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Robert J. Robinson
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STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR MALLORY CREEK PLANTATION

This Declaration, Made the 27th day of July, 2004, by **WILMINGTON WEST, INC.**, hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated;

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Brunswick County, North Carolina, known as **TYLER'S COVE @ MALLORY CREEK PLANTATION, Section 1**, as shown on a plat recorded in the Office of the Register of Deeds of Brunswick County, North Carolina, in Map Book 30, Page 362, **RIGHT OF WAY DEDICATION AND CLUB HOUSE SITE @ MALLORY CREEK PLANTATION**, as shown on a plat recorded in the Office of the Register of Deeds of Brunswick County, North Carolina, in Map Book 30, Page 361, **THE PALMS @ MALLORY CREEK PLANTATION, Section 1**, as shown on a plat recorded in the Office of the Register of Deeds of Brunswick County, North Carolina, in Map Book 30, Page 363, and **EMBERWOOD AT MALLORY CREEK PLANTATION**, as shown on a plat recorded in the Office of the Register of Deeds of Brunswick County, North Carolina, in Map Book 30, Page 364, to which maps reference is made for a more particular description (the "Property"); and

WHEREAS, Declarant now owns or may acquire other lands which at Declarant's sole option may be added to the Planned Community (as hereinafter defined); and

WHEREAS, Declarant is unable to determine at the time of recording of this Declaration what types of residential product lines or developments will be constructed on any Additional Property (as hereinafter defined) but desires to retain the flexibility for this Declaration to accommodate such different product lines and developments, when identified.

NOW, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in

Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions.

ARTICLE I.

DEFINITIONS

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

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

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

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

SECTION 4. Association Maintenance Area shall mean any land areas or facilities which the Association is obligated to operate or maintain which are not Common Elements. The Association Maintenance Areas shall consist of the unpaved portions of Mallory Creek Drive (or portions thereof that the Association elects to maintain) and the portions of such other public highway rights of way within the Planned Community as the Association elects from time to time to maintain.

SECTION 5. Common Elements shall mean and refer to all lands and easements within or appurtenant to the Planned Community which are owned or enjoyed by the Association, other than a Lot, and intended for the common use and enjoyment of the Owners, and their tenants including, without limitation, any private roads, perimeter fencing for the Property (but not privacy fences located on or within a Lot), and storm water retention ponds within the Planned Community. Common Elements shall also include any areas designated on any plats for the Planned Community as "Open Space", "Common Area", "Common Element", "Recreation Area", "Amenity Area", or other similar designation. Common Elements need not be contiguous to or abutting the Property or any Additional Property.

SECTION 6. Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

SECTION 7. Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise.

SECTION 8. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to WILMINGTON WEST, INC., its successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right.

SECTION 9. Declarant Control Period shall have the meaning set forth in Article III hereof.

SECTION 10. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 11. Executive Board or Board shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this Declaration or otherwise to act on behalf of the Association.

SECTION 12. Limited Common Elements shall mean areas and facilities within any Lot which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration. Initially The Limited Common Elements shall consist of, but only within Townhomes at Mallory Creek Plantation, (i) the exterior of all dwellings, including by way of illustration, but not limited to, roofs, exterior building surfaces, decks, porches, gutters and downspouts, and (ii) yards and other improvements, including by way of illustration, but not limited to, travelways, walkways, privacy fences for the sole use of a Lot, leaves, shrubs and grass but excluding that portion of the yard located within any privacy fencing. Declarant may with regard to Additional Property, by amendment to this Declaration, add Limited Common Elements to the Planned Community without the consent of any Lot Owners (so long as the Owners of the Limited Common Elements pay the cost of their operation and maintenance through Annual Limited Common Element Assessments as hereinafter defined.

SECTION 13. Limited Common Element Development shall mean any townhouse, patio, or other type development within the Planned Community which has Limited Common Elements (the operation and maintenance of which is paid by the Owners within the Limited Common Element Development).

SECTION 14. Lot(s) shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner and shown on a recorded subdivision plat which has been approved by the applicable planning board or other governmental authority.

SECTION 15. Lot Owner or Owner shall mean the Declarant or other Person who owns a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 16. Master Association means a master association as defined in the Act.

SECTION 17. Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

SECTION 18. Planned Community shall mean and refer to the Property plus any Additional Property made a part of the Planned Community by the exercise of any Special Declarant Right.

SECTION 19. Purchaser means any Person, other than the Declarant or a Person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 20. Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

SECTION 21. Special Declarant Rights means rights reserved for the benefit of the Declarant including without limitation the right (i) to complete improvements intended or planned by Developer for the Property or Additional Property; (ii) to exercise any development or other right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain within the Planned Community sales offices, management offices, construction offices/trailers, signs advertising the Planned Community, and models; (iv) to use the Common Elements for the purpose of making improvements within the Planned Community; (v) to make the Planned Community part of a larger planned community or group of planned communities; (vi) to make the Planned Community subject to a Master Association; (vii) to appoint or remove any officer or Executive Board member of the Association or any Master Association during the Declarant Control Period or (viii) to permit

other land to be annexed to and made part of the Planned Community in accordance with the terms of this Declaration.

SECTION 22. Stormwater Permit shall mean State Stormwater Permit # SW8 021111 issued by the North Carolina Division of Water Quality (DWQ), Department of Environment and Natural Resources (DENR) as it may be amended, and such other stormwater permits as may be issued for the Planned Community from time to time.

SECTION 23. Townhouse or Townhome shall mean the dwelling located on a Lot within any Townhome Development.

SECTION 24. Townhome Development shall mean any Townhome project within the Planned Community.

ARTICLE II.

PROPERTY RIGHTS AND EASEMENTS

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

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners (but such rules and regulations may not exclude an Owner from simultaneous use of the Common Elements except for non-payment of Assessments or rules violations);

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

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

(a) easements as necessary in the lands constituting the Common Elements

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

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

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

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

(a) an easement to all police, fire protection, ambulance and all similar

persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties.

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

(c) the Association is granted an easement over each Lot for the purposes of providing Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration.

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

SECTION 5. Gas Line Easement. ExxonMobil Chemical Company is the holder of a 30' easement located over portions of the Planned Community which is recorded in Book 313 Page 572 of the Brunswick County Registry. ExxonMobil maintains a gas line(s) within the easement. Declarant has designated portions of the gas line as Common Area/Open Space. Lot Owners and the Association are prohibited from digging or making any excavations whatsoever or from installing any apparatus within the gas line without first having obtained the consent of ExxonMobil.

ARTICLE III.

HOMEOWNERS' ASSOCIATION

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

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

SECTION 3. Membership Classes. The Association shall initially have three classes of voting membership (but the Declarant by amendment to this Declaration without the consent of any Lot Owners may add other membership classes for each Limited Common Element Development or other type development which may be annexed to the Planned Community).

Class A. Class A Members shall be Owners of Lots who have not been assigned to another membership class pursuant to this Declaration.

Class B. Class B Members shall be Owners of Lots in Townhomes at Mallory Creek Plantation.

Class C. The Declarant shall be a Class C Member.

SECTION 4. Voting Rights. The voting rights of each class of membership shall be as follows:

(a) The Class A and B Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited. Only certain classes of members may vote on certain issues as hereinafter provided.

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

(i) when the total vote outstanding in all Classes of Membership, other than Class C Membership, equals the total vote outstanding in the Class C Membership; or

(ii) on December 31, 2020; or

(iii) upon the voluntary surrender of all Class C Membership by the holder thereof.

The period during which there is Class C Membership is sometimes referred to herein as the "Declarant Control Period". If the Declarant loses Class C Membership, it

shall re-acquire Class C Membership for the Planned Community upon adding Additional Property. During the Declarant Control Period, the Declarant shall have the right to designate and select the Executive Board of the Association and the right to remove any person or persons designated and selected by the Declarant to serve on the Executive Board, and to replace them for the remainder of the term of any person designated and selected by the Declarant to serve on the Executive Board who may resign, die, or be removed by the Declarant.

SECTION 5. Government Permits. After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

SECTION 6. Common Elements. The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element within the Planned Community from the date of completion of its construction or improvement by the Developer, whether or not (i) such Common Element has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Element has been transferred from the Declarant to the Association or assumed by the Association. If the Declarant is required by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within 30 days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special Assessment to cover the amount of such bill if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment.

SECTION 7. Architectural Control Committee. The Executive Board shall perform all duties of the Architectural Control Committee if no such committee is appointed by it, subject, however, to the Special Declarant Rights. Any Architectural Control Committee appointed by the Executive Board shall consist of at least 5 members.

ARTICLE IV.

INSURANCE AND BONDS

SECTION 1. Townhouse Insurance. Commencing not later than the time of the first conveyance of a Lot within any Townhouse Development to a Person that is not a Declarant, it shall be the duty of the Association to maintain in effect casualty and liability insurance covering the Townhouses and Townhouse Development as follows, to the extent it is reasonably available:

(a) Amount and Scope of Insurance. All insurance policies necessary or desirable upon any Townhouses and Townhouse Development (except personal property within a Townhome) shall be secured by the Board of Directors, or its designee, on behalf of the Association. Such insurance shall at a minimum cover against (1) loss or damage by fire or other hazards normally insured against in an amount after application of any deductibles of not less than 80 percent of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date exclusive of land excavation, foundations and other items normally excluded from property policies, and (2) general liability insurance for each Lot, with limits of at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence.

(b) Insurance Provisions. The Board of Directors shall make diligent efforts to insure that the insurance policies required by this section provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Lot Owners and their employees, agents, tenants and invitees;

(2) a waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(3) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured and all mortgagees;

(4) coverage will not be prejudiced by act or neglect of the Lot Owners when said act or neglect is not within the

control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Planned Community over which the Association has no control.

(5) the master policy on the Planned Community cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Lot Owners;

(6) the master policy on the Planned Community cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured;

(7) each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest;

(8) if at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(c) Premiums. All premiums on the insurance policies required by this section and any deductibles payable by the Association upon loss shall be a Common Expense paid by the class of Members to which it applies;

(d) Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors who shall hold any such insurance proceeds in trust for Lot Owners within the Townhouse Development and lien holders as their interest may appear;

(e) Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "A" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the Townhouse Development Lot Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the

Owners at least ten (10) days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any, upon request of such mortgagee;

(f) Individual Policies. If the Association shall determine that it would be more economically feasible in lieu of the Association maintaining a master policy for the Members within a Townhouse Development to purchase insurance policies covering each Lot and Lot Owner individually, then upon the assent of 67 percent of the Members voting as a class (which votes may be cast in person or by proxy) who are eligible to vote at a meeting duly called for such purpose, the insurance coverage for the Townhomes may be turned over to the Lot Owners to purchase individual policies under such terms and conditions as the Association may prescribe. If the responsibility for maintaining the insurance coverage on the Townhouses is turned over to the individual Lot Owners under the provisions of this paragraph, then the Association shall be named as additional insured on each policy, each Lot shall be insured for its full replacement value, and the provisions of this Section shall be modified accordingly;

(g) Distribution of Insurance Proceeds. Subject to the provisions of Section 47F-3-113(g) of the Act, the proceeds of insurance policies maintained by the Association pursuant to this section shall be distributed to or for the benefit of the beneficial owners in the following manner:

(1) all reasonable expenses of the insurance trustee shall be first paid or provision may therefor;

(2) the remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

SECTION 2. Individual Home Insurance. All Owners not within a Townhouse Development shall purchase at their individual expense individual policies covering each Lot and Lot Owner individually.

SECTION 3. Common Element Insurance. The Board of Directors on behalf of the Association, as a Common Expense of all Lot Owners, may at all times keep the Common Elements and other assets of the Association insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all

Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. The Association at minimum shall maintain with regard to the Common Elements the insurance coverage(s) required by the Act.

SECTION 4. Fidelity Bond. The Association may maintain, as a Common Expense paid by all Owners, blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association; provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

ARTICLE V.

PARTY WALLS - TOWNHOUSES

SECTION 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Townhomes and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law in North Carolina regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

SECTION 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

SECTION 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

SECTION 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act caused the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such element.

SECTION 5. Right to Contribute Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

SECTION 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of all the arbitrators.

ARTICLE VI.

COVENANTS FOR ASSESSMENTS

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

- A. Annual Common Element Assessments;
- B. Annual Limited Common Element Assessments;
- B. Special Assessments;
- C. Insurance Assessments;
- D. Ad Valorem Tax Assessments; and
- E. Working Capital Assessments.

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

SECTION 2. Purpose of Annual Assessments. The Annual Common Element Assessments and the Annual Limited Common Element Assessments levied by the Association shall be used, as applicable, exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Planned Community and for the maintenance, repair and replacement of the Common Elements and any Limited Common Elements. The funds arising from said assessments or charges, may be used for any or all

of the following purposes: Operations, maintenance and improvement of the Common Elements, and any Limited Common Elements, including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization or Master Association of which the Association is a member; and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Elements and Limited Common Elements in good operating order and repair.

SECTION 3. Annual Assessments. At least 90 days before the beginning of each fiscal year, the Executive Board shall adopt proposed annual budgets, as follows:

(i) a budget for the Annual Common Element Assessments consisting of the annual cost of operating and maintaining the Common Elements.

(ii) a separate budget for the Annual Limited Common Element Assessment for each Limited Common Element Development within the Planned Community consisting of the annual cost of operating and maintaining the Limited Common Elements for such development.

(iii) such other budgets as the Executive Board deems appropriate.

Within 30 days after adoption of the proposed budgets for the Planned Community, the Executive Board shall provide to all of the Lot Owners a summary of the budgets and notice of a meeting to consider ratification of the budgets, including a statement that the budgets may be ratified without a quorum. Each budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association entitled to vote on the particular budget rejects the budget. All members shall be entitled to vote on the budget for the Annual Common Element Assessments. Only the class of members to which any budget for the Annual Limited Common Element Assessments applies shall be entitled to vote with regard to the budget applicable to them. In the event a proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board. The Annual Assessments for each Lot shall be established based on the annual budgets thus adopted, with all Lots funding the budget for the Annual Common Element Assessments and the Lots within a particular Limited Common Element Development funding the budget for the Annual Limited Common Element Assessments applicable to them; provided, however, that the first Annual Assessments shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Executive Board. The Executive Board shall have the authority to require the Assessments to be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

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

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

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

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

SECTION 7. Working Capital Assessments. At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of \$200.00 to the Association as working capital to be used for operating and capital expenses of the Association. Such amounts paid for working capital are not to be considered as advance payment of the Annual or any other Assessments.

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

SECTION 9. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

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

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

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

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

C. The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

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

E. Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or

first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

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

ARTICLE VII.

RIGHTS OF DEVELOPER

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

SECTION 1. The Architectural Control Committee/Executive Board. The Declarant shall be entitled, so long as Declarant shall own any Lot within the Planned Community, to appoint and remove the members of the Architectural Control Committee. The Declarant shall be entitled during the Declarant Control Period to appoint and remove the officers and members of the Executive Board.

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

Common Elements or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Elements. The Declarant need not develop, or develop in any particular manner, any lands now owned or hereafter acquired by the Declarant, including any lands shown on plats of the Planned Community as "Future Development" or as "shadow lots" or potential lots in planned future sections of the Planned Community. Any such lands shall not be subject to this Declaration unless Declarant expressly subjects them hereto by filing of a supplemental declaration in the Register of Deeds office of Brunswick County. Declarant is required by DWQ to state herein the maximum allowed built-upon area for all lots which Declarant has planned to develop within the Planned Community. By listing the maximum built-upon area herein for all such lots, Declarant does not obligate itself to develop in any particular manner or for any particular uses any lands now owned or hereinafter acquired by Declarant which are not shown on the recorded plats referenced herein.

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

- A. In any respect, prior to the sale of the first Lot.
- B. To the extent this Declaration applies to Additional Property, including, but not limited to, amendments to add additional classes of Membership to the Association, to add, delete or alter Common and Limited Common Elements and to establish minimum square footages and other standards for structures.
- C. To correct any obvious error or inconsistency in drafting, typing or reproduction.
- D. To qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.
- E. To incorporate or reflect any platting change as permitted by this Article or otherwise permitted herein.
- F. To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Planned Community or to qualify the Planned Community or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without

limitation, ecological controls, stormwater regulations, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the North Carolina Department of Environment and Natural Resources, the Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. The Declarant may at any time amend this Declaration to change the maximum built-upon area permitted by DENR/DWQ. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.

SECTION 4. Annexation of Additional Property. Declarant may annex to and make a part of the Planned Community any other real property, whether now owned or hereafter acquired by Declarant or others, and whether developed by the Declarant or others (the "Additional Property"). Annexation of Additional Property to the Planned Community shall require the assent of 67 percent of the Members who are voting in person or by proxy at a meeting called for this purpose; provided, however, Additional Property may be annexed to the Planned Community without the assent of the Members so long as the Additional Property is used for residential purposes (including but not limited to multifamily, condominiums, townhomes, patio homes, apartments, Common Elements, roads and other amenities related thereto). Declarant is not required to annex any land to the Planned Community.

SECTION 5. Sales Model/Parking. So long as the Declarant or its designee shall retain ownership of any Lot, it may utilize any such Lot for offices, models or other purposes relating to the development, construction, sale or rental of Lots and dwellings, including the right to place "For Sale" or "For Rent" signs on any Lots. In addition, in connection with any of the above activities the Declarant and its agents shall have the right to park vehicles and materials on any street or within the right of way thereof.

SECTION 6. Transfer of Declarant and Special Declarant Rights. Without limiting Declarants general authority to transfer its rights hereunder, the Declarant specifically reserves the right to transfer, without the approval of any Lot Owners, any Declarant or Special Declarant rights contained herein to any other Person who develops or build homes in the Planned Community. Upon such transfer, the transferee shall have all of the rights of the Declarant hereunder except to the extent any such rights are limited in the document of transfer.

SECTION 7. Use of Infrastructure and Amenities. Declarant may allow other owners' associations, and their owners (whether residential or commercial), to use the amenities and infrastructure within the Planned Community so long as such other owners' associations pay a portion of the cost or the operation and maintenance of such amenities and infrastructure, the exact amount of such payment to be in the sole discretion of the Declarant.

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ARTICLE VIII.

USE RESTRICTIONS, ARCHITECTURAL CONTROL AND MAINTENANCE

SECTION 1. Approval of Plans for Building and Site Improvements. No dwelling, wall, tent or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. If the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Architectural Control Committee for its records. The Architectural Control Committee shall not be responsible for any structural or other defects in plans and specifications submitted to it or in any structure erected according to such plans and specifications.

SECTION 2. Minimum Standards for Site Improvements.

A. Each dwelling, on the following Lots shown on the above referenced plat, shall have the following minimum of square footages of enclosed, heated dwelling area:

Tyler's Cove Sect. 1	1,000 sq. ft. to 1,400 sq. ft.
The Palms Sect. 1	1,400 sq. ft. to 1,600 sq. ft.
Emberwood Sect. 1	1,800 sq. ft.

Provided, however, the Architectural Control Committee may permit a dwelling to have a minimum of 10% less square feet than provided above if the Committee in its sole discretion finds that the variance will not adversely impact property values within the

Planned Community. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas. The Declarant, as provided above, shall be entitled to amend this Declaration to establish different square footage minimums for any Additional Property annexed to the Planned Community, whether Townhomes, Patio Homes or otherwise.

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

C. The exterior of all dwellings, yards, landscaping, irrigation and other structures must be completed within six (6) months after the construction of same shall have commenced.

D. All service utilities, ^{garbage?} garage receptacles, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the Planned Community. All mail and newspaper boxes shall be uniform in design within each type development within the Planned Community. Design for mail and newspaper boxes shall be furnished by the Architectural Control Committee. Fences shall be permitted on any Lot; provided, however, that the design, placement, and materials of any fence are approved by the Architectural Control Committee. Clothes lines are not permitted on any Lot.

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

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

G. Front yards shall be sodded with sod approved by the Declarant or the

Architectural Control Committee.

H. Construction activity on a Lot shall be confined within the boundaries of said Lot. Each Lot Owner shall have the obligation to repair damage to common Elements or other property and to collect and dispose of all rubbish and trash resulting from the construction on his Lot. Upon a Lot Owner's failure to repair such damage or to collect and dispose of such trash within thirty (30) days after receipt of a written notice from the Association, the Association may repair the damage or collect and dispose of such rubbish and trash at the Lot Owner's expense. Any expense incurred by the Association in repair or clean-up of the Lot shall be billed to the Owner of the Lot and if not paid within 30 days, the amount thereof shall become a lien against the Lot which shall be enforceable pursuant to the provisions of this Declaration as is the case for delinquent assessments.

I. Shallow wells for the purpose of watering lawns and not for potable water supply are permitted. Such wells and pump houses must be located no closer to the front lot line than the front of the residence constructed on the Lot and the exact location is subject to the approval of the Architectural Control Committee.

SECTION 3. Use Restrictions.

A. Land Use And Building Type. No Lot or parcel of land shall be used for any purpose except for residential purposes, subject, however, to the rights of the Declarant contained herein. All numbered Lots are restricted for construction of one single family dwelling (plus, a detached garage, if there is not one attached to the residence, ~~and such other accessory buildings as may be approved by the Architectural Control Committee~~). Notwithstanding the foregoing, the Declarant may develop any parcel of land annexed to the Planned Community as multifamily (Condos, apartments, etc.) so long as the parcel is restricted only to residential use.

B. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, ~~unsightly~~, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or un-kept condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area.

C. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Association

or its designee; provided, however, that this shall not prevent the Declarant, its designees or assigns from maintaining a construction trailer or office on any part of the Planned Community until the construction and sale of dwellings on all Lots and the Common Elements improvements are completed.

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

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

F. Statuary, TV Satellite Dishes and Outside Antennas. No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Architectural Control Committee; provided, however, satellite dishes not over 18" in diameter which cannot be seen from the street are permitted.

G. Construction in Common Elements. No Person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

H. Signs. No signs (including "for sale" or "for rent" signs) shall be permitted on any Lot or in the Common Elements without permission of the Executive Board; provided, however, the Declarant may, so long as Declarant owns any Lot or land, maintain for sale signs on Declarant's Lots and land and maintain signs on the Common Elements advertising the Planned Community.

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

J. Leases. No rental or lease for any Lot shall be for a term of less than 12 months. All leases must be in writing and must contain a provision requiring the tenant to comply

with all the use restrictions of this Declaration and any rules and regulations adopted by the Association. All leases shall be submitted to the Association to verify that they comply with this section. When a dwelling is leased to more than one tenant they must be related by blood or by marriage. Transient rentals are strictly prohibited.

K. Trees. No trees on any Lot in 6 inches in diameter or greater may be cut or removed without the approval of the Architectural Control Committee.

L. Window Coverings. Each Townhome is to be originally equipped with mini-blinds which shall be permanent fixtures and shall remain with the Townhome when sold and may not be removed. The mini-blinds may be replaced with mini-blinds of the same style and color as those originally installed. Any additional window treatments must be located inside the mini-blinds.

SECTION 4. Maintenance. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. All shrubs, trees, grass and plantings shall be kept neatly trimmed and properly cultivated.

ARTICLE IX.

STORMWATER PERMIT/FACILITIES

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

SECTION 2. Stormwater Facilities O & M. Any stormwater retention ponds and related facilities for the Planned Community which have or are to be constructed by or on behalf of Declarant constitute Common Elements and, subject only to the provisions of Section 3 of this Article, the Association, at its sole cost and expense, is responsible for the operation and maintenance of such facilities. Such O & M shall include, but not be limited to, compliance with all of the terms and obtaining any renewals of the Stormwater Permit. Except as provided in Section 3 of this Article, the Association shall indemnify and hold harmless the Developer from any obligations and costs under the Stormwater Permit for operation and maintenance of the stormwater retention ponds and related facilities.

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

SECTION 4. Enforcement Of Storm Water Runoff Regulations.

A. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8021111, as issued by the Division of Water Quality under NCAC 2H.1000.

B. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.

C. These covenants are to run with the land and be binding on all persons and parties claiming under them.

D. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of water Quality.

E. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

F. The maximum allowable built-upon area per Lot is as follows (this data is for Lots shown on the above referenced plat plus lots for which the Declarant has an approved stormwater plan but which Declarant is under no obligation to subdivide or develop in any particular fashion or for any particular use):

Lot Number	Allowable Impervious (sf)
50-76 (Emberwood)	4,000
1-10; 111-145 (The Palms)	3,500
147-155; 173-181 (Tyler's Cove)	3,000

These allotted amounts include any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.

G. All runoff from the future commercial area and the townhome complex must drain into Pond No. 3.

H. Built-upon area in excess of the permitted amount will require a permit modification.

I. The connection from the future commercial development and the townhome complex collection system shall be made such that short-circuiting of the system does not occur.

J. The owner of each development tract, whose ownership is not retained by the permittee, shall submit a separate offsite stowmwater permit application to the Division of Water Quality and receive a permit prior to construction.

ARTICLE X.

LOTS SUBJECT TO DECLARATION/ENFORCEMENT

SECTION 1. Lots Subject to Declaration. The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of the Planned Community and the Lots. All present and future Owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into

occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, their heirs, successors and assigns, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated by the Lot Owners.

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

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

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

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

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

ARTICLE XI.

GENERAL PROVISIONS

SECTION 1. Rights of Institutional Note Holders. Any institutional holder of a first lien on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Planned Community or the property securing its loan, (e) receive written notice of any sixty-day (60) delinquency in the payment of Assessments or charges owed by any Owner of any property which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

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

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

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

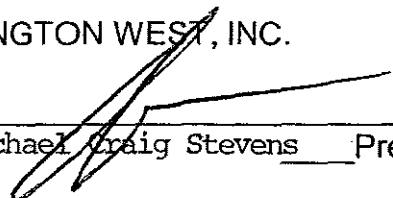
SECTION 5. FHA/VA Approval. So long as there is Class B membership, annexation of Additional Properties, dedication of Common Elements and amendments to this Declaration must be approved by the Federal Housing Administration and/or the Department of Veterans Affairs, as the case may be, if either of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

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

SECTION 7. Liability Outside Class. By virtue of this Declaration, the Association's Articles and Bylaws, certain actions by the Association are required to be taken for only a particular Class of Members. The Members of any Class of Membership outside of a Class for which the Association is required or elects to take any action shall have no liability, through assessments or otherwise, for the Association's failure to take or to mismanage any such action.

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

WILMINGTON WEST, INC.

By: 
Michael Craig Stevens President

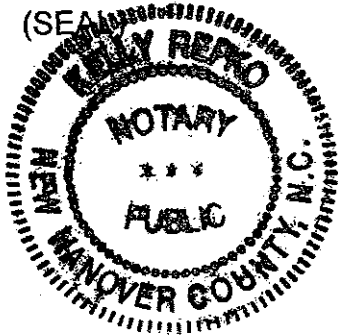
STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Kelly Repko, a Notary Public, certify that Michael Craig Stevens personally came before me this day and acknowledged that he is the _____ President of Wilmington West, Inc., a corporation, and that he, as _____ President, being authorized to do so, executed the foregoing on behalf of said corporation.

Witness my hand and seal, this the 30 day of July, 2004.

Kelly Repko
Notary Public

My commission expires: 5-5-2007



STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

KELLY REPKO

The Foregoing (or annexed) Certificate(s) of _____

Notary(ies) Public is (are) Certified to be Correct.
This Instrument was filed for Registration on this 3rd Day of August, 2004
in the Book and page shown on the First Page hereof.

Robert J. Robinson
ROBERT J. ROBINSON, Register of Deeds

~~Brunswick County~~ Register of Deeds
Robert J. Robinson
Inst #278655 Book 2193 Page 482
07/19/2005 03:00:13pm Rec# 240593

RET. 177 100
TOTAL 23 REV TC# 38
REC# OK AMT 23 OK# 2716
CASH REF BY JL

RETURN TO Hogue, Will

AMENDMENT
TO
DECLARATION OF COVENANTS

This Amendment to Declaration of Covenants, Conditions and Restrictions, made the 18 day of July, 2005, by WILMINGTON WEST, INC., a North Carolina corporation, hereinafter referred to as "Declarant" or Developer";

WITNESSETH:

Whereas, Declarant has recorded a Declaration of Covenants, Conditions and Restrictions for MALLORY CREEK PLANTATION in Book 1990 at Page 138, Brunswick County Registry (the "Declaration"); and

Whereas, the Declarant desires to amend the Declaration as hereinafter provided; and

Whereas, the Declarant and those persons signing the "Jointer and Consent" attached hereto as Exhibit A, own 67% of the platted Lots within Mallory Creek.

NOW, THEREFORE, Declarant hereby declares that the Declaration is amended as follows:

1. That Article IV of the Declaration as it now reads is deleted in its entirety and is amended to read as follows:

ARTICLE IV.

INSURANCE AND BONDS

SECTION 1. Townhouse Insurance. The Owner of each Townhome shall at all times keep his Townhome fully insured from casualty loss with general liability coverage. The Association shall be provided with written proof of such coverage by the Owner's insurance company and with notice of cancellation or non-renewal of such policies. The Association may obtain such insurance on any Owner's behalf who fails to carry such coverages and add the cost thereof to the Annual Assessment due by the Owner. The Association shall be entitled from time to time to specify the terms and conditions of such insurance coverages. The Association shall be named as additional insured on each policy and each Lot shall be insured for its full replacement value. The proceeds of insurance shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid.

SECTION 2. Individual Home Insurance. All Owners not within a Townhouse Development shall purchase at their individual expense individual policies covering each Lot and Lot Owner individually.

SECTION 3. Common Element Insurance. The Board of Directors on behalf of the Association, as a Common Expense of all Lot Owners, may at all times keep the Common Elements and other assets of the Association insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. The Association at minimum shall maintain with regard to the Common Elements the insurance coverage(s) required by the Act.

SECTION 4. Fidelity Bond. The Association may maintain, as a Common Expense paid by all Owners, blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association; provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

2. **Article VIII, Section 3, Subsection L., entitled Window Coverings, as it now reads is deleted and is amended to read as follows:**

L. The design, style and color of window coverings for Townhome windows visible from the street must be approved by the Architectural Control Committee.

Developer confirms that the Declaration as hereby amended, remains in full force and effect.

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

WILMINGTON WEST, INC.

By: _____

President

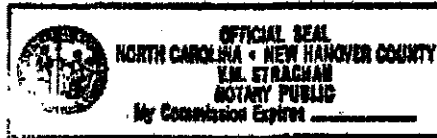
Inst # 27855 Book 2193Page: 484

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, V.M. Strachan, a Notary Public, certify that M. Craig Stevens personally came before me this day and acknowledged that he is the President of Wilmington West, Inc., a corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of said corporation. Witness my hand and seal, this the 18 day of July, 2005.

My commission expires: 2-20-2006
Public
(SEAL)

V.M. Strachan Notary



STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

V M STRACHAN

The Foregoing (or annexed) Certificate(s) of _____

Notary(ies) Public is (are) Certified to be Correct.
This Instrument was filed for Registration on this 19th Day of July 2005
in the Book and page shown on the First Page hereof.

Robert J. Robinson JR
ROBERT J. ROBINSON, Register of Deeds

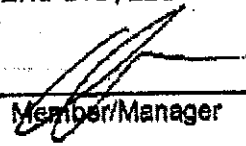
Inst # 278655 Book 2193 Page: 405

EXHIBIT A

JOINTER AND CONSENT

THE UNDERSIGNED Owners of Lots within Mallory Creek Plantation, hereby consent to the foregoing Amendment of Declaration of Covenants, by signing our written consent below, this 18 day of July, 2005.

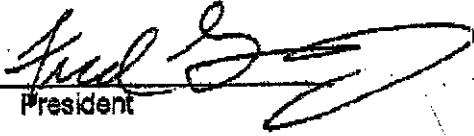
STEVENS LTD, LLC

BY: 
Member/Manager

TFT & CO., INC.

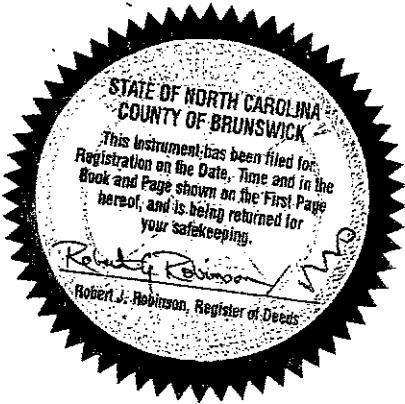
BY: 
President

FRED GRAHAM CONSTRUCTION CO.

BY: 
President



B2669 P1367 09-05-2007 15:09:07.000
Robert J. Robinson
Brunswick County, NC Register of Deeds page 1 of 4



Presenter HHU&L Ret: ES
Total: 23 Rev _____ Int. W
Ck \$ 23 Ck # 6747 Cash \$ _____
Refund: _____ Cash \$ _____ Finance _____
 Portions of document are illegible due to condition of original.
 Document contains seals verified by original instrument that cannot be reproduced or copied. KA

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MALLORY CREEK PLANTATION

This Declaration, Made the 4th day of Sept., 2007, by **WILMINGTON WEST, INC.**, hereinafter referred to as "Declarant" or "Developer", **TURNCO, INC.**, and **TFT & CO., INC.**, for the purposes hereinafter stated;

WITNESSETH:

WHEREAS, Declarant has recorded a Declaration of Covenants, Conditions and Restrictions for Mallory Creek Plantation (the "Declaration") in Book 1990, Page 138, Brunswick County Registry, as amended (all capitalized terms not otherwise herein defined shall have the meaning set forth in the Declaration); and

WHEREAS, Declarant desires to amend the Declaration as it applies to Phase 2, Section 1, Tyler's Cove at Mallory Creek Plantation; and

WHEREAS, Turnco, Inc. and TFT & Co., Inc. own all lots within said tract.

NOW, THEREFORE, Declarant declares that the owners of lots within Phase 2, Section 1, Tyler's Cove at Mallory Creek Plantation shall be responsible for maintenance of the drainage easement located upon the owner's respective lot and shall keep the easement mowed and in a neat condition; provided, however, that Mallory Creek Plantation Homeowners' Association, Inc. shall be responsible for repairing any damage to the drainage easements caused by flood or other catastrophic loss.

Turnco, Inc. and TFT & Co., Inc. are joining in this Amendment for the sole purpose of consenting to the foregoing amendment.

Declarant confirms that the Declaration as hereby and previously amended, remains in full force and effect.



82669 P1368 09-05-2007 15:09:07.000
Robert J. Robinson
Brunswick County, NC Register of Deeds page 2 of 4

IN TESTIMONY WHEREOF, the parties hereto have caused this instrument to be signed in its corporate name by its president pursuant to authority of Grantor's Board of Directors as of the day and year first above written.

WILMINGTON WEST, INC.

By: Terry F. Turner
V. President

TURNCO, INC.

By: Terry F. Turner
President

TFT & CO., INC.

By: Terry F. Turner
President

STATE OF NORTH CAROLINA
COUNTY OF New Hanover

I, VICTORIA M. STRACHAN, certify that the following person(s) personally appeared before me this day, and (mark [] one box)

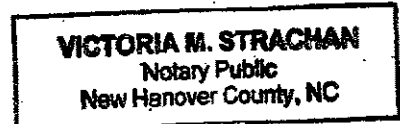
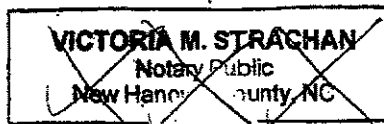
- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____
- A credible witness: _____ (insert name of witness) has sworn to the identity of the principal(s);

each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Principal's Name	Capacity
<u>Terry F. Turner</u>	<u>Vice</u> President, Wilmington West, Inc.

on behalf of and as the act of the following entity: Wilmington West, Inc.
(Insert "N/A" if "individual" or "trustee" inserted in Capacity column above).

Date: September 4, 2007
Victoria M. Strachan, Notary Public
VICTORIA M. STRACHAN (print name[required])
My commission expires: 2-28-2011
(official seal)





B2669 P1369 09-05-2007 15:09:07.000
Robert J. Robinson
of Deeds page 3 of 4

STATE OF NORTH CAROLINA
COUNTY OF New Hanover

I, Terry F. Turner, certify that the following person(s)
personally appeared before me this day, and (mark [] one box)

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____
- A credible witness: _____ (insert name of witness) has sworn to the identity of the principal(s);

each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Principal's Name	Capacity
<u>Terry F. Turner</u>	<u>President of Turnco, Inc.</u>

on behalf of and as the act of the following entity: Turnco, Inc.
(Insert "N/A" if "individual" or "trustee" inserted in Capacity column above).

Date: September 4, 2007 Victoria M Strachen, Notary Public
VICTORIA M. STRACHAN (print name[required])
(official seal) My commission expires: 2-28-2011

VICTORIA M. STRACHAN
Notary Public
New Hanover County, NC



B2669 P1370 09-05-2007 15:09:07.000 Robert J. Robinson Brunswick County, NC Register of Deeds page 4 of 4

STATE OF NORTH CAROLINA
COUNTY OF New Hanover

I, VICTORIA M. STRACHAN, certify that the following person(s) personally appeared before me this day, and (mark [] one box)

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____
- A credible witness: _____ (insert name of witness) has sworn to the identity of the principal(s);

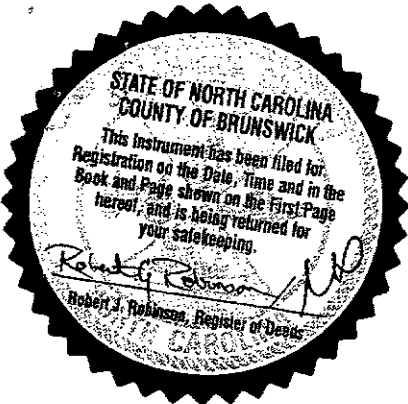
each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Principal's Name	Capacity
<u>Terry F. Turner</u>	<u>President of TFT & Co., Inc.</u>

on behalf of and as the act of the following entity: TFT & Co., Inc.
(Insert "N/A" if "individual" or "trustee" inserted in Capacity column above).

Date: September 4, 2007 Victoria M. Strachan, Notary Public
VICTORIA M. STRACHAN (print name[required])
(official seal) My commission expires: 2-28-2011

VICTORIA M. STRACHAN
Notary Public
New Hanover County, NC



B2785 P0978 05-02-2008 11:00:04.000
 Robert J. Robinson
 Brunswick County, NC Register of Deeds page 1 of 2

Presenter HH+ Ret: Mail
 Total 17 Rev _____ Int. no
 Ck \$ 17 Ck # 7848 Cash \$ _____
 Refund: _____ Cash \$ _____ Finance _____
 Portions of document are illegible due to condition of original.
 Document contains seals verified by original instrument that cannot be reproduced or copied.

STATE OF NORTH CAROLINA
 COUNTY OF BRUNSWICK

SUPPLEMENTAL DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS FOR MALLORY CREEK PLANTATION

This Declaration, Made the 30 day of April, 2008 by **WILMINGTON WEST, INC.**, a North Carolina corporation, hereinafter referred to as "Declarant" or "Developer", for the purposes hereinafter stated;

WITNESSETH:

WHEREAS, Declarant has recorded a Declaration of Covenants, Conditions and Restrictions for Mallory Creek Plantation (the "Declaration") in Book 1990, Page 138, Brunswick County Registry, as amended (all capitalized terms not otherwise herein defined shall have the meaning set forth in the Declaration); and

Whereas, Declarant has added **Phase 2, Section 2, Tyler's Cove @ Mallory Creek Plantation**, to and made it a part of the Planned Community (as defined in the Declaration), the same being shown on map thereof recorded in Map Book 49, Page 34, in the office of the Register of Deeds of Brunswick County; and

Whereas, Declarant desires for Phase 2, Section 2, Tyler's Cove @ Mallory Creek Plantation to be subject to the Declaration.

NOW, THEREFORE, Declarant hereby declares as follows:

1. That all of the property within Phase 2, Section 2, Tyler's Cove @ Mallory Creek Plantation, as described above, shall be held, sold and conveyed subject to the Declaration, as amended, which Declaration, as amended, shall run with the land and be binding on all parties having any right, title or interest in Phase 2, Section 2, Tyler's Cove @ Mallory Creek Plantation, their heirs, successors or assigns, and shall inure to the benefit of each owner of real property within Phase 2, Section 2, Tyler's Cove @ Mallory Creek Plantation.



B2785 P0979 05-02-2008 11:00:04.000
Robert J. Robinson
Brunswick County, NC Register of Deeds page 2 of 2

2. That the maximum allowable built-upon area per Lot for the Lots within Phase 2, Section 2, Tyler's Cove @ Mallory Creek Plantation shall be as set out in Statement of Consolidation of a Portion of Declaration of Covenants Conditions and Restrictions for Mallory Creek Plantation and All Its Supplements and Amendments recorded in Book 2626, Page 154, Brunswick County Registry.

3. That the owners of lots within Phase 2, Section 2, Tyler's Cove at Mallory Creek Plantation shall be responsible for maintenance of the drainage easement located upon the owner's respective lot and shall keep the easement mowed and in a neat condition; provided, however, that Mallory Creek Plantation Homeowners' Association, Inc. shall be responsible for repairing any damage to the drainage easements caused by flood or other catastrophic loss.

4. Declarant affirms that the Declaration as hereby supplemented remains in full force and effect.

IN WITNESS WHEREOF, Wilmington West, Inc., the Declarant has caused this instrument to be signed in its corporate name by its president pursuant to authority of its Board of Directors as of the day and year first above written.

WILMINGTON WEST, INC.

By: Terry F. Turner
Vice President

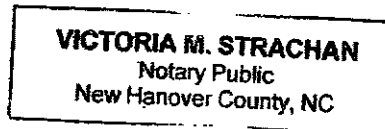
STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, VICTORIA M. STRACHAN, a Notary Public, certify that TERRY F. TURNER personally came before me this day and acknowledged that he is the VICE President of WILMINGTON WEST, INC., a corporation, and that he, as VICE President, being authorized to do so, executed the foregoing on behalf of said corporation.

Witness my hand and seal, this the 30 day of April, 2008.

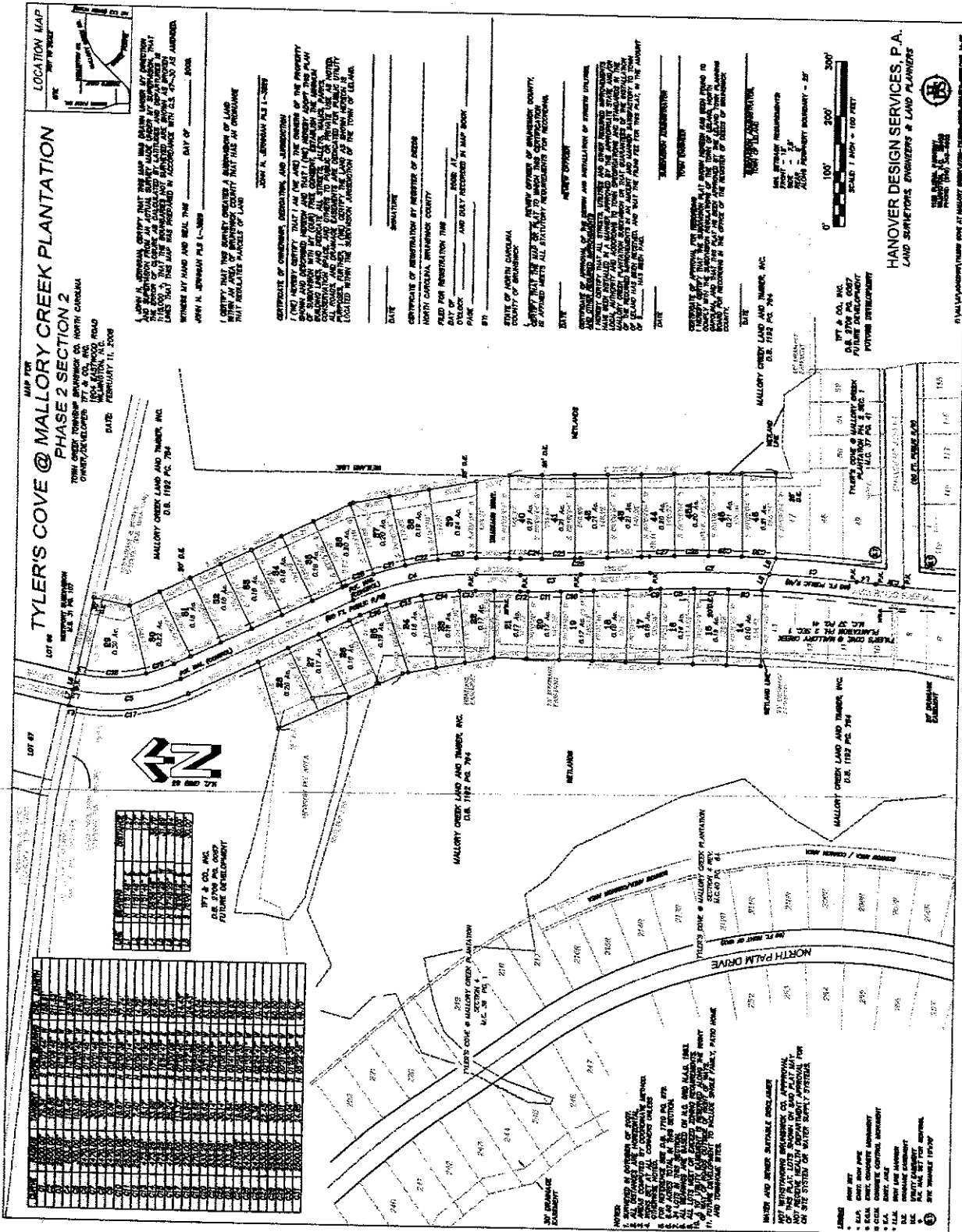
My commission expires: 2-28-2011 Victoria M. Strachan
Notary Public

(SEAL)



3128108

Recorded Map 49 pg. 34



MAP FOR TYLER'S COVE @ MALLORY CREEK PLANTATION PHASE 2 SECTION 2
 TOWN OF TYLER'S COVE, NORTH CAROLINA
 COUNTY OF WASHINGTON, NORTH CAROLINA
 DATE: FEBRUARY 11, 2008

JOHN H. JENNISON, CERTIFIED PLANNING ENGINEER, HAS PREPARED THIS MAP FOR THE PURPOSE OF RECORDING THE SAME AND FOR THE PURPOSE OF SHOWING THE BOUNDARIES OF THE LOTS AND THE BOUNDARIES OF THE TRACTS OF LAND SHOWN HEREON. THE BOUNDARIES OF THE LOTS AND THE BOUNDARIES OF THE TRACTS OF LAND SHOWN HEREON ARE BASED ON THE SURVEY MADE BY JOHN H. JENNISON AND HIS ASSISTANTS, AND THE BOUNDARIES OF THE LOTS AND THE BOUNDARIES OF THE TRACTS OF LAND SHOWN HEREON ARE BASED ON THE SURVEY MADE BY JOHN H. JENNISON AND HIS ASSISTANTS, AND THE BOUNDARIES OF THE LOTS AND THE BOUNDARIES OF THE TRACTS OF LAND SHOWN HEREON ARE BASED ON THE SURVEY MADE BY JOHN H. JENNISON AND HIS ASSISTANTS.

WITNESSES BY HAND AND SEAL THIS _____ DAY OF _____ 2008
 JOHN H. JENNISON, REGISTERED PROFESSIONAL PLANNING ENGINEER
 STATE OF NORTH CAROLINA

CERTIFICATE OF CORRECTION, OBSERVATIONS, AND COMMENTS
 I, JOHN H. JENNISON, CERTIFIED PLANNING ENGINEER, HAVE REVIEWED THE MAP AND THE SURVEY MADE BY JOHN H. JENNISON AND HIS ASSISTANTS, AND I HAVE FOUND NO ERRORS OR OMISSIONS IN THE MAP OR THE SURVEY. THE MAP AND THE SURVEY ARE CORRECT AND ACCURATE, AND THE BOUNDARIES OF THE LOTS AND THE BOUNDARIES OF THE TRACTS OF LAND SHOWN HEREON ARE CORRECT AND ACCURATE.

CERTIFICATE OF REGISTRATION BY REGISTER OF DEEDS
 NORTH CAROLINA, WASHINGTON COUNTY
 FILED FOR REGISTRATION THIS _____ HOUR AT _____ PLACE
 AND DEED ACCORDS IN MAP BOOK _____ BY _____

STATE OF NORTH CAROLINA
 COUNTY OF WASHINGTON
 JOHN H. JENNISON, REGISTERED PROFESSIONAL PLANNING ENGINEER
 STATE OF NORTH CAROLINA

CERTIFICATE OF APPROVAL OF THE BOARD OF SUPERVISORS OF THE COUNTY OF WASHINGTON
 I, _____, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF WASHINGTON, HAVE REVIEWED THE MAP AND THE SURVEY MADE BY JOHN H. JENNISON AND HIS ASSISTANTS, AND I HAVE FOUND NO ERRORS OR OMISSIONS IN THE MAP OR THE SURVEY. THE MAP AND THE SURVEY ARE CORRECT AND ACCURATE, AND THE BOUNDARIES OF THE LOTS AND THE BOUNDARIES OF THE TRACTS OF LAND SHOWN HEREON ARE CORRECT AND ACCURATE.

STATE OF NORTH CAROLINA
 COUNTY OF WASHINGTON
 _____, CLERK OF THE BOARD OF SUPERVISORS

SCALE: 1" = 100 FEET
 0 100' 200' 300'

HANOVER DESIGN SERVICES, P.A.
 LAND SURVEYORS, ENGINEERS & LAND PLANNERS
 1000 W. HANOVER AVENUE, SUITE 200, HANOVER, NC 28031
 PHONE: 704.764.4444
 FAX: 704.764.4444
 LICENSE NO. 10000

NOTICE: THIS MAP IS A PRELIMINARY MAP AND IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PREPARED. THE USER OF THIS MAP ASSUMES ALL LIABILITY FOR ANY ERRORS OR OMISSIONS IN THIS MAP. THE USER OF THIS MAP ASSUMES ALL LIABILITY FOR ANY ERRORS OR OMISSIONS IN THIS MAP. THE USER OF THIS MAP ASSUMES ALL LIABILITY FOR ANY ERRORS OR OMISSIONS IN THIS MAP.



Bagwell Holt,
 Return to *Smith PA* Type *Alto*
 Total *26* Rev _____ Int. *SMO*
 Ck \$ *26* Ck # *1062* Cash \$ _____
 Refund _____ Cash \$ _____ Finance _____

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

Prepared by and return to: Smith Moore Leatherwood LLP (DGM)

STATE OF NORTH CAROLINA :

**SUPPLEMENTAL DECLARATION
AND AMENDMENT**

COUNTY OF BRUNSWICK :

THIS SUPPLEMENTAL DECLARATION TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MALLORY CREEK PLANTATION AND AMENDMENT TO ANNEXATION AGREEMENT (this "Supplemental Declaration") is made as of the *8* day of *MAY*, 2018, by and among **WILMINGTON WEST, INC.**, a North Carolina corporation (the "Declarant"), **STEVENS HOME INVESTMENTS, INC.**, a North Carolina corporation ("Stevens"), and **MALLORY CREEK PLANTATION HOMEOWNERS' ASSOCIATION, INC.**, a North Carolina nonprofit corporation (the "Association");

WITNESSETH:

WHEREAS, Declarant previously recorded that certain Declaration of Covenants, Conditions and Restrictions for Mallory Creek Plantation in Book 1990, page 138, Brunswick County Registry (as amended, modified or supplemented from time to time, the "Declaration"); and

WHEREAS, Article VII, Section 4 of the Declaration provides that Declarant may, without the assent of members, submit to the terms of the Declaration additional property so long as the additional property is used for residential purposes, roads, utilities, drainage facilities, amenities, and other facilities not inconsistent with residential developments; and

WHEREAS, Declarant desires to submit to the terms of the Declaration the additional property described in Section 2 of this Supplemental Declaration below and represents that such additional property will be used for residential purposes, roads, utilities, drainage facilities, amenities, and other facilities not inconsistent with residential developments; and

WHEREAS, Stevens is the current owner of the additional property described in Section 2 of this Supplemental Declaration and joins this Supplemental Declaration to consent to the submittal of such additional property to the terms of the Declaration; and



WHEREAS, Declarant, Stevens and the Association are parties to an Agreement that recorded in Book 2351, page 1184, Brunswick County Registry (the "Annexation Agreement"); and

WHEREAS, Declarant desires (i) to submit the additional property described in Section 2 of this Supplemental Declaration to the terms of the Declaration and (ii) to amend the Declaration to permit Stevens to exercise architectural control over such additional property, to make provisions for payment of Assessments during development activities, and for the other purposes described herein; and

WHEREAS, Article VII, Section 3.B of the Declaration permits its amendment by Declarant without the consent of the Association's Members for the purposes stated herein; and

WHEREAS, Declarant, Stevens and the Association desire to amend the Annexation Agreement for the purposes described herein;

NOW THEREFORE, Declarant hereby declares that the real property located in Brunswick County, North Carolina, being more particularly described in Section 2 of this Supplemental Declaration below, is, and shall be, submitted to, and shall be held, transferred, sold and conveyed subject to, the terms of the Declaration, upon the terms and conditions set forth herein, and that the Declaration shall be further supplemented and amended as set forth herein; and

NOW, THEREFORE, Declarant, Stevens and the Association agree to amend the Annexation Agreement as set forth herein;

1. Recitals and Exhibits. The foregoing recitals and all exhibits to this Supplemental Declaration are hereby incorporated herein by this reference.

2. Submission of Additional Property. Declarant hereby submits the following described property (the "Stevens Tract 2 Additional Property") to the terms of the Declaration and Stevens, as the current owner of the Stevens Tract 2 Additional Property, hereby consents to the submittal of the Stevens Tract 2 Additional Property to the terms of the Declaration:

"ALL of Tract 2 as shown on map recorded in Map Book 34, Page 404, Brunswick County Registry, reference to which is hereby made for a more particular description."

3. Correction of Association's Name. The Annexation Agreement incorrectly stated the name of the Association as "Mallory Creek Homeowners Association, Inc.". All references in the Annexation Agreement to "Mallory Creek Homeowners Association, Inc." are hereby deleted and replaced with "Mallory Creek Plantation Homeowners' Association, Inc.".

4. Membership Classes. Article III, Section 3 of the Declaration is amended to provide for an additional Membership Class in the Association by inserting the following therein:



Class D. Class D Members shall be Owners of Lots that will be developed out of that parcel of land shown as "Tract 2" on map recorded in Map Book 34, Page 404, Brunswick County Registry. Class D Members shall have the same voting rights as the Class A and B Members and entitled to one vote for each Lot owned.

5. Amendment of the Declaration. The Declaration is amended as follows:

(a) Article VIII, Section 1 is amended to add a sentence to the end of the Section reading as follows:

Notwithstanding the foregoing, the provisions of this Section 1 shall not apply to that parcel of land shown as "Tract 2" on map recorded in Map Book 34, Page 404 of the Brunswick County Registry.

(b) Article VIII, Section 2 is amended to add a sentence to the end of the Section reading as follows:

Notwithstanding the foregoing, the provisions of this Section 2 shall not apply to that parcel of land shown as "Tract 2" on map recorded in Map Book 34, Page 404 of the Brunswick County Registry.

(c) Article VI, Section 9 is deleted in its entirety and replaced with the following:

Section 9. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant, or a deed from an assignee of Declarant's rights; provided, however, if the deed is to a builder (i) who will construct a unit thereon for resale and (ii) the Lot is located on Additional Property made subject to the Declaration on or after the recording date of this Supplemental Declaration, Assessments shall not commence until the date an Owner accepts a deed for the Lot from the builder.

6. Section 1(c) of the Annexation Agreement is amended to add a sentence to the end of the Section reading as follows:

Notwithstanding the foregoing, the provisions of this Section 1(c) shall not apply to Tract 2 as shown on map recorded in Map Book 34, Page 404 of the Brunswick County Registry.

7. Developer/Builder Amenity Contribution.

(a) Section 2(ii) of the Annexation Agreement is deleted and replaced with the following:

2(ii) Stevens and its successors and assigns shall pay to the Association the sum of \$750.00 for each new home constructed on each Lot within the Stevens Tract 2 Additional Property for access to the existing amenities within the Development



(the "Developer/ Builder Amenity Contribution"). The Developer/Builder Amenity Contribution would increase to \$1,000.00 for each new home constructed on each Lot within the Stevens Tract 2 Additional Property in the event the Association commences construction on a second amenity within the Development, with such increase to commence upon the first day of the first month after the date that the Association has commenced construction on a second amenity within the Development and has provided written notice of same to the then current developer of lots or builder of residences within the Stevens Tract 2 Additional Property. The Developer/Builder Amenity Contribution shall be paid at the time the developer or builder closes on the sale of the new home and lot with its homebuyer. The Developer/Builder Amenity Contribution shall be held in escrow by the Association and shall be used to maintain the existing amenity or to construct additional amenities within the Development.

(b) Section 3(iii) of the Annexation Agreement is deleted.

8. Construction Materials. Section 3(iv) of the Annexation Agreement is amended to remove the requirement that residences built on the portion of the Stevens Tract 2 Additional Property that abuts Mallory Creek Drive must be primarily of brick construction.

9. Lot Density. Section 3(vi) of the Annexation Agreement is amended to remove the requirement that lots and/or units developed out of the Stevens Tract 2 Additional Property shall not exceed 4 units per acre and to provide that the maximum number of lots and/or units developed out of the Stevens Tract 2 Additional Property shall not exceed 193.

10. Effect of Amendment. In the event of any conflict or inconsistency between the terms of this Supplemental Declaration and the Declaration or the Annexation Agreement, the terms of this Supplemental Declaration shall prevail, the term "Declaration" shall hereafter mean the Declaration as modified by this Supplemental Declaration, and the term "Annexation Agreement" shall hereafter mean the Annexation Agreement as modified by this Supplemental Declaration. Except as herein modified, all terms and provisions of the Declaration are hereby ratified and confirmed and shall remain in full force and effect throughout the term of the Declaration, and Declarant does ratify and affirm the provisions thereof. Except as herein modified, all terms and provisions of the Annexation Agreement are hereby ratified and confirmed and shall remain in full force and effect throughout the term of the Annexation Agreement, and Declarant, Stevens and the Association ratify and affirm the provisions thereof.

11. Miscellaneous. All capitalized but undefined terms used in this Supplemental Declaration shall have the meaning ascribed to such terms in the Declaration or the Annexation Agreement, as applicable. The Stevens Tract 2 Additional Property shall be subject to all the terms, covenants, requirements and conditions of the Declaration and the Annexation Agreement, the provisions of which are specifically incorporated herein by reference, and all references therein to the property shall be deemed to include and encompass the Stevens Tract 2 Additional Property as if the Stevens Tract 2 Additional Property were, and had been, enumerated in the Declaration and the Annexation Agreement when originally filed. Each party to this Supplemental Declaration



represents and warrants to the other parties that the person signing this Supplemental Declaration on its behalf is authorized to do so.

(SIGNATURE AND NOTARY ACKNOWLEDGMENT PAGES FOLLOW)



IN WITNESS WHEREOF, the parties have caused this Supplemental Declaration to be duly executed the day and year first above written.

DECLARANT:

WILMINGTON WEST, INC.,
a North Carolina corporation

By: *William H. Cameron* (SEAL)
Name: William H. Cameron
Title: Vice President

STATE OF NORTH CAROLINA

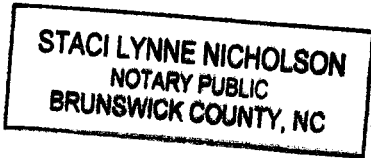
COUNTY OF New Hanover

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

Today's Date: 5/8, 2018.

Staci Lynne Nicholson
[Notary's signature as name appears on seal]

Staci Lynne Nicholson
[Notary's printed name as name appears on seal]



My commission expires: 11/20/2018

[Affix Notary Seal in Space Above]



IN WITNESS WHEREOF, the parties have caused this Supplemental Declaration to be duly executed the day and year first above written.

STEVENS:

STEVENS HOME INVESTMENTS, INC.,
a North Carolina corporation

By: [Signature] (SEAL)
Name: Michael Craig Stevens
Title: President

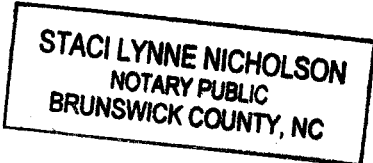
STATE OF NORTH CAROLINA
COUNTY OF New Hanover

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

Today's Date: 5/8, 2018.

[Signature]
[Notary's signature as name appears on seal]

Staci Lynne Nicholson
[Notary's printed name as name appears on seal]



My commission expires: 11/20/2018

[Affix Notary Seal in Space Above]



IN WITNESS WHEREOF, the parties have caused this Supplemental Declaration to be duly executed the day and year first above written.

DECLARANT:

WILMINGTON WEST, INC.,
a North Carolina corporation

By: *William H. Cameron* (SEAL)
Name: William H. Cameron
Title: Vice President

STATE OF NORTH CAROLINA

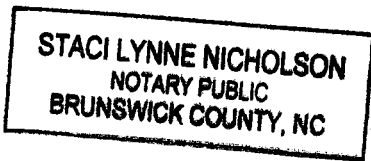
COUNTY OF New Hanover

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

Today's Date: 5/8, 2018.

Staci Lynne Nicholson
[Notary's signature as name appears on seal]

Staci Lynne Nicholson
[Notary's printed name as name appears on seal]



My commission expires: 11/20/2018

[Affix Notary Seal in Space Above]



IN WITNESS WHEREOF, the parties have caused this Supplemental Declaration to be duly executed the day and year first above written.

STEVENS:

STEVENS HOME INVESTMENTS, INC.,
a North Carolina corporation

By: [Signature] (SEAL)
Name: Michael Craig Stevens
Title: President

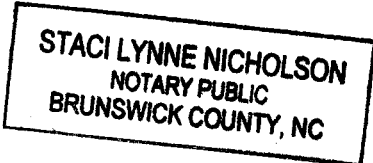
STATE OF NORTH CAROLINA
COUNTY OF New Hanover

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

Today's Date: 5/8, 2018.

[Signature]
[Notary's signature as name appears on seal]

Staci Lynne Nicholson
[Notary's printed name as name appears on seal]



My commission expires: 11/20/2018

[Affix Notary Seal in Space Above]



IN WITNESS WHEREOF, the parties have caused this Supplemental Declaration to be duly executed the day and year first above written.

ASSOCIATION:

MALORY CREEK PLANTATION
HOMEOWNERS' ASSOCIATION, INC., a North
Carolina nonprofit corporation

By: Tim Linkhorn (SEAL)
Name: Tim Linkhorn
Title: President MCP-HOA

STATE OF NORTH CAROLINA

COUNTY OF New Hanover

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

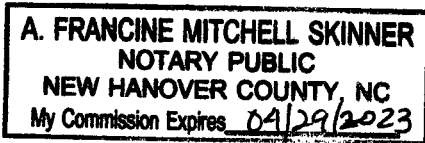
Today's Date: May 8, 2018.

A. Francine Mitchell Skinner
[Notary's signature as name appears on seal]

A. Francine Mitchell Skinner
[Notary's printed name as name appears on seal]

My commission expires: 04/29/2023

[Affix Notary Seal in Space Above]





Return to Hogue Hill Type mail
 4 Total 26 Rev _____ Int. NE
 Ck \$ 26 Ck # 9956 Cash \$ _____
 Refund _____ Cash \$ _____ Finance _____

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AMENDED AND RESTATED
 DECLARATION, OF COVENANTS CONDITIONS AND RESTRICTIONS
 FOR
MALLORY CREEK PLANTATION
 (To Restate Stormwater Permit Allowable Impervious Surfaces)

This Amended and Restated Declaration of Covenants, Conditions and Restrictions, made as of the 28thst day of November, 2018, by **WILMINGTON WEST, INC.**, a North Carolina corporation, and **BRUNSWICK PINES, INC.** a North Carolina corporation and an assignee of declarant rights from Wilmington West, Inc., individually and collectively hereinafter referred to as "Declarant", for the purposes hereinafter stated;

WITNESSETH:

WHEREAS, Declarant has recorded a Declaration of Covenants, Conditions and Restrictions (the "Declaration") for Mallory Creek Plantation (the "Development") in Book 1990, Page 138, Brunswick County Registry (all capitalized terms not otherwise herein defined shall have the meaning set forth in the Declaration); and

WHEREAS, Declarant has recorded various documents supplementing and amending the Declaration (the "Amendments") which, along with the Declaration, set out maximum allowable built-upon areas for Lots and Townhomes permitted under the terms and conditions of NC Department of Environment and Natural Resources Stormwater Management Permit **SW8 021111**, as amended (the "Permit"); and

WHEREAS, because of discrepancies between Lot numbers shown on the Permit and those shown on subdivision plats for various sections of the Development, plus other reasons, errors exist in the stated amounts of allowable built-upon area for some Lots; and

WHEREAS, to cure such errors, Declarant desires to set out in this document a consolidated statement of the correct maximum allowed built-upon area for each lot which is subject to the terms of the Permit; and



WHEREAS, Article VII, Section 3. F. of the Declaration permits its amendment by the Declarant, without HOA Member approval, to conform its terms to the requirements of any law or governmental agency having legal jurisdiction over the Development.

NOW, THEREFORE, Declarant declares as follows:

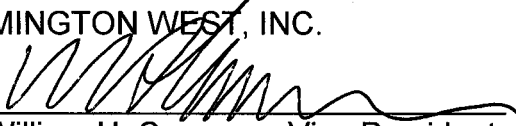
1. Revocation of Prior Statements of Allowable Impervious Surfaces. All statements of allowable built-upon area, allowable impervious surfaces, and similar statements contained in the Declaration and the Amendments thereto, including but not limited to those contained in Amendments recorded in Book 2296 Page 929, Book 2626, Page 154 and Book 3787, Page 716 of the Brunswick County Registry, are revoked and declared null and void; provided, however, this revocation applies only to Lots and Townhomes that are subject to the Permit and described on **Exhibit A** attached hereto and incorporated herein by reference.

2. Restatement of Stormwater Permit Requirements. The maximum allowable built-upon area for each Lot and Townhome which is subject to the terms of the Permit is set forth on **EXHIBIT A** hereof.

AS HEREBY CHANGED, the Declaration and Amendments remain in full force and effect.

IN WITNESS WHEREOF, Declarant has caused this instrument to be signed in its corporate name by its Vice President pursuant to authority of its Board of Directors, as of the day and year first above written.

WILMINGTON WEST, INC.

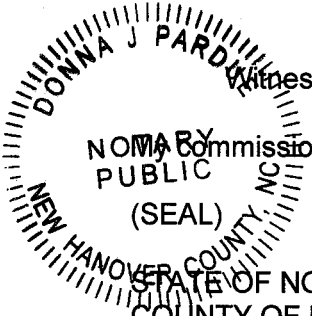
By: 
William H. Cameron, Vice President

BRUNSWICK PINES, INC

By: 
A. V. Saffo, President

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Donna J. Pardue, a Notary Public, certify that **William H. Cameron** personally came before me this day and acknowledged that he is Vice President of **Wilmington West, Inc.**, a corporation, and that he in that capacity, being authorized to do so, executed the foregoing on behalf of said corporation.



Witness my hand and seal, this the 28 day of November, 2018.

My commission expires: 4-11-21

Donna J. Pardue
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Susan D. Melton, a Notary Public, certify that **A. V. Saffo** personally came before me this day and acknowledged that he is President of **Brunswick Pines, Inc.**, a corporation, and that he in that capacity, being authorized to do so, executed the foregoing on behalf of said corporation.

Witness my hand and seal, this the 29 day of November, 2018.

My commission expires: 5-30-21

Susan D. Melton
Notary Public

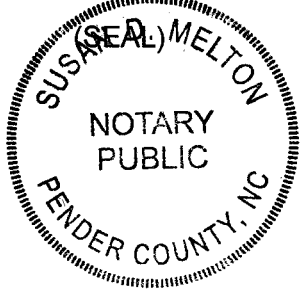




Exhibit A

**Impervious Surface Restrictions for Mallory Creek
 Plantation
 SW8 021111**

<u>Recorded Plats</u>			Allowable Impervious Surface per Lot
Book	Page	Description	
30	361	Mallory Creek Clubhouse	30,282
30	362	Tylers Cove Sec 1 Lots 147-155 and 173-181	3,000
30	363	Palms Sec 1 Lots 1-10 and 111-145	3,500
31	133	Tylers Cove Sec 2 Lots 156-172	3,000
31	134	Townhomes at Mallory Creek Sec 1 373-384 and 421-431	1,725
31	397	Palms Sec 2 Lots 11-21 and 94-108	4,000
32	513	Palm Gardes Sec 1 Lots 274-280 and 325-362	3,500
32	545	Tylers Cove Section 3 Lots 182-200 and 263-273	3,500
33	282	Gracepoint Townhomes 1-16	1,725
33	458	Palm Gardes Sec 2 Lots 281-324	3,500
35	345	Townhomes Sec 2 385-420	1,725
36	1	Tylers Cove Sec 4 Revision Lots 201-205, 217-219, and 247-262	3,500
36	382	Tylers Cove Sec 5 Lots 220-224 and 229-246	3,500
40	64	Tylers Cove Section 4 (Revision) Lots 206R-216R	3,500
52	32	Grove Sec 1 Lots 50-76 (Revision - formerly Emberwood Sec 1)	4,000
52	33	Grove Sec 2 Lots 23-49 and 77-92 (Revision - formerly Emberwood Sec 2)	4,000
72	61	Pines Phase 1 Lots 1-9, 132-135, 181-183, and 230-234	3,860
72	62	Pines Phase 1 Lots 10-12 and 222-229	3,860
75	34	Pines Phase 1 Revision Lots 13R-18R	3,860
78	24	Pines Lot 19	3,860
83	43	Tylers Cove Section 5 Revision Lots 225R and 226R	3,500
85	50	Pines Phase 1 Lots 20-30 and 213-216	3,860
85	58	Pines Phase 1 Lots 127-131, 136, and 176-180	3,860
92	45	Pines Phase 1 Revision Lots 217R-221R	3,860
92	97	Pines Phase 1 Lots 36-60, 137, 184-185, and 204-208	3,860
95	31	Pines Phase 1 Revision Lot 31	3,860
96	99	Pines Phase 1 Lots 32-35 and 209-212	3,860
102	33	Pines Phase 1 Lots 186-203	3,860



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AMENDED AND RESTATED
 DECLARATION, OF COVENANTS CONDITIONS AND RESTRICTIONS
 FOR
MALLORY CREEK PLANTATION
 (To Restate Stormwater Permit Allowable Impervious Surfaces)

This Amended and Restated Declaration of Covenants, Conditions and Restrictions, made as of the 28thst day of November, 2018, by **WILMINGTON WEST, INC.**, a North Carolina corporation, and **BRUNSWICK PINES, INC.** a North Carolina corporation and an assignee of declarant rights from Wilmington West, Inc., individually and collectively hereinafter referred to as "Declarant", for the purposes hereinafter stated;

WITNESSETH:

WHEREAS, Declarant has recorded a Declaration of Covenants, Conditions and Restrictions (the "Declaration") for Mallory Creek Plantation (the "Development") in Book 1990, Page 138, Brunswick County Registry (all capitalized terms not otherwise herein defined shall have the meaning set forth in the Declaration); and

WHEREAS, Declarant has recorded various documents supplementing and amending the Declaration (the "Amendments") which, along with the Declaration, set out maximum allowable built-upon areas for Lots and Townhomes permitted under the terms and conditions of NC Department of Environment and Natural Resources Stormwater Management Permit **SW8 021111**, as amended (the "Permit"); and

WHEREAS, because of discrepancies between Lot numbers shown on the Permit and those shown on subdivision plats for various sections of the Development, plus other reasons, errors exist in the stated amounts of allowable built-upon area for some Lots; and

WHEREAS, to cure such errors, Declarant desires to set out in this document a consolidated statement of the correct maximum allowed built-upon area for each lot which is subject to the terms of the Permit; and



WHEREAS, Article VII, Section 3. F. of the Declaration permits its amendment by the Declarant, without HOA Member approval, to conform its terms to the requirements of any law or governmental agency having legal jurisdiction over the Development.

NOW, THEREFORE, Declarant declares as follows:

1. Revocation of Prior Statements of Allowable Impervious Surfaces. All statements of allowable built-upon area, allowable impervious surfaces, and similar statements contained in the Declaration and the Amendments thereto, including but not limited to those contained in Amendments recorded in Book 2296 Page 929, Book 2626, Page 154 and Book 3787, Page 716 of the Brunswick County Registry, are revoked and declared null and void; provided, however, this revocation applies only to Lots and Townhomes that are subject to the Permit and described on **Exhibit A** attached hereto and incorporated herein by reference.

2. Restatement of Stormwater Permit Requirements. The maximum allowable built-upon area for each Lot and Townhome which is subject to the terms of the Permit is set forth on **EXHIBIT A** hereof.

AS HEREBY CHANGED, the Declaration and Amendments remain in full force and effect.

IN WITNESS WHEREOF, Declarant has caused this instrument to be signed in its corporate name by its Vice President pursuant to authority of its Board of Directors, as of the day and year first above written.

WILMINGTON WEST, INC.

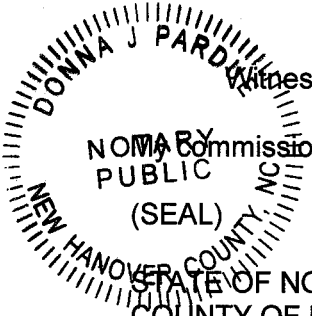
By: [Signature]
William H. Cameron, Vice President

BRUNSWICK PINES, INC

By: [Signature]
A. V. Saffo, President

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Donna J. Pardue, a Notary Public, certify that **William H. Cameron** personally came before me this day and acknowledged that he is Vice President of **Wilmington West, Inc.**, a corporation, and that he in that capacity, being authorized to do so, executed the foregoing on behalf of said corporation.



Witness my hand and seal, this the 28 day of November, 2018.

My commission expires: 4-11-21

Donna J. Pardue
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Susan D. Melton, a Notary Public, certify that **A. V. Saffo** personally came before me this day and acknowledged that he is President of **Brunswick Pines, Inc.**, a corporation, and that he in that capacity, being authorized to do so, executed the foregoing on behalf of said corporation.

Witness my hand and seal, this the 29 day of November, 2018.

My commission expires: 5-30-21

Susan D. Melton
Notary Public

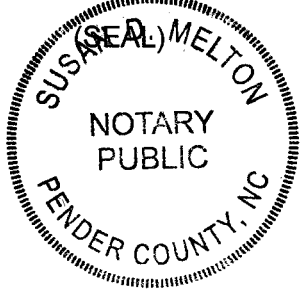




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