater permit(s) to the Association, then the Association will cause its officers, without the necessity for a vote or approval of Lot Owners, and within ten (10) days after being requested to do so, to sign any and all documents required by the State of North Carolina for the stormwater permit(s) to be transferred to the Association, and will accept a deed conveying such facilities to the Association (if not already deeded and accepted). If the Association fails to cause the documents required by this paragraph to be signed by its officers or to accept a deed conveying such facilities, the Declarant shall be entitled to specific performance in the courts of North Carolina requiring that the Association's officers sign all documents necessary for the stormwater permit(s) to be transferred to the Association and accept a deed conveying such facilities to the Association. Failure of the Association's officers to sign as provided herein shall not relieve the Association of its obligations to operate and maintain the stormwater facilities covered by the stormwater permit(s). The Declarant, during the Class "B" Control Period, and thereafter the Board, shall have the right to appoint the Stormwater Agent's successor(s).

(b) The Association, at its sole cost and expense, is responsible for the operation and maintenance of all stormwater retention ponds and related facilities for THE HOME PLACE OF SOUTHPORT excepting only any damage to stormwater facilities caused by the Declarant's development activities. Such operation and maintenance shall include, but not be limited to, compliance with all of the terms and obtaining any renewals of the stormwater permit(s). The Association shall indemnify and hold harmless the Developer from any obligations and costs under the storm water permit(s) for operation and maintenance of the storm water retention pond(s) and related facilities. Declarant shall, at its sole cost and expense, be responsible for repairing any damage to stormwater facilities caused by the Declarant's development activities. The Declarant shall not be responsible for damages to stormwater retention ponds and related facilities caused by any other Cause whatsoever, including but not limited to construction of residences or other activities by Owners, their agents and contractors, acts of God, or the negligence or willful acts of others. Lot Owners shall be responsible for damages to such stormwater facilities caused by construction of buildings or other activities upon the Owner's Lot or by the negligence or willful acts of the Owner or the Owner's family members, members of the Owner's household, or the Owner's guests, contractors, agents, or invitees. Each Owner shall within thirty (30) days after receipt of notice of damage to stormwater facilities for which the Owner is responsible, repair the damage at the Owner's sole cost and expense to return them to the state required by the stormwater permit and the stormwater plans and specifications for THE HOME PLACE OF SOUTHPORT. If the Lot Owner fails to do so within said thirty (30) day period, the Association shall perform the work and the cost of the work shall be a Specific Assessment levied in accordance with Section 8.5(b).

(c) All Lots are subject to the State of North Carolina rules and regulations concerning storm water runoff as these rules and regulations may be amended from time to time. Without limiting the foregoing, Declarant or its designer, reserves the right to impose additional restrictions upon the Property as and to the extent required by the terms of any storm water permit applicable to THE HOME PLACE OF SOUTHPORT or any portion thereof issued by the State of North Carolina. Such additional restrictions may be imposed by Declarant by the recording of an Amended Declaration, Amendment to Declaration or Supplemental Declaration, and no joinder or consent of the Association or any other owner or person shall be required for such Amended Declaration, Amendment to Declaration or Supplemental Declaration

(d) The following deed restrictions and restrictive covenants in this Section shall apply to that property described in Exhibit A attached to this Declaration:

1. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 210518, as issued by the Division of Energy, Mineral and Land Resources (the "Division") under 15A NCAC 02H.1000, effective January 1, 2017.
2. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit(s).
3. These covenants are to run with the land and be binding on all persons and parties claiming under them.
4. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the Division.
5. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division.
6. The maximum built-upon area (BUA) per Lot is 4,500 square feet. This allotted amount includes any BUA 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 not shown on the approved plans. BUA has the same meaning as G.S. 143-214.7, as amended.
7. For those lots within the CAMA Area of Environmental Concern, where DCM calculates a different maximum lot BUA, the governing maximum lot BUA shall be the more restrictive of the two amounts.
8. The maximum allowable BUA shall not be exceeded on any lot until the permit is modified to ensure compliance with the stormwater rules, permit, and the approved plans and specifications.

9. All runoff from the BUA on the lot must drain into the permitted system. This may be accomplished via grading, a stormwater collection system and/or a vegetated conveyance.
10. A 50-foot wide vegetative setback must be provided and maintained adjacent to all surface waters in accordance with 15A NCAC 02H.1003(4) and the approved plans.
11. Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of the stormwater rules is subject to enforcement procedures as set forth in NCGS 143, Article 21.
12. Wetlands located on the property may not be filled, disturbed, or altered in any way unless properly permitted by the North Carolina Department of Environmental and Natural Resources and/or the U.S. Army Corps of Engineers.
13. Prohibit on-street parking within the development.

(e) Built-upon area in excess of the permitted amount will require a permit modification at Lot Owner's expense.

(f) Declarant reserves the right, in its sole discretion, as homes are constructed, to recalculate and redesignate maximum built-upon areas as set forth in above, provided such recalculations and redesignations are in accordance with stormwater permits applicable to THE HOME PLACE OF SOUTHPORT. In addition, if any property, as constructed as of the issuance of a Certificate of Occupancy for a home constructed thereon does not use all of its allocated built-upon area, Declarant shall be deemed to have reclaimed such excess allotment or unused capacity and shall have the right and option to reallocate that excess built-upon area to remaining properties in its sole discretion. In such event, Declarant shall notify the Division, or other applicable permitting authority, of the changes and shall record an Amended Declaration, Amendment to Declaration or Supplemental Declaration reflecting the same, and no joinder or consent of the Association or any other owner or person shall be required on such Amended Declaration, Amendment to Declaration or Supplemental Declaration. In the event that the Association is the permit holder at the time of any recapture and reallocation by the Declarant, the Association shall be obligated to join with Declarant and cooperate with Declarant in obtaining any necessary modifications to the Permit from the Division, or other applicable permitting authority.

(h) Declarant reserves the right to impose additional restrictions upon the Property as and to the extent required by the terms of the Stormwater Management Permit applicable to THE HOME PLACE OF SOUTHPORT or any portion thereof issued by the Division. Such additional restrictions may be imposed by Declarant by the recording of an Amended Declaration, Amendment to Declaration, or a Supplemental Declaration, and no joinder or

consent of the Association or any other owner or person shall be required for such Amended Declaration, Amendment to Declaration or Supplemental Declaration.

(i) No party shall apply for or obtain any stormwater management permit applicable to any portion of THE HOME PLACE OF SOUTHPORT without the prior written consent of Declarant (which may be granted or withheld in Declarant's sole and absolute discretion). Except in the specific event of Declarant's consent (if applicable) in accordance with the foregoing sentence, it is the intent of Declarant and this Declaration that all such permits are to be in the name of Declarant until such time as Declarant elects to assign them to the Association as provided herein.

(j) In the event of any change of jurisdiction such that the Division of Energy, Mineral and Land Resources shall cease to be the applicable permitting authority for stormwater permitting for THE HOME PLACE OF SOUTHPORT, the provisions of this Section 7.3 shall be construed to substitute the then-applicable permitting authority for the Division of Energy, Mineral and Land Resources.

#### **7.4. Insurance.**

The Association shall maintain all insurance coverage which it is required by law (including without limitation, the North Carolina Community Act) to provide.

#### **7.5. Compliance and Enforcement.**

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents, provided that, as and to the extent required by law or the By-Laws, the Owner or occupant shall be entitled to notice and a hearing in connection with such sanction. Such sanctions may include, without limitation:

(i) imposing reasonable charges for the late payment of assessments, which charges shall constitute a lien upon the violator's Lot, as provided in Section 8.9;

(ii) imposing reasonable monetary fines for other violations of the Governing Documents, which shall constitute a lien upon the violator's Lot, as provided in Section 8.9. Except as may be permitted by the Governing Documents and by law, no such fine shall exceed One Hundred Dollars (\$100.00) per violation; provided, however, if such violation is not remedied within five (5) days after the decision to levy the fine, then, beginning on the sixth (6) day after the decision to levy the fine, additional fines of One Hundred Dollars (\$100.00) per day may be levied by the Association, without further hearing, for each day that the violation continues. In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed as provided therein, the Association shall first seek to assess such fine against the violator, provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(iii) suspending an Owner's right to vote;



(iv) suspending any services or privileges provided by the Association (except for rights to access a Lot), including but not limited to the suspension of a person's right to use any recreational facilities within the Common Area, for reasonable periods for violations of the Declaration, By-Laws, and Restrictions and Rules;

(v) suspending any services or privileges (as described in the immediately preceding subsection) provided by the Association to an Owner or the Owner's Lot during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer;

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and upon failure of the Owner to do so, the Board or its designee shall have the right but not the obligation to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) levying Specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents;

(viii) filing liens with the Brunswick County Clerk of Superior Court and/or the Brunswick County Register of Deeds for nonpayment of assessments or fees, and

(ix) filing notices of violations with the Brunswick County Clerk of Superior Court and/or the Brunswick County Register of Deeds providing record notice of any violation of the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

(i) to the extent permitted by law, exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(iii) although a technical violation may exist or may have occurred, if it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources then to elect not to pursue the removal of the violation and/or the restoration of the property to substantially the same condition that existed prior to the violation.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.



(c) The Association, by contract or other agreement, may enforce applicable city and county ordinances and request the Brunswick County Planning Department, Brunswick County or any municipality having jurisdiction to enforce ordinances within THE HOME PLACE OF SOUTHPORT for the benefit of the Association and its Members.

**7.6. Implied Rights: Board Authority.**

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with the standards set forth in the By-Laws.

**7.7. Indemnification of Officers, Directors, and Others.**

Subject to North Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under the Articles of Incorporation and North Carolina law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and

officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**7.8. Safety and Security.**

Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in THE HOME PLACE OF SOUTHPORT. The Association may, but shall not be obligated to maintain or support certain activities within THE HOME PLACE OF SOUTHPORT designated to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within THE HOME PLACE OF SOUTHPORT, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

**NO REPRESENTATION OF WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE HOME PLACE OF SOUTHPORT, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, AND DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE HOME PLACE ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING LOTS AND THE CONTENTS OF LOTS, RESULTING FROM ACTS OF THIRD PARTIES. EACH OWNER SHALL BE RESPONSIBLE FOR INFORMING ITS TENANTS AND ALL OCCUPANTS OF ITS LOT OF THE FOREGOING.**

**7.9. Intentionally deleted.**

**7.10. Provision of Services.**

The Association may provide, or provide for, services and facilities for the Members and their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Lots. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, utilities, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the



provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners of Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

**Article VIII  
Association Finances**

**8.1. Budgeting and Allocating Common Expenses: Base Assessments.**

Until a Base Assessment amount is established as provided in this Section 8.1, the Base Assessment rate for Attached Duplex Homes shall be \$4,200.00 per year and shall be paid at the rate of \$350.00 per month for each Attached Duplex Lot, and the Base Assessment rate for Unattached Homes shall be \$4,680.00 per year and shall be paid at the rate of \$390.00 per month for each Unattached Home Lot, subject to the provisions of Article VIII of this Declaration.

At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.3. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, and any income expected from sources other than assessments against the Lots, as authorized in Section 8.7.

The Association is hereby authorized to levy Base Assessments equally against all Lots subject to assessment under Section 8.7 to fund the Common Expenses. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated becoming subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to reduce the Base Assessment for any fiscal year by payment by Declarant of a subsidy in addition to any amounts paid by Declarant under Section 8.8(b), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a summary of the final budget, together with a notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner within thirty (30) days after the Board adopts such budget. With such summary, the Board shall provide to each Owner a written notice of the meeting of the Owners at which the ratification of the budget will be considered. Notwithstanding any provisions to the contrary in the Governing Documents, there shall be no requirement that a quorum be present at the meeting described herein, and the notice of said meeting shall include a statement that the budget may be ratified at such meeting without a quorum. The meeting of the Owners to consider



ratification of the budget shall be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice referenced in this paragraph. The budget shall automatically be deemed ratified and become effective unless disapproved at such meeting by Members representing at least seventy-five (75%) percent of the total Class "A" votes in the Association and by the Class "B" Member, if such exists.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the Budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

**8.2. Intentionally deleted.**

**8.3. Special Assessments.**

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment shall be levied against the entire membership. The Board may establish the amount of the Special Assessment if it is One Hundred Dollars (\$100.00) or less in any assessment year for each Member. Except as otherwise specifically provided herein, any Special Assessment shall require the affirmative vote or written consent of Voting Members representing more than fifty (50%) percent of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**8.4. Intentionally deleted.**

**8.5. Specific Assessments.**

The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in Section 7.10). Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided that, to the extent required by law or the By-Laws, the Board shall give the Lot Owner prior notice and an opportunity for a hearing before levying any Specific Assessment under this subsection.

(c) to cover costs including overhead and administrative costs and reserves incurred for maintenance, repair and replacement of private roads, signs, mail boxes, fences and berms which are constructed for the benefit of certain specified Lots, as shall be more specifically set forth in a Amended Declaration, Amendment to Declaration or Supplemental Declaration.

**8.6. Service Assessments.**

The Association shall have the power to levy Service Assessments against a particular Lot or Lots constituting less than all Lots within THE HOME PLACE OF SOUTHPORT to cover the costs, including overhead and administrative costs, of providing specialized maintenance and/or landscaping services to such Lots and the occupants thereof. Such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner. Notwithstanding the foregoing to the contrary, the fact that the Association levies a Service Assessment shall not be deemed to impose any obligation upon the Association to (i) monitor the quality of work or services being provided, (ii) assume any responsibility for the quality of work or services provided, (iii) ensure the structural integrity or soundness of any construction or modifications provided or (iv) ensure compliance with building codes and other governmental requirements relating to the work or services provided.

**8.7. Authority to Assess Owners: Time of Payment: Grace Period for Certain Builders.**

(a) Declarant hereby establishes, and the Association is hereby authorized to levy, assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to the Declaration; or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

(b) Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payments. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require the outstanding balance on all assessments to be paid in full immediately.

(c) Notwithstanding anything to the contrary in this Article VIII, any Approved Builder who purchases property subject to this Declaration directly from the Declarant shall not be required to pay any Base Assessments or Special Assessments relative to such property acquired from Declarant for a period beginning on the date such property is acquired from Declarant (each, an "Acquisition Date") and ending on the date that is two hundred forty (240)

days after the Acquisition Date; provided, however, in the event any portion(s) of such property are subsequently conveyed by Builder to any other party prior to the 240 day after the Acquisition Date, then the grace period described in this Section 8.7(e) shall automatically and immediately terminate as to any portion(s) of the property conveyed by the Builder as of the date of such conveyance, and the grantee of such conveyance shall thenceforth be subject to full assessment under this Article VIII.

**8.8. Obligation for Assessments.**

(a) Personal Obligation. Each Owner, by accepting a deed is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 8% per annum or such higher rate as the Board may establish, subject to the limitations of North Carolina law), late charges as determined by Board resolution (subject to the limitation of North Carolina law), costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the personal obligation for delinquent Assessments shall not pass to the Owner's successor in title unless expressly assumed.

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

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

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Option to Fund Budget Deficits. During the Class "B" Control Period, Declarant may satisfy its obligation for assessments on Lots which it owns either by: (i) paying such assessments in the same manner as any other Owner; (i) paying the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year, or (ii) paying one-half of the assessments for an unimproved Lot for all Lots which are platted and Recorded but which have not yet been sold to an Owner other than Declarant or an Approved Builder.

Unless Declarant otherwise notifies the Board in writing at least forty-five (45) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

**8.9. Lien for Assessments.**

(a) The Association shall have a lien against each Lot including those owned by Declarant to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens except (i) lien and encumbrances (specifically including, but not limited to, a Recorded Mortgage on the Lot made in good faith and for value) Recorded before the docketing of the claim of liens in the office of the Brunswick County Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot which applicable law would require to be superior. This subsection does not affect the priority of mechanics' or materialmen's liens. Subject to applicable law and the terms and conditions of this Declaration, such lien, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

(b) Any assessment levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when a claim of lien is filed of record in the office of the Clerk of Superior Court of Brunswick County. To the extent permitted by law, fees, charges, late charges, and other charges imposed pursuant to this Declaration or North Carolina law are enforceable as assessments under this Article.

(c) The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2 of Chapter 45 of the General Statutes, provided, however:

(i) The Association may not foreclose an assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the Association, interest on unpaid fines, or attorneys' fees incurred by the Association solely associated with fines imposed by the Association (provided that the Association shall be entitled to enforce such lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes); and

(ii) The Association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any Owner unless the fee is expressly allowed in this Declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29 of Chapter 1 of the General Statutes.



(d) A claim of lien by the Association 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.

(e) The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf, (ii) no assessment shall be levied on it; and (iii) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(f) Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, 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 personally 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 all the Lot Owners including such purchaser, its heirs, successors, and assigns.

#### **8.10. Exempt Property.**

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

(a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility.

(b) Any property dedicated to and accepted by any governmental authority or public utility.

(c) Any property held by a conservation trust or similar non-profit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Lot which is subject to assessment hereunder (in which case the Lot shall not be exempted from assessment).

(d) intentionally deleted.

(e) Any property designated by Declarant for use as a sales office or model home (provided that Declarant shall be entitled to terminate any such sales office or model home exemption in the event such property is no longer used for such purposes).

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).



**8.11. Capitalization of Association.**

Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant or an Approved Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to three hundred and no/dollars (\$300.00) per Lot. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed there from to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

**8.12. Community Enhancement Fee.**

(a) Authority. The Board shall have the authority, on behalf of the Association, to establish and collect a transfer fee from the transferring Owner upon each transfer of title to a Lot in THE HOME PLACE OF SOUTHPORT, which fee shall be payable to the Association at the closing of the transfer and shall be secured by the Association's lien for assessments under Section 8.9. Owner shall notify the Association's Secretary of a pending title transfer at least seven days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and such other information as the Board may reasonably require.

(b) Purpose. All transfer fees which the Association collects shall be deposited into a segregated account used for such purposes as the Board deems beneficial to the general good and welfare of THE HOME PLACE OF SOUTHPORT, which the Governing Documents do not otherwise require to be addressed by the Association's general operating budget. By way of example and not limitation, such transfer fees might be used to assist the Association or one or more tax-exempt entities in funding:

(i) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation and preservation of the natural environment at THE HOME PLACE OF SOUTHPORT;

(ii) programs and activities which serve to promote a sense of community within THE HOME PLACE OF SOUTHPORT, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs; and

(iii) social services, community outreach programs, and other charitable causes.

(c) Exempt Transfers. Notwithstanding the above, no transfer fee shall be levied upon transfer of title to a Lot:

(i) by or to Declarant;

(ii) by an "Approved Builder" who held title solely for purposes of development and resale;



(iii) by a co-owner to any person who was a co-owner immediately prior to such transfer;

(iv) to the Owner's estate, surviving spouse or child upon the death of the Owner;

(v) to any entity wholly owned by the grantor (provided, upon any subsequent transfer of an ownership interest in such entity, the transfer fee shall become due); or

(vi) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

**8.13. Surplus Funds.**

Notwithstanding the provisions of N.C.G.S. §47F-3-114, any surplus funds of the Association remaining after payment of or provision for Common Expenses shall be applied to reserves or other future expenses as the Board deems appropriate.

**Article IX  
Expansion of the Community**

Intentionally deleted.

**Article X  
Additional Rights Reserved to Declarant**

**10.1 Withdrawal of Property.** Intentionally deleted.

**10.2. Marketing and Sales Activities.**

Declarant may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion may be reasonably required, convenient, or incidental to the construction or sale of units, including, but not limited to, business offices, signs, model units, and sales offices. Declarant shall have easements for access to and use of such facilities at no charge.

**10.3. Right to Develop.**

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

**10.4. Right to Approve Additional Covenants and Associations.**

No Person shall Record any declaration of covenants, conditions and restrictions, declaration of condominium, amendment thereto, or any similar instrument affecting any portion of THE HOME PLACE OF SOUTHPORT without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

**10.5. Right to Approve Changes in THE HOME PLACE OF SOUTHPORT Standards.**

No amendment to or modification of any Restrictions and Rules or Architectural Design Standards shall be effective without prior notice to and the written approval of Declarant so long as Declarant or any Affiliated Company of Declarant owns property subject to this Declaration.

**10.6. Right to Transfer or Assign Declarant Rights.**

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case, it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

**10.7. Exclusive Rights to Use Name of Development.**

No Person shall use the name "THE HOME PLACE OF SOUTHPORT" or any derivative of such name or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "THE HOME PLACE OF SOUTHPORT" in printed or promotional matter where such term is used solely to specify that particular property is located within THE HOME PLACE OF SOUTHPORT and the Association shall be entitled to use the words "THE HOME PLACE OF SOUTHPORT" in its name.

**10.8. Easement to Inspect and Right to Correct.**

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within THE HOME PLACE OF SOUTHPORT, including Lots, and a perpetual nonexclusive easement of access throughout THE HOME PLACE OF SOUTHPORT upon reasonable notice to the Owner. However, entry into a dwelling shall be permitted without the consent of the Owner upon those occasions when the Owner cannot be consulted and an emergency condition exists. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

**10.9. Right to Notice of Design or Construction Claims.**



No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within THE HOME PLACE OF SOUTHPORT in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

**10.10. Termination of Right**

The rights contained in this Article shall not terminate until the earlier of: (a) The termination of the "Class "B" Control Period"; or (b) Recording by Declarant of a written statement that all sales activity has ceased.

**Article XI  
Easements**

**11.1. Easements in Common Area**

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property the Association;
- (c) The Board's right to:
  - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
  - (ii) suspend an Owner's right to use recreational facilities within the Common Area (A) for any period during which any charge against such Owner's Lot remains delinquent; and (B) for a period not to exceed thirty (30) days for a single violation (or for a longer period in the case of any continuing violation) of the Governing Documents (subject to any applicable notice and hearing requirements specifically imposed by law or the By-Laws);
  - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
  - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
  - (v) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred subject to the approval requirements set forth in Section 18.4: and



(vi) permit use of any and all private roads that may now or in the future be located within THE HOME PLACE OF SOUTHPORT by persons other than Owners, their families, lessees, and guests in order to access adjacent or neighboring commercial property or any other adjacent or neighboring property.

(d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, is applicable, subject to reasonable Board regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the period of the lease.

### **11.2. Easements of Encroachment.**

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots or any Lot due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of the Person claiming the benefit of such easement.

### **11.3. Easements for Utilities, Etc.**

(a) Installation and Maintenance. So long as Declarant or an Affiliated Company of Declarant owns any property described in Exhibit A Declarant reserves for itself and grants to the Association and all utility providers, perpetual nonexclusive easements throughout THE HOME PLACE OF SOUTHPORT (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve THE HOME PLACE OF SOUTHPORT, including any additional property which is made a part of THE HOME PLACE OF SOUTHPORT in the future and/or any adjacent or neighboring commercial property, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, over and under private roads, walkways, pathways and trails, stormwater and/or other drainage systems, street lights, and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure, and other improvements described in Section 11.30): and

(iii) access to read utility meters

(b) Specific Easements Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in Declarant's sole

discretion, in connection with the orderly development of any property described in Exhibit "A-I" and Exhibit "A". The owner of any property to be burdened by any casement granted pursuant to this subsection shall be given written notice in advance of the grant. The location of the casement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

(c) **Minimal Interference.** All work associated with the exercise of the casements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize the interference with the use and enjoyment of the property burdened by the casement. Upon completion of the work, the Person exercising the casement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these casements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

#### **11.4. Easements to Serve Additional Property.**

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an casement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit A whether or not such property is expressly made subject to this Declaration. This casement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the casement is exercised for permanent access to such property and such property or any portion thereof benefitting from such casement is not made subject to this Declaration, Declarant and its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance that the Association provides for the benefit of the casement holder. The shared maintenance costs may include maintenance of storm water utilities as well as any private road-way providing access to the benefitted party.

#### **11.5. Easements for Maintenance, Emergency, and Enforcement.**

Declarant grants to the Association casements over THE HOME PLACE OF SOUTHPORT as necessary to enable the Association to fulfil its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. The Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

#### **11.6. Easements for Lake and Pond Maintenance and Flood Water.**

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility or any other property; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such area in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of THE HOME PLACE OF SOUTHPORT which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within one-hundred (100) feet of bodies of water and wetlands within THE HOME PLACE OF SOUTHPORT in order to (a) temporarily flood and back water upon and maintain water over such portions of THE HOME PLACE OF SOUTHPORT; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility, and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a permanent, exclusive right and easement (a) to pump water from the ponds located in the Area of Common Responsibility for the purpose of irrigating any portion of the same and/or any other property, and (b) to drill, install, locate, maintain and use wells, pumping stations, water lowers, filtration basins and tanks and related water facilities and systems within the Common Area and/or lands within the Area of Common Responsibility. The pumping or other removal of any water from any lake, pond, lagoon or body of water wholly or partly within the Area of Common Responsibility, for any purpose other than fire fighting and as provided herein, is prohibited without the express written permission of Declarant and/or the Association.

There is hereby reserved for the benefit of the Declarant, the Association, or any public utility company or municipality which is providing sewer service to THE HOME PLACE OF SOUTHPORT, their affiliates, successors or assigns, a permanent easement and right to discharge waste water into designated ponds within THE HOME PLACE OF SOUTHPORT, so long as approved by the North Carolina Division of Environmental Management

#### **11.8 Easement to Inspect and Right to Correct.**

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or conditions which may exist on any portion of the property within THE HOME PLACE OF SOUTHPORT, including Lots, and a perpetual, nonexclusive easement of access through THE HOME PLACE OF SOUTHPORT to the extent



reasonably necessary to exercise such right. Except in an emergency, entry into a Lot shall be only after reasonable notice to the Owner.

The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

**11.9. Setback Easement.**

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 line are established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the Declarant reserves the right to either 1) establish setback lines for certain property or Townhomes within the property's Architectural Design Standards, or 2) 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 this Declaration 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.

In addition to the easements reserved and/or granted above and notwithstanding anything to the contrary in the foregoing paragraph of Section 11.9. Declarant hereby further reserves for itself, the Association and their successors, assigns and designees a perpetual, nonexclusive right and casement over any portions of any Lot and/or tract within THE HOME PLACE OF SOUTHPORT lying within fifteen (15) feet of the property lines of such Lot and/or tract under elevated decks or porches (but not through a structure) for the purpose of installing, inspecting, maintaining, operating, repairing and replacing utilities, stormwater facilities, landscaping and buffer yards, retaining walls , fencing, etc, or any other reasonable use related to the orderly development, maintenance and use of the property within THE HOME PLACE OF SOUTHPORT.

**Article XII  
 Limited Common Areas**

**12.1 Purpose.**

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of Lot(s) to which such Limited Common Area may be allocated. By way of illustration and not limitation Limited Common Areas may include parking areas, entry features, recreational facilities, landscaped medians and cul-de-sacs, and other portions of the Common Area. All costs associated with



maintenance, repair, replacement, and insurance of a Limited Common Area shall be allocated to the Lot(s) to which the Limited Common Areas are allocated.

**12.2 Designation.**

During the Class "B" Control Period, Limited Common Area may be designated by Declarant in the deed conveying such area to the Association, or on a subdivision plat relating to such Common Area or by Amended Declaration, Amendment to Declaration or Supplemental Declaration, provided, however, any such assignment shall not preclude Declarant from inter assigning use of the same Limited Common Area to additional Lots, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.I.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Voting Members representing a majority of the total Class "A" votes in the Association. As long as Declarant or an Affiliated Company of Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, any such assignment or reassignment shall also require Declarant's written consent.

**Article XIII**

**Party Walls and Other Shared Structures**

**13.1 General Rules of Law to Apply.**

Each wall built as a part of the original construction on the Townhome Lots which serves and/or separates any two adjoining Lots shall constitute a party wall structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage to shared fences, driveways and similar shared structures due to negligence or willful acts or omissions shall apply. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article 14.

**13.2 Maintenance: Damage and Destruction.**

The cost of reasonable repair and maintenance of a party wall and other shared structures shall be shared equally by the Owners who make use of the structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the kind and shall pass to such Owner's successors-in-title.

## Article XIV Resolution of Disputes

### 14.1. Agreement to encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors and committee members, all Persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted each Claim to the alternative dispute resolution procedures set forth in Section 14.2 in good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment, which shall not be subject to review.
- (iv) any suit in which any indispensable party is not a Bound Party, and
- (v) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statutes of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

### 14.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim the legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and



(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the claim;

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 14.2(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Brunswick County area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation which scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not to third parties) on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of Termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

#### **14.3 Initiation of Litigation by Association.**

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Owners entitled to cast 75% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the "Class "B" Control Period";
- (b) initiated to enforce the provisions of this Declaration, including collection of Assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of foods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.



This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

**Article XV**  
**Mortgagee Provisions**

**15.1. Notices of Action.**

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, and guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of THE HOME PLACE OF SOUTHPORT or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) day, or any other violation of the Governing Documents relating to such Lot or the Owner of occupant which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

**15.2. Special FHLMC Provision.**

So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) percent of the first Mortgagees or Voting Members representing at least sixty-seven (67%) percent of the total Association vote to consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (a decision, including contracts, by the Board or provisions of any declaration subsequently Recorded on any portion of THE HOME PLACE OF SOUTHPORT regarding assessments shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Area (the issuance and amendment of architectural standards, procedures, rules and

regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

- (d) Fail to maintain insurance, as required by this Declaration; or
- (e) Use hazard insurance proceeds for any common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of a Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

### **15.3 Other Provisions for First Lien Holders.**

To the extent not inconsistent with North Carolina law:

(a) Any restoration or repair of THE HOME PLACE OF SOUTHPORT after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of the first Mortgages on Lots to which more than fifty (50%) percent of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which more than fifty (50%) percent of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

### **15.4 Amendment to Documents.**

The following provisions do not apply to amendments to the Governing Documents or termination of the Association as a result of destruction, damage, or condemnation pursuant to Section 15.3(a) and (b), or to the addition of land in accordance with Article IX.

(a) The consent of Voting Members representing at least eighty (80%) percent of the Class "A" votes and of Declarant, so long as it owns any land subject to this Declaration, and the approval of the Eligible Holders of first Mortgages on Lots to which at least eighty (80%) percent of the votes of Lots subject a Mortgage appertain, shall be required to terminate the Association

### **15.5 No Priority.**

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

### **15.6 Notice to Association.**



Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**15.7. Failure of Mortgagee to Respond,**

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

**15.8. Construction of Article XV.**

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the By-Laws, or North Carolina law for any of the acts set out in this Article.

**Article XVI  
 Changes in Ownership of Lots**

Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

**Article XVII  
 Changes in Common Area**

**17.1. Condemnation.**

If any part of the Common Area shall be taken (or conveyed in lien of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least sixty-seven (67%) percent of the total Class "A" votes in the Association and of Declarant, as long as Declarant or any Affiliated Company of Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking Declarant, so long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1, and Voting Members representing at least seventy-five (75%) percent of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board; or

(b) If the taking or conveyance does not involve improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

#### **17.2. Partition.**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

#### **17.3. Transfer or Dedication of Common Area.**

Subject to the applicable terms of the North Carolina Planned Community Act, the Association may dedicate portions of the Common Area to the County of Brunswick, North Carolina or to any other local, state, or federal governmental or quasi- governmental entity, subject to such approval as may be required by law or Section 17.4 herein.

#### **17.4. Actions Requiring Owner Approval.**

If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs insures or guarantees the Mortgage on any Lot, then the following actions shall require the prior approval of the Voting Members representing not less than two-thirds of the total Class "A" votes in the Association and the consent of the Class "B" Member, if such exists: merger, consolidation or dissolution of the Association; annexation of additional property other than that described in Exhibit A; and dedication, conveyance or mortgaging of Common Area. Notwithstanding anything to the contrary in Section 17.1 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.



## Amendment of Declaration

### 18.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

In addition, so long as Declarant owns property described in Exhibit A for development as part of THE HOME PLACE OF SOUTHPORT, it may unilaterally amend this Declaration for any other purpose. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

### 18.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five (75%) percent of the total Class "A" votes in the Association, including seventy-five (75%) percent of the Class "A" votes held by Members other than Declarant, and Declarant's consent, so long as Declarant or an Affiliated Company of Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1. In addition, the approval requirements set forth in Article XV shall be met if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

### 18.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Members without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within



six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

**18.4. Exhibits.**

Exhibit A attached to this Declaration is incorporated by this reference, and this Article governs the amendment of such exhibit. All other exhibits are attached for informational purposes and may be amended from time to time as provided therein or in the provisions of this Declaration which refer to and govern such exhibits.

**Article IXX  
Conservation**

**19.1 Identification.**

Those areas defined herein at Article II as “Conservation Areas”, if any, shall be maintained in perpetuity in their natural condition except as permitted by Code of Ordinances of the Brunswick County Planning Department, North Carolina Section 18-341(d)(1) through (4). Those areas defined herein at Article II as “Conservation Setbacks”, if any, shall be maintained in perpetuity in compliance with Code of Ordinances of the Brunswick County Planning Department, North Carolina Section 18- 341(d)(5)

**19.2 Prohibited Activities.**

No person or entity shall perform any activities prohibited under Code of Ordinances of the Brunswick County Planning Department, North Carolina Section 18-341(d) (1) through (4) in the “Conservation Areas”.

No person or entity shall place any structures or impervious surfaces or perform any activities or make any improvements within the “Conservation Setbacks” except in compliance with or as permitted by Code of Ordinances of the Brunswick County Planning Department, North Carolina Section 18-341 (d)(5).

This covenant is to run with the land, and shall be binding on the Declarant and all parties claiming under it. This covenant cannot be amended without the express written consent of the Brunswick County Planning Department.

**Article XX  
Miscellaneous**

**20.1. Severability.**



Invalidation of any one of the covenants or restrictions in this Declaration by judgment or any court, agency or legislative order shall in no way affect any other provision, covenants, conditions or restrictions contained in this Declaration.

**20.2. Notice by Electronic Means.**

Any written notice required to be provided pursuant to the Governing Documents may be provided in accordance with the provisions of the applicable Governing Document. Alternatively, and to the extent permitted by North Carolina law, written notice may be provided by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the Member or other Person designated as a recipient of said notice. Permitted notice given electronically shall be deemed to be delivered when dispatched, unless an error message is reported back to the sending system.

**20.3. Conflicts with the North Carolina Planned Community Act.**

To the extent any provision of this Declaration is directly inconsistent with the terms of the North Carolina Planned Community Act (N.C.G.S. §47F-1-101 et. Seq.) And such provision of this Declaration cannot reasonably be reconciled with said North Carolina Planned Community Act, the terms of the North Carolina Planned Community Act shall be controlling with regard to such term.

(Signature Page follows)



IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.


**THE HOME PLACE OF WILMINGTON, LLC**  
a North Carolina limited liability company

By: T. ANDO CONSTRUCTION & CONSULTING, INC.,  
Member/Manager

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

Terrance S. Ando, President

By: KEY MARCO CONSULTING & MARKETING, INC.,  
Member/Manager

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

Robert Weinbach, President

By: SINGER ISLAND CONSULTING, INC.,  
Member/Manager

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

Dick J. Thompson, President



STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

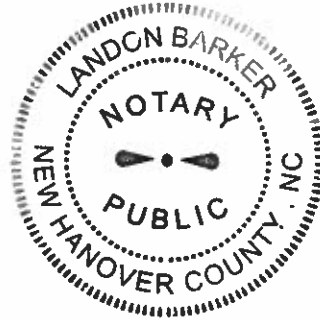
I, Landon Barker, a Notary Public for said County and State, do hereby certify that Terrance S. Ando, President of T. Ando Construction & Consulting, Inc., acting in its capacity as Member/Manager of THE HOME PLACE OF WILMINGTON, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said corporation acting in its capacity as Member/Manager of said limited liability company.

Witness my hand and notarial seal this 7 day of Sept, 2022.

Landon Barker  
Notary Public

My Commission Expires:

3-28-2026



STATE OF North Carolina  
COUNTY OF Brunswick

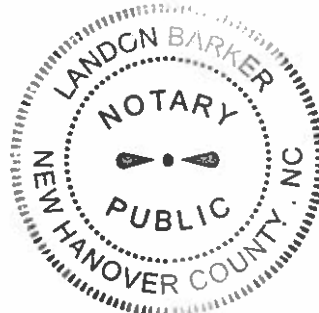
I, Landon Barker, a Notary Public for said County and State, do hereby certify that Robert Weinbach, President of Key Marco Consulting & Marketing, Inc., acting in its capacity as Member/Manager of THE HOME PLACE OF WILMINGTON, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said corporation acting in its capacity as Member/Manager of said limited liability company.

Witness my hand and notarial seal this 7 day of Sept, 2022.

Landon Barker  
Notary Public

My Commission Expires:

3-28-2026





STATE OF North Carolina  
COUNTY OF New Hanover

I, Landon Barker, a Notary Public for said County and State, do hereby certify that Dick J. Thompson, President of Singer Island Consulting, Inc., acting in its capacity as Member/Manager of THE HOME PLACE OF WILMINGTON, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said corporation acting in its capacity as Member/Manager of said limited liability company.

Witness my hand and notarial seal this 7 day of Sept., 2022.

Landon Barker  
Notary Public

My Commission Expires:  
3-23-2024





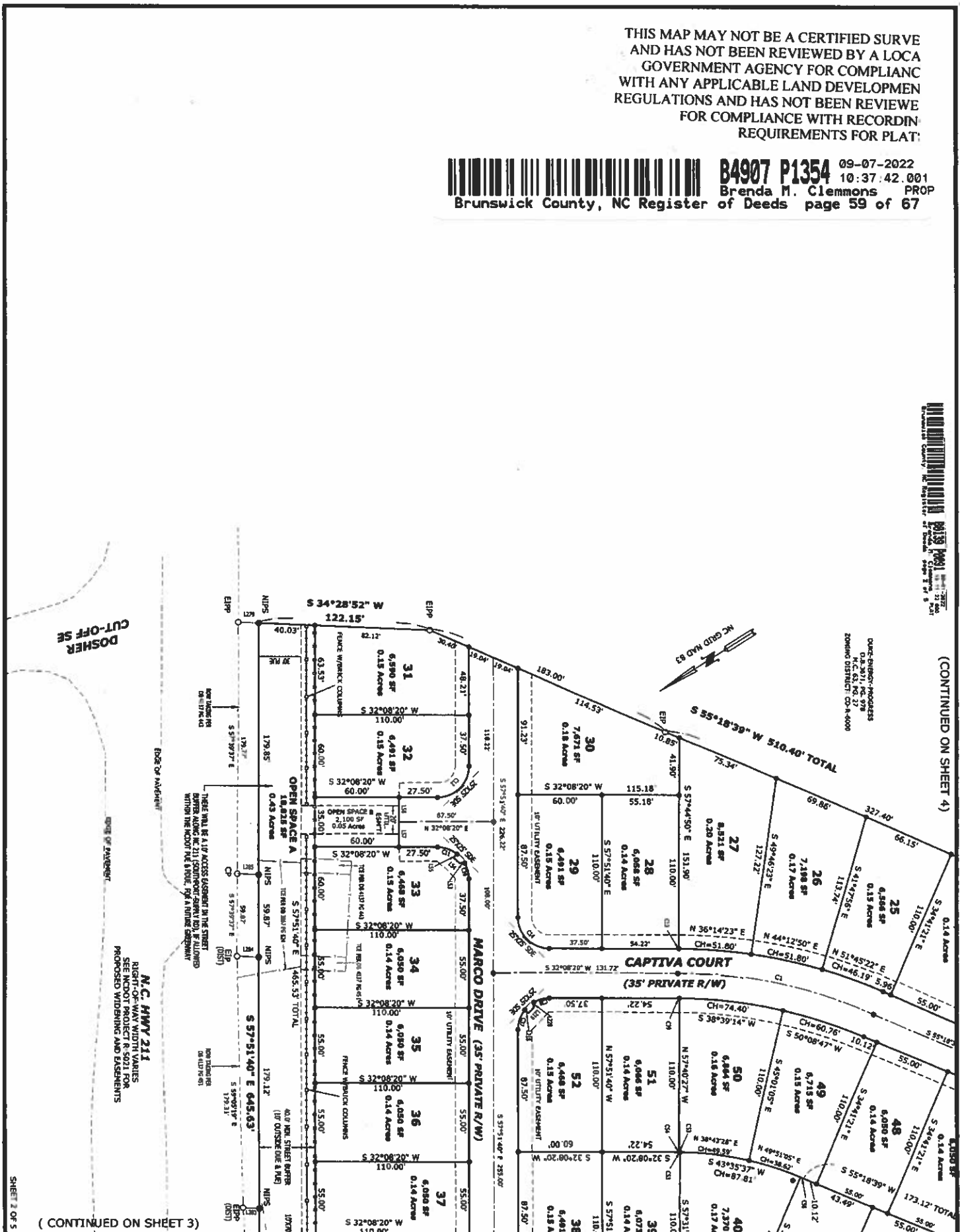
THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLAT:



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Brenda M. Clemmons PROP  
Brunswick County, NC Register of Deeds page 59 of 67



(CONTINUED ON SHEET 4)

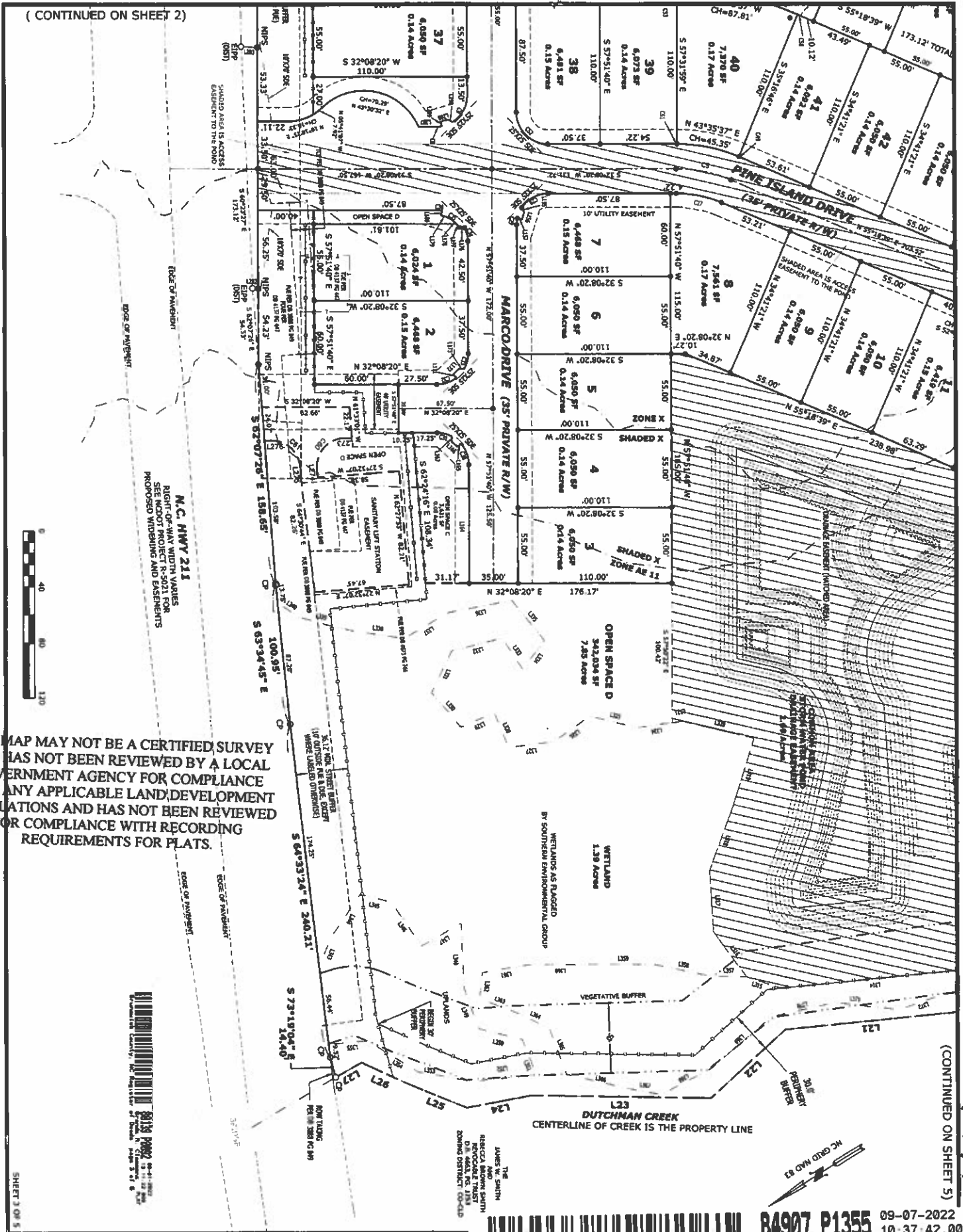


DOSHER CUT-OFF SE

(CONTINUED ON SHEET 3)

139/91

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N.C. HWY 211  
RIGHT-OF-WAY WIDTH VARIES  
SEE MONUMENT PROJECT R-5021 FOR  
PROPOSED WIDENING AND EASEMENTS

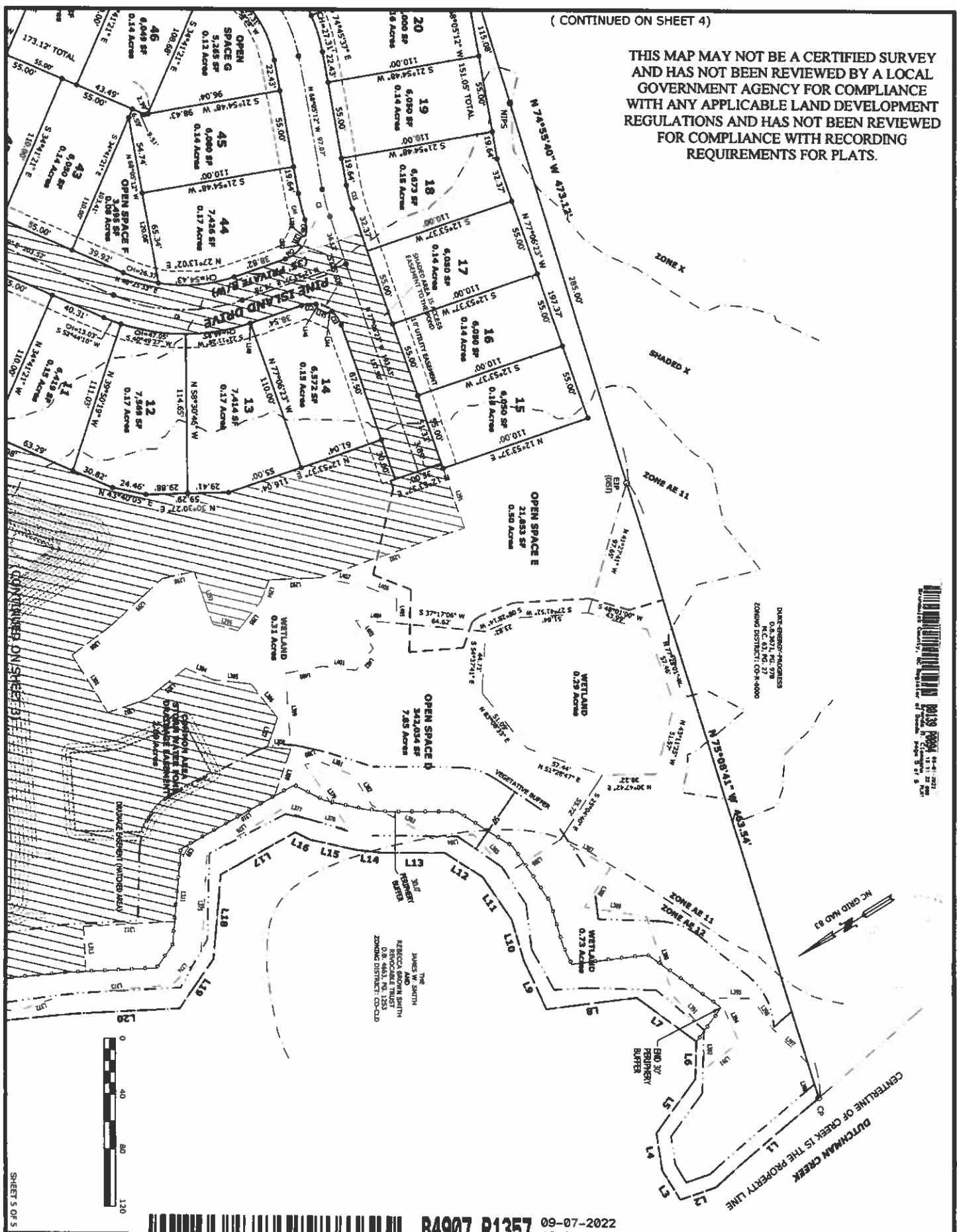
(CONTINUED ON SHEET 5)

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(CONTINUED ON SHEET 4)

THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS.



DATE: 09-07-2022  
 DRAWN BY: BRENDA M. CIEMMONS  
 P.L.C., 411 N. C. ST.,  
 ZONING DISTRICT: CO-H-4000



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## EXHIBIT "B"

### INITIAL RESTRICTIONS AND RULES

The following restrictions shall apply to all of THE HOME PLACE OF SOUTHPORT until such time as they are amended, modified, repealed, or limited pursuant to Article III of the Declaration.

1. General. THE HOME PLACE OF SOUTHPORT, is a planned development, which includes residential lots and may include temporary commercial offices (without limitation, an information center and/or sales office for any real estate broker retained by Declarant to assist in the sale of property described in Exhibit A, offices for any property manager retained by the Association, or business offices for Declarant or the Association) consistent with this Declaration and any Amended Declaration, Amendment to Declaration or Supplemental Declaration.

2. Restricted Activities. The following activities are prohibited within THE HOME PLACE OF SOUTHPORT unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, motorcycles, mopeds, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles on Lots in places other than enclosed garages; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area;

(b) Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Lot. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may have the pet removed. All parties are also hereby notified that, in the event any dog kept or maintained on a Lot or within THE HOME PLACE OF SOUTHPORT barks excessively, continuously or in a manner that constitutes a nuisance, the Board may require the Lot Owner to employ a collar or other device designated to reduce or control such excessive barking (provided that such action shall in not 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). Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board, whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;

(c) Any activity which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Lots;



- (d) Any activity which violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;
- (e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Lot;
- (f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Lots;
- (g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Lot;
- (h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Lots, except alarm devices used exclusively for security purposes;
- (i) Use and discharge of firecrackers and other fireworks;
- (j) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within THE HOME PLACE OF SOUTHPORT, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;
- (k) Accumulation of rubbish, trash, or garbage except between regular garbage pickups and then only in approved containers;
- (l) Obstruction or re-channeling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.
- (m) Subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and recorded, except that Declarant shall be permitted to subdivide or replat Lots which it owns;
- (n) Unless otherwise approved by the Association or Declarant, no swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams, or other bodies of water within THE HOME PLACE OF SOUTHPORT, will be permitted. Water from lakes, ponds, and streams within THE HOME PLACE OF SOUTHPORT for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within or adjacent to THE HOME PLACE OF SOUTHPORT;

(o) Use of any Lot for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years;

(p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation and maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article IV;

(r) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the outside of the Lot; (ii) the business activity conforms to all zoning requirements for THE HOME PLACE OF SOUTHPORT; (iii) the business activity does not involve door-to-door solicitation of residents of THE HOME PLACE OF SOUTHPORT; (iv) the business activity does not in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in THE HOME PLACE OF SOUTHPORT which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of THE HOME PLACE OF SOUTHPORT and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of THE HOME PLACE OF SOUTHPORT, as may be determined in the Board's sole discretion.

The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary, generally accepted meaning and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (1) such activity is engaged in full or part-time, (2) such activity is intended to or does generate a profit; or (3) a license is required.

Leasing of a Lot shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of THE HOME PLACE OF SOUTHPORT or its use of any Lots which it owns within THE HOME PLACE OF SOUTHPORT;

(s) Capturing, trapping, or killing of wildlife within THE HOME PLACE OF SOUTHPORT, except circumstances posing an imminent threat to the safety of persons using THE HOME PLACE OF SOUTHPORT or by licensed pest control companies.

(t) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within THE HOME PLACE OF SOUTHPORT or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(u) Conversion of any garage to finished space for use as an apartment or other integral part of the living area on any Lot without prior approval pursuant to Article IV;

(v) Operation of motorized vehicles on pathways or trails maintained by the Association; and

(w) Any construction, erection, placement, or modification of anything, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment, clotheslines, garbage cans; woodpiles; above-ground swimming pools, docks, piers and similar structures, and hedges, walls, dog runs, animal pens, or fences of any kind; satellite dishes and antennas, except that:

- (i) an antenna designated to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;
- (ii) an antenna designated to receive video programming services via multipoint distribution services, including multichannel multipoint distributions services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or
- (iii) an antenna that is designated to receive television broadcast signals; (collectively, "Permitted Antennas") shall be permitted on Lots, subject to such reasonable requirements as to location and screening as may be set forth in the Architectural Design Standards, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of THE HOME PLACE OF SOUTHPORT, should any master system or systems be utilized by the Association and require such exterior apparatus.

3. Prohibited Conditions. The following shall be prohibited at THE HOME PLACE OF SOUTHPORT:



(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of THE HOME PLACE OF SOUTHPORT;

(b) Structures, equipment, or other items on the exterior portions of a Lot which have become rusty, dilapidated, or otherwise fallen into disrepair; and

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from THE HOME PLACE OF SOUTHPORT ponds, or other surface waters within THE HOME PLACE OF SOUTHPORT, except that Declarant and the Association shall have the right to draw water from such sources.

4. Leasing of Lots. "Leasing" for purpose of this Paragraph, is defined as regular, exclusive occupancy of a Lot by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, services, gratuity, or emolument. All leases shall be in writing. The Board shall require a minimum lease term of twelve months. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten (10) days of execution of the Lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Restrictions and Rules. No rentals of individual rooms within a Lot will be permitted. Any lease regardless of term must be for the entire unit.