

rod.brunasco.net



B3523 P0205 05-02-2014
13:00:48.004
Brenda M. Clemmons PROP
Brunswick County, NC Register of Deeds page 1 of 25

rod.brunasco.net

Collins & Collins
resale
25 Total 66 Rev Int 24
Ck \$ 92 Ck \$ 500 Cash \$
Refund: Cash \$ Finance \$

* Portions of document are illegible due to condition

of original

Seals verified by original

Seals cannot be reproduced or copied.

rod.brunasco.net

WATERWAY COVE

AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES, AND LIENS FOR WATERWAY COVE

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.
SEE ARTICLE II, SECTION 6.

Prepared by and return recording to:

Ellen P. Wortman
Hedrick, Gardner, Kincheloe & Garofalo, LLP
1838 Sir Tyler Drive, Suite 200
Wilmington, NC 28405

rod.brunasco.net

rod.brunasco.net

rod.brunasco.net

**AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS,
EASEMENTS, CHARGES, AND LIENS FOR WATERWAY COVE**

THIS AMENDED AND RESTATED DECLARATION for Waterway Cove is made by this the 28th day of March, 2014 by Waterway Cove Partners, LLC, the successor declarant, and the undersigned WATERWAY COVE HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation operating in Brunswick County.

WITNESSETH:

WHEREAS, WATERWAY COVE is a real estate development located in Brunswick County, North Carolina further identified on the following map(s):

- A. "Waterway Cove Phase 1A", recorded on April 6, 2010 in the Brunswick County Registry at Map Book 65, Pages 18-25; and
- B. "Waterway Cove Phase 2", recorded on March 26, 2013 in the Brunswick County Registry at Map Book 77, Pages 69-71; and

WHEREAS, WATERWAY COVE was initially developed by Waterboro Village Management, LLC, (hereinafter "Original Declarant"), which caused to be recorded the following:

- A. "Waterway Cove Phase 1A", recorded on April 16, 2010 in the Brunswick County Registry at Map Cabinet 65, Pages 18-25;
- B. "Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens For Waterway Cove", recorded on May 13, 2010 in the Brunswick County Registry at Book 3045, Page 897;
- C. "Affidavit" addressing water and sewer distribution lines in Phase 1A, recorded on October 20, 2010 in the Brunswick County Registry at Book 3095, Page 1379; and
- D. "Affidavit" addressing water and sewer distribution lines in Phase 2, recorded on July 11, 2011 in the Brunswick County Registry at Book 3175, Page 892; and

WHEREAS, the Original Declarant transferred its ownership and rights to **WATERWAY COVE** to Special Services Asset Management Company, an Illinois Corporation, pursuant to two North Carolina General Warranty Deeds, recorded on January 27, 2012 in the Brunswick County Registry at Book 3233, Page 792, and August 1, 2012 in the Brunswick County Registry at Book 3296, Page 1178; and

WHEREAS, Special Services Asset Management Company caused to be recorded the following:

- A. "Waterway Cove Phase 2", recorded on March 26, 2013 in the Brunswick County Registry at Map Cabinet 77, Pages 69-71; and
- B. "Assignment And Assumption of Declarant Rights", recorded on July 10, 2013 in the Brunswick County Registry at Book 3428, Page 834; and

WHEREAS, WATERWAY COVE HOMEOWNERS ASSOCIATION, INC., a non-profit corporation, currently acts as the representative for its members who are Lot Owners in **WATERWAY COVE**; and it was the intent of the Original Declarant, and is the intent of the Successor Declarant, at the time of the conveyance of a Lot to an Owner, to make available certain Common Areas and amenities on the Property, if any, as they were built, and, to convey, upon completion of the development, the entire Property, excluding the Lots and publicly dedicated streets, if any, without cost or charge to the Association; and

WHEREAS, this **AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WATERWAY COVE** is made pursuant to N.C. Gen. Stat. 47F-2-117; and

WHEREAS, it is the desire of **WATERWAY COVE HOMEOWNERS ASSOCIATION, INC.,** the Lot Owners of **WATERWAY COVE,** and the Successor Declarant to amend the Declarant rights provided in the Declaration, and to eliminate NATUREWATCH LLC's

05-02-2014 13:00:48.004
B3523 P0206
Branda N. Clemmons Prop
Brunswick County, NC Register of Deeds page 2 of 25

obligation to pay annual assessments for Lots they own, to revise the Turnover Date in the Declaration, and allow both the Successor Declarant and NATUREWATCH LLC to be eligible for Class B membership; and

WHEREAS, it is the desire of WATERWAY COVE HOMEOWNERS ASSOCIATION, INC., the Lot Owners of WATERWAY COVE, and the Successor Declarant to amend the minimum square footage to require a minimum of 1400 square feet in all phases of WATERWAY COVE; and

WHEREAS, Article XI, Section 2, of the Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens For Waterway Cove anticipated future phases of WATERWAY COVE would be subjected to the Declaration, and allowed the Original Declarant to record a Supplemental Declaration, allowing for change in the character of the subsequent phases; and

WHEREAS, the Declarant rights reserved in the Declaration and other applicable documents were assigned to the Successor Declarant by deeds recorded on January 27, 2012 in the Brunswick County Registry at Book 3233, Page 792, and August 1, 2012 in the Brunswick County Registry at Book 3296, Page 1178; and

WHEREAS, it is the desire of WATERWAY COVE HOMEOWNERS ASSOCIATION, INC., the Lot Owners and the Successor Declarant to subject Phase 2 of WATERWAY COVE into the WATERWAY COVE HOMEOWNERS ASSOCIATION, which property is more particularly described in the map entitled "Waterway Cove Phase 2", recorded on March 26, 2013 in the Brunswick County Registry at Map Book 77, Pages 69-71, and to subject that property to the previously recorded Association documents referenced above, and to include the current and future Lot Owner(s) of Phase 2 of WATERWAY COVE as Members in WATERWAY COVE HOMEOWNERS ASSOCIATION, INC. All of these restrictions shall run with the land and shall be binding upon the Lot Owners and upon the parties having or acquiring any right, title or interest, legal or equitable in and to the Property or any part or parts thereof subject to such restrictions; and

WHEREAS, on March 28, 2014, the first annual meeting of the Members of the Association was held at which a quorum was present. At the meeting, this Amended and Restated Declaration was presented, and was approved by sixty-seven percent (67%) of the votes of the Association; and

WHEREAS, the purpose of this Amended and Restated Declaration is to amend and restate all Prior Declarations and to combine all Prior Declarations into this Declaration. This Amended and Restated Declaration replaces and supersedes all Prior Declarations; and

NOW, THEREFORE, WATERWAY COVE HOMEOWNERS ASSOCIATION, INC., the Lot Owners of WATERWAY COVE, and the Successor Declarant, hereby declare that all of the Lots and Common Areas, as defined herein, located within WATERWAY COVE are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of WATERWAY COVE as a whole and of each of said Lots. All of these restrictions shall run with the land and shall be binding upon the Lot Owners and upon the parties having or acquiring an right, title or interest, legal or equitable in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of the Successor Declarant and every one of its successors in title to any of the Property.

ARTICLE I Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context prohibits) have the following meanings:

- (a) "Act" means The North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes, as the same may be amended, or such successor or replacement act.
- (b) "Additional Property" means the additional lands that Declarant, in its discretion, may incorporate or annex as additional phases of the Subdivision and bring same under and subject to this Declaration.
- (c) "ARC" means the Architectural Review Committee established under Article IV hereof.
- (d) "Architectural Review Guidelines" means the architectural guidelines promulgated from time to time by the ARC pursuant to Article IV, Section 2.
- (e) "Assessment" means one or more of the annual assessments, special assessments and/or Individual Assessments as established and provided for in Article VII.
- (f) "Association" means Waterway Cove Homeowners Association, Inc., its successors and assigns, a North Carolina nonprofit corporation.
- (g) "Board of Directors" means the Board of Directors of the Association.
- (h) "BUA (Built Upon Area)" includes, but is not limited to: structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking or the water surface of swimming pools.

- (i) **"Buffer Area"** means an area identified as a "Buffer Area" (or words of similar import) on any recorded plat of the Subdivision.
- (j) **"Common Area"** means (i) all commons area and those area of land, including the facilities or improvements to be constructed thereon, if any, specifically designated as "Common Area" on any map or plat of the Subdivision recorded by Declarant or the Association with the Brunswick County Register of Deeds or by any other means so designated by Declarant of the Association; and (ii) private water and sewer lines and storm water management systems located outside public street rights-of-way.
- (k) **"Common Expenses"** mean expenditures made by or financial liabilities of the Association, together with any allocations to reserves, and includes, but is not limited to:
- Expenses for maintenance, repair and replacement of private roads, streets and alleys of the Subdivision, of the landscaping of the Common Areas and those portions of the Lots for which the Association is responsible.
 - Expenses of administration, maintenance, repair and replacement of the Commons Areas and all improvements thereon, including, but not limited to, that relating to signage, lighting, irrigation and landscaping.
 - Expenses declared to be common expenses by the provisions of this Declaration, the Bylaws of the Association or the North Carolina Planned Community Act.
 - Hazard, liability or such other insurance premium and surety or other bonds as the Declaration may require or permit the Association to purchase.
 - As valorem taxes and public assessment charges lawfully levied against the Common Areas;
 - Expenses of maintaining private and utility easements and facilities located within the Subdivision which the Declaration requires the Association to maintain;
 - Charges for utilities used in connection with the maintenance and use of the Common Areas;
 - Expenses for maintenance, repair and replacement of all signage located on Common Areas;
 - Expenses for the maintenance of all easements and landscaping and improvements thereon conveyed to the Association for which the Declaration requires the Association to maintain;
 - Expenses for the maintenance, repair and replacement of all water retention ponds, lakes and other bodies of water within the Common Areas and in compliance with storm water management requirements.
 - Any other expenses determined by the Board of Directors or approved by the Members to be commons expenses of the Association.
- (l) **"Declarant"** means Waterboro Village Management, LLC, a North Carolina limited liability company, and those persons or entities that succeed to Waterboro Village Management, LLC as the developer of the Subdivision or any portion thereof and to which is assigned some or all of the rights reserved to or retained by Declarant hereunder by a written instrument recorded in the office of the Brunswick County Register of Deeds; therefore at the time this document is recorded, it shall also mean Waterway Cove Partners, LLC.
- (m) **"Declaration"** means this Amended and Restated Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Waterway Cove, as it may be amended from time to time.
- (n) **"Dwelling"** means a single family dwelling or structure located upon a Lot.
- (o) **"Governing Documents"** means collectively, the Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, the Architectural Review Guidelines and the Rules and Regulations, if any, including any amendments or restatements thereof.
- (p) **"Improvement"** means a building, Dwelling, outbuilding, storage shed, roofed structure, plantings of trees, shrubs, hedges and other plants, landscaping, parking area, loading area, fence, wall, deck, trellis, gazebo, boathouse, pole, driveway, swimming pool, bulkhead, or any other structure, item or thing generally considered a real property improvement.
- (q) **"Individual Assessment"** means an Assessment asserted or assessed against a Lot pursuant to Article VII, Section 6.
- (r) **"Lot"** means any separately numbered lot or plot of land intended or residential use, with delineated boundary lines appearing on any subdivision map of the Subdivision recorded with the Brunswick County Register of Deeds, but excluding any Common Area shown on any such recorded plat of the subdivision; provided, should any Lot increase in size by subdivision or combination, the same shall nevertheless be and remain a Lot for the purposes of the Declaration; provided, further however this definition shall not imply, however, that the Lot may be subdivided if prohibited elsewhere in this Declaration.
- (s) **"Member"** means an Owner who is a member of the Association as provided in Article VI hereof.
- (t) **"Original Declarant"** means Waterboro Village Management, LLC, a North Carolina limited liability company.
- (u) **"Owner"** means the record owner, whether one or more persons or entities, of the fee simple title to any Lot from time to time, but excludes any mortgagee or beneficiary of a deed of trust of subsequent holder of a mortgage or beneficial owner of a deed of trust unless and until such mortgagee or holder has acquired fee title pursuant to foreclosure or any proceedings in lieu of foreclosure.
- (v) **"Plans and Specifications"** has the meaning set forth in Article IV, Section I.
- (w) **"Rules and Regulations"** means subject to the provisions of this Declaration and the Bylaws of the Association, the rules and regulations as adopted or enacted from time to time by the Board of Directors to govern the use of the Commons Areas, the regulation, placement and display of signage on Lots and the other procedures and policies of the Association in order to carry out the powers conferred upon the Association.



- (x) "Setback" means an area along the boundary of a Lot where no building or other structures, including, without limitation, swimming pools, fences, patios or decks shall be permitted except to the extent of a variance or waiver thereof granted by the ARC pursuant to this Declaration.
- (y) "Subdivision" means all property (including Lots and Commons Areas as are subject to this Declaration) which is described in Exhibit A together with any additional lands or phases that may be developed and specifically submitted to the provisions of this Declaration pursuant hereto.
- (z) "Supplemental Declaration" means an amendment to this Declaration which annexes property to be subject to this Declaration under Article XI.
- (aa) "Turnover Date" has the meaning set forth in Article VI, Section 4.

ARTICLE II Uses of Lots and Commons Areas

Section 1. Conformity and Approval of Improvements. No improvement shall be placed, prosecuted, altered or modified on any Lot except in accordance with the provisions of this Declaration.

Section 2. Subdivision or Reconfiguration of Lot. No Lot shall be further subdivided or its boundary lines altered except as hereafter provided. After the creation of a Lot by Declarant's recordation of plat with the Brunswick County Registry, a Lot or Lots may only be further subdivided or its boundary lines altered (including but not limited to, the combination or recombination of multiple Lots) (i) by Declarant or with the written consent of the ARC, and (ii) upon the recordation of a revised plat or map showing the resulting subdivision or alteration of a Lot's boundary lines, such resulting or reconfigured Lot shall on all purposes of this Declaration be thereafter deemed a "Lot"; provided, however, (i) where two or more Lots are combined to reduce the number of Lots, Assessments are applicable on each individual Lot as recorded or configured by Declarant; and (ii) where a Lot is subdivided resulting in the creating of more than one Lot, Assessments are applicable on each resulting Lot. Upon combination or recombination of Lots, (i) the building line requirements prescribed herein for the resulting Lots shall apply and the easements reserved herein shall be applicable to the rear, side and front Lot lines of such resulting Lot(s), and (ii) the resulting Lot and structures erected thereon must otherwise comply with this Declaration and the new boundary lines of the resulting Lot shall be used to compute the Setback as set forth herein.

Section 3. Residential Use of Lots. All Lots shall be used, improved and devoted exclusively to single-family, detached Dwellings for residential use except for limited home office uses permitted under Section 7 of this article. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling constructed in accordance with the Plans and Specifications therefore. Ownership of a Lot and/or improvements thereon through timesharing, interval ownership, or other related or similar ownership schemes where the right to exclusive use or occupation rotates among multiple owners or member of the program is prohibited, provided, that the preceding is not intended to prohibit ownership of a Lot and/or Improvements thereon by tenancy in common, joint tenancy or tenancy by the entirety.

Section 4. Nuisances. No noxious, unlawful or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the Subdivision. No plants, poultry, animals, junk, junk automobiles, or devices or things of any sort, the normal activities or existence of which are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the Subdivision shall be placed, kept or maintained on any Lot. Bottled gas containers shall be screened from public view. No Lot shall be used for storage of building materials prior to the issuance of the building permit for the Dwelling.

Section 5. Exclusion of Above Ground Utilities. All outside electrical service, cable, telephone and telecommunication lines shall be placed underground; provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities are permitted within the Subdivision; and provided, further, that overhead utility service lines are permitted during the construction period of any Dwelling and until utility companies can place such service underground.

Section 6. Signs. No billboards or signs of any character, kind, design or nature shall be erected, placed, permitted, displaced or maintained on any Lot or improvement thereon or within the Subdivision except as follows:

- (a) "For Sale", "For Rent" or similar signs and signs identifying the house number are permitted on a Lot provided the sign complies with material, size and color signage guidelines contained in the Architectural Review Guidelines or the Rules and Regulations;
- (b) Signs of any nature located on Common Areas or within road right-of-way and erected by the Association or Declarant;
- (c) Temporary or permanent signs on Lots and Commons Areas erected by Declarant and identifying owner's names, street names, Common Area, traffic signs (including but not limited to stop signs and speed limit signs), and any other signs that will aid in the development, maintenance and/or operation of the Subdivision, including, but not limited to, signs advertising or marketing the Subdivision and/or model homes;
- (d) Signs otherwise permitted pursuant to Section 7 of this Article; and



- (e) Political signs (i.e., signs that attempt to influence the outcome of an election, including supporting or opposing an issue on the election ballot) may be displayed on a Lot by an Owner of such Lot no earlier than 45 days before the day for the election and no later than 5 days after the election.

Signs may never be affixed or nailed to any trees. Should it be determined that a sign erected on a Lot does not conform to Architectural Review Guidelines or the Rules and Regulations, the Association or Declarant or their respective agents or assigns shall have the right from time to time to enter upon such Lot without any liability for damage, wrongful entry, trespass or otherwise for the purpose of removing the nonconforming sign. The Association and ARC have the right from time to time to revise the Rules and Regulations and the Architectural Review Guidelines, respectively, regarding signs in order to meet the needs of the community or satisfy any governmental regulations.

Section 7. Prohibition Against Business Activity. No business activity, including but not limited to, a rooming house, a boarding house, gift shop, antique shop, landscape business professional office or beauty shop or the life or any trade of any kind whatsoever (in which clients or members of the public regularly come to any Lot or any significant business traffic is generated in the Subdivision) shall be carried on upon any Lot or Lots; provided, however, that nothing contained herein shall be construed so as to prohibit use any portion of a residence as a home office so long as (i) no clients or members of the public regularly come to any Lot; (ii) no significant business traffic is generated in the Subdivision on account of such use; and (iii) the use of such Lot otherwise complies with applicable zoning ordinances. Provided further, however, that nothing contained herein shall be construed so as to prohibit (a) the construction of Dwellings and Improvements to be sold on Lots or the showing of such Dwellings and Improvements for the purpose of selling houses in the Subdivision; (b) Declarant and/or its marketing agent and initial builders of the Dwellings from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and to facilitate initial or new construction home sales in the Subdivision; or (c) any activity permitted by Article VII, Section 10.

Section 8. Mining and Drilling. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Subdivision, nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or materials of any kind be produced or extracted from any lands in the Subdivision.

Section 9. Garbage Disposal. Each Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Association, or a roll-out garbage rack of the type approved by the Association. An Owner's garbage facilities shall be visible from the streets only on the evening before the day of garbage pickup and on garbage pickup days. No garbage or trash incinerator shall be permitted upon any Lot. No burning, burying or other disposal of garbage on any Lot or within the Subdivision shall be permitted (except licensed contractors may burn construction debris during the period of construction or improvements on any Lot if they have been properly permitted). Notwithstanding the foregoing, Declarant or the Association, without a vote of the Members, shall be permitted to modify the requirements of this section where necessary to comply with the order of governmental bodies.

Section 10. Temporary Structures. No structure of a nonpermanent character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to (i) shelters used by the contractors during construction of the Dwelling or (ii) a portable toilet structure (i.e., porta potty) in connection with the construction of an Improvement where local governmental ordinances and regulations require the presence of such a portable toilet, it being clearly understood that such temporary shelters or portable toilets may not, at any time, be used for a residence or permitted to remain on the Lot after completion of construction. Prior to placement on any Lot, all temporary construction shelters must be approved in writing by the ARC.

Section 11. Other Structures. No tent (other than small overnight tents used by children which remain in place for less than 24 hours), barn, shed, shack, trailer, mobile home, modular home, tree house or other similar building or structure shall be placed on any Lot at any time either temporarily or permanently except as provided in Section 10 of this Article, nor shall above ground swimming pools be permitted.

Section 12. Clotheslines. No clotheslines or drying yards shall be located upon any Lot so as to be visible from any Common Area or from any adjoining property or Lot.

Section 13. Vehicle and Off-Street Parking. No mobile home, modular home, trailer (either with or without wheels), motor home, tractor truck (other than personal-use pick-up trucks and sport utility vehicles), commercial vehicles of any type (including, without limitation, cars or trucks with advertising signs or lettering), camper, motorized camper or trailer, recreational vehicle, boat or other watercraft (including jet skis, wave runners and similar craft), boat trailer, motorized go-cart, or other related forms of transportation may be stored or parked upon any Lot, on the Commons Areas, or on any right-of-way of any road or area within the Subdivision or adjoining the Subdivision by any Owner, its family members, tenants or contract purchasers, except either in an enclosed garage located on a Lot or otherwise in accordance with the Rules and Regulations. Each Owner shall provide for parking of vehicle off of the alleys, private lanes, streets and roads within the Subdivision. Notwithstanding the foregoing, but subject to the ordinances and regulations of any governmental authority have jurisdiction thereof, (i) delivery and maintenance vehicles that are not owned by a Lot Owner or its family members or tenants may park either in the driveway or on the streets and roads immediately in front of the Lot for which the delivery or maintenance is being provided for a period



not to exceed 8 hours; (ii) an Owner, its family members and tenants may park temporarily for a period not in excess of 24 hours non-commercial passenger vehicles and pick-up trucks on the streets and roads immediately in front of such Owner's Lot; and (iii) contractor's trucks and vehicles may be parked on the Lot or on the streets and roads of the Subdivision during and in connection with the construction of a Dwelling or other Improvement. No Owners or other occupants of any portion of the Lots shall repair or restore any vehicle of any kind upon a Lot or within the Subdivision except (i) within enclosed garages, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. Violators of the prohibitions contained in this section are subject to have their vehicles towed, at the Owner's expense, by or at the direction of the Association, and to the levy of fines by the Association in such amount as may be otherwise determined from time to time by the Association. Additional rules and regulations regarding use, repair, parking (both off-street and on-street) and storage of vehicles in the Subdivision may be promulgated from time to time by the Association.

Section 14. Sewer, Water, Utilities. No septic tanks or surface toilets are permitted in the Subdivision. Portable toilets will be allowed only during construction as provided in Section 10 of this article. The Subdivision is to be served by Brunswick County water and sewer system. Each Owner shall be responsible for the then-applicable water meter, tap and impact fees; sewer tap fee and electric deposit fee.

Section 15. Firearms and Fireworks. No firearms or fireworks of any variety shall be discharged upon the Lots or Common Area. The term "firearms" shall include, without limitation, guns, BB guns, pellet guns and other guns or pistols of any kind, caliber, type or method of propulsion. No hunting of any type shall be carried on or conducted on the Property.

Section 16. Animal and Pets. No animals, wildlife, livestock, reptiles or poultry of any kind shall be raised, bred, or kept on any portion of the Subdivision except for dogs, cats, or other usual and domestic household pets not to exceed a total of three (3) may be permitted on a Lot; provided, however that the limitation to three (3) shall not take into account fish or other aquatic animals living in a tank within a Dwelling. Dogs shall be leashed at all times when on the Common Area. No dogs shall be permitted to roam the Subdivision, and the Association may have strays and dogs that are not leashed and are found off their Owner's Lot picked up by governmental authorities. Those pets which, in the sole discretion of the Association, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or other Lots shall be removed upon request of the Association. No pets shall be kept, bred or maintained for any commercial purpose. All persons bringing a pet onto the Common Area shall be responsible for immediately removing any solid waste of such pet from the Common Area. No animal pens may be constructed or permitted to remain on any Lot.

Section 17. Driveways. All private driveways, right-of-ways, and culverts, if required, installed therein, shall be of a type, grade and quality approved by the ARC. Some Lots within the Subdivision may be accessed by means of shared driveway(s). If access to multiple Lots is through a shared driveway, the Owner of each Lot so accessed shall have an easement over that portion of the adjoining Lot within such shared driveway for reasonable use of the shared driveway, wherever it is situated, and the Owners of the Lots served by the shared driveway shall share equally in the cost of maintenance of such driveway and shall keep such driveway in good repair and condition. If the Owners of the Lots served by any shared driveway are unable to agree on the terms of maintenance of said driveway(s), either affected Owners shall have the right to apply to the Board of Directors to determine whether there is a need for maintenance or repair of said driveway, and failing repair by the Owners of the shared driveway, the Association shall have the right to make any necessary repairs or perform any necessary maintenance and charge the costs of same in equal portions as an Individual Assessment against the Lots served by the shared driveway. The Association shall have an easement to enter upon any Lot for the purpose of performing repairs or maintenance as outlined in this section.

Section 18. Mailboxes; Delivery Receptacles. Declarant may provide locations for cluster mailboxes for the Subdivision, and no other mailboxes shall be allowed unless approved by the ARC. No paper boxes (i.e., outdoor boxes or receptacles for the delivery of newspapers and similar material) are permitted on any Lot.

Section 19. Garages and Parking. To the extent a Lot includes a garage with a Dwelling, no garage may be converted to living area without prior ARC approval. If approved by the ARC, the Lot may have a detached garage as long as the garage is constructed of materials similar to the Dwelling and is compatible in design. Garage doors must be closed at night or when garages are left unattended.

Section 20. Wells and Irrigation Systems. No sprinkler, piping or irrigation systems of any type that draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters shall be installed, constructed, or operated within the Subdivision by any person unless prior written approval has been received from the ARC. This section shall not apply to Declarant, and it may not be amended without Declarant's written consent so long as Declarant has the right to add property to the Subdivision in accordance with Article XI, Section 2. No private water wells or individual drinking water supply system are permitted upon any Lot.

Section 21. Ponds, Lakes and Water Retention Areas. Except as permitted by the Rules and Regulations, no ponds, lakes or water retention areas shown on any map of the Subdivision shall be used for swimming, boating or diving, nor shall the use of any personal flotation devices, jet skis or other such items be permitted on any pond or lake. Fishing by Owners, members of their families and invitees is permitted subject to the Rules and Regulations. No piers, docks or barriers shall be constructed any portion of the ponds or lakes nor attached to the shoreline or banks thereof except those that may be constructed by Declarant, the Association or as approved by the ARC. Neither Declarant nor the Association shall be responsible for any loss, damage, or injury to any person or property arising out of the



authorized or unauthorized use of ponds, lakes or water retention areas within the Subdivision, as all persons so using such do so at their own risk. No dredging or filing shall be undertaken on any property adjacent to any water body. Declarant makes no warranties whatsoever as to the water level in the water retention areas, lakes and ponds not to their continued existence beyond the time that the construction of them has been completed and they are filled with water and turned over to the Association. No person shall interfere with the operation of any pumps, fountains, or waterfalls located on or in connection with any body of water or water feature. (See Article V) for additional provisions regarding ponds and lakes). Declarant reserves a temporary construction easement of forty feet (40') in width adjoining all Common Areas to clear and grade the land and enter thereon, without liability for any trespass, for the purpose of constructing, clearing or grading the Common Area and ponds and lakes, such temporary construction easement to expire upon completion of construction of improvement of same.

Section 22. Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation, with the exception of specialty use areas such as Common Area putting greens, is permitted to exist within the Subdivision. Exterior sculpture, fountains, gazebos, arboretums, flags and similar items are subject to prior approval of the ARC; provided, however, that nothing contained herein shall prohibit the appropriate display of the American and North Carolina flags consistent with N.C. General Statute § 47F-3-121.

Section 23. Play Structures and Yard Accessories. All permanent yard accessories and outdoor play structures, including basketball backboards and any other fixed game accessories, located on any Lot are subject to the prior approval of the ARC.

Section 24. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot (other than within a Dwelling or other approved structure) unless it is approved by the ARC.

Section 25. Trees. Trees may be removed without prior written approval within the building foundation area of the Dwelling and within twenty feet (20') of the Dwelling provided that the location of the Dwelling has been approved in writing by the ARC. Except as provided for in this section or in Article IV, Section 1, Article IX or Article X of this Declaration, no tree six inches (6") in diameter or greater at ground level may be cut, removed or intentionally damaged on any Lot without the prior approval of the ARC. No Owner may place, plant or install a palm tree (belonging to the *Arecaceae* family of plants) without the prior approval of the ARC.

Section 26. Elevation and Drainage Changes. No changes in the elevation, topography or drainage characteristics of any Lot may be made without the prior approval of the ARC.

Section 27. Boat Slips. Declarant may establish, subject to regulatory approval, a separate boat basin to be located in or adjacent to the Subdivision. The boat basin, if established, may allow access by the Association and its Members. The boat basin may include a day slip(s), and dock(s) for community use. The use of any boat slip constructed or existing in the Subdivision is subject to the terms and conditions of the permit issued by the Division of Coastal Management, this Declaration and the Rules and Regulation.

Section 28. Docks, Piers, Landings, Wharfs, Seawall and Bulkheads. No dock, pier, landing, wharf, seawall, bulkhead or other structure shall be constructed, placed or allowed to remain on any body of water or water course within the Subdivision or on the Intracoastal Waterway adjoining the Subdivision unless approved by the ARC and any applicable governmental agency or authority.

Section 29. Restrictions on Rentals and Leasing. No leasing or renting of any Dwelling and/or Lot shall be permitted for a term of less than thirty (30) days (unless approved by the Board of Directors), nor shall any less than the entirety of any Dwelling be leased. All leases shall be in writing, and any Owner to lease the Dwelling on the Lot shall be required to have a copy of the rental agreement submitted to and on file with the Association prior to the commencement of the lease. Every lease of a Dwelling shall specifically incorporate the terms of this Declaration, the Bylaws and the Rules and Regulations, and shall make a condition of the lease that the occupants of the Dwelling abide by the Governing Documents.

Section 30. Antennas. No Owner may erect, place or maintain any exterior radio or television transmission or receiving antenna on any Common Area. Except as provided in this section, no exterior radio or television transmission or receiving antenna may be erected, placed or maintained on any part of a Lot; provided, however, any OTARD antenna (as hereinafter defined) and related connecting equipment may be erected, placed and maintained on a Lot or any structure on a Lot as long as such shall be located in a place shielded from view from the street or driveway and other Dwellings to the maximum extent possible, with the view that the OTARD Antenna not detract from the overall attractiveness of the Lot and Subdivision and is in a location that is at least visible from the street; provided, further that nothing herein requires an OTARD Antenna from being erected, placed or maintained in a location where an acceptable quality signal cannot be received. Prior to the installation or placement of an OTARD Antenna, the Lot Owner shall notify the ARC of the intended installation and provide to the ARC a sketch, plat or map showing the intended location of the OTARD Antenna and a brief explanation of the choice of such location. The Association reserves the right to inspect all antenna installations in order to confirm compliance with this section, and if legal action is necessary, the Association is entitled to recover its reasonable attorneys' fees, costs and expenses incurred in the enforcement of this section.



This section is intended to comply with the Over The Air Reception Devices Rule (47 C.F.R. § 1.4000), and is to be construed consistent therewith. For purposes of this section, an "OTARD Antenna" is:

- (a) Any antenna of a diameter of not greater than one meter and used to receive direct broadcast satellite service (including direct-to-home satellite service) or to receive or transmit fixed wireless signals via satellite;
- (b) Any antenna of a diameter of diagonal measurement of not greater than one meter and used to receive video programming services via multipoint distribution service (including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services) or to receive fixed wireless signals other than via satellite; or
- (c) Any antenna that is used to receive television broadcast signals.

ARTICLE III Construction of Improvements

Section 1. General. All Improvements, including structures of every type and description, shall be constructed, placed or erected within the Subdivision in accordance with the provisions of this Article III, Article IV (Architectural Standards and Control) and the other provisions of this Declaration. All property in the Subdivision is further subject to all notes, easements, restrictions and other matters (including, but not limited to Setbacks) indicated on the plats of the Subdivision placed of record by Declarant to the extent of and as set forth on such recorded plats. Only new construction of residential buildings shall be permitted on a Lot, it being the intent of this covenant to prohibit the moving of an existing building or portion hereof on a Lot and remodeling or converting same into a Dwelling.

Section 2. Size of Residence and Lot Coverage. All Dwellings to be constructed upon any Lot shall have a minimum of 1,400 square feet of enclosed heated living area (exclusive of porches, decks and garages and other unheated spaces).

Section 3. Setback; Setback Lines. No Dwelling, building or structure (including, but not limited to, porches, decks, swimming pools or projections of any kind therefrom, including eaves) shall be erected so as to extend over or across any of the Setback lines shown on the recorded plat of the Subdivision or as described in the Declaration or any amendment thereto so as to be nearer to the Lot boundary line than such Setback line. In order to preserve particular view corridors or to account for unusual topography, natural site features, streetscape, hardship or other extenuating circumstances, variances of the Setback requirements may be granted by the ARC as provided in Article IV, Section 9.

Section 4. Height and Accessory Buildings. No Dwelling, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than a detached, single-family dwelling not to exceed thirty-six (36') in height from grade. Any structure or building serving as an accessory building to the Dwelling may not be constructed prior to the construction of the Dwelling. All garages shall be attached to the Dwelling unless the ARC approves in writing a variance permitting a detached garage. Accessory buildings or other outbuildings shall conform to the architectural scheme and appearance of the Dwelling.

Section 5. Conversion to Multi-family Use Prohibited. No Dwelling, once approved by the ARC and constructed, may be altered or converted into a multiplex residence.

Section 6. Prohibited Building Material. Exposed exterior walls composed of concrete block, imitation asphalt brick siding, tar paper, and imitation asphalt stone siding is prohibited.

Section 7. Construction Bonds.

(a) **Contractor Performance Bond.** The ARC may require, prior to commencement of work on a Lot, a general contractor submit a contractor performance bond in favor of the Association in the amount of \$1,000.00, or such other sum as is established by the ARC from time to time, to ensure that the contractor, during construction, keeps the Lot in a neat, and clean manner, free of garbage or debris, and to ensure that the contractor completes the Improvements in accordance with the approved Plans and Specifications therefor.

(b) **Contractor Road Bond.** The ARC may require, prior to commencement of work on a Lot, a general contractor submit a \$2,500.00 road bond, or such other sum as is established by the ARC from time to time, to ensure that streets and curbs in front of Lot on which the contractor is working are maintained throughout the construction process, in the same good quality condition as they were in when construction began, and to ensure that the proper reseeding, and clean-up of right-of-ways and drainage swales for any damage caused by contractor and its agents. Any portion of the road bond not applied to necessary repairs will be refunded at the end of construction.

Should the contractor not perform either by the end of any business day or at the end of construction, as appropriate, some or all of the appropriate bond may be used to bring the contractor into compliance with the approved Plans and Specification and for any necessary site



maintenance and correction. Any portion of the contractor bonds remaining at the end of the construction and issuance of the certificate of occupancy will be refunded to the contractor.

Section 8. Diligent Construction. All construction, landscaping and other improvements that have been commenced on any Lot must be prosecuted with reasonable diligence to completion, and no partially completed Dwelling or other Improvement shall be permitted to exist on any Lot except during such reasonable time period as is necessary for completion. All construction must be completed within the period set forth in Section 10 of this Article. The Owner of the Lot on which the Improvements are being constructed shall at all times (i) keep public and private streets contiguous to the Lot free from any dirt, mud, gravel, garbage, trash or other debris which might be occasioned by construction of the Improvements; and (ii) require its contractors to maintain the Lot upon which such work is being done in a reasonable clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Any damage to the roadways, curbs or sidewalks or any part of the Common Area or any utility system caused by an Owner or Owner's contractors or his subcontractors shall be the responsibility of the Owner of such Lot to repair. Any general contractor or subcontractor constructing Improvements on any Lot or within the Subdivision shall keep such portion of the Subdivision free of construction debris in accordance with the construction rules established by the ARC, if any, and paragraph (a) of Section 7 of this Article and shall similarly keep the ponds and contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Association may levy an Individual Assessment against an Owner and such Owner's Lot consistent with Article VII to pay for the cost of repairing any damage to roadways, curbs or sidewalks or any part of any roadway, Common Area, or utility system, to pay for the cost of cleaning public and private areas, including the roadways in the Subdivision and to pay for the cost of the removal of garbage, trash or other debris, which is occasioned by the activities of an Owner or Owner's general contractor or subcontractors during the construction of Improvements in addition to realizing upon any bonds posted pursuant to Section 7 of this Article.

Section 9. Commencement of Dwelling and other Construction. Notwithstanding anything to the contrary herein stated, construction of a Dwelling on a Lot must be commenced within two (2) years (or such longer period as permitted by the Board of Directors) from the date that such Lot is conveyed by Declarant to a third party. If an Owner has not commenced construction within such two (2) year period or such longer period as permitted by the Board of Directors, only Declarant and/or the Association may enforce this covenant by any and all appropriate legal means, including, but not limited to, the imposition of a fine by the Board of Directors and/or the institution of an action at law for damages or in equity (including obtaining a mandatory injunction requiring the commencement of a Dwelling on such Lot).

Section 10. Completion of Improvements. With the exception of construction which is interrupted or delayed due to *force majeure* (including, but not limited to, strikes, national emergencies, or physical damage to the work in progress (such as damage due to fire, lightning, windstorm flood, hail, riot or civil commotion, explosion, or theft)), the construction of any Dwelling must be completed within one (1) year of the commencement thereof (such completion measured by the issuance of a certificate of occupancy or compliance), and any Improvement other than a Dwelling must be completed within six (6) months of the commencement of construction thereof, except in either case with the written consent of the ARC. Upon completion of construction the Owner shall cause its contractors to immediately remove all equipment, tools, and construction material, and debris from the Lot. If completion of the Dwelling or other Improvements on any Lot is not completed within the required time period and the Association determines that construction progress has diminished to such an extent that completion of such Improvement is unlikely within 120 days of the expiration of such required time period, the Association shall give notice to the Owner of such Lot requiring the Owner, within 30 days of such notice, to remove all construction work in progress, including without limitation, the foundation and all building improvements and all stored building materials, and fill and grade the Lot so that it is restored to its natural grade level as existed immediately prior to the commencement of such Improvement. The Association and, until the Turnover Date, Declarant shall have the right to undertake this work upon Owner's failure to do so and charge the cost to the Owner and to secure such charge, assess or cause to be assessed an Individual Assessment against such Lot upon Owner's failure to pay these charges.

ARTICLE IV ARCHITECTURAL STANDARDS AND CONTROL

Section 1. Generally. No site preparation of a Lot (including, but not limited to clearing, excavation, grading, excavation, elevation work, landscaping, sloping and other site work); construction, erection, or installation of any Improvements; or removal of any such Improvements previously approved by the ARC shall be commenced, erected, placed, altered or maintained upon any Lot until the plans and specifications showing the nature, kind, shape, height, materials, exterior color, siding, location and elevations of the proposed improvements or site work (collectively the "*Plans and Specifications*") shall have been submitted to, and approved in writing by the ARC as provided in this Article. Any change in exterior appearance of the landscaping shall be deemed an alteration of an Improvement requiring approval by the ARC as provided in this Article.

Section 2. Architectural Review Committee Authority. The ARC shall have exclusive jurisdiction over all construction on or alteration of the Lots or any portion thereof as provided in Section 1 of this Article. The ARC may prepare and, on behalf of the Board of Directors, may promulgate Architectural Review Guidelines consistent with the spirit and provisions of this Declaration, which may include an application for architectural review, approved color palettes, approved materials list, approved styles of construction, approved plant lists, guidelines for the display of signage, standards and procedures governing the ARC's areas of responsibility and practice and such other rules and regulations as the ARC deems necessary. The ARC shall have sole and full authority to prepare and to amend the Architectural Review



Guidelines. The ARC shall make the Architectural Review Guidelines available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Lots. The ARC shall have the right to designate or re-designate which Lot line shall be the "front Lot line" in the case where a Lot is bordered by more than one street for purposes of compliance with Setbacks and other matters.

Section 3. Composition of ARC. The ARC shall consist of at least three (3) but not more than five (5) persons appointed by the Board of Directors. The members of the ARC do not have to be Owners. Notwithstanding the foregoing, for as long as the Declarant or NATUREWATCH LLC hold a Class B membership in the Association, (i) Declarant shall have the right to the exclusion of the Board of Directors, to appoint members of the ARC; or (ii) Declarant may exercise all of the rights, authority and power granted to the ARC without establishing an ARC, and in either event, upon Declarant's exercise of such rights, authority and power, Declarant shall be protected and immune from all liabilities to the same extent as the ARC under this Declaration, at law or in equity. Declarant may surrender either or both of the rights set forth in the preceding sentence by the execution of a written instrument in recordable form recorded with the Brunswick County Register of Deeds.

Section 4. ARC Approval Process. Plans and Specifications for any matter subject to Section 1 of this Article shall be submitted to the ARC for approval prior to the commencement of same. If the ARC fails to respond to the submission of such Plans and Specifications (either via an approval, a denial or a request for additional information) within forty-five (45) calendar days after submission of such Plans and Specifications, supplemented by a response for additional information (if requested by the ARC) consistent with this Declaration and the Architectural Review Guidelines, the Plans and Specifications shall be deemed approved; provided, however, that no such failure to act shall be deemed an approval of any matters specifically prohibited by any other provision of this Declaration. Approval or disapproval by the ARC of such Plans and Specifications may be based upon any grounds, including purely aesthetic and environmental grounds, the quality of workmanship and design and harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, all within the sole discretion of the ARC. ARC approvals required by this Declaration shall be in writing and are in addition to any approvals required by other applicable government authority. Upon request of an Owner who submitted plans for approval to the ARC, the ARC shall provide such Owner with a letter stating that such Plans and Specification have been approved, and the letter may be relied upon by third parties. The ARC reserves the right to require submissions of Plans and Specifications and other information under this section to be either in written or hard copy form or submitted via electronically and on forms that may be promulgated by the ARC from time to time.

Section 5. ARC Approval Fees. All reasonable costs incurred by the ARC in reviewing and approving applications to the ARC shall be the responsibility of the applicant. Unless specifically waived by the ARC, all applications and submissions of Plans and Specifications required under this Declaration for approval by the ARC must be accompanied by an architectural review fee of \$500.00 or such other sum as is established by the Board of Directors from time to time.

Section 6. Exclusions from ARC Approval Process. Notwithstanding anything herein to the contrary, no approval by the ARC shall be required to repaint the exterior of any structure in accordance with an originally approved color scheme or to rebuild in accordance with originally approved Plans and Specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of such Owner's Dwelling or to paint the interior any color desired.

Section 7. Phasing: Different Architectural Review Guidelines. Nothing in this Declaration shall be construed to prohibit the ARC from promulgating different Architectural Review Guidelines for each phase of the Subdivision or portion thereof and the ARC is specifically authorized to do so.

Section 8. Approval Not Responsibility. Actual construction of Dwellings and other Improvements shall be the responsibility of the Owner of the Lot and the Owner's builder. The purpose of the ARC approval is solely for the benefit of the Association as a whole. By approving any submitted Plans and Specifications, neither the Association, the Board of Directors, Declarant nor the ARC.

- (a) Warrants (i) that the submitted and approved Plans and Specifications comply with any applicable statutes, rules, ordinances or regulations of any governmental or quasi-governmental authority or agency; (ii) that the submitted and approved Plans and Specifications are in accord or consistent with good and/or sound engineering or construction practices; (iii) that the Improvements to be constructed are structurally stable or of good and sufficient design or quality; or (iv) that the contractor who participates in the construction of any Improvement is duly qualified or able to carry out its obligations in a good and workmanlike manner; and
- (b) Is responsible for any defects in the Plans and Specifications submitted to it on in any Improvement erected or made on any Lot.

Section 9. Variances. The ARC shall have the power to grant or deny, and may allow or refuse, variances of, and adjustments of, any of the restrictions established herein or in the Architectural Review Guidelines with regard to Setbacks and matters within the scope of authority or responsibility of the ARC pursuant to this Declaration in order to overcome practical difficulties and prevent unnecessary



hardships in application of such restrictions or when circumstances such as topography, natural obstructions, aesthetic or environmental considerations may require, provided, however, that such variances are done in conformity with the intent and purposes hereof. Variances may be of the height, size and Setback requirements pursuant to the terms herein, but shall not be limited thereto. Such variances must be evidenced in writing and must be signed by at least a majority of the members of the ARC and shall be effective upon delivery to the Owner; provided, however that upon request of the affected Owner, the variance shall be prepared, at the cost of the requesting Owner, in form suitable for recording in the land records of the Brunswick County Register of Deeds, and upon such recordation, shall be binding upon Declarant, the Association and other Lot Owners, and may be relied upon by third parties to evidence the variance approval. If a variance is granted, no violation of this Declaration or the Architectural Review Guidelines will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive any of the terms and provisions of this Declaration or the Architectural Review Guidelines for any purpose except as to the particular Lot and Improvements and the particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all statutes, laws ordinances and regulations affecting the use of the Owner's Lot, including but not limited to zoning ordinances and setback requirements imposed by Brunswick County or the Town of Ocean Isle Beach.

Section 10. Enforcement; Amendments. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the ARC. Notwithstanding anything herein to the contrary, this Article IV may not be amended without Declarant's written consent as long as Declarant owns any land subject to this Declaration.

ARTICLE V

Additional Provisions as to Buffer Areas, Ponds and Common Area Irrigation

Section 1. Buffer Areas. No cutting or removal of trees, shrubbery, or landscaping of any kind shall be made within any Buffer Area and no construction or erection of any structures or any land disturbing activities shall be permitted within the Buffer Areas except in each case with the prior written consent of the ARC. A Buffer Area shall surround every pond and water retention area within the Subdivision as depicted on a recorded plat of the Subdivision. As the provisions contained herein are for the preservation of the aesthetics and privacy of the Subdivision, in the event of the destruction or removal of any tree, shrub or landscaping within a Buffer Area within a Lot (except destruction caused by act of God) and to the extent that the Association is not obligated to replace such tree, shrub or landscaping pursuant to Article X, Section 2, the Owner of the Lot upon which such tree, shrub, or landscaping was located will cause same to be replaced or restored with a comparable size and type of tree, shrub or landscaping, at the Lot Owner's sole expense within sixty (60) days of such destruction or removal.

Section 2. Declarant's Rights and Easements. Declarant hereby reserves a maintenance easement over, under, onto and across all Buffer Areas for the purpose of maintaining, restoring, and replacing trees, shrubs, and landscaping. The reservation of these easements shall not place upon Declarant any obligation to perform such activities, and such performance shall lie solely within the discretion of Declarant. The within rights of Declarant are in addition to the rights and obligations of Association set out in Article VII, Section 4. The easements herein reserved in this section expire on the Turnover Date, are non-exclusive and shall run with title to the Lots.

Section 3. Rights of Enforcement. If an Owner does not replace trees and/or restore landscaping as and when required under Section 1 of this Article, the Association shall have the right to undertake this work upon Owner's failure to do so and charge the cost to the Owner and to secure such charge, assess an Individual Assessment against such Lot for the cost therefor.

Section 4. Ownership and Control of Ponds, Lakes and Water Retention Areas. No right title or interest, including, without limitation, riparian rights, in any pond or lake shall attach to or become an appurtenance to any Lot by reason of or upon conveyance of such Lot by Declarant unless such conveyance specifically includes such rights. Declarant reserves an easement upon and across every Lot to maintain such ponds, lakes, and water retention areas as more fully provided in Article VII, Section 8, and the Association shall be responsible for all maintenance of such ponds, lakes and water retention areas, including but not limited to monitoring water levels, maintaining any fountains or aeration devices, and providing lake mitigation services (i.e. algae control and aeration). Nothing in this section shall relieve Owners of their responsibility to prevent the development of any unclean, unsightly or unkempt condition to the area of their Lot bordering the Common Area around the ponds and lakes, subject however to the Association's obligation to maintain the grounds thereof under Article X, Section 2.

ARTICLE VI

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is an Owner who is subjected by this Declaration to assessment by the Association shall be a Member. Membership is appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.



Section 2. Board of Directors. Initially, there shall be three (3) members of the Board of Directors, who shall serve until such time as their successors are duly elected and agree to serve. The directors shall have annual meetings and other such meetings as may be called for at the request of the president of the Association, by a majority of the directors, or as called for in the Bylaws. The foregoing notwithstanding, prior to the Turnover Date, Declarant shall select the members of the Board of Directors, which members need not be Owners.

Section 3. Articles of Incorporation and Bylaws. The Articles of Incorporation and Bylaws of the Association shall be adhered to in the administration and operation of the Association.

Section 4. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A: Class A Members shall be all Owners excepting however Declarant or NATUREWATCH LLC only while Declarant or NATUREWATCH LLC are Class B Members. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 of this Article. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. When any purchaser except NATUREWATCH LLC purchases an individual Lot or Lots and takes title thereto from Declarant, such purchaser automatically becomes a Class A Member.

Class B: The sole Class B Members shall be Declarant and NATUREWATCH LLC. The Class B Members shall be entitled to ten (10) votes for each Lot owned. Class B membership shall cease and become converted to Class A membership upon the happening of the earlier of the following:

- (a) The date on which Declarant no longer owns any part of the Subdivision (including Common Areas); or
- (b) Fifteen (15) years from date of recordation of this Declaration; or
- (c) At such time as Declarant, in its sole discretion, voluntarily relinquishes Class B Member status in writing.

Upon the conversion of Declarant or NATUREWATCH LLC to Class A membership, Declarant and NATUREWATCH LLC shall thence be entitled to one vote for each Lot owned in the manner provided above. The earliest to occur of (a), (b), or (c) is referred to as the "Turnover Date".

ARTICLE VII Property Rights in the Common Area/Easements

Section 1. Members of Easement of Enjoyment. Subject to the provisions of Section 3 of this article, every Member has a non-exclusive right and easement of enjoyment in and to the Common Area, and such easement is appurtenant to and passes with the title to every Lot. This right and easement is for use in common with all other Members, their tenants, guests, and invitees as further provided in this Declaration. If Declarant annexes Additional Property pursuant to Article XI, Section 2, all Owners of Lots within such additional phases or lands shall have the same rights and privileges with regard to use of the Common area as the Owners of Lots originally subject to this Declaration. Notwithstanding anything herein to the contrary, no general plan or plat of the Subdivision showing Additional Property or adjoining areas that may later be developed as additional phases of the Subdivision shall cause such areas to be included or classified as Common Area nor shall the Association or any Owner be entitled to any right, title, or interest therein unless and until such Additional Property is annexed to the Subdivision pursuant to Article XI, Section 2.

Section 2. Title to Common Area. Declarant hereby covenants for itself, its successors and assigns, that within fifteen (15) years from the date of recording of this Declaration, it will convey to the Association, by special warranty deed, fee simple title to the Common Area upon the conditions set forth herein, subject to the provisions of this Declaration.

In lieu of the conveyance provided for herein with regard to the alleys, private lanes, streets and roads, Declarant may cause such alleys, private lanes, streets and roads to be dedicated to any governmental entity as provided for in paragraph (a) of Section 3 of this Article. If such alleys, private lanes streets and roads are so dedicated, acceptance of such dedication may be conditioned upon the agreement of the Association that the Association shall maintain, (at Association's sole cost and expense) and all landscaping, shrubbery and the entrance sign to the Subdivision which may be located within the dedicated areas. Except as provided as aforesaid, the Common Areas are intended to be devoted to the common use and enjoyment of the Members and are not dedicated for use by the general public.

Section 3. Extent of Members Easements. The rights and easements created hereby are subject to the following:



- (a) The right of Declarant and/or of the Association to dedicate, transfer or convey all or any part of the Common Area, with or without consideration (and subject to the conditions set out in Section 2 of this Article), to any governmental body, district, agency or authority, or to any utility company, provided that no such dedication, transfer or conveyance shall adversely limit the use of the Common Area by the Members, and upon such dedication and acceptance, such lands so dedicated will no longer be considered Common Area under this Declaration;
- (b) The right of Declarant and/or of the Association to grant and reserve easements and rights-of-way for maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage and other utilities and services, including, without limitation, a cable or community antenna television system and irrigation or lawn sprinkler systems;
- (c) the right of Declarant and/or the Association to grant and reserve easements and right-of-way through, over and upon and across the Common Area for the completion of the Subdivision and for the operation and maintenance of the Common Area
- (d) The right of Declarant to reserve over the Common Area perpetual non-exclusive easements or ingress and egress and utility installation and maintenance to any other property of Declarant, regardless of whether or not made subject to this Declaration.
- (e) The right of the Association, as provided in its Bylaws, to suspend the enjoyment rights of any Member in the Common Area (but not access to the Member's Lot) for any period during which any assessment remains unpaid and for a period not to exceed thirty (30) days from any infraction of its published Rules and Regulations; and
- (f) The rights of the Association, in accordance with law, its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and in pursuance thereof, to mortgage the same.

Section 4. Maintenance. The Association shall at all times maintain in good repair and condition all Common Areas, leased property, the street pavement (if not maintained by a governmental unit or agency), drainage structures, street lighting fixtures (if not maintained by a utility company), landscaping, entrance signage and ponds which are part of within the Common Area. The Board of Directors acting by majority vote shall order all work to be done and shall pay for all Common Expenses. All work pursuant to this section and all expenses hereunder shall be paid for by such Association through assessments imposed in accordance with Article VIII. Excluded therefrom shall be paving and maintenance of individual Lot driveways, which shall be maintained by each Owner. Nothing herein shall be construed as preventing the Association from delegating or transferring its maintenance obligations to a governmental authority under such terms and conditions as the Board of Directors may deem in the best interest of the Association.

Section 5. Additional Structures. Neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Declarant or after the Turnover Period, of the Association, erect, construct or otherwise locate any structure or other improvement in the Common Area.

Section 6. Delegation of Use. Subject to this Declaration, the Bylaws of the Association and to the Rules and Regulations, the right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised and enjoyed by members of an Owner's family and tenants of the Owner, in each case who occupy the Dwelling of the Owner within the Subdivision, and by guests of the Owners.

Section 7. Rules and Regulations. Consistent with this Declaration and the Bylaws of the Association, the Board of Directors is authorized and empowered to promulgate Rules and Regulations governing the use of the Commons Area; the regulation, placement and display of signage on Lots and the procedures and policies of the Association in order to carry out the powers conferred upon it. The use of the Common Area by an Owner or Owners, and all other parties authorized to use same, shall be at all times subject to such Rules and Regulations. The Rules and Regulations are to be maintained at the office of the Association or its management company and available to the members for inspection during normal business hours.

Section 8. Easements for Utilities and Maintenance.

(a) **Particular Easement.** Declarant reserves as well as grants to the Association perpetual and alienable easements over and under all Lots along an area five feet (5') in width inside each side boundary line of each Lot and fifteen feet (15') along the front and rear of each Lot for the purpose of installation, construction, maintenance, repair, replacement, use and operations of utilities and utility systems of all kinds (including but not limited to water, sewer, electric, and natural gas), drainage (including but not limited to storm water and surface drainage) and access.

(b) **General Easement and Rights.** Declarant reserves as well as grants to the Association a perpetual and alienable easement and right of ingress and egress, over, upon, across and under the Setback areas, and easement areas on each Lot as shown on any



recorded map or plat of the Subdivision and/or as set forth herein and over, upon, across and under the Common Area for maintenance, erection, installation and use of electrical and telephone wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance, transmission and use of electricity, telecommunications, gas, sewer, water or other public convenience or utilities, including an easement for privately-owned television and other telecommunications cable and equipment; for maintenance of ponds and the installation and maintenance of pumps, foundations or other equipment related to said maintenance; and for the installation and maintenance of irrigation systems. Declarant and the Association may further cut drainways for surface water when such action may appear to Declarant and the Association to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of soil, or to take any other similar action reasonably necessary to provide economical and safe utility or other installations and to maintain reasonable standards of health, safety and appearance. Declarant further reserves the right to locate wells, pumping stations, irrigation systems and tanks on Common Area. It shall not be necessary to obtain the consent of Owners or Lots adjoining any existing utilities or pump stations. Such rights may be exercised by the licensee of Declarant or the Association, but this reservation in and of itself shall not be considered an obligation of Declarant or the Association to provide or maintain any such utility service. No structures or other items, including walls, fences, paving or planting shall be erected upon any part of the Subdivision which will interfere with the rights of ingress and egress provided for in this section. Specifically, no Owner shall erect any Improvement, including, without limitation, walls, fences or paving within any areas designated on any recorded plat of map of the Subdivision and/or as set forth herein as a "Road Right of Way", "Common Area", "Utility Easement", "Drainage Ditches" or "Swales" nor shall any Owner change the grade of any such easement area; provided however, that driveways may cross utility and drainage easements at the front and rear of the Lots subject to prior approval of the ARC, and that any landscaping in easements areas shall not interfere with the applicable easement and shall be limited to grass and small shrubbery. Each Owner shall keep drainage ditches and swales located on Owner's Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon such Lots as may be reasonably required for proper drainage. Declarant may, at its sole option, convey any such drainage easements to an appropriate government entity. The easements referred to in this section are, without limitation, those shown upon the recorded plat(s) of the Subdivision, as set out in easements of record, as set forth in this Declaration or which are located on, over or under the ground.

(c) Easement for Adjoining Property. Declarant further reserves a perpetual, alienable easement and right of ingress and egress over, upon, across and under the Common Area and all streets and roads within the Subdivision for the purpose of providing drainage and utility installation, construction, reconstruction, and maintenance to adjacent property now or hereafter owned by Declarant and for the installation and maintenance of any irrigation systems, pipes, drainways or other installations necessary for the foregoing and further for the installation, maintenance, repair, replacements and operation of water lines and other utilities which serve or shall serve property presently owned by Declarant. Declarant, its agents, contractors, servants, employees and assignees may enter upon the easement areas for the purposes of maintaining, repairing, replacing and operating such irrigation systems, water lines and other utilities and drainage facilities and for the purpose of installing additional utilities and drainage facilities. Declarant further reserves a perpetual, alienable easement and right-of-way over, under and across those areas designated as "Road Right of Way", "Common Area", "Utility Easement", "Drainage Ditches" or "Swales" on any recorded plat or map of the Subdivision for the purpose of providing drainage of the Subdivision and lands now or hereafter adjacent to the Subdivision or in the vicinity thereof (whether or not a part of the Subdivision) and for the installation, repair and maintenance of pipes and other facilities necessary for such drainage. Declarant, its agents, contractors, servants, employees and assignees may enter upon any of the easement areas so designated on the recorded plat of the Subdivision for the purpose of maintaining, repairing, replacing and operating any of the drainage facilities, pipes, ditches and drainage areas located thereon. The Owners of Lots on which such easements are located shall not interfere in any manner with such easements or any of the facilities located therein or the access thereto. Declarant, its agents, employees and assignees shall have no liability for damage which may occur to any structures, plants, trees, or other items which may be located in such utility and drainage easements, and Declarant shall have no obligation to replace any such structures which may be removed or damaged due to maintenance, repair or other work performed in such easement areas. Declarant further reserves an easement of ingress and egress over and across all streets and roads of the Subdivision which such easements are and shall be for the purpose of ingress and egress to any property now owned or hereafter acquired by Declarant, its successors and assigns, whether or not such property is made a part of the Subdivision and whether or not such property adjoins the Subdivision.

Section 9. Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its agents, contractors, servants, employees and assignees, including but not limited to, any property manager employed by the Association and any employee of such manager, to enter upon any Lot or any portion thereof in the performance of their respective duties, to carry out the obligations imposed by it or to exercise the rights conferred to it under this Declaration.

Section 10. Sales Offices, Rental Offices, Property Management Offices and Construction Offices. Notwithstanding any provisions or restrictions in this Declaration to the contrary,

- a. Declarant hereby reserves for its benefit the perpetual, alienable and transferable right and easement in and to the Subdivision for the maintenance of signs, sales offices, rental offices, property management offices and construction offices, together with such other facilities as in the sole opinion of the Declarant reasonably may be required, convenient or incidental to the completion, management, rental, improvement and/or sale of Lots, Dwellings, Common Area and other property of Declarant;



- b. Declarant expressly reserves the right to grant to any builder or builders the right to operate and maintain builder sales, marketing and/or construction offices at any location within the Subdivision upon such terms and conditions as Declarant in Declarant's sole discretion may determine; and
- c. Declarant reserves for itself and its marketing agent and initial builders of Dwelling, the right to maintain a sales office, model homes and a construction office upon one or more Lots until all Lots to be located within the Subdivision have been sold.

Section 11. Maintenance Easement. Subject to the other terms of this Declaration, there is hereby reserved for the benefit of the Declarant, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement to enter upon any Lot for the purpose of landscaping, mowing, maintenance of landscaping and removal of rubbish and trash so as to maintain reasonable standards of health, fire safety and appearance within the Subdivision and to carry out their respective obligations imposed upon them or to exercise the rights granted to them pursuant to this Declaration; provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions except as expressly provided herein. Furthermore, there is hereby reserved for the benefit of Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement, but not the obligation, to maintain and/or repair the outer portions of any building if the Owner shall fail to maintain such building in keeping with the standards of the Subdivision. The cost of such maintenance and/or repair shall constitute an Individual Assessment against the Lot on which the building is located and the Owner of such Lot as provided in Article VIII herein.

Section 12. Road Construction Easement. Declarant reserves a temporary construction easement of twenty-five feet (25') in width along both sides and running parallel to unimproved, platted streets and roads, alleys and private lanes, which easements shall expire eighteen (18) months after the particular road construction commences. Should it be necessary due to terrain and site conditions, Declarant has at its sole discretion the right to extend the width of the temporary construction easement.

ARTICLE VIII Assessment for the Maintenance and Operation of Common Areas and Facilities

Section 1. Assessments, Liens and Personal Obligations Therefor.

- a. Each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Association (i) annual assessments or charges which are Common Expenses; (ii) special assessments for capital improvements and extraordinary maintenance or expenses; and (iii) Individual Assessments. The Assessments are to be fixed, established and collected from time to time as hereinafter provided. Assessments, together with such interest thereon and costs of collection thereof (including reasonable attorneys' fees) as are hereinafter provided, shall be a charge on the Land and a continuing lien upon the Lot(s) against which each such assessment is made. Each such assessment, together with such interest thereon and the costs of collection thereof (including reasonable attorneys' fees) as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot(s) at the time when the Assessment became due.
- b. The annual and special assessments levied by the Association shall be used exclusively for the following purposes:
 - (i) For promoting the recreation, health, safety and welfare of the Owners;
 - (ii) For the improvement, maintenance, use and operation of the Common Area (including, for the repair, replacement and additions thereto or to any improvements or structures thereon) and, upon determination by the Board of Directors, improvements located outside of the Subdivision (including, without limitation, identification and/or directional signage [including landscaping] either exclusively or in cooperation with other associations or parties now or hereafter designated or existing;
 - (iii) for the payment of ad valorem taxes and public assessments levied on the Common Area and for the payment of such other taxes, assessments and fees that may be levied against the Association;
 - (iv) for the procurement and maintenance of insurance in accordance with the Bylaws of the Association, N.C. Gen. Stat. § 47F-3-113 and as otherwise deemed prudent by the Board of Directors;
 - (v) for the costs incurred by the Association to carry out its obligations imposed upon it or the rights conferred to it under this Declaration or the articles of incorporation or bylaws of the Association;
 - (vi) for the acquisition, improvement and maintenance of the services and facilities devoted to the aforesaid purposes; and
 - (vii) for the employment of attorneys, accountants, property managers and other professionals to represent the Association when necessary and such other needs as may arise.

If Declarant performs any of the foregoing services for Association, including, but not limited to, accounting and bookkeeping services, it shall have the right to receive a reasonable fee therefor and such shall not be deemed to be a conflict of interest.

Section 2. Amount and Payment of Annual Assessment. The initial annual assessment payable by each Owner shall be \$2,268.00 per Lot per calendar year. Upon the closing of the initial sale of each Lot by Declarant, any purchaser of each Lot, except



NATUREWATCH LLC, shall pay to the Association a capital contribution equal to 1/6th of the then applicable Annual Assessment. The annual assessments shall not commence as to any Lot until the earlier of (i) nine (9) months after the conveyance of such Lot by the Declarant to any grantee except NATUREWATCH LLC or a successor Declarant; (ii) the conveyance of such Lot by the grantee of the Declarant; or (iii) the issuance by such appropriate governmental agency of authority a certificate of occupancy or compliance with respect to the Dwelling constructed on such Lot. In any event, neither the Declarant nor NATUREWATCH LLC is obligated to pay to the Association either a capital contribution or an annual assessment during the time either owns any Lot.

Section 3. Operating Budget. Declarant has prepared the initial budget of the Association upon which the initial annual assessment is based, and copy is available to any Owner upon written request. It will be the duty of the Board of Directors at least sixty (60) days prior to the first day of the Association's first full fiscal year following the recording of this Declaration, and each fiscal year thereafter, to prepare a budget covering the estimate Common Expenses during the coming year, such budget to include a reserve account, if necessary, for the capital needs of the Association. Each Lot shall be equally responsible for its proportionate share of the total annual assessments, subject to Section 2 of this Article.

(a) **Notice of Proposed Annual Assessment; Ratification.** Pursuant to N.C. Gen. Stat. § 47-3-103(c), within thirty (30) days after the Board of Directors' adoption of any budget for the next fiscal year of the Association, but in all events at least thirty (30) days prior to the first day of the fiscal year for such budget, the Board of Directors will provide to all of the Owners a summary of such budget and a notice of the meeting to consider ratification of such budget, including a statement that such budget may be ratified without a quorum being present at the meeting and that such budget will be ratified unless at the meeting, the owners entitled to cast sixty-seven percent (67%) of the votes of the Association reject such budget. Such meeting shall be held on a date and time selected by the Board of Directors not less than ten (10) nor more than sixty (60) days after mailing of such summary of the budget and notice.

(b) **Disapproval of Annual Budget.** If the proposed budget is disapproved or if the Board of Directors fails for any reason to determine an annual budget and to set the annual assessments, then and until such time as a budget and annual assessment will have been determined as provided herein, the budget and annual assessments will be the budget and annual assessments for the previous fiscal year.

Section 4. General Provisions Regarding Assessments.

- (a) If two Lots are combined into one Lot, the Owner(s) of the resulting Lot shall pay an Assessment for each of the original Lots as if they had not been combined.
- (b) Each annual assessment shall be fully payable in advance on the 1st day of January each year; provided, however the Board of Directors shall have the option to permit payment of Assessments in such installments and at such times as it shall determine. The exact amount of each annual assessment shall be fixed by the Board of Directors.
- (c) The Association shall, upon request at any time and the payment of any applicable fee, furnish to any Owner liable for any Assessment a certificate in writing, signed by an officer of the Association or by the Association manager, setting forth whether said Assessment has been paid. Such certificate shall in recordable form and shall be conclusive evidence of the payment status of any Assessment therein stated to have been paid. The Association shall have the right to assess a fee as established by the Board of Directors not to exceed \$100 to defray the costs of providing such certificate.
- (d) Both annual assessments and special assessments must be fixed at a uniform rate for all Lots subject to collection of the annual assessment.

Section 5. Special Assessments for Insurance and Capital Improvements. The Association may also levy, in any fiscal year, a special assessment applicable to that year only, for the purpose of defraying unanticipated increases in insurance costs and for unexpected costs associated with the repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, or for any other unexpected expenses, capital or ordinary, of the Association consistent with the purposes of the Association provided that any such assessment shall have the assent of at least fifty-one (51%) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The due date of any specific assessment shall be fixed in the resolution authorizing such special assessment.

Section 6. Individual Assessment. The Association may levy an individual assessment upon any Owner to cover the costs incurred by the Association due to the Owner's failure to maintain its Lot and improvements pursuant to the standards or requirements set forth in this Declaration, to reimburse the Association for any damage to any Common Area caused by any Owner or their tenant or invitee, or for any other purpose permitted by this Declaration or any supplemental Declaration (the "Individual Assessments"). Individual Assessments shall be due and payable within thirty (30) days after written notice from the Association.



Section 7. Paid Professional Manager. The Board of Directors may employ a professional manager or managerial firm to supervise all the work, labor, services and material required in the operation and maintenance of the Common Area and in the discharge of the Association's duties.

Section 8. Effect of Non-Payment of Assessment; Personal Obligation of the Owner; Remedies of Association. If any Assessment (or reimbursement of any sum due the Association under this Declaration) or installment thereof is not paid within thirty (30) days after the due date, then such Assessment or reimbursement shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof (including reasonable attorneys' fees) as are hereinafter provided, continue as a lien on the Lot(s) which shall bind such Lot(s) in the hands of the Owner, its heirs, devisees, personal representatives, successors and assigns.

Any delinquent Assessment (or reimbursement obligation as aforesaid) or installment thereof will incur a late charge in an amount as may be determined by the Board of Directors from time to time, but not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of the amount of the unpaid Assessment or reimbursement obligation or installment thereof and will also commence to accrue simple interest at the rate of eighteen (18%) per annum or the highest rate permitted by law. The Board of Directors, at its discretion, may also accelerate the remainder of the annual assessment that is due.

The Association may bring legal action against the then Owner personally obligated to pay the delinquent Assessment, reimbursement obligation or installment thereof or may enforce and/or foreclose the lien against the Lot(s) pursuant to the provisions of the Act, and in the event a judgment is obtained, such judgment shall include interest on the assessment or reimbursement as above provided and reasonable attorneys' fees and late charges together with the costs of the action. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. The Association, acting on behalf of the Owners, shall have the power to bid on any Lot and to acquire and hold, lease, mortgage and convey the same. A suit to recover money for unpaid Assessments and other charges is maintainable without foreclosing or waiving the lien securing same. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREA OR ABANDONMENT OF ITS LOT. On behalf of the Association, the Board of Directors shall have the authority to compromise and settle claims for Assessments and collection of other sums due the Association upon a majority vote of the directors upon good cause shown.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien provided for this article is prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot. Sale or transfer of any Lot shall not affect the lien provided for in this Article, however, the sale or transfer of any Lot pursuant to a mortgage or tax foreclosure proceeding, the lien of which mortgage or tax is senior to the lien provided for in this Article, shall extinguish the lien provided for in this Article as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior Owner.

Section 10. Assessments Upon Sale or Transfer of a Lot. No Owner of a Lot shall be liable for the payment of any part of the Assessments assessed against his Lot subsequent to a consummated sale, transfer or other conveyance by him (made in accordance with the provisions of this Declaration and applicable restrictions of record) of such Lot. A purchaser of a Lot shall be jointly and severally liable with the seller for the amount of the Assessments assessed against such Lot (together with attendant charges, interest, late fees and costs of collection) prior to the acquisition by the purchaser of such Lot, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser therefor; provided, that a purchaser of a Lot at a foreclosure sale of such Lot shall not be liable for, and such Lot shall not be subject to, a lien for the payment of Assessments (and attendant charges, interest, late fees and costs of collection) assessed prior to such foreclosure sale to the extent that the lien of that being foreclosed is senior to the lien of the Assessments, and such unpaid Assessments shall be deemed to be a Common Expense collectible from all of the Owners, including such purchaser of such foreclosed Lot.

Section 11. Exempt Property. All Common Area and all property dedicated to, and accepted by, a local public authority is be exempted from the Assessments, charges and liens created herein.

ARTICLE IX Stormwater Management; Permits

Section 1. Compliance with Stormwater Management. All construction within the Subdivision shall comply with title 15 NCAC 2H.1000, the Coastal Stormwater Management Regulation, which is intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 070544MOD issued by the Division of Water Quality under Title 15A NCAC 2H.1000 applicable to wet detention ponds in the Subdivision (the "Permit"). Each wet detention pond includes a specified drainage area that limits the area that may be built upon with impervious surfaces (each a "Drainage Area"). The built-upon area ("BUA") of each Lot within each Lot within each approved Drainage Area must be limited so the overall maximum allowable BUA for that Drainage Area is not exceeded.



(a) **Stormwater Restrictions.** The ARC shall implement, comply with and enforce the following standards with respect to the exercise of its powers and the review and approval of all improvements to be developed, constructed and reconstructed in the Subdivision.

(i) The ARC shall have the authority to review and approve, or disapprove as needed, Lot plans and to establish the BUA limit for each Lot based on the approved Permit BUA allowances for each Drainage Area. (See paragraph (b) of Section 4 of this article.) The ARC shall remain a viable entity and may not be dissolved or relieved of its authority with respect to setting and tracking BUA requirements and compliance unless and until a Permit transfer of ownership, submitted by the current Permit holder, is approved by the North Carolina Division of Water Quality (the "DWQ").

(ii) The ARC shall monitor and track each Lot's BUA and will provide to DWQ every six (6) months an updated list of each Lot's recorded BUA. Upon assignment of all BUA for each Lot in the Subdivision within the permitted areas, a final list of recorded BUA for each Lot will be provided to DWQ. The ARC shall ensure that the total proposed BUA within each Drainage Area complies with the permitted maximum BUA for the drainage Area in which the Lot is located. As outlined in the Permit:

Maximum Allowable BUA for Drainage Area #1 is 634,964 ft²

Maximum Allowable BUA for Drainage Area #2 is 337,903 ft²

The amount of BUA allocated to a Lot shall be at the sole discretion of the ARC, subject to the requirements of the Permit, and, by purchasing a Lot, each Lot Owner agrees to comply with the maximum BUA established for the Lot by the ARC.

(iii) The ARC shall not modify or approve a change to any Drainage Area from the approved plans for the Drainage Area without prior approval of DWQ. The process for acquiring this approval will be through the submittal of an application for a Permit modification.

(iv) The covenants set forth in this Declaration are intended to ensure ongoing compliance with the Permit. The State of North Carolina is hereby made a beneficiary of the covenants in this Section 1 to the extent necessary to maintain compliance with the Permit.

(b) **Enforcement.** The failure of any Owner to comply with a provision of this Section 1 shall provide the Association the right to bring legal action at law or in equity, including an action for injunctive relief, damages or a combination thereof to enforce the provisions hereof against the violating Owner. All costs and expenses incurred by the Association in terminating or resolving a violation of the covenants and restrictions set forth in this section, inclusive of reasonable attorneys' fees (whether or not litigation is instituted) and court costs shall be the responsibility of the Owner determined by the ARC to be in violation. Collection of such reasonable attorneys' fees, costs and damages may be enforced by any method described in this Declaration, including, but not limited to providing for the collection of same through an Individual Assessment, by a civil action to collect the debt, or as otherwise provided by law. Failure by the ARC to enforce any provision contained in this section may never be deemed a waiver of the right to do so thereafter or preclude any other person or entity a beneficiary of the covenants and restrictions set forth in this section, including DWQ, from enforcing such violation pursuant to this section. All rights and remedies set forth in this section are in addition to, and not exclusive of, all rights and remedies that may be enforced by the ARC, the Association and/or any Owner as provided in this Declaration.

Section 2. Compliance with Wetland and Buffer Regulations. In accordance with Title 15A NCAC 2H 500m, it has been determined that portions of the open space area located in the Waterway Cove Subdivision, Brunswick County, North Carolina, as shown on plans prepared by The John R. McAdams Company meet the requirements for the designation as a wetland, stream, or protected stream buffer. The areas shown in the recorded plats Waterway Cove, Map Cabinet 65, Pages 18-25 and Waterway Cove, Map Cabinet 77, Pages 69-71 recorded at the Register of Deeds Brunswick County as conservation areas shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- (a) fill, grade, excavate, or perform any other land disturbing activities;
- (b) cut, burn, remove, or harm any vegetation;
- (c) construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures;
- (d) drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area;
- (e) dump or store soil, trash, or other waste; and
- (f) graze or water animals, or use for any agricultural or horticultural purpose.

The covenants in this section are intended to ensure continued compliance with mitigation conditions of a Clean Water Act, authorization issued by the United States Army Corps of Engineers, Wilmington District, and therefore may be enforced by the United States of America. The covenants in this section run with the land and shall be binding on the Owner and all parties claiming use of it. This language cannot be amended without the express written consent of the U.S. Army Corps of Engineers, Wilmington District, U.S. Army Corps of Engineers, reference Permit # 197800056 (COE Action ID No. 2006-41576-010) issued 11/21/07.

Section 3. Notice of Land Use Restrictions. Land use on private lots is subject to federal, state, and local laws and regulations. Some uses may be restricted due to inclusion of, or proximity to, land or waters with the following designations: wetlands, flood



prone areas, areas of environmental concern, outstanding resource waters, primary nursery areas, Atlantic Intracoastal Waterway Right of Way and Neuse River Basin SA stream classification. Other designations or restrictions may apply. All property within the Subdivision is subject to the conditions of the following permits which have been issued to Brunswick and approved for the project:

- (a) Wastewater Treatment Permit # WQ0012748
- (b) Wastewater Collection System # WQ0032347
- (c) NCDOT Driveway Access Permit #B-1506
- (d) NCDOT Encroachment Permit #E-10-07-131
- (e) CAMA Permit #179-07
- (f) Storm Water Permit #SW8 070544MOD
- (g) State Water Extension Approval #NC0410045
- (h) Erosion & Sediment Control # BRUNS-2008-031

ARTICLE X Exterior Maintenance, Reasonable Access and Maintenance of Common Area

Section 1. Exterior Maintenance. Subject to Section 2 of this Article and unless specifically stated to be an obligation of the Association pursuant to this Declaration, the Owner of each Lot, at such Owner's sole cost and expense, shall maintain its Lot, including improvements thereon, in a safe, clean and attractive conditions at all time, including, but not limited to:

- (a) maintenance of the Dwelling and all other structures;
- (b) prevention of conditions that could result in an unsightly or unkempt appearance of the Dwelling, structures and grounds that tend to substantially decrease the beauty of the neighborhood as a whole or the specific area;
- (c) prompt removal of all litter, trash, refuse and waste;
- (d) maintenance and replacement of plants, flower beds and landscaping that is not the obligation of the Association to so maintain and replace under Section 2 of this Article;
- (e) maintenance of exterior lighting and mechanical facilities;
- (f) maintenance of parking areas and driveways;
- (g) maintaining adequate soil erosion controls;
- (h) maintenance so as to comply with the covenants and restrictions of Article IX;
- (i) to the extent not adequately maintained by applicable governmental authority, the Association or a public utility provider, maintenance of the sidewalk, driveway, driveway apron and utility laterals serving such Owner's Lot even if located on Common Area.

Each Owner shall perform the foregoing responsibilities in a manner that does not unreasonably disturb or interfere with the reasonable enjoyment by the other Owners of their portions of the Subdivision.

If any Owner fails to perform any of the maintenance responsibilities set forth in this section, then the Association may give such Owner written notice of such failure, and the Owner shall, within thirty (30) days after such notice is given, perform the required maintenance. If such Owner fails to perform same within the allotted time period, then the Association, acting through its authorized agents, shall have the right and power, but not the obligation, to enter such Owner's Lot and perform such maintenance, at the expense of such Lot Owner and without any liability for damages for wrongful entry or trespass. The cost of any of the work performed by the Association as aforesaid is immediately due and owing from the Owner of the Lot and constitute an Individual Assessment against the Lot on which the work was performed, collectible in a lump sum.

Section 2. Maintenance and Landscaping of Lots. The Association shall maintain and replace trees, shrubs, grass and other plantings of landscaping on each Lot, including in any Buffer Area, to the extent that such (i) were a part of the original landscaping plan or landscaping installed on such Owner's Lot; (ii) were added by the Association to the landscape of the Lot, and (iii) were added by the Owner of such Lot and submitted to and approved by the ARC pursuant to Article IV. The maintenance obligation of the Association set forth in this section includes, but is not limited to, the application of fertilizer, reseeding and replacement of grass, shrubs, trees and other plantings on such Lot, and extends to the portion of any Common Area and/or public street right-of-way located between the boundary line of each Lot and the shore of any lake, pond, water retention area, stream or other body of water located within Common Area. The Association shall maintain landscaped and grassed areas on each Lot for which it is responsible so as to keep all vegetation in a healthy condition. Landscaping as approved by the ARC is to be installed prior to occupancy of the Dwelling on such Lot-occupancy of a Dwelling prior to completion of landscaping shall require the written approval of the ARC, shall be for good cause only, and shall be no earlier than ninety (90) days prior to completion of landscaping.

In order to enable the Association to accomplish the foregoing, it is reserved to the Association the right, privilege and easement of unobstructed access over and upon each Lot at all reasonable times to perform the maintenance as required in this section. The Owner shall not (i) place any furniture or place or construct any Improvements on the Lot that will interfere with the Association's maintenance obligations of



this section, or (ii) plant any vegetation on the Lot, except in each case upon the submission to and approval by the ARC pursuant to Article IV. The ARC may condition the approval of the fencing in of any area on a Lot or the erection of any Improvements on a Lot with the ceding of the obligation to maintain the trees, shrubs, grass and other plantings affected by such, upon which such maintenance obligation shall become borne solely by the Owner of such Lot. No maintenance by an Owner of such plantings shall reduce the assessment payable by such Owner to the Association.

Section 3. Access at Reasonable Hours. For the purpose of performing its function under this or any other Article of the Declaration, and to make necessary surveys in connection therewith, the Association, by its duly authorized agent and employees, or Declarant while Declarant is a Class B Member, may enter upon any Lot at reasonable hours on any day on reasonable prior notice.

Section 4. Maintenance of Common Area. It shall be the responsibility of the Association to maintain the Common Area. However, should Declarant, prior to conveyance to the Association, or the Association hereafter decide to transfer any portion or all of the areas designated or to become, by conveyance, Common Area to a governmental authority otherwise consistent with this Declaration, such duty to maintain same shall cease as to that portion so transferred upon acceptance of maintenance thereof by such governmental authority.

Section 5. Removal of Obstructions, Debris, and Materials. The Association may remove any obstruction of any nature located within the road right-of-ways or other Common Area, including trees and shrubs which, in the opinion of the Association, either might produce a hazard or might interfere with the maintenance of the roads.

ARTICLE XI Phased Development

Section 1. Initial Phase. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and known as Phase 1-A and Phase 2 is located in Brunswick County, North Carolina, and is more particularly described on Exhibit A attached hereto and made a part and parcel hereof.

Section 2. Additional Phases. From the date of the recordation of this Declaration until a date that is the earlier of (i) ten (10) years thereafter or (ii) the Turnover Date, Declarant may, at its option, from time to time subject other lands contiguous to that presently subject to this Declaration to the provisions of this Declaration by recording a Supplemental Declaration(s), describing the lands to become subject to this Declaration. Declarant may incorporate such additional land under the provisions hereof in any number of additional phases as it may so desire and may, in its discretion, change the character or nature of such future phases, including but not limited to changing the architectural theme, building materials, elevations, and minimum square footage requirements for buildings. The annexation of additional lands and the execution and recording of such Supplemental Declaration(s) to effect same shall not require the vote or consent of the Association or any Owner, and any such Supplemental Declaration(s) shall be effective upon the filing thereof in the public records of Brunswick County, North Carolina. Upon Declarant's election to incorporate additional real estate hereunder, all of such real estate so incorporated shall be as fully covered hereby as if a part of the original Subdivision, and all lands so annexed shall be subject to all the declarations, covenants, easements, liens, restrictions and duties as herein contained, together with such additional restrictions and obligations as Declarant may impose on the lands being submitted to the provisions of this Declaration by such Supplemental Declaration(s). Declarant shall have no obligation to develop any land adjoining the Subdivision in accordance with this Declaration and may develop same in any manner it may desire and further, Declarant, if it should decide to develop any additional land located adjacent to the Subdivision, in its sole discretion, shall have no obligation to make same a part of the Subdivision or subject to this Declaration. **DECLARANT IS UNDER NO OBLIGATION TO DEVELOP ADDITIONAL PHASES AND NONE OF THE REMAINING PORTION OF THE PROPERTY DESCRIBED HEREIN SHALL BE DEEMED A PART OF ANY SCHEME OF DEVELOPMENT UNIT ACTUALLY BROUGHT UNDER THESE RESTRICTIONS AS HEREIN PROVIDED.**

Section 3. Reservation of Additional Easement and Rights. Declarant reserves as developer (and all conveyances by Declarant to Association of Common Area shall be deemed to automatically reserve) easements over, under and across all Common Area for ingress and egress and for construction and completion of construction and development of future phases including, without limitation, easements for the installation, construction, reconstruction, repair, maintenance and operation of all utility services, such easements to be in addition to and not in lieu of any other rights or easements reserved by Declarant herein or in any supplement hereto or any other conveyance by or to Declarant or its predecessors in title.

Section 4. Extension of Roads. Declarant shall have the right, but shall have no obligation, to extend any street or road now or hereafter within the Subdivision without seeking the approval of Association or any other party, for the purpose of serving additional phases of the Subdivision and/or for serving other parcels of property not included within the Subdivision.

Section 5. Voting Rights. As each phase, if any, is added to the Subdivision, the Lots comprising such additional phase shall be counted for the purpose of voting rights.

Section 6. Identification of Additional Phases. Nothing in this Declaration shall prohibit Declarant from naming or identifying any phase or portions thereof by a name other than "Waterway Cove" and any such other designation shall in no way prejudice the rights or obligations under this Declaration of any Owner of any Lot in any such section or phase.

ARTICLE XII

Rights of Mortgagees

Should a mortgagee or third party acquire the rights of Declarant, by way of foreclosure or otherwise in adjoining or neighboring property contiguous to the property subject to this Declaration, as same may exist from time to time, such mortgagee or third party shall be allowed full use of all rights, easements, rights-of-way and utilities contained within the Subdivision as was permitted or granted to Declarant for the purpose of serving such adjoining or neighboring areas.

ARTICLE XIII

Insurance and Casualty Losses

Section 1. Insurance. The Board of Directors, or its duly authorized agent, shall obtain and maintain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then, at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount (as determined by the insurance underwriter) sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board of Directors shall also obtain a public liability policy covering the Common Areas, the Association, and its Members (to the extent of such Member's insurable interest) for all damage or injury caused by the negligence of Association or arising out of the use, ownership or maintenance of the Common Areas. The public liability policy shall have at least a \$1,000,000.00 single person limit with respect to bodily injury and property damage, a \$3,000,000.00 limit per occurrence, and a \$500,000.00 property damage limit.

Premiums for all insurance required or permitted under this Article and all insurance deductibles of policies carried by the Association are a Common Expense. The policies may contain reasonable deductibles and the amount thereof shall be added to the face amount of the casualty policy in determining whether the insurance at least equals the full replacement cost. Declarant shall be named as an additional insured on all policies obtained by the Association for as long as it is a Class B Member.

All such insurance coverage obtained by the Board of Directors is to be written in the name of the Association as trustee for the benefited parties, and shall otherwise comply with the provisions of N.C. Gen. Stat. § 70-113(c). Exclusive authority to adjust losses under policies in force on the Common Areas obtained by Association is vested in the Board of Directors. The Board of Directors is further required to make every reasonable effort to secure insurance policies that will provide for the following: (i) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of Association or its duly authorized manager without prior demand in writing delivered to Association to cure the defect and the allowance of a reasonable time hereafter within which the defect may be cured by Association or its property manager; and (ii) that no policy may be canceled or substantially modified without at least ten (10) days prior written notice to Association.

In addition to the other insurance required by this section and by law, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, provided that no fidelity bond shall be required as long as Class B membership exists. The amount of fidelity coverage is to be determined in the Board of Directors' sound business judgment, but may not be less than the sum of three (3) months of the annual assessments and reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association.

The Association may purchase officers' and directors' liability insurance, if reasonably available, and the Board of Directors approves the purchase of same.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

- (a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of Association and placed in a capital improvements account.



- (b) If it is determined, as provided in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in paragraph (c) of this section; provided, however, repair or replacement of the affected Common Area may occur unless prohibited or illegal by law or governmental rule or regulation or as otherwise provided by paragraph (b) of Section 3 of this Article.

Section 3. Damage and Destruction.

- (a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance written in the name of Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of damaged or destroyed Common Areas. Repair or reconstruction, as used in this article, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty.
- (b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Members representing at least eighty (80%) percent of the total vote of the Association, shall decide not to repair or reconstruct. No mortgagee shall have the right to participate in the determination of whether the Common Area damaged or destroyed shall be repaired or reconstructed.
- (c) If it should be determined in the manner described above that the damage and destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then, and in that event, the affected portion of the Common Area shall be restored to a condition compatible with the remainder of the Subdivision.

Section 4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or constructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all owners in proportion to the number of Lots owned; provided, if the damage or destruction involves only a Lot or Lots, only Owners of the affected Lot(s) shall be subject to such special assessment. Additional special assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

**ARTICLE XIV
General Provisions**

Section 1. Enforcement. Declarant, the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration except as expressly otherwise provided by the Declaration and shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or reach in any such event or to recover damages. The failure to enforce any rights, reservation, restriction, or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Declarant or Association employ counsel to enforce any of the foregoing covenants, condition, reservations, or restrictions because of a breach of the same, all costs incurred in such enforcement, including a reasonable attorneys' fee for Declarant/Association's counsel, shall be paid by Owner of such Lot or Lots in breach thereof. Any amount assessed hereunder shall constitute an Individual Assessment on such Lot and shall be enforceable as herein provided. Notwithstanding the foregoing, the Association, through the Board of Directors, shall have the exclusive authority to enforce the Rules and Regulations and the Architectural Review Guidelines.

Section 2. Fines and Association Administrative Proceedings. In addition to all other remedies, in the sole discretion of the Board of Directors, the Board of Directors may impose a reasonable fine or fines upon an Owner for failure of an Owner, his/her family, guests, invitees, lessees or employees to comply with any covenant, restriction, rule, or regulation contained in this Declaration, the Rules and Regulations, the Architectural Review Guidelines and/or Bylaws of the Association pursuant to the applicable notice and hearing procedures set forth in the Act, including, but not limited to N.C. Gen. Stat. §§ 47F-3-101(11), 47F-3-107(d) or 47F-3-107.1, or such successor statutes. Once imposed, fines shall be treated as an Individual Assessments subject to the provisions for the collection of assessments. The Association may conduct any administrative proceedings permitted or provided for under the Declaration, the Act or as otherwise provided by law, including without limitation, the right of the Association, after notice and an opportunity to be heard, (i) to impose reasonable fines for violations of the Declaration, Bylaws, Rules and Regulations and/or the Architectural Review Guidelines, or (ii) to suspend privileges or services provided by the Association (except rights of access to land) for reasonable periods for such violations or 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. Prior to pursuing the imposition of a fine or the suspension of privileges or services as allowed by the Act and as provided herein, the offending Owner will be notified and given ten (10) days in which to cure his violation or nonpayment. If the violation or nonpayment is not cured within this ten (10) day period, a hearing shall be held before the Board of Directors or an adjudicatory panel appointed by the Board of Directors to determine if



the offending Owner should be fined or if privileges or services should be suspended. The offending Owner charged shall be given notice of the charge, an opportunity to be heard and to present evidence and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed \$100.00 may be imposed for the violation and without further hearing, for each day more than five (5) days after the decision that the violation occurs. Fines imposed shall be individual Assessments secured by liens under N.C. Gen. Stat. § 47-3-116. If it is decided that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the delinquency is paid if imposed pursuant to N.C. Gen. Stat. § 47-3-102(11) or until the violation is cured or sixty (60) days, whichever is longer, if imposed pursuant to N.C. Gen. Stat. § 47-3-102(12). The Association may institute actions or proceedings permitted by law or the Act to collect any sums due and owing to it.

Section 3. Responsibility and Rights of Declarant. Declarant herein shall not in any way or manner be liable or responsible for any violation of this Declaration, the Rules and Regulations or the Architectural Review Guidelines by any person other than itself. In addition, nothing contained in this Declaration shall be deemed to be a representation by Declarant with regard to the requirements of any governmental authority and it shall be the duty of each Owner to comply with any such requirements in addition to the provisions of this Declaration. Declarant reserves the right in addition to all other rights of Declarant, to assign its right of consent and approval as set out in this Declaration and any amendment hereto or supplement thereof, to the Association, or any assignee of Declarant's development rights. At such time as Declarant no longer owns any Lots or property in the Subdivision, any right of approval reserved to Declarant by this Declaration shall be exercised by the Association.

Section 4. Rule Against Perpetuities. If any of the provisions under this Declaration are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then, in the event such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of North Carolina, and such provision shall be fully effective for said reduced period of time.

Section 5. Binding Effect; Duration. All covenants, conditions, limitations, restrictions, easements, and affirmative obligations set forth in this Declaration shall be binding upon the Owners and their respective heirs, successors, and assigns, and run with the land for a term of twenty (20) years from the effective date of this Declaration, after which time, they shall be automatically extended for unlimited, successive periods of ten (10) years unless terminated by agreement of Owners to which at least ninety percent (90%) of the votes in the Association are allocated.

Section 6. References. In construing the provisions of this Declaration, (i) references to articles and sections refer to the articles and sections in this Declaration unless the context otherwise requires; (ii) the use of gender includes all other genders; (iii) the use of the singular includes the plural; and (iv) the use of the plural includes the singular.

Section 7. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent (i) when personally delivered to such Owner or Member; (ii) mailed, postpaid, to the last known address of the person who appears as Member or Owner of the records of the Association or on the official property tax records of the Brunswick County Tax Assessor at the time of such mailing; or (iii) to the extent that an Owner or Member expressly consents, via electronic transmission to an email or other electronic address as such Owner or Member shall provide to the Association from time to time.

Section 8. Severability. Each and every covenant and restriction contained herein is considered to be an independent and separate covenant and agreement, and if any one or more such covenants or restrictions shall, for any reason, be held to be invalid or unenforceable, all of the remaining covenants and restrictions shall nevertheless remain in full force and effect.

Section 9. Amendment. This Declaration, and the covenants, restrictions, easements, charges and liens set forth herein, may be amended or changed at any time and from time to time by the affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated. The foregoing notwithstanding, however, until the Turnover Date, this Declaration may not be amended, changed or terminated without Declarant consent. In addition, no amendment, change or modification of the rights and privileges granted and reserved hereunder in favor of Declarant or of the obligations imposed herein on Declarant shall be made without the written consent of Declarant. Notwithstanding the foregoing, Declarant may, prior to the Turnover Date, and therefore, the Board of Directors may, amend this Declaration as shall be necessary, in its opinion, (i) to correct obvious errors and omissions herein or (ii) to qualify the Association or the Subdivision, or any portion thereof, for tax-exempt status as contemplated under this Declaration, in each case, without the consent of any of the other Owners. No amendment to this Declaration shall be effective until executed and recorded in the office of the Brunswick County Register of Deeds.

Section 10. Amendment of Declaration Without Approval of Owners. Notwithstanding Section 9 of this Article, so long as it owns any portion of the Subdivision, Declarant, without the consent or approval of any other Owner, shall have the right to amend this Declaration:

- (a) to conform to the requirements of any law or governmental agency having legal jurisdiction over the Subdivision;



- (b) to enable any reputable title insurance company to issue title insurance coverage with respect to any properties subject to this Declaration;
- (c) to qualify the Subdivision as any Lots and improvements thereon for mortgage or improvement loans; or
- (d) to annex additional property to the Subdivision or make further property subject to this Declaration pursuant to Article XI.

A letter from an official of any such governmental Agency, including without limitation, the Veterans Administration, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Governmental National Mortgage Association or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such agency shall be sufficient under paragraph (a) or (c) of this section to support the execution of such an amendment. Such amendment shall become effective upon the date of its recordation in the Office of the Register of Deeds.

Section 11. Changes to Plans for the Subdivision. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of the Subdivision, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Supplemental Declaration, reserves the right to change any plans for Waterway Cove subdivision at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions. Any plans for Waterway Cove subdivision shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Subdivision or any part thereof.

Section 12: Effective Date. This Declaration shall become effective upon is recordation in the Office of the Register of Deeds for Brunswick County, North Carolina.

IN WITNESS WHEREOF, Declarant WATERWAY COVE PARTNERS, LLC, has caused this instrument to be executed by its duly authorized manager on the 28th day of April, 2014.

WATERWAY COVE PARTNERS, LLC
A North Carolina Limited Liability Company

By: _____

(Name, Title)

CHRISTOPHER GRISMAN, MANAGER

State of North Carolina

County of Union

I, the undersigned Notary Public of the County and State aforesaid, certify that Christopher Grisman personally came before me this day and acknowledged that he/she is the Manager of Waterway Cove Partners LLC, and that by authority duly given and as the act of such entity, she attested the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 28 day of April, 2014.

My Commission Expires: 5/29/2018



B3523 P0229 05-02-2014
13:00:48.004
Brenda M. Clemmons PROP
Brunswick County, NC Register of Deeds page 25 of 25

Collins & Collins
4/26/14
Total \$26 Rev Int. \$155
Ck \$26 Ck # 155 Cash \$
Refund: Cash \$ Finance \$
☐ Portions of documents negotiable due to condition of original
This document contains records verified by original

COLLINS & COLLINS LAW OFFICES, P.C.
215 Racine Drive
Suite 101
Wilmington, NC 28403

rod.brunscosco.net
**AMENDMENT TO THE BYLAWS
OF
WATERWAY COVE HOMEOWNERS ASSOCIATION, INC.**

Waterway Cove Homeowners Association, Inc. does hereby certify the following amendments to its Bylaws effective the 28th day of March, 2014.

RECITALS:

1. Waterway Cove Homeowners Association, Inc. ("Association") is the nonprofit corporation comprised of Members who are the owners of lots located in Waterway Cove;
2. Article XI of the Bylaws of the Association permits amendment of the Bylaws by a majority of the Members present at any meeting at which a quorum is present, provided that a notice of the meeting shall have been given which states that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the Bylaws and includes a copy or summary of the proposed amendment or states the general nature of the amendment;
3. On March 28, 2014, a meeting of the Members of the Association was held at which a quorum of the Members was present. At the meeting, the amendments set forth hereinafter were presented to those Members present in person or by proxy for consideration, and all of said amendments were approved by a vote of a majority of those Members present in person and by proxy;

NOW, THEREFORE, the undersigned officers of the Association do hereby certify the following amendments have been properly adopted by the Members as aforesaid at the annual meeting of the Association and its Members on March 28, 2014:

First Amendment

Articles I, II and IV are deleted and replaced with the following:

**ARTICLE I
NAME AND LOCATION**

The name of the corporation is Waterway Cove Homeowners Association, Inc. hereinafter referred to as the "Association". The principal office of the Association shall be located at 1105 Newpoint Blvd, Suite 6, Leland, NC 28451 and meetings of members and directors may be held at such places as may be designated by the Board of Directors.

**ARTICLE II
DEFINITIONS**

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Amended Declaration of Covenants, Conditions and Restrictions for Waterway Cove recorded in Book 3523, Page 205 of the Register of Deeds Office, Brunswick County, North Carolina (as the same may be amended from time to time, the "Declaration").

**ARTICLE IV
OFFICES**

Section 1. Registered Office. The registered office of the Association shall be located at 1105 Newpoint Blvd, Suite 6, Leland, NC 28451.

Section 2. Principal Office. The principal office of the Association shall be located at 1105 Newpoint Blvd, Suite 6, Leland, NC 28451.

Section 3. Other Offices. The Association may have other offices at such other places as the Board of Directors may from time to time determine or as the affairs of the Association may require.

Second Amendment

The title for Article III is deleted and replaced with the following:

**ARTICLE III
ADMINISTRATION OF WATERWAY COVE**

Third Amendment

Sections 1 and 6 of Article VI are deleted and replaced with the following:

**ARTICLE VI
MEETINGS OF MEMBERS AND VOTING RIGHTS**

Section 1. Annual Meetings. A meeting of the Members shall be held at least once each year (an "Annual Meeting"). The Annual Meeting shall be set by the Board of Directors and held on a business day in January of each year at 8:00 p.m., Eastern Standard Time, or at a time set by the Board of Directors. At Annual Meetings, the Board of Directors shall be elected in accordance with these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 6. Voting Rights. The voting rights of the Membership shall be appurtenant to the ownership of the Lot or Dwelling. There shall be two classes of Membership with respect to voting rights:

(a) **Class A Members.** Class A Members shall be all Owners excepting the Declarant and NATUREWATCH LLC. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 above. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, such purchaser automatically becomes a Class A Member, unless that purchaser is NATUREWATCH LLC.

rod.brunscosco.net

rod.brunscosco.net



(b) Class B Members. Class B Members shall be the Declarant and NATUREWATCH LLC. Each Class B Member shall be entitled to ten (10) votes for each Lot owned. Class B membership shall cease and become converted to Class A membership upon the happening of the earlier of the following:

- (i) The date on which neither the Declarant nor NATUREWATCH LLC owns any part of the entire subdivision (including Common Areas);
- (ii) Fifteen (15) years following the date of recordation of the Amended Declaration; or
- (iii) At such time as the Class B Members voluntarily relinquish their Class B Member status in writing.

From and after the happening of whichever of said events occurs earlier, the Class B Member shall be deemed to be a Class A Member and entitled to one vote for each Lot owned in the manner provided above.

IN TESTIMONY WHEREOF, for the purpose of certifying the adoption of the amendments aforesaid, this document has been executed on behalf of the Association by its President, attested by its Secretary, and its seal affixed hereto, all by order of the Board of Directors and the membership of the Association first duly given.

WATERWAY COVE HOMEOWNERS ASSOCIATION,
INC.,

a North Carolina non-profit corporation

BY:

NAME:

TITLE: President

Scott H Cook

ATTEST

[Signature]
Secretary

rod.brunasco.net

rod.brunasco.net

rod.brunasco.net



State of North Carolina
 County of Brunswick

I, Amber Lainhart, Notary Public, certify Scott Cook personally came before me this day and acknowledged that he is President of Watermy Cove Homeowners Association Inc, a NC non-profit corporation and that by authority duly given to him and as the act of the non profit corporation, the foregoing instrument was signed in its name by him

Witness my hand and official seal, this the 1st day of May, 20 14

My commission expires 4-24-2015

Amber Lainhart
 (Notary Public)



rod.brunsko.net

rod.brunsko.net

rod.brunsko.net

rod.brunsko.net

rod.brunsko.net

rod.brunsko.net

UNOFFICIAL

07-10-2013
10:28:46.001
Brenda M. Clemmons
PROP

83428 P0834

Brunswick County, NC Register of Deeds page 1 of 5

For counter Hinson Faulk, P.A. me!
Total 86 Rev Int 86
Cash 86 Ch notes Cash \$ 86
Finance 86 Cash \$ 86 Finance 86

UNOFFICIAL

Return to:

Hinson Faulk, P.A.
309 Post Office Drive
Indian Trail, NC 28079

Prepared by and
after recording return to:

File No.

Ellis & Winters LLP (CNA), 1100 Crescent Green Drive, Suite 200, Cary, NC 27518

THIS ASSIGNMENT AND ASSUMPTION OF DECLARANT RIGHTS ("Assignment") is made effective as of the 14 day of June, 2013 by SPECIAL SERVICES ASSET MANAGEMENT COMPANY, an Illinois corporation ("Assignor"), for and for the benefit of WATERWAY COVE PARTNERS, LLC, a North Carolina limited liability company ("Assignee").

WHEREAS, Assignor has conveyed to Assignee the property described on Exhibit A, attached hereto and incorporated herein by reference (the "Property").

WHEREAS, in connection with the sale of the Property, Assignor has agreed to convey to Assignee and Assignee has agreed to accept from Assignor all of Assignor's rights, privileges, obligations and liabilities, if any, as declarant (collectively, "Declarant Rights") under the Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Waterway Cove recorded in Book 3045, page 897, of the public records of Brunswick County, North Carolina and the North Carolina Planned Community Act.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Assignment and Assumption.** Assignor assigns, quitclaims, and conveys to Assignee without representation or warranty and on an "AS IS" and "WHERE-IS" basis, with all known and unknown faults, and Assignee hereby accepts and assumes all of Assignor's Declarant Rights. Assignor makes no representation or warranty whatsoever, written or oral, express or implied, with regard to the Declarant Rights. Assignor expressly disclaims making any representation or warranty as to: (a) whether Assignor has any Declarant Rights; or (b) whether Assignor has the authority to assign, quitclaim and convey the Declarant Rights. Assignee agrees to indemnify and hold Assignor, its member, managers, officers, parents, affiliates and successors, harmless from and against any and all claims, losses, liabilities, damages, expenses, fee and costs (including attorneys' fees) arising in whole or in part from this Assignment and/or Assignee's acts or omissions as the successor to the Declarant Rights.

2. **Miscellaneous.** Assignee joins in the execution of this Instrument for the purpose of accepting this Assignment in accordance with N.C. Gen. Stat. § 47F-3-104. This Assignment may be executed in one or more counterparts, each of which will constitute an original but which together shall constitute a single Instrument. This Assignment will become effective upon the recording thereof in the Office of the Register of Deeds for Brunswick County, North Carolina. North Carolina law, excluding principles of conflicts of laws, shall govern the interpretation and enforcement of this Assignment.

UNOFFICIAL

UNOFFICIAL

UNOFFICIAL

UNOFFICIAL



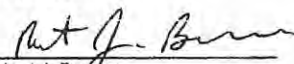
B3428 P0835 07-10-2013
10:28:46.001
Brenda M. Clemmons PROP
Brunswick County NC Register of Deeds page 2 of 5

IN WITNESS WHEREOF, Assignor and Assignee have caused this instrument to be executed as of the day and year first above written.

ASSIGNOR:

SPECIAL SERVICES ASSET MANAGEMENT
COMPANY,
an Illinois corporation

By:


Robert J. Benson
Vice President

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THE FOREGOING INSTRUMENT was, executed, acknowledged, and delivered before me, the undersigned officer, this _____ day of _____, 2013, by Robert J. Benson (who personally appeared), as a Vice President of Special Services Asset Management Company., on behalf of said company. He:

- ☐ is personally known to me OR
☐ produced a _____ [state] driver's license as identification OR
☐ produced _____ as identification.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[NOTARY SEAL]

See Attached
Acknowledgement Form

Print Name: _____
Notary Public, State of California
/ City or County Aforesaid

UNOFFICIAL

UNOFFICIAL

UNOFFICIAL

UNOFFICIAL

UNOFFICIAL
UNOFFICIAL
UNOFFICIAL

B3428 P0836 07-10-2013
10:28:46.001
Brenda M. Clemmons PROP
Brunswick County, NC Register of Deeds page 3 of 5

ACKNOWLEDGMENT

State of California
County of Los Angeles

On June 12, 2013 before me, Maria Davalos, Notary Public
(insert name and title of the officer)

personally appeared Robert J. Benson ---
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

UNOFFICIAL
UNOFFICIAL
UNOFFICIAL

UNOFFICIAL
UNOFFICIAL
UNOFFICIAL

UNOFFICIAL
UNOFFICIAL
UNOFFICIAL

UNOFFICIAL
UNOFFICIAL
UNOFFICIAL

UNOFFICIAL

BRUNSWICK COUNTY, NC REGISTER OF DEEDS

B3428 P0837 07-10-2013 10:28:46.081
Brenda M. Clemmons PROP
page 4 of 5

ASSIGNEE:

WATERWAY COVE PARTNERS, LLC,
a North Carolina limited liability company

By:

Name:

Title:

David Cuthbertson

Manager

Union County, North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: David Cuthbertson

Date: June 14, 2013

My Commission Expires:

6-6-2017

[Affix Notary Stamp or Seal]

Print Name:

Notary Public

Crystal M. Miller



UNOFFICIAL

UNOFFICIAL

UNOFFICIAL

UNOFFICIAL
UNOFFICIAL



83428 P0838 07-10-2013
10:28:46.001
Brenda M. Clemmons PROP
Brunswick County, NC Register of Deeds page 5 of 5

Exhibit A to Assignment and Assumption of Declarant Rights

Legal Description

Being all of that tract of land consisting of 48.87 acres +/- as shown on plat entitled "Survey for Atlantic Coast Development" prepared by Bobby M. Long & Associates, Surveyors, on October 20, 2006, revised on January 30, 2007, and recorded in Map Book or Map Cabinet 36, Page 463, Brunswick County Registry, save and except therefrom Lots 1, 9, 10, 11, 12, 76, 77 and 79, Phase 1A, Waterway Cove Subdivision, as more fully described in plats recorded at Map Cabinet 65, page 18, Brunswick County Registry

UNOFFICIAL
UNOFFICIAL
UNOFFICIAL

UNOFFICIAL
UNOFFICIAL
UNOFFICIAL

UNOFFICIAL
UNOFFICIAL
UNOFFICIAL

UNOFFICIAL
UNOFFICIAL
UNOFFICIAL

4

#933542

UNOFFICIAL
UNOFFICIAL
UNOFFICIAL

UNOFFICIAL
UNOFFICIAL
UNOFFICIAL