



Prepared by: This instrument prepared by Kara J. Keith of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., a licensed North Carolina attorney.
Return to: 1000 29th Avenue North, Myrtle Beach, SC 29577

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

**DECLARATION OF PROTECTIVE COVENANTS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS**

FOR

**SMITHFIELD TOWNHOMES 3 AT BRUNSWICK PLANTATION
(A TOWNHOME COMMUNITY)**

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



Table of Contents

ARTICLE I: NAME.....	5
ARTICLE II: DEFINITIONS	5
ARTICLE III: MASTER DECLARATION AND MASTER ASSOCIATION	9
ARTICLE IV: PROPERTY RIGHTS, EASEMENTS AND ENCROACHMENTS	10
ARTICLE V: MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION	19
ARTICLE VI: COVENANT FOR MAINTENANCE ASSESSMENTS	20
ARTICLE VII: USE OF PROPERTY	23
ARTICLE VIII: MAINTENANCE AND REPAIR	30
ARTICLE IX: CONSTRUCTION IN ACCORDANCE WITH PLANS AND SPECIFICATIONS	34
ARTICLE X: INSURANCE AND CASUALTY LOSSES	34
ARTICLE XI: RIGHTS OF LENDERS	40
ARTICLE XII: PHASED DEVELOPMENT	42
ARTICLE XIII: DISPUTE RESOLUTION AND LIMITATION OF LITIGATION.....	43
ARTICLE XIV: CHANGES IN COMMON ELEMENTS.....	47
ARTICLE XV: GENERAL PROVISIONS	48
ARTICLE XVI: STORMWATER.....	51
ARTICLE XVII: ARCHITECTURAL CONTROL	52
EXHIBIT A: DESCRIPTION OF REAL ESTATE	58
EXHIBIT B: LIMITED COMMON ELEMENTS	59
EXHIBIT C: ARTICLES OF INCORPORATION.....	60
EXHIBIT D: BY-LAWS OF SMITHFIELD AT BRUNSWICK PLANTATION 3	
HOMEOWNERS' ASSOCIATION, INC.....	67
ARTICLE I: NAME, PRINCIPAL OFFICE AND DEFINITIONS	67
ARTICLE II: ASSOCIATION – MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES	67
ARTICLE III: BOARD OF DIRECTORS NUMBERS, POWERS, MEETINGS	70
A. Composition and Selection.....	70
B. Meetings	73
C. Powers and Duties	75
ARTICLE IV: OFFICERS	80
ARTICLE V: COMMITTEES	81



ARTICLE VI: MISCELLANEOUS81
ARTICLE VII: LIABILITY AND INDEMNIFICATION83



**DECLARATION OF PROTECTIVE COVENANTS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS**

FOR

**SMITHFIELD TOWNHOMES 3 AT BRUNSWICK PLANTATION
(A TOWNHOME COMMUNITY)**

BRUNSWICK COUNTY, NORTH CAROLINA

THIS DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR SMITHFIELD TOWNHOMES 3 AT BRUNSWICK PLANTATION (A TOWNHOME COMMUNITY) (this "Declaration") is made by Clayton Properties Group, Inc., a Tennessee corporation, doing business as Mungo Homes (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in Brunswick County, North Carolina, which is more particularly described in Exhibit A (hereafter the "Property") attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision; and

WHEREAS, the Property is part of a larger community known as "Brunswick Plantation" (the "Master Community") and is subject to Amended and Restated Master Declaration and Development Plan for Brunswick Plantation recorded in Book 3645, Page 966, Brunswick County Register of Deeds (the "Master Declaration"); and

WHEREAS, subject to the terms of the Master Declaration, the undersigned Declarant desires and intends to develop on the Property a residential community of townhomes (hereinafter, together with any property added thereto, called the "Community"); and

WHEREAS, the Declarant desires to maintain design criteria, location and construction specifications, and other controls to assure the integrity of the Community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in the Community and for the maintenance of common lands and facilities, if any, and to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

NOW THEREFORE, pursuant to Chapter 47F of the North Carolina General Statutes (the "Planned Community Act"), the Declarant declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I: NAME

The Community of the Property created by this Declaration shall be known and designated as Smithfield Townhomes 3 at Brunswick Plantation (A Townhome Community).

ARTICLE II: DEFINITIONS

Unless otherwise specified, the capitalized terms in this Declaration and the attached exhibits shall be defined as follows:

- a. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act, as the same may be amended from time to time.
- b. "Architectural Review Committee" or "ARC" shall mean and refer to the Architectural Review Committee established under Article XV, Section 1, hereof.
- c. "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of North Carolina, as the same are or hereafter may be amended from time to time.
- d. "Association" shall mean and refer to Smithfield at Brunswick Plantation 3 Homeowners' Association, Inc., its successors and assigns.
- e. "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.
- f. "Building" means an improvement consisting of two or more Townhomes notwithstanding that each Townhome therein is located on a separate Lot.
- g. "Common Elements" shall mean and include the elements described in the Planned Community Act, and in this Declaration (including Exhibits), as "Common Elements" and also the following:
 - a. Easements through the Units and general Common Elements for maintenance, repair and replacement of the general Common Elements.

- b. Installations for the furnishing of utility services to the general Common Elements, which installation shall include ducts, plumbing, wiring and other facilities for the rendering of such services.
- c. The tangible personal property required for the maintenance and operation of the Community, even though owned by the Association.
- d. Those areas of land, including the facilities and amenities to be constructed thereon, if any, shown and specifically designated as "Open Space", "Common Area", "CA", "Common Element", "CE" or similar designation on any subdivision map of Smithfield Townhomes 3 at Brunswick Plantation (A Townhome Community), filed by Declarant or by any other means so designated by Declarant. Such areas are intended to be devoted to the common use and enjoyment of the members of the Association as herein defined, and are not dedicated for use by the general public. Subject to the provisions of Article VII hereof, any existing and future greenways, median strips, cul-de-sac centers, planting areas, lakes, bike trails, recreational areas and facilities, playgrounds, entrance signage, gate houses, open spaces, walking trails, sidewalks, and any other areas designated as "Open Space", "Common Area", "CA", "Common Element", "CE" or similar designation on the plat of the Community referred to in Exhibit "A" hereto shall become Common Elements upon conveyance by Declarant to the Association.

Provided however, the recording and reference to said plat shall not in and of itself be construed as creating any dedications, rights or easements (negative, reciprocal or otherwise), and all such dedications, rights and/or easements being made only specifically by this Declaration, any amendment or supplement hereto or any deed of conveyance from Declarant, its successors or assigns.

- h. "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Elements, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.
- i. "Declarant" shall mean and refer to Mungo Homes of North Carolina, Inc, a North Carolina corporation, its successors and/or assigns. A person or entity shall be deemed a "successor and assign" of Declarant only if specifically so designated in a duly recorded written instrument as a successor or assign of Declarant under this Declaration and/or a Supplemental Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration or under such Supplemental Declaration which are specifically designated in the recorded written instrument.

- j. “Declarant Control Period” shall mean the period of time during which the Declarant is entitled to appoint at least a majority of the members of the Board of Directors.
- k. “Declaration” shall mean and refer to this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Smithfield Townhomes 3 at Brunswick Plantation (A Townhome Community), as it may be amended from time to time.
- l. “Deed of Trust” a mortgage, deed of trust or other similar security interest recorded in the records of Brunswick County, North Carolina, which grants, creates or conveys a lien upon one or more of the Lots.
- m. “Development Period” means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property. The Development Period shall recommence each time the Declarant acquires additional land.
- n. “Dwelling Unit” shall mean and refer to any improvement or portion thereof situated on a Lot intended for use and occupancy as one (1) single-family dwelling, irrespective of the number of Owners thereof (or the form of ownership) located within the Property and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) single-family attached homes, such as townhouses. Where appropriate in context, the term shall include both the improvements and the real property on which the improvements are situated.
- o. “Governing Documents” shall mean and refer to the Declaration, the Articles of Incorporation of the Association (“Articles”), the By-Laws of the Association (“By-Laws”), the Architectural, Construction Management, Landscaping Design and Environmental Standards (“ARC Guidelines and Procedures”), and the Rules and Regulations of the Association.
- p. “Lake Area(s)” means any Common Area on which a lake now exists or is later constructed by Declarant and “Lake” means a body of water which now exists or is later constructed by Declarant in a Lake Area.
- q. “Lake Maintenance Easement” means those areas, if any, identified on the recorded plat(s) of the Property as “Lake Maintenance Easement” or similar designation which shall be reserved to the Association or its assigns for the purpose of performing maintenance of the Lakes in accordance with the terms and provisions of this Declaration.
- r. “Lender” shall mean the holder of any recorded Deed of Trust, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. As used in this Declaration, the term “Institutional Lender” or “Institutional

Holder” shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), all corporations and any agency or department of the United States Government or of any state or municipal government, or any other organization or entity which has a security interest in any Lot. In the event any Deed of Trust is insured by the Federal Housing Administration (“FHA”) or guaranteed by the Veterans Administration (“VA”), then as to such Deed of Trust the expressions “Lender” and “Institutional Lender” include the FHA or the VA as the circumstances may require, acting, respectively, through the Federal Housing Commission and the Commissioner of Veterans' Benefits or through other duly authorized agents.

- s. “Limited Common Elements” shall mean and include the elements described in the Planned Community Act, and in this Declaration (including Exhibits). For all purposes contained herein, other than anything specifically provided to the contrary, a Limited Common Element shall be a “Common Element” as defined herein above.
- t. “Lot” or “Lots” means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed a Dwelling Unit that is conveyed to an Owner (as hereinafter defined) by the Declarant. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.
- u. “Master Declaration” shall mean and refer to that certain Amended and Restated Master Declaration and Development Plan for Brunswick Plantation recorded in Book 3645, Page 966, records of Brunswick County, North Carolina.
- v. “Master Association” shall mean and refer to Brunswick Plantation Property Owners Association, Inc.
- w. “Member” shall mean and refer to an Owner who is a member of the Association as provided in Article IV hereof.
- x. “Operating Deficit” shall mean and refer to funds necessary to meet the budgeted and/or immediate cash obligations of the Association as may be forecast in the annual budget or as may arise during the fiscal year, which cannot be met by application or use of funding through Regular Assessments, Special Assessments, or any other sources of revenues available to the Association.
- y. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot(s) later developed, but shall not mean or

refer to any Lender or subsequent holder of a Deed of Trust, unless and until such Lender or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner.

- z. "Party Wall" or "Party Walls" shall have the meaning set forth in Article VIII, Section 3.
- aa. "Plat" means the subdivision plats of the Property, which are recorded with the Register of Deeds of the county in which the Property is located, as the same may be hereafter amended or supplemented pursuant to this Declaration.
- bb. "Provider" shall mean and refer to the entity or entities which provides Provider Services.
- cc. "Provider Services" shall mean, without limitation, television, cable, computer connection and/or internet connection by line, wire, cable, fiber optic, main, duct, pipe conduit, pole, antenna, microwave, satellite dish, or wire or wireless technology.
- dd. "Setback" shall mean an area along the boundary of a Lot where no building or other structures including, without limitation, fences, patios or decks shall be permitted, without the express written permission of Declarant. However, the location of normal air handling and heat, ventilation and air conditioning units within such Setback area shall be permissible so long as it is in conjunction with an approved residential building or other structure located on a Lot.
- ee. "Subsequent Amendment" or "Supplemental Declaration" shall mean an amendment to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of the Declaration.
- ff. "Townhome" or "Townhomes" shall mean a Dwelling Unit which has no Dwelling Units located above or below it and which shares one or more Party Walls with adjacent Dwelling Unit(s).
- gg. "Wetland Areas" shall mean and refer to those areas delineated as wetland by the U.S. Army Corps of Engineers and shown and referred to as "Wetlands" and "Wetland Area", if any, on the recorded plat of the Subdivision.

ARTICLE III: MASTER DECLARATION AND MASTER ASSOCIATION

Additional covenants and restrictions applicable to the Property are contained in the Master Declaration. The Master Declaration established a Master Association for the purposes of

administration and enforcement of the Master Declaration. To the extent the Master Declaration governs the Property as part of the Master Community, the covenants and restrictions contained in the Master Declaration shall control and take precedence over the covenants and restrictions contained in this Declaration. The Master Association shall govern the Property to the extent provided in the Master Declaration except to the extent the Master Association has delegated such responsibility to the Association as provided in the Master Declaration.

ARTICLE IV: PROPERTY RIGHTS, EASEMENTS AND ENCROACHMENTS

Section 1. Owner's Easements of Enjoyment of Common Elements. Subject to the provisions of Section 2 of this Article and to the exclusive right of use of the Limited Common Elements appurtenant to any Townhome, every member shall have a right and easement of enjoyment in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot. This right and easement shall be for use in common with all other such members, their tenants, guests and invitees. In the event that Declarant incorporates additional land under the provisions of this Declaration pursuant to Article XII, Section 2 of this Declaration, all Owners of Lots within such additional phases shall have the same rights and privileges with regard to use of the Common Elements as the Owners of Lots originally made subject to this Declaration.

Furthermore, subject to the provisions of Section 2 of this Article and to the exclusive right of use of the Limited Common Elements appurtenant to any Townhome, every member shall have a non-exclusive easement over and across any areas within the Community, such areas not including any Dwelling Units or Limited Common Elements, for ingress, egress and pedestrian access, subject to the reasonable rules and regulations which may be established by the Association.

Section 2. Extent of Member's Easements. The rights and easements created hereby shall be subject to the following:

- a. The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Elements owned by the Association;
- b. The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- c. The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Elements owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such activities) and upon improvements, additions or alterations to the Lots and the Common Elements owned by the Association;



d. The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;

e. The right of the Association to mortgage any or all of the Common Elements owned by the Association, upon the approval of two-thirds ($\frac{2}{3}$) of the membership of each class of members of the Association;

f. The easements reserved elsewhere in this Declaration and the right of the Association through its Board of Directors to grant further reasonable utility easements across and through the Common Elements owned by the Association for the benefit of its members;

g. Subject to Article XIV, Section 2, the right of the Association through its Board of Directors to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors or otherwise allowed pursuant to this Declaration, as amended;

h. If ingress or egress to any Lot is through the Common Elements, any conveyance or encumbrance of such Common Element is subject to such Lot Owner's easement for ingress and egress;

i. The right of the Declarant to erect any signs (i) advertising the sale of the Property or any Lot and/or (ii) identifying the Community;

j. The right, but not the obligation, of the Declarant and its assigns to install, or cause to be installed, Technology Infrastructure in Common Elements;

k. The right of the Declarant and the Association to add amenities or alter existing amenities from time to time; and

l. All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3. Delegation of Use.

a. Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owners' family who occupy the residence of the Owner within the Community.

b. Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to the Owner's tenants who occupy a residence within the Community.

c. Guests. Any recreational facilities and other Common Elements may be utilized by guests of Owners or tenants subject to this Declaration, the By-Laws of the Association and to the rules and regulations of the Association governing said use and as established by its Board of Directors.

Section 4. Certain Obligations and Access Rights to the Common Elements.

a. Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Elements owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

b. The Association shall have and is hereby granted a general right of access and easement to all of the Common Elements owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

Section 5. Rules and Regulations. The use of the Common Elements and Limited Common Elements by an Owner or Owners, and all other parties authorized to use same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established by the Association governing such use, or which may hereafter be prescribed and established by the Association.

Section 6. General Drainage, Utility, Sewer and Other Development Easements. The following rights and easements reserved in this Section 6 shall not be exercised with respect to a Lot, after the conveyance of such Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section 6 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property. The following rights and easements reserved in this Section 6 are not intended to permit, and shall not be construed to

permit, (i) any Provider to enter any easement reserved in this Section 6, or (ii) the Association to install or authorize to be installed, in any easement reserved in this Section 6, any Technology Infrastructure or any other equipment, facilities, or installations of any type for the purpose of bringing Provider Services to any Lot, Dwelling Unit, and/or any improvements on a Common Element.

a. Declarant hereby reserves unto itself, and unto any public or private utility, a utility/drainage easement (the "Utility/Drainage Easement"), as designated on the Plat, or any similar designation thereof, for drainage, utility and sewer purposes in, on and over all of the Common Elements and any Lot, so as to permit Declarant to properly install and allow to be installed and maintained all electrical, telephone, water, gas, and sanitary and storm sewer, to serve any Dwelling Unit constructed on the Property. This Utility/Drainage Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Elements are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Element. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Element. This easement shall be in addition to any easement identified or designated upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

b. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Lake Easement") and right-of-way in and to any Lake Area(s) or areas now or hereafter shown on the Plat as a "Common Area", "Common Element" "Lake Maintenance Easement" or "Lake" or similar wording or any other Common Element within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress, without permission or approval of any Owner, through so much of the remainder of the Property as is reasonably necessary or appropriate to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

c. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable

zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Elements maintenance obligations.

d. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

- i. Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;
- ii. Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,
- iii. Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Register of Deeds of the County in which the Property is located.

e. The title of the Association (as to the Common Elements owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 7. Declarant's General Network Easement. The following rights and easements reserved and retained in this Section 7 shall not be exercised with respect to a Lot, after the conveyance of such Lot in a manner that (i) unreasonably and absolutely affects any Dwelling Unit or portion thereof located upon such Lot or the Owners use or enjoyment thereof or (ii) unreasonably affects the rights of ingress and egress to such Lot. The Declarant hereby forever reserves, retains, and is granted a blanket, exclusive, perpetual easement over, above, across, under, upon, along, and through the Property and all Lots, Common Elements, and streets located therein (iii) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, removing, improving, expanding and otherwise servicing the Technology Infrastructure, and any other equipment, facilities, and installations of any type bringing Provider Services to any Lot, Dwelling Unit, and/or any improvements on the Common Elements. This General Network Easement may be conveyed, assigned, and transferred by the Declarant, in the Declarant's sole discretion, without notice or consent of the Association, the Owners, or any other person. The General Network Easement is for the exclusive benefit of the Declarant, and its successors, designees and assigns, and is an appurtenant easement which runs with the Property and all Lots, Common Elements, and streets therein. Only those Providers which receive the Declarant's explicit written permission shall be permitted within the General Network Easement. The Declarant's right under this Section 7 shall survive beyond the Development Period and exist in perpetuity, and this General Network Easement shall be in addition to any easement identified or

designated on a plat. Nothing herein or otherwise shall prevent Declarant from continuing existing relationships for services or entering into ongoing relationships for services, which relationships shall be binding upon the Association.

Section 8. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use, in the case of an emergency, by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Elements.

Section 9. Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the Association for the common enjoyment of all residents in the Community.

Section 10. Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof (hereafter collectively "DU&E Easements"), which are hereby reserved to the appropriate governmental entities, public utilities, private utilities and Provider(s) or Declarant for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities, the Community Network and Technology Infrastructure; provided, however, that the only Providers which receive the Declarant's explicit written permission shall be permitted to be within the DU&E Easements. Purchasers of Lots in this Community shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Article XVII, shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 11. Designated Easements for Landscaping, Mounding, Screening and Signage. Within any strips of ground shown or designated on a Plat as a landscape easement, berm easements, landscape maintenance easement, landscape maintenance access easement, or by any similar language indicating a landscaping purpose, Declarant hereby reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to (i) erect signs which advertise the Property or availability of Lots, and/or identify the Community and (ii) install landscaping, mounding, walls, and screening. Notwithstanding anything in this Declaration to the contrary, except as approved by Declarant or the Board of Directors, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected between (iii) the area of any such easements and (iv) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

Section 12. Designated Network Easement. Any strips of ground identified on a Plat as a Network Easement are hereby forever exclusively for the Declarant, and the Declarant's successors, designees and assigns, for the purpose of installing, maintaining, repairing, replacing, improving, relocating, expanding, removing or otherwise servicing the Technology Infrastructure and Community Network, and any other equipment, facilities, and installations of any type bringing Provider Services to any Lot, Dwelling Unit, and/or any improvements on the Common Elements. Notwithstanding anything in the Declaration to the contrary, no planting, hedges, walls, structures, signs, fences, or any other improvements shall be constructed, placed, or erected within such Designated Network Easement. Only those Providers which receive the Declarant's explicit written permission shall be permitted within the Designated Network Easement. The Declarant's rights under this Section 12 shall survive beyond the Development Period and exist in perpetuity, and may be conveyed, assigned, or transferred by the Declarant, in the Declarant's sole discretion, without notice to or consent of the Association, Owners, or any other person.

Section 13. Street Dedication. All streets now or hereafter located upon the Property are hereby private. The Declarant shall have the right, but not the obligation, to cause such streets and/or roads to be dedicated to any governmental entity.

Section 14. Easement Work. Notwithstanding any architectural approval under Article XVII, below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever planted, to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Sections 9 and 10 above.

Section 15. No Access. There may be strips of ground designated on the Plat as “no access strips”, “no access”, “no access easement”, “no access esmt”, or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress, egress and/or traveling, is prohibited on, over, or across any such strips or areas. Furthermore, vehicular access to any Lot shall only be from the adjoining public street and shall not cross any Common Element(s).

Section 16. Reservation of Right to Grant Easement. The Declarant hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the real estate which is adjacent to the Property. Nothing herein or otherwise shall prevent Declarant from continuing existing relationships for services or entering into ongoing relationships for services, which relationships shall be binding upon the Association.

Section 17. Sales Offices, Rental Offices, Property Management Offices and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant, its successors and assigns, the perpetual, alienable and transferable right and easement in and to the Community for the maintenance of signs, sales offices, rental offices, property management offices and construction offices, together with such other facilities as in the sole opinion of Declarant reasonably may be required, convenient or incidental to the completion, management, rental, improvement and/or sale of Lots or Common Elements. The Declarant also reserves the right to grant to any builder or builders the right to operate and maintain builder sales offices at any location within the Community upon such terms and conditions as the Declarant in the Declarant's sole discretion may determine.

Section 18. Displays. No rule shall abridge an Owner's right to display political, religious, or holiday symbols and decorations on his or her Lot of the kinds normally displayed in single-family residential neighborhoods, nor shall any rule regulate the content of political signs. However, the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Lot, including reasonable limitations on size and number. Owners may display one “For Sale” or “For Rent” sign on their Lots provided such signs are in compliance with the Association's approved template, are a similar size and quality as those used by local real estate brokers and agents and in no event exceed six square feet of surface area.

Notwithstanding the foregoing, the display of political signs shall be prohibited at all times earlier than forty-five (45) days before the day of the respective election and at all times later than seven (7) days following the day of the respective election. Unless provided otherwise in any local governmental laws or regulations, only one (1) political sign is permitted on an Owner's Lot, and such political sign shall be of a size no greater than twenty-four (24) inches by twenty-four (24) inches.

Section 19. Household Composition. No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Lot size and facilities and its fair share use of the Common Elements.

Section 20. Easements for Encroachment. If any portion of the Common Elements now encroaches upon any Dwelling Unit or if any Dwelling Unit now encroaches upon any other Dwelling Unit or upon any portion of the Common Elements as a result of the construction or repair of any building or if any such encroachment shall occur hereafter as a result of settlement or shifting of any building or otherwise, a valid easement for the encroachment and for the maintenance, shall exist, so long as the building stands. In the event any building, any Dwelling Unit, any adjoining Dwelling Unit, or any adjoining Common Element shall be partially or totally destroyed as the result of fire or other casualty or as the result of condemnation or eminent domain proceedings and the reconstructed building, Lot or part of the Common Elements encroaches upon any Dwelling Unit or over any Dwelling Unit, or upon any portion of the Common Elements due to such reconstruction, the reconstruction shall be permitted and valid easements for such encroachments and maintenance thereof shall exist so long as the building shall stand. This Section shall not entitle any Owner to intentionally construct improvements which encroach upon any other portion of the Property and no easement for encroachment shall exist if such encroachment occurred due to the willful and knowing conduct on the part of, or with the knowledge and consent of, and Owner, permitted user or the Association.

Section 21. Support and Other Easements for Townhomes. Each Townhome shall have the following easements: (1) for lateral and subjacent support of, in and to all exterior walls, Party Walls, structural members, roof, footings and foundations of the Dwelling Unit or other improvements which abut or support the Townhome; (2) for maintenance of common construction improvements, such as footings, supports and foundations, which abut or support the Townhome; (3) for attachment of the Townhome to the Party Wall(s) it shares with the adjacent Townhome(s); and (4) of necessity in favor of, all other Dwelling Units within the Building in which it is located and any other structure or improvement which abuts or supports a Townhome.

Section 22. Limited Common Elements. Limited Common Elements as the term is used herein, shall mean and comprise the following: All water, power, telephone, electricity, plumbing, gas and sewage lines located in the Townhomes; provided, however, that the portion of said lines located in a common compartment for, or installation of, such lines shall be Common Elements as described above. Further, the term "Limited Common Elements" shall include the areas designated as such in Exhibit B to this Declaration, as the same may be amended from time to time by the incorporation of Additional Real Estate to Smithfield Townhomes 3 at Brunswick Plantation (A Townhome Community) in accordance with the terms and provisions of this Declaration. In all such incorporations of Additional Real Estate, the Declarant reserves the right to designate driveways or portions of driveways as Limited Common Elements for the use and benefit of a Townhome or multiple Townhomes. Such designation shall be included within the Supplemental Declaration to this Declaration incorporating such Additional Real Estate as a part of Smithfield Townhomes 3 at Brunswick Plantation (A Townhome Community). The Board of Directors of the Association may also establish rules and regulations prohibiting parking of vehicles in certain portions of the Common Elements.

ARTICLE V: MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the North Carolina Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Except as provided in Article III, Section A(2) of the By-Laws, Directors must be members of the Association.

Section 3. Articles of Incorporation and Bylaws. A copy of the Articles of Incorporation of the Association and By-Laws of the Association are attached hereto as Exhibit C and Exhibit D respectively, and made a part and parcel hereof.

Section 4. Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of not less than sixty (60) days.

Section 5. Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) 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 the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. During the Declarant Control Period, the Class B Member shall have the right to appoint the members of the Board. Directors appointed by the Class B Member shall serve at the pleasure of the Class B Member. The Class B Membership and the Declarant Control Period shall cease and be converted to a Class A Membership on the happening of either of the following events, whichever occurs earlier:

- i. December 31, 2031; or
- ii. Upon the sale of One Hundred (100%) Percent of the Lots and Dwelling Units within the Community to Owners other than Builders; provided,

however, that the Class B Membership shall recommence in the event that the Declarant subsequently records a plat of part of or all of the Property subjecting additional real estate to this Declaration.

Provided, further, that nothing herein shall be construed to prohibit Declarant from converting all or part of the Class B memberships to Class A membership, with the results set forth above at any time earlier than the date specified above, by written statement executed by Declarant and delivered to the Association.

Upon the termination of the Declarant Control Period, directors shall be elected as provided in Article III of the By-Laws.

ARTICLE VI: COVENANT FOR MAINTENANCE ASSESSMENTS

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

a. Assessments to be assessed against the Owners pursuant to the authority vested in the Association under Section 3 hereof ("Regular Assessments") (for maintenance, repairs and ordinary operating expenses, including Common Expenses); and

b. Assessments to be assessed against the Owners pursuant to the authority vested in the Association under Section 4 hereof ("Special Assessments") for capital improvements and Operating Deficits and for special maintenance or repairs as provided in this Declaration.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Regular Assessments. The Regular Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Elements, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Elements, and other capital improvements which the Association is required to maintain.

Section 3. Regular Assessments. The Board of Directors from time to time may fix the Regular Assessment, without any vote of the membership.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Assessments authorized above, the Board of Directors of the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any Operating Deficits which the Association may from time to time incur.

Section 5. Quorum. Written notice of any meeting of the members of the Association called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting

Section 6. Uniform Rate of Assessment. Regular Assessments and Special Assessments for capital improvements and to recover Operating Deficits must be fixed at a uniform rate for all Lots.

Section 7. Operating Deficit. For so long as the Class B membership shall exist, in lieu of paying Assessments on the Lots owned by Declarant, Declarant may, at its option, pay to Association a contribution equal to the Operating Deficit of the Association for that year. The extent of the Declarant's obligation to make up the Operating Deficit shall be restricted to such amounts as are necessary for the Association to meet its cash obligations and achieve a balanced zero budget, inclusive of budgeted reserve funds. In the alternative, should Declarant elect to pay assessments for each Lot owned by Declarant, any obligation of Declarant to fund the Operating Deficit shall terminate and be of no further force and effect for that year. Furthermore, any overpayment by Declarant in any year shall be considered a loan to the Association payable upon demand.

DECLARANT WILL NOT BE OBLIGATED TO PAY ANY OPERATING FUND DEFICIENCIES THAT ARE DUE TO NON-PAYMENT OF ASSESSMENTS BY CLASS A OWNERS, AND SUCH LEVIED/ASSESSED BUT UNPAID ASSESSMENTS SHALL NOT BE CALCULATED AS A PART OF THE OPERATING DEFICIT. IN THAT REGARD, NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO RELIEVE OR RELEASE ANY CLASS A OWNER FROM THE OBLIGATION TO PAY ITS RESPECTIVE SHARE OF THE ASSESSMENTS AS AND WHEN DUE. To the extent any such long or short term shortfalls in any way arise from the failure of Owners of Lots to pay Regular or Special Assessments, any such resultant funding Declarant elects to make shall constitute a loan to the Association and shall be entered upon the books and records of the Association as a loan.

Any Designated Builder shall be exempt from the payment of any Assessments for the earlier of: (i) a period of twelve (12) months from the date of receipt by the Designated Builder of the certificate of occupancy issued by the applicable governmental agency; or (ii) such time as the Lot or Lots is conveyed to a third party purchaser. Any Designated Builder shall also be exempt from the payment of any Assessments for any model homes or homes built by any Designated Builder for speculative sales purposes.

Section 8. Date of Commencement of Yearly Assessments; Due Dates. The Regular Assessment provided for herein shall commence as to each Lot within a recorded Plat on the first day of the first month following the recording of this Declaration and if any Supplementary Declaration (as to any additional real estate made subject hereto by such Supplementary Declaration. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court.

Section 10. Subordination of the Lien to Deeds of Trust; Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first Deed of Trust. The sale or transfer of any Lot pursuant to the foreclosure of any first Deed of Trust on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure

or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

Section 11. Capital Contribution. Upon the closing of the initial sale of each lot by the Declarant or Designated Builder, its successors and assigns to an Owner other than the Designated Builder, the Owner of each Lot shall pay an initial contribution to the Association of Five Hundred and No/100 Dollars (\$500.00) to provide general operating funds for the Association. Such payment shall not in any way be considered a prepayment of any regular or Special Assessment. Such funds may be used by the Association in such manner as the Board of Directors thereof shall direct.

Section 12. Exempt Property. The following property shall be exempt from payment of Regular Assessments and Special Assessments:

- (a) All Common Elements;
- (b) All Limited Common Elements;
- (c) Any property dedicated to and accepted by any governmental authority or public utility;

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

ARTICLE VII: USE OF PROPERTY

Section 1. Lot Use and Conveyance. Subject to the provisions hereinafter contained, all Lots shall be used exclusively for single-family residential purposes, except that Declarant reserves unto itself, its successors and assigns, the right to develop additional real estate as single family residences, duplexes or such other form as Declarant may, in its sole and absolute discretion, determine. Declarant may, in its sole and absolute discretion, submit all or any such portions of the additional real estate to the terms of this Declaration, and may include such additional covenants, conditions and restrictions affecting such additional real estate as Declarant may deem necessary. Declarant may elect not to submit all or any portion of the additional real estate to the terms of this Declaration and Declarant specifically reserves such right. Furthermore, Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other

common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Elements owned by the Association, and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

However, Declarant and the Designated Builder may maintain sales offices, models and construction offices upon one or more Lots until all Lots located or to be located within the Properties (including all subsequent phases) have been sold to third parties or Declarant no longer has the right to incorporate additional land under the terms of this Declaration. Easements are hereby reserved through the Common Elements, including, without limitation, the easements shown on the plat(s) of the Property for use by Developer, for its use and the use of its agents, employees, licensees and invitees, for all purposes in connection with the use, development and sales of the Property, including, without limitation, for the erection and maintenance of signage.

Section 2. Leasing. Subject to the provisions contained in this Section and in the remainder of this Declaration, any Lot may be leased by its Owner.

No timesharing, interval ownership or other related ownership scheme where the right to exclusive use rotates among multiple owners or members of the program shall be permitted. In addition, no leasing or rental of any Dwelling shall be permitted, having a duration of less than one (1) year nor shall less than the entirety of any Dwelling be leased. Declarant or its assignee may, however, maintain a sales office, models and construction office upon one or more Lots until all Lots to be located within the Community have been sold. Furthermore, any such rental or leasing of any Lot shall be in writing with a copy of such agreement to be provided to the Association within ten (10) days after execution. Notwithstanding such leasing or rental of a Lot, the Owner thereof shall remain primarily responsible for ensuring the compliance of the tenants with this Declaration and the rules and regulations of the Association.

Section 3. Nuisances. No noxious, unlawful or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No plants, poultry, animals, junk, junk automobiles, or devices or things of any sort, the normal activities or existence of which are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood shall be placed, kept or maintained on any Lot. Without limiting the foregoing, exterior lighting may not be so installed on any Lot so as to illuminate any portion of a neighboring Lot or to shine into any window or otherwise enter a Dwelling located on an adjoining Lot. Any propane tanks and any bottled gas containers larger than twenty (20) pounds which are not for the

purpose of bringing Provider Services to any Lot, Dwelling Unit, and/or any improvements on a Common Elements shall be buried underground in accordance with any applicable regulations promulgated by the Board of Directors and shall be buried underground in accordance with any applicable regulations promulgated by the Board of Directors. No lot shall be used for storage of building materials prior to the issuance of the building permit for the primary residence.

Section 4. Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 5. Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 6. Prohibition Against Business Activity. No business activity, including but not limited to, a rooming house, boarding house, gift shop, antique shop, landscape business, professional office or beauty shop or the like or any trade of any kind whatsoever (in which clients or members of the public regularly come to any Lot or any significant business traffic is generated in the Community) shall be carried on upon any Lot or Lots. Provided, however, that nothing contained herein shall be construed so as to prohibit use of any portion of a residence as a home office, so long as no clients or members of the public regularly come to any Lot and no significant business traffic is generated in the Community on account of such use. Provided further, that nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on said Lots, or the showing of said houses for the purpose of selling said houses in the Community. Nothing herein shall be construed to prevent the Declarant or its permittees from erecting, placing or maintaining signs, structures and offices as Declarant may deem necessary for its operation and sales in the Community.

Section 7. Mining, Drilling and Excavation. No derrick or any other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Community nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or materials of any kind be produced on or extracted from the premises.

Section 8. Garbage Disposal. Each Lot Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Declarant, or a rollout garbage rack of the type approved by the Declarant, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other disposal of garbage on any Lot or within the Community shall be permitted (except licensed contractors may burn construction debris during the period of construction of improvements on any Lot if they have been properly permitted). Provided, however, that the Declarant shall be permitted to modify the requirements of this Section where necessary to comply with orders of governmental bodies.

Section 9. Outside Storage. All equipment, garbage cans, trash receptacles, service yards, woodpiles or storage piles shall be screened (form of screening must be approved by the Board of Directors pursuant to Article XVII) and kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers. No clotheslines shall be erected or maintained upon the Property.

Section 10. Parking Regulations/Prohibited Vehicles. There shall be no outside storage or parking upon any portion of the properties of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than personal-use pick-up trucks and sport utility vehicles), commercial vehicle, camper, motorized camper or trailer, boat or other water craft, boat trailer, motorized go-cart, or other related forms of transportation devices. For purposes of this Declaration, "Commercial Vehicle" shall be deemed to include cars, pick-up trucks and vans in styles normally used for private purposes but painted with or carrying commercial advertising, logos, or business names or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle or that extend beyond the length or width of the vehicle. No oversized/commercial vehicle (a vehicle wider than and/or longer than a standard parking space, 19 feet maximum, any vehicle having more than two (2) axles, or those vehicles greater than 7,000 pounds) may park on the premises. No Owners or other occupants of any portion of the properties shall repair or restore any vehicle of any kind upon or within a property subject to this Declaration except (i) within enclosed garages, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. No parking of vehicles on the streets of the Community shall be permitted except for temporary parking of a vehicle for a period of not more than 24 hours within a two (2) day period. No parking of vehicles on lawns, grass, etc., of the properties shall be permitted. Violators of the prohibitions contained in this Section shall be subject to having their vehicles towed, at the Owner's expense, by or at the direction of the Association, and to the levy of fines by the Association in such amount as may be determined from time to time by the Board of Directors. This provision shall not preclude commercial vehicles from being on the property temporarily (less than 24 hours) to provide services to the Association or a resident. Additional rules and regulations regarding use, repair, parking and storage of vehicles in the properties may be promulgated from time to time by the Board.

Section 11. Sewer System. Private septic tanks and surface toilets are not permitted in the Community. The grantee of any Lot assumes all responsibility for obtaining the necessary permits for attaching to the public sanitary sewer and water system for the project.

Section 12. Firearms and Fireworks. No firearms or fireworks of any variety shall be discharged upon the Lots or Common Elements. The term "firearms" shall include, without limitation, guns, "B-B" guns and pellet guns.

Section 13. Animal and Pets. No animals, wildlife, livestock, reptiles, or poultry of any kind shall be raised, bred, or kept on any portion of the Community, except that dogs, cats, or other usual and common household pets may be permitted in a Dwelling Unit. Dogs shall be leashed and under the control of the owner at any such time that the dog(s) is not within the respective Owner's Townhome and the associated Limited Common Elements. No dogs shall be permitted to roam the property and the Association may have strays and dogs that are not leashed and are found off their owner's lot picked up by governmental authorities. Those pets which, in the sole discretion of the Association, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Community shall be removed upon request of the Association. No pets shall be kept, bred, or maintained for any commercial purpose. Pets shall only be permitted on the Common Elements if such portions thereof are so designated by the Association. All persons bringing a pet onto the Common Elements shall be responsible for immediately removing any solid waste of said pet.

Section 14. Animal Kennels. No animal quarters or kennels may be constructed unless approved by the Board of Directors pursuant to Article XVII.

Section 15. Wells and Irrigation Systems. No sprinkler or irrigation systems of any type that draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals, or other ground or surface waters within the Community shall be installed, constructed, or operated within the Community by any person, unless prior written approval has been received from the Declarant. This Section shall not apply to the Declarant, and it may not be amended without Declarant's written consent so long as Declarant has the right to add property to the Community in accordance with Article XI, Section 2 of this Declaration. No private water wells or individual drinking water supply system shall be permitted upon any Lot.

Section 16. Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Element owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Furthermore, no Owner or the Association may draw water from any Lake for the purpose of irrigation unless specifically approved, in writing, by Declarant. No docks, decks or other structures may be erected in any Lake or so as to protrude into the bounds of any Lake or Lake Area. Lakes and Lake Areas may or may not exist on the Property, and the reference

throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Element owned by the Association adjacent to a Lake. Owner understands and agrees that if Owner's Lot is located on the bank of a Lake, it is the responsibility of Owner to maintain the bank of the Lake. Association shall have the responsibility to maintain the Lakes within the Property, which maintenance shall include, but not be limited to, such maintenance as may be required by governmental entities and governmental laws and regulations. Association shall be responsible for maintaining such Lakes in accordance with the terms and conditions of all permits issued for the construction and maintenance of such Lakes.

Section 17. Home Occupations. No Lot or Dwelling Unit located thereon shall be used for any purpose other than as a single family residence, except a home occupation which is both permitted under the applicable zoning ordinance and which also complies with the following guidelines:

- a. Any home occupation must be conducted entirely within the residence and conducted solely by a member of the immediate family residing in said Dwelling Unit;
- b. Any home occupation must be clearly incidental and secondary to the use of the Dwelling Unit for residential purposes;
- c. There can be no sign or display that will indicate from the exterior of the Dwelling Unit that the Dwelling Unit is being used, in whole or in part, for any purpose other than that of a residential dwelling;
- d. No commodity can be sold from the Lot or Dwelling Unit located thereon.
- e. No person can be employed other than a member of the immediate family residing in the Dwelling Unit;
- f. No manufacturer or assembly operations can be conducted; and
- g. Customers cannot enter upon the Lot or Dwelling Unit for the purpose of conducting business.

In no event shall the following similar activities be conducted: child care, barber shop, styling salon, animal hospital, kennel, any form of animal care or treatment such as dog trimming, or any similar activities.

Section 18. Docks, piers, landings, wharfs and bulkheads. No dock, pier, landing, wharf, or bulkhead shall be constructed on any portion of the lakes or detention ponds, nor attached to the shoreline or banks thereof, except those that may be constructed by the Declarant.

Section 19. Wetland Areas. Lot Owner(s) are and shall be prohibited, unless prior written approval is obtained from the U.S. Army Corps of Engineers (the "Corps"), from filling, draining, flooding, dredging, impounding, clearing, burning, cutting or destroying vegetation, cultivating, excavating, erecting, constructing, or otherwise doing any work in the Wetland Areas; introducing exotic species into the Wetland Areas; and from changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters, and any other discharge or activity requiring a permit under clean water or water pollution control laws and regulations, as amended. Violation of this covenant shall subject Lot Owner(s) to enforcement actions by the Corps, the U.S. Department of Justice, and/or the North Carolina Department of Environmental Quality (DEQ). The perimeter of the Wetland Areas shall at all times be plainly marked by permanent signs saying "Protected Natural Area," or by an equivalent, permanent marking system.

Section 20. Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Elements owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first Deeds of Trust, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 21. Development and Sale Period. Nothing contained in this Article shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, flags, banners, parking areas, model residences, construction offices, sales offices and business offices.

Section 22. Mailboxes. Mail receptacles shall be uniform and conform to design standards promulgated by Declarant (or after the Development Period, by the Architectural Committee).

Such mail receptacles will be kiosks throughout the community in such locations to be designated by Declarant. A perpetual easement for the location, maintenance and use of such mail kiosks shall exist. The Association shall have the right to require maintenance and/or replacement of the aforesaid mail kiosks when such maintenance and/or replacement is necessary in Association's sole discretion.

Mail receptacles shall be uniform and conform to design standards promulgated by Declarant (or after the Development Period, by the Board of Directors). Such mail receptacles shall be centrally-located kiosks at a site to be designated by Declarant or the Board of Directors, or (2) located along the boundary line of two (2) adjoining lots at a site to be designated by Declarant or the Board of Directors. A perpetual easement for the location, maintenance and use of such post and the mail receptacles shall exist. The Association shall have the right to require maintenance and/or replacement of the aforesaid posts and/or mail receptacles when such maintenance and/or replacement is necessary in Association's sole discretion. If applicable, the cost of such maintenance and/or replacement shall be divided equally between the owners of the two lots which share the use of the post and receptacles.

Section 23. Wetlands. The Declarant reserves the right to make perpetual conservation easements or similar type restrictions on usage in any Common Elements or within any wetland areas on any Lot(s).

Section 24. Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one (1) sign with an area of not more than six (6) feet and of a design approved by Declarant may be displayed with the purpose of advertising the Lot for sale.

ARTICLE VIII: MAINTENANCE AND REPAIR

Section 1. Maintenance by Association.

(a) Exterior Maintenance. Subject to the terms herein this Section, the Association, at its expense, shall be responsible for the maintenance of all exterior portions of the Buildings on a regular schedule (the "Exterior Maintenance"). The Exterior Maintenance shall include: (1) lawn care in the front and rear yard area of each Lot, (2) maintenance and repair of all walkways and paved areas, (3) periodic repainting of exterior building surfaces on each Dwelling Unit, and (4) repair and replacement (if necessary) of the following structural elements of each Dwelling Unit: (i) exterior walls and building surfaces, roofs, windows, front stoops, gutters and downspouts; provided, however, in no event shall the Association be responsible for the exterior doors, which items shall be repaired, maintained and replaced at the cost and expense of the Owner (if the exterior doors are repainted and/or replaced, such paint shall be of the same type and color as the original door installed by the Developer or the Designated Builder).

(b) Maintenance of Common Elements. The Association, as part of its duties, and as part of the Common Expenses, shall provide for:

a. Maintenance of the Common Elements. Maintenance of the Common Elements shall include, but shall not be limited to, fertilizing, treating any Lakes, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Elements;

b. Maintenance of the entry signs, permanent Community identification sign, and landscaping installed by the Declarant in any Common Element, or any Landscape Easement, Landscape Maintenance Easement, Landscape Maintenance Access Easement or similar easement;

c. The maintenance of any street lights which are installed by Declarant and which are not located upon any Lot; and,

d. The maintenance of any brick surface installed by Declarant on any internal street or entryway.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Elements owned by the Association (or any items deemed Common Elements for purposes of maintenance only) as it deems necessary.

Although certain areas may be designated as Common Elements or Limited Common Elements, fee simple title to those areas may be held by a Lot Owner rather than the Association, and such ownership by a Lot Owner shall not negate the various maintenance and use provisions of this Declaration.

(c) Notwithstanding any of the foregoing in this Article, if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to any areas which are included in the Association's Exterior Maintenance obligations or to the Common Elements owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

(d) Access Easement. The authorized representatives of the Association, the Board of Directors, the Managing Agent for the Association (if any), the Association's contractors (and such contractors' agents) (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with any activities reasonably required by the Association, which shall include, but are not limited to, maintenance, repairs or replacements of or to any areas which

are included in the Association's Exterior Maintenance obligations or to the Common Elements owned by the Association or any items deemed as Common Element for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

Section 2. Maintenance by Owners. Except for the maintenance required of the Association in Section 1 above, each Owner of a Lot shall keep the Lot owned by him/her, and all improvements thereon, in a clean and sanitary condition and in good order and repair. All fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of the Dwelling Unit, shall be maintained and kept in repair by the Owner thereof. If an Owner of any Lot fails to maintain that Lot and the improvements thereon in accordance with this Article in a manner reasonably satisfactory to the Board, in its sole discretion, the Board shall give written notice to such Owner and, if the necessary maintenance is not completed within twenty (20) days, the Association shall have the right, through its agents, contractors, and employees to enter upon the Lot of the defaulting Owner and to repair, maintain and restore the Lot and the exterior of the Building and any other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable in accordance with the provisions herein. In the event of any emergency (as so deemed by the Board in its reasonable discretion), the Association shall have the right with or without prior notice to the Owner, to enter any Lot and Dwelling Unit to make emergency repairs necessary for the proper maintenance and operation of the Property.

Section 3. Party Walls. Each wall which is built as a part of the original construction of a Building upon the Property and placed on a boundary line between the Lots, and all reconstruction or extension of such walls, shall constitute a "Party Wall".

(a) General Rules of Law Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-grade construction and liability for property damage resulting from negligence or willful acts or omissions shall apply to each Party Wall or party fence which is built as part of the original construction upon each Lot and any replacement thereof. If any portion of any structure originally constructed by Declarant, including any party wall, any extension of a party wall, or any common fence, protrudes over an adjoining Lot or into the Common Elements, such structure, wall or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Elements, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall or fence, nor any action for damages. If there is a protrusion as described in the immediately preceding sentence, it shall be deemed that the affected Owner(s) or the Association have granted perpetual easements to the adjoining Owner(s) for continuing maintenance and use of the encroaching structure, wall or fence. The foregoing shall also apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant. The provisions of this Section 3 shall be perpetual in duration and shall not be affected by an amendment of this Declaration.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners of Lots who make use of the Party Wall or benefit therefrom in proportion to such use and benefit, to the extent such maintenance is not the responsibility of the Association as set forth herein.

(c) Destruction by Fire or Other Casualty.

- i. Pursuant to Article X, Section 2, in the event a Common Casualty Insurance Policy is available to the Association and the Association has obtained such casualty insurance, if a Party Wall is destroyed or damaged by fire or other casualty, the Association shall be responsible for causing the Party wall to be restored.
- ii. Pursuant to Article X, Section 2, in the event a Common Casualty Insurance Policy is not available to the Association and all Owners are required to obtain their own casualty insurance, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it. Each Owner who uses the restored Party Wall shall contribute to the costs of restoring the same in proportion to each such Owner's use; provided, however, that such contribution shall not prejudice the right of any such Owner to seek a larger contribution from any contributing Owner(s) based on negligence or willful misconduct.

(d) Alteration, Repair and Maintenance. All reasonable costs for the repair and maintenance of Party Walls shall be a Common Expense; provided, however, that the cost of any repair necessitated by damage resulting from an Owner's negligence or intentional misconduct will be the sole responsibility of the Owner causing such damage. The cost of any voluntary alteration or improvement of a Party Wall shall be the sole responsibility of the Owner(s) performing such work. Upon completion of such work provided herein, such Owner shall restore the adjoining Lot to as near the same condition as prevailed before the commencement of such work as is reasonably practicable. No Owner of any Lot nor any successor in interest to any such Owner shall have the right to extend said party wall in any manner, either in length, height or thickness.

(e) Weatherproofing. Notwithstanding any other provisions of this Section, an Owner who, by his negligence or willful act, causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(f) Right to Contributions Run 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.

(g) Certification with Respect to Contribution. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner(s) a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charges; provided, however, that where the

adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

ARTICLE IX: CONSTRUCTION IN ACCORDANCE WITH PLANS AND SPECIFICATIONS

Section 1. General. All structures of every type and description shall be constructed, placed or erected within the Community in accordance with the provisions of this Article together with other applicable provisions of this Declaration. Only new construction of residential buildings shall be permitted, it being the intent of this covenant to prohibit the moving of an existing building or portion thereof on a lot and remodeling or converting same into a dwelling.

Section 2. Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot within shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 3. Setbacks. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof; furthermore, in no case will any fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines. The minimum side yard and minimum rear yard requirements shall be those as set forth on the plat. However, (a) the location of normal air handling and heat, ventilation and air conditioning units within such Setback area shall be permissible so long as it is in conjunction with an approved residential structure on said Lot, and (b) roof overhangs not to exceed eighteen (18") inches from and as a part of the main dwelling may extend unto the Setback area.

Section 4. No Impediments. Notwithstanding anything in this Declaration to the contrary, and unless permitted pursuant to the terms of the easement in question, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of easements which in any way interfere with the operation and/or use of the easement(s), except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected between (iii) the area of any such easements and (iv) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

ARTICLE X: INSURANCE AND CASUALTY LOSSES

Section 1. Owner's Insurance. The Owner of each Lot shall, at his own expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects and other personal property belonging to such Owner and shall, at his own expense and option, obtain insurance coverage against personal liability for injury to the person or property of another while

within such Owner's Lot or upon the Common Elements. The Owner shall provide Association with a copy of such policy and evidence of payment therefor, as well as copies of all renewals thereof. All such insurance obtained by the Owner of each Lot shall, wherever such provision shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners of Lots, the Association, and the respective servants, agents and guests of said other Owners and the Association, and such other insurance coverage may be obtained from the insurance company from which the Association obtains coverage against the same risk, liability or peril, if the Association has such coverage and if it is available. Risk of loss of or damage to any furniture, furnishings, personal effects and other personal property (other than such furniture, furnishings and personal property constituting a portion of the Common Elements) belonging to or carried on the person of the Owner of each Lot, or which may be stored in any Lot or in, to or upon Common Elements shall be borne by the Owner of each such Lot. The Owner of a Lot shall have no personal liability for any damages caused by the Association, any Owner or otherwise in connection with the use of the Common Elements. The Owner of a Lot shall be liable for injuries or damage resulting from an accident on his own Lot.

Section 2. Association Insurance.

(a) The Association shall procure and maintain, or cause to be maintained, if reasonably available, as a Common Expense, insurance in accordance with the following:

i. Casualty insurance covering the Buildings and Lots and any Common Elements (a "Common Casualty Insurance Policy"), in an amount equal to the maximum insurance replacement value thereof, exclusive of excavation and foundation costs, as determined annually by the insurance carrier, such coverage to afford protection against (i) loss or damage by fire or other hazards covered by the standard extended coverage or other perils endorsements; and (ii) such other risks of a similar or dissimilar nature as are or shall be customarily covered with respect to buildings similar in construction, location and use, including but not limited to vandalism, malicious mischief, windstorm, wind driven rain damage, water damage and flood damage, if available.

1. However, in the event a Common Casualty Insurance Policy which includes casualty insurance covering the Buildings and Lots is not reasonably available to the Association, upon notification of the Association to the Owners of such unavailability, each Owner shall be responsible for procuring and maintaining its own casualty insurance covering the respective Unit and Lot, and such casualty insurance shall name the Association as an additional insured. Each Owner shall provide Association with a copy of such policy and evidence of payment therefor, as well as copies of all renewals thereof. All such insurance obtained by the Owner of each Lot shall, wherever such provision shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners of Lots, the Association, and the respective servants, agents and guests of said other Owners and the Association. The Association, however, shall remain responsible for procuring and maintaining, or causing to be maintained, casualty insurance to maintain and/or repair and any Common Elements pursuant to the standards in Article X, Section 2(a)(i) above.

ii. A policy of comprehensive general public liability insurance, including bodily injury, property damage, personal injury and non-owned automobile in an amount not less than Two Million Dollars (\$2,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence, if reasonably available in the discretion of the Board of Directors.

iii. Worker's Compensation insurance to meet the requirements of law.

iv. A bond or insurance policy for Director's and Officer's Errors and Omissions coverage in such amounts as determined by the Board of Directors, in its reasonable discretion.

v. Such other insurance coverage, other than title insurance, as the Board of Directors of the Association, in its sole discretion may determine from time to time to be in the best interest of the Association and the Owners of all of the Lots.

All insurance shall be obtained from insurance carriers with a minimum A-VII Best's financial rating and authorized to do business in the state of North Carolina, and, if required, meet the specific requirements of any Federal Mortgage Agency regarding the qualifications of insurance carriers. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect liability insurance and fidelity bonds that meet any applicable requirements established by any Federal Mortgage Agency so long as any of them is a Lender or Owner of a Lot, except to the extent such coverage is not available or has been waived in writing by them. All such insurance policies and fidelity bonds shall provide that coverage may not be canceled or substantially modified without at least 30 days' (10 days' cancellation for nonpayment of premium) prior written notice to any and all insureds named therein, including Owners, Lenders, and designated servicers of Deeds of Trust.

In addition, the insurance obtained shall contain the following provisions and limitations:

i. Each Lot Owner is an insured Person under the policy with respect to liability arising out of the Owner's interest in the Plat or membership in the Association.

ii. Such policies shall not provide for contribution by (or Assessment against) Lenders or become a lien on the Property superior to the lien of a First Deed of Trust. If, at the time of the loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

iii. Coverage shall not be prejudiced by: (a) any act, omission or neglect of the Owners when such act or neglect is not within the scope of the Owner's authority on behalf of the Association, or (b) failure of the Association to comply with any warranty or condition with regard to any portion of the premises over which the Association has no control

iv. A waiver of subrogation by the insurer as to any and all claims against the Association, the Owner, and/or their respective agents, members of the Owner's household,

employees, or lessees, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

- v. A standard lender clause which shall:
 - a. Provide that any reference to a Lender in the policy shall mean and include all holders of Deeds of Trust of any Lot or Lot lease or sublease in their respective order of preference, whether or not named therein;
 - b. Provide that such insurance as to the interest of any Lender shall not be invalidated by any act or neglect of the Board or Owners or any Persons under any of them;
 - c. Waive any provision invalidating such lender clause by reason of the failure of any Lender to notify the insurer of any hazardous use or vacancy, any requirement that the Lender pay any premium thereon, and any contribution clause; and
 - d. Provide that, without affecting any protection afforded by such lender clause, any proceeds payable under such policy shall be payable to the Association or the insurance trustee.

The required fidelity bonds shall afford coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all other Persons who handle or are responsible for handling funds of, or funds administered by the Association. The Association shall obtain directors and officers liability insurance which shall at a minimum insure each director and officer of the Association against any loss arising from any claim for any alleged wrongful act made by such person while acting in his/her capacity as director or officer of the Association.

All liability insurance maintained by the Association shall contain cross liability endorsements to cover liability of all Owners of Lots as a group as to each Lot Owner.

(b) Association Insurance as Common Expense. All insurance coverage authorized to be purchased shall be purchased by the Association for the Association, and for the benefit of and as agent for all of the Owners of all Lots. The cost of obtaining the insurance coverage authorized above is declared to be a Common Expense, as are all other fees and expenses incurred which may be necessary or incidental to carrying out the provisions hereof.

(c) Insurance Trustee. The Board of Directors of the Association is hereby declared to be "Insurance Trustee" and is appointed as authorized agent for all of the Owners of all Lots for the purpose of negotiating and agreeing to a settlement as to the value and extent of any loss which may be covered under any policy of casualty insurance, and is granted full right and authority to execute in favor of any insurer a release of liability arising out of any occurrence covered by any policy or policies of casualty insurance and resulting in loss of or damage to insured property.

All policies of casualty insurance covering the Community shall provide for the insurance proceeds covering any loss to be payable to the Insurance Trustee, or to its successor, and the insurance proceeds from any casualty loss shall be held for the use and benefit of the Association and all of the Owners of all Lots and their respective Lenders, as their interests may appear, and such insurance proceeds shall be applied or distributed in the manner herein provided.

The Association shall have the right to delegate the duties of the Insurance Trustee to some other party and all parties beneficially interested in such insurance coverage shall be bound by said delegation.

In the event the Insurance Trustee is any other party other than the Association, the Insurance Trustee shall not be liable for the payment of premiums, for the renewal of any policy or policies of casualty insurance, for the sufficiency of coverage, for the form or content of the policies or for the failure to collect any insurance proceeds.

The sole duty of the Insurance Trustee shall be to receive such proceeds of casualty insurance as are paid and to hold same in trust for the purposes herein stated, and for the benefit of the Association and the Owners of all Lots and their respective Lenders, such insurance proceeds to be disbursed and paid by the Insurance Trustee as hereinafter provided. The Association, as a Common Expense, may pay a reasonable fee to the Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Wherever the Insurance Trustee may be required to make distribution of insurance proceeds to Owners of Lots and their Lenders, as their respective interests may appear, the Insurance Trustee may rely upon a Certificate of the President and Secretary of the Association, executed under oath, and which Certificate will be provided to said Insurance Trustee upon request of said Insurance Trustee made to the Association, such Certificate to certify unto said Insurance Trustee the name or names of the Owners of each Lot, the name or names of the Lender or Lenders who may hold a Deed of Trust or Deeds of Trust encumbering each Lot, and the respective percentages of any distribution which may be required to be made to the Owner or Owners of any Lot or Lots, and his or their respective Lender or Lenders, as their respective interests may appear. Where any insurance proceeds are paid to the Insurance Trustee for any casualty loss, the holder or holders of any Deed of Trust or Deeds of Trust encumbering a Lot shall not have the right to determine or participate in the determination of repair or replacement of any loss or damage, and shall not have the right to elect to apply insurance proceeds to the reduction of any Deed of Trust or Deeds of Trust, unless such insurance proceeds represent a distribution to the Owner or Owners of any Lot or Lots, and their respective Lenders, after such insurance proceeds have been first applied to repair, replacement or reconstruction of any loss or damage, or unless such casualty insurance proceeds are authorized to be distributed to the Owner or Owners of any Lot or Lots, and their respective Lender or Lenders, by reason of loss of or damage to personal property constituting a part of Common Elements and as to which a determination is made not to repair, replace or restore such personal property.

(d) Casualty Loss, Condemnation, or Damage to Improvements within the Community.

In the event of casualty loss, condemnation, or damage to improvements within the Community required to be covered by insurance, the Board of Directors shall be responsible for applying the proceeds of all casualty insurance or condemnation award to the repair or reconstruction of such property in accordance with the provisions of this Article. Any reconstruction or repair must follow substantially the original plans and specifications of the destroyed, condemned or damaged improvements to the extent practicable.

In the event that any portion of the Community cannot be reconstructed or repaired due to any law, rule, ordinance or regulation such that a Lot cannot be reconstructed or repaired to substantially the same condition as existed prior to such casualty, the Owner(s) of any such Lots and their Lenders shall be distributed a pro rata portion of the insurance proceeds attributable to the value of the Dwelling Unit(s) that cannot be reconstructed or repaired.

The Board shall promptly obtain estimates of the cost required to restore the damaged property to its condition before the casualty occurred. Such costs may include professional fees and premiums for bonds as the Board of Directors deems necessary.

If the damage to any property which is the responsibility of the Association to maintain and repair is not insured or if the amount of the loss is within the deductible provisions of the insurance policy or if the proceeds of insurance or condemnation are insufficient to cover the cost of reconstruction or repair, the deficiency shall be a Common Expense of all Owners; provided, however, any such deficiency resulting from damage to the any property as a result of the neglect, willful act, or abuse of the any property by any Owner or his or her guests or occupants shall be charged to such Owner as an individual assessment. The Board of Directors of the Association shall approve and issue, without any consent of the Owners, any assessment for Common Expenses necessary for the restoration or repair of property in accordance with this Article. In such case, the requirements of consent included within the By-Laws shall not apply.

If the damage to any items for which the Owner of a Lot is obligated to maintain, repair or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association, or the Insurance Trustee herein designated, shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner of such Lot shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

The insurance or condemnation proceeds received by the Board and any special assessment collected to cover a deficiency in such proceeds shall constitute a construction fund from which the Board shall disburse payment of the costs of reconstruction and repair. It shall be presumed that the first disbursements from the construction fund are insurance or condemnation proceeds; and if there remains a balance in the fund after payment of all costs of reconstruction and repair, the balance of the fund will be a general fund of the Association.

In the event of the loss of or damage to personal property belonging to the Association, the insurance proceeds, when received by the Insurance Trustee, shall be paid to the Association. In the event of the loss of or damage to personal property constituting a portion of the Common Elements, and should the Board of Directors of the Association determine not to replace such personal property as may be lost or damaged, then the insurance proceeds received by the Insurance Trustee shall be disbursed to the Association which may use such proceeds for any purpose not in violation of this Declaration in the sole discretion of the Board.

ARTICLE XI: RIGHTS OF LENDERS

The following provisions are for the benefit of holders, insurers and guarantors of first Deeds of Trust on Lots (together with any improvements thereon) in Smithfield Townhomes 3 at Brunswick Plantation (A Townhome Community). The provisions of this Article apply in both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Rights of Lenders. In addition to any other rights provided elsewhere in this Declaration to any holder of a first deed of trust upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Elements owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 2. Notices of Action. An institutional holder, insurer, or guarantor of a first Deed of Trust which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Deed of Trust relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- a. Any condemnation loss or any casualty loss which affects a material portion of Smithfield Townhomes 3 at Brunswick Plantation (A Townhome Community) which affects any Lot on which there is a first Deed of Trust held, insured, or guaranteed by such Eligible Holder;
- b. Any delinquency in the payment of assessments or charges owed by a Lot subject to the Deed of Trust of such Eligible Holder, which such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within 60 days;
- c. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- d. Any proposed action which would require the consent of a specified percentage of Eligible Holders

Section 3. No Priority. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first Lender of a Lot pursuant to its Deed of Trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Element Property.

Section 4. Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any "right of first refusal" subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first Lender to:

- a. Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the Deed of Trust;
- b. Accept a deed or assignment in lieu of foreclosure in the event of default by a debtor; or
- c. Sell or lease a lot acquired by the Lender.

Section 5. Unpaid Dues or Charges. Any first Lender who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the Deed of Trust or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the Lender.

Section 6. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Deed of Trust encumbering such Lot Owner's Lot.

Section 7. Failure of Lender to Respond. Any Lender who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Lender within 30 days of the date of the Association's request, provided such request is delivered to the Lender by certified or registered mail, return receipt requested.

Section 8. Books and Records. Pursuant to Section 47-3-118 of the Act, any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, the Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year, except that the Association shall not be required to provide the financial statement for the preceding fiscal year if said fiscal year expired less than 75 days prior to the date of the request.

ARTICLE XII: PHASED DEVELOPMENT

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

Section 2. Additional Real Estate. The Declarant, its successor or assigns to which this right is specifically assigned, may, at its option, bring additional real estate adjacent to or near the Property (the "Additional Real Estate") under the provisions hereof by recording a Supplemental Declaration stating its intention to so incorporate the Additional Real Estate. Further, the Declarant may, at its option, from time to time bring other land adjacent to or near the Additional Real Estate under the provisions hereof by recording a Supplemental Declaration(s) stating its intention to so incorporate such additional land. Declarant may incorporate all or any portion of the additional land under the provisions hereof in any number of additional phases as it may so desire and may, in its discretion, change the character or nature of such future phases, including but not limited to changing the architectural theme, building materials, elevations, and minimum square footage requirements for buildings. Such Supplemental Declaration(s) shall not require the vote or consent of the Association or any Owner. Any such Supplemental Declaration(s) shall be effective upon the filing thereof in the public records of Brunswick County, North Carolina. Such Supplemental Declaration shall describe the additional land to be brought under the provisions hereof. Declarant may bring such additional land under the terms hereof either in whole or in part and may do so in multiple phases. Upon the Declarant's election to incorporate additional land hereunder, all of such additional land so incorporated shall be as fully covered hereby as if a part of the original Community. All property so incorporated shall be subject to all the declarations, covenants, easements, liens, restrictions and duties as herein contained, together with such additional restrictions and obligations as Declarant may impose on the land being submitted to the provisions of this Declaration by such Supplemental Declaration(s). Declarant shall have the unilateral right to transfer to any other person or entity the said right to submit the additional land to the provisions of this Declaration. Declarant shall have no obligation to develop any land adjoining the Community in accordance with this Declaration and may develop same in any manner it may desire and further, Declarant, in the event that it should decide to develop any additional land located adjacent to the Community, in its sole discretion, shall have no obligation to make same a part of the Community or subject to this Declaration. **THE DECLARANT SHALL BE UNDER NO OBLIGATION TO DEVELOP ADDITIONAL PHASES AND NONE OF THE REMAINING PORTION OF THE PROPERTY DESCRIBED HEREIN SHALL BE DEEMED A PART OF ANY SCHEME OF DEVELOPMENT UNTIL ACTUALLY BROUGHT UNDER THESE RESTRICTIONS AS HEREIN PROVIDED. THE RIGHT TO ADD FUTURE PHASES SHALL TERMINATE 25 YEARS FOLLOWING THE DATE OF THE ORIGINAL SMITHFIELD TOWNHOMES 3 AT BRUNSWICK PLANTATION (A TOWNHOME COMMUNITY) DECLARATION.**

Section 3. Reservation of Additional Easements and Rights. Declarant reserves for itself and its successors and assigns as developer (and all conveyances by Declarant to Association of Common Element shall be deemed to automatically reserve) easements over, under and across all Common Elements for ingress and egress and for construction and completion of construction and development of future phases including, without limitation, easements for the installation,

construction, reconstruction, repair, maintenance and operation of all utility services; said easements to be in addition to and not in lieu of any other rights or easements reserved by Declarant herein or in any supplement hereto or any other conveyance by or to Declarant or its predecessors in title.

Further, Declarant reserves for itself and its successors and assigns, as developer, easements over, under and across all streets or roads now or hereafter construed within the Community for access to the Additional Real Estate, regardless of whether or not the Additional Real Estate is subjected to the provisions of this Declaration.

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

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

Section 6. Identification of Additional Phases. Nothing in this Declaration shall prohibit Declarant from naming or identifying any Phase or portions thereof by a name other than Smithfield Townhomes 3 at Brunswick Plantation (A Townhome Community) and any such other designation shall in no way prejudice the rights or obligations under this Declaration of any Owner of any Lot in any such section or Phase.

ARTICLE XIII: DISPUTE RESOLUTION AND LIMITATION OF LITIGATION

Section 1. Consensus for Association Litigation. Except as provided in this Section 1, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Class A Members. This Section 1 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of lien), (b) the imposition and collection of assessments as provided in Article V hereof, (c) proceedings involving challenges to ad valorem taxation, (d) suits against providers of goods or services pursuant to a contract, or (e) counterclaims or cross-claims brought by the Association in proceedings instituted against it. This Section 1 shall not be amended unless such amendment is made by Declarant or is approved by the percentages votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 2. Agreement to Encourage Resolution of Disputes Without Litigation

a. Declarant; the Association and its officers, directors, and committee members; all Persons subject to this Declaration; and any Person not otherwise subject to this Declaration who agrees to submit to this Article XII (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community or the operation of the Association without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described

in Section 2 of this Declaration, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 3 in a good faith effort to resolve such Claim.

b. As used in this Article XII, the term “Claim” shall refer to any claim, grievance or dispute arising out of or relating to:

- i. the interpretation, application, or enforcement of the Governing documents;
- ii. the rights, obligations, and duties of any Bound Party under the Governing documents; or
- iii. the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article XVII of this Declaration, which shall not be subject to review.

The following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 3 of this Declaration:

- i. any suit by the Association to collect assessments or other amounts due from any Owner;
- ii. any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;
- iii. any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- iv. any suit in which any indispensable party is not a Bound Party; and
- v. any suit as to which any applicable statute of limitations would expire within 180 days of giving the notice required by Section 3(a) of this Declaration, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article XII.

Section 3. Dispute Resolution Procedures.

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

- i. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

- ii. the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- iii. the Claimant's proposed resolution or remedy; and
- iv. the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

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

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

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated.

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

d. Arbitration.

- i. Except as otherwise provided in Section 3(d)(ii), if a dispute, controversy or claim (whether based upon contract, tort, statute, common law or otherwise) (collectively a “Dispute”) arises from or relates directly or indirectly to the subject matter of this Declaration, including all property, improvements, furniture, fixtures, appliances and the like conveyed pursuant thereto and if the Dispute cannot be settled through negotiation and mediation as set forth in Sections 3(b) and 3(c), any unresolved Dispute shall be submitted to and settled by binding arbitration pursuant to the Revised North Carolina Uniform Arbitration Act (N.C.G.S.A. Ch. 1, Subch. XV, Art. 45C et seq.) (the “Arbitration Act”). The proceeding shall be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”). In the event of a conflict between the Arbitration Act and the AAA rules, the Arbitration Act shall control. The Parties shall be entitled to conduct limited written discovery (Interrogatories and Requests for Production of Documents) of directly relevant evidence only. Additionally, the Parties may conduct limited depositions restricted to depositions of the Parties and designated expert witnesses. The Arbitrator may limit the number of Interrogatories and Requests for Production of Documents upon application of a Party. The arbitration proceedings shall be conducted in the County in which the Home is located, or a mutually agreed upon location, on an expedited basis before a single neutral arbitrator who is a member of the bar of the state where the Home is located, and has been actively engaged in the practice of law for at least fifteen (15) years, specializing in transactions with substantial experience in the subject matter of this Declaration. Any attorney who serves as an arbitrator shall be compensated at a rate equal to his or her current regular hourly billing rate unless the arbitrator agrees otherwise. Upon the request of either party, the arbitrator’s award shall include findings of fact and conclusions of law provided that such findings may be in summary form. Unless otherwise deemed appropriate by the arbitrator(s), the prevailing party shall be entitled to an award of all reasonable out-of-pocket costs and expenses (including attorney’s and arbitrator’s fees) related to the entire arbitration proceedings (including review, if applicable). The arbitration shall be binding and final, and either party shall have the right to seek judicial enforcement of the arbitration award.
- ii. In the event a claim is, or may be, the subject of an express third party warranty issued to a Bound Party, then such claim shall be resolved in accordance with the dispute resolution procedures set forth in the warranty, and the provisions of Section 3(d)(i) shall not and are not intended to apply to such warranty disputes.

In the event a claim is, or may be, subject to provisions of a Purchase Agreement, the provisions of the Purchase Agreement shall control.

iii. Except as otherwise provided, the Claimant agrees to have any Dispute decided by binding arbitration in accordance with the terms of this Article XII, and, to the extent permitted by law, the Claimant knowingly and voluntarily waives and relinquishes any rights the Claimant might possess to have the Dispute litigated and resolved in a court or by a jury trial. In the event the provisions of this Paragraph shall cause an insurance provider to deny or call into question the availability of insurance coverages, the Parties may deem all or some provisions hereof inapplicable as necessary to preserve coverages.

e. All of the provisions of this Article XII shall survive (and continue to be effective after) Closing and/or any earlier termination of this Declaration. Any party to this Declaration may bring an action, including a summary or expedited proceeding, to compel arbitration of any Dispute to which this Article XII applies in any court having subject matter jurisdiction over such action.

f. Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

ARTICLE XIV: CHANGES IN COMMON ELEMENTS

Section 1. Eminent Domain

If a Lot or a portion thereof shall be taken by eminent domain, compensation and the Owner's interests in the Common Elements shall be appropriately allocated among all other Owners, and an amendment reflecting such reallocations shall be recorded promptly. If any part of the Common Elements shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least seventy-five (75%) percent of the total votes in the Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

a. If the taking or conveyance involves a portion of the Common Elements on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining Common Elements to the extent available, unless within sixty (60) days after such taking Declarant, during the Declarant Control Period, and Members representing at least seventy-five (75%) percent of the total votes in the Association shall otherwise agree. Any

such construction shall be in accordance with plans approved by the Board. The provisions of Article IX, regarding funds for restoring improvements shall apply.

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

Section 2. Transfer, Partition, or Encumbrance of Common Elements.

a. Except as this Declaration otherwise specifically provides, the Common Elements shall not be judicially partitioned or subdivided into Lots, nor shall the ownership of the Common Elements be otherwise divided or encumbered in any manner after conveyance to the Association, except upon the approval of Members representing at least Eighty (80%) percent of the total votes in the Association, including a majority of the votes held by Members other than Declarant, and the consent of Declarant if during the Declarant Control Period.

The Association shall have the authority, subject to approval of Members representing a majority of the total votes in the Association, including a majority of the votes held by Members other than Declarant, and the consent of Declarant, if during the Declarant Control Period, to transfer portions of the Common Elements and improvements thereon to appropriate governmental entities or tax-exempt organizations for the maintenance, operation, and preservation thereof; provided, any such transfer shall not relieve such Common Elements from the rights and benefits of the Association and the Members as provided in this Declaration and shall otherwise be subject to the provisions of this Declaration.

ARTICLE XV: GENERAL PROVISIONS

Section 1. Time of Essence. It is agreed that time is of the essence with regard to these restrictions, protective covenants, limitations, and conditions.

Section 2. Enforcement. Subject to the provisions of Article XII hereof, in the event of a violation or breach of any of these restrictions by any Owner or agent, or agent of such Owner, Owners of Lots in the Community, or any of them, jointly or severally, Declarant, and/or Association shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any such event or to recover damages. In addition to the foregoing, Declarant, its successors and assigns, shall have the right, but shall be under no obligation, whenever there shall have been built on any Lot in the Community any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of Owner if, after thirty (30) days written notice of such violation, it shall not have been corrected by Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction, or condition contained in this Declaration, however, long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Declarant or Association employ counsel

to enforce any of the foregoing covenants, condition, reservations, or restrictions because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Declarant/Association's counsel, shall be paid by Owner of such Lot or Lots in breach thereof. Any amount assessed hereunder shall constitute a lien on such Lot and shall be enforceable as herein provided. Failure of Declarant, Association, or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter. In addition, the Board of Directors shall have the authority to enforce the Covenants and Restrictions, including reasonable rules and regulations as outlined in the By-Laws.

Section 3. Fines. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a reasonable fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, Lessees or employees to comply with any covenant, restriction, rule or regulation, provided notice and hearing procedures set out in Article III, Section 24 of the By-laws are followed. Once imposed, fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth in Article VI, Section 1 of this Declaration.

Section 4. Responsibility of Declarant. Declarant herein shall not in any way or manner is liable or responsible for any violation of these restrictions by any person other than itself. In addition, nothing contained in this Declaration shall be deemed to be a representation by Declarant with regard to the requirements of any governmental authority and it shall be the duty of each Owner to comply with any such requirements in addition to the provisions of this Declaration.

Section 5. Rule Against Perpetuities. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then, in the event, such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of North Carolina, and such provision shall be fully effective for said reduced period of time.

Section 6. Binding Effect. All covenants, conditions, limitations, restrictions, easements, and affirmative obligations set forth in this Declaration shall be binding on the Owners of the Lot(s) and their respective heirs, successors, and assigns, and run with the land. All rights, easements and agreements reserved by or granted to Declarant herein shall inure to the benefit of Declarant, its successors and assigns including, without limitation, the right to develop and submit additional phases. Declarant reserves the right in addition to all other rights of Declarant, to assign its rights of consent and approval as set out in this Declaration and any amendment hereto or supplement thereof, to the Association, or any assignee of Declarant's development rights. At such time as Declarant, its successors and assigns no longer owns any Lots or property in the Community, any right of approval reserved to Declarant by this Declaration shall be exercised by the Association.

Section 7. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner of the records of Association at the time of such mailing.

Section 8. Severability and Waiver. 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. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 9. Amendment of Declaration.

a. By Declarant. For so long as Declarant owns any Lot or Dwelling Unit within the Property, this Declaration may be amended by the Declarant, without the consent or joinder of any other Owner or the Association provided that any such amendment does not materially alter or change any Owner's right to use and enjoyment of such Owner's Lot or Dwelling Unit or of the Common Elements or Limited Common Elements as set forth in this Declaration. Any such amendment shall be effective upon recording of same in the Office of the Register of Deeds of Brunswick County, North Carolina. No amendment shall be binding upon any Lot or Owner until fifteen (15) days after a copy of such amendment has been provided to such Owner.

The covenants and restrictions of this Declaration, and any amendments thereto, are appurtenant to and shall run with and be binding upon the Property and the Owners thereof for a term of seventy-five (75) 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 or amended by a vote of the Owners as set forth below.

b. By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, the covenants, restrictions, easements, charges, and liens of this Declaration may be amended, changed, added to, or derogated only by the affirmative vote or written consent, or any combination thereof, of the Owners holding not less than sixty-seven (67%) percent of the votes of the membership in Association, provided, that so long as there is Class B membership, no amendment adopted by the Owners shall be effective unless and until such amendment is approved in writing by the Declarant. Further, the provisions for voting of Class A and Class B Members as hereinabove contained in this Declaration shall also be effective in voting for changes in this Declaration. This Declaration shall only be terminated by the affirmative vote or written consent, or any combination thereof, of the Owners holding not less than ninety (90%) percent of the votes of the membership in Association; however, no rights or easements of Declarant under this Declaration shall be terminated without Declarant's written approval, regardless of whether there is a Class B membership.

Section 10. Validity and Effective Date of Amendments. No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of the Declarant (or the assignee of such right or privilege). Any amendment shall become effective upon recording in the Office of the Register of Deeds for Brunswick County, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.



Section 11. Assignment of Declarant Rights. Declarant reserves the right to assign its rights to a successor or assign who also assumes Declarant's responsibilities.

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

Section 13. Changes in Ownership of Lots. Within fifteen (15) days following any change in the name, address and phone number of a Lot Owner, the new Owner shall give the Board written notice of the changed information and such other information as the Board may reasonably require.

Section 14. Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Elements owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their Deed of Trust holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

ARTICLE XVI: STORMWATER

Section 1. Storm Drainage. The Property and the use thereof is subject to the conditions set forth in State Stormwater Management Permit Number SW8 990323, as renewed and modified from time to time (the "Stormwater Permit"), issued by the Division of Energy, Mineral and Land Resources of the State of North Carolina Department of Environmental Quality. Pursuant to the terms of that Permit, the Declarant hereby states that:

1. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 990323, as issued by the Division of Energy, Mineral and Land Resources under the Stormwater Management Regulations.
2. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit.
3. These covenants are to run with the land and be binding on all persons and parties claiming under them.
4. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina.
5. Alteration of the drainage as shown on the approved plans may not take place without the concurrence of the Division of Energy, Mineral and Land Resources.
6. The maximum built-upon area ("BUA") per lot, in square feet, is as listed below:

<u>Lot(s)</u>	<u>BUA</u>
Lots 1 through 31, inclusive	3,340 square feet

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

7. Each lot will maintain a 30 foot wide vegetated buffer between all impervious areas and surface waters.
8. All runoff from the built-upon areas on the lot must drain into the permitted system. This may be accomplished through a variety of means including roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales to collect the lot runoff and directing them into a component of the stormwater collection system. Lots that will naturally drain into the system are not required to provide these additional measures.

The stormwater retention facility and other elements of the stormwater drainage system are a part of the Common Elements, and, therefore, the maintenance of these items and the costs thereof, as well as the ongoing compliance with the stormwater permit shall be the Association's responsibility and shall be included in the Association's annual budget.

Section 2. Stormwater Permitting. Declarant may cause certain stormwater management systems to be installed on portions of the Property (the "Stormwater Systems"). The portions of the Property on which the Stormwater Systems have been installed (the "Stormwater Property") may be conveyed, assigned, and transferred by the Declarant, in the Declarant's sole discretion, to the Association, without notice or consent of the Association, and the Association shall be deemed to have accepted such conveyances. In that regard, the permits which relate to such Stormwater Systems (the "Stormwater Permits") may be conveyed, assigned, and transferred by the Declarant, in the Declarant's sole discretion, to the Association, without notice or consent of the Association, and the Association shall be deemed to have accepted such conveyances. Should Declarant convey the Stormwater Property and Stormwater Permits to the Association, the Association shall thereby become the permittee pursuant to such Stormwater Permit(s) and shall be perpetually obligated to maintain the Stormwater Systems pursuant to the Stormwater Permit(s).

ARTICLE XVII: ARCHITECTURAL CONTROL

Section 1. Architectural Review Committee. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Review Committee.

Declarant intends that the members of the Architectural Review Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all

inferences in favor of the Architectural Review Committee, could only conclude that such determination constituted an abuse of discretion.

The Architectural Review Committee has the right, but not the obligation, to inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Neither the Architectural Review Committee nor any agent thereof, nor the Declarant, or Association shall be liable in any way for costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Review Committee, Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Architectural Review Committee, Association and/or Declarant make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used. All parties should seek professional construction advise, engineering, and inspections on each lot prior to proposing construction.

Section 2. General. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. All applications for approval of any change in the appearance or the color of any part of the exterior of a residence shall be accompanied by the as-built survey (provided to Owner at the closing of the Owner's respective Lot) illustrating such requested change. The Architectural Review Committee may, in its sole discretion, impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning or other governmental codes. The Architectural Review Committee shall be a permanent committee of the Association and shall administer and perform architectural and landscape review and control functions of the Association.

No building, mailbox, fence, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color 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 Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. No approval shall be required for improvements constructed by, or on behalf of, Declarant by Declarant.

Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. Nothing herein shall require the approval of other than substantial changes to the landscaping on any Lot. For purposes of this Declaration, "substantial changes" shall refer to matters such as addition or removal of street trees, changes to the overall landscape design on the Lot and changes to the overall appearance of the Lot. The planting of seasonal plants and flowers and changes or replacements of individual shrubs shall not require approval. However, there shall be no such

approval of the planting of hedges, walls, fences, structures and/or other improvements prohibited under Article VII, Section 4, below, and any such approval shall be null and void. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, then the request for approval shall be deemed DENIED.

Section 3. No Waiver of Future Approvals. Each owner acknowledges that the members of the Architectural Review Committee reviewing the applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of these restrictions and applicable regulations, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed work until the work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Architectural Review Committee may refuse to approve similar proposals in the future. Approval of applications or plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans or other matters subsequently or additionally submitted for approval.

Section 4. Certificate of Compliance. Any Owner may request that the Architectural Review Committee issue a certificate of compliance certifying that there are no known violations of this Article. The Association shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

Section 5. Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission, receiving antenna or satellite dish (collectively, the "Antennas") shall be erected, placed or maintained on any part of the premises except those expressly permitted pursuant to the applicable FCC Regulations and as set forth in any guidelines imposed by the Architectural Review Committee, which guidelines shall not conflict with the FCC Regulations. Provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the development. Pursuant to 47 C.F.R. Section 1.4000, as amended, to the extent that the Antennas can be installed in such a manner that does not prevent reception of an acceptable quality signal or as to impose unreasonable expense or delay, the Antennas shall be placed above the roof line at the eave; if such Antenna(s) is placed or maintained in such a manner, the Owner does not need to submit an application for approval to the Architectural Review Committee. If the Antenna(s) is placed or maintained anywhere other than the roof, the Owner shall submit an application to the Architectural Review Committee, pursuant to this Article, which shall include the applicable method of screening material the Owner desires to employ to screen the subject Antenna from view of the street. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

Section 6. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, or other improvement shall be placed or altered on any Lot except in accordance with the provisions of this Declaration.

Section 7. Subdivision of Lot. No Lot shall be subdivided and no building or residence, including porches, decks or projections of any kind, shall be erected so as to extend over or across any of the Setbacks as hereinafter established except as herein provided.

Section 8. Alteration of Setback Lines in the Best Interest of Development. Where because of size, configuration, natural terrain, or any other reason in the opinion of the Declarant, it would be in the best interest of the development of the Community that the setback lines of any Lot should be altered or changed, then the Declarant reserves unto itself, its successors or assigns, and no other, the right to grant a variance to the Lot Owner or in the case of a Lot owned by Declarant, the Declarant may change said setback lines to meet such conditions. The Declarant specifically reserves the right to transfer and assign this right of approval to the Board of Directors. Notwithstanding the forgoing, any proposed change of setback lines that is less than the minimum established by any Brunswick County, North Carolina zoning ordinance must also be approved by the applicable governmental authorities of Brunswick County, North Carolina.

Section 9. Temporary Structures. No structure of a temporary character, tent, shack, basement, garage, shed, barn or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

Section 10. Garages. No garage shall be utilized for other than the purpose of parking and storage of vehicles and other types of items normally stored in garages in residential neighborhoods. No garage shall be converted into or used for living space without prior approval of the Board of Directors.

Section 11. Outside Use of Lots. No planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the ARC. Except as approved by the ARC, vegetable gardens may only be located in the rear yard of a Lot and cannot exceed 8' x 10' in size.

Section 12. Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Community. Exterior sculpture, fountains, gazebos, arboretums, flags, and similar items are subject to Declarant's or Board of Director's prior approval; provided, however, that nothing contained herein shall prohibit the appropriate display of the American flag or the North Carolina flag, provided such flag is no greater than four (4) feet by six (6) feet in dimension. Should the ARC approve a flag or if such flag is the American flag, the flagpole may only be mounted to the exterior of the Dwelling Unit.

Section 13. Play Structures and Yard Accessories. All yard accessories and play structures, including fixed and portable basketball backboards or hoops, as well as any other fixed game structures, shall be subject to review by the ARC and prior approval. Should it be determined that a play structure or yard accessory was erected on a Lot without the necessary approval, the



Declarant, its agents or assigns shall have the right from time to time to enter said Lot without any liability for damage, wrongful entry, trespass or otherwise for the purpose of removing the unauthorized structure/accessory.

Section 14. Elevation and Drainage Changes. No changes in the elevation, topography or drainage characteristics of any Lot within the Community shall be made without the prior written approval of the Declarant or the ARC once Declarant Class B status has been terminated.

Signature page follows.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed by its proper officers and its corporate seal to be affixed thereto on Monday, 2021.
December 21

Clayton Properties Group, Inc.
A Tennessee corporation

By: Dave Jolliffe
Name: D Jolliffe
Its: LD Manager

Way County, State of SC

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Dave Jolliffe, as LD manager of Clayton Properties Group, Inc.

Date: 12/21/21

My Commission Expires:

10/10/2024

Notary Public [Signature]
Print Name: Kara Keith

[Affix Notary Stamp or Seal below]

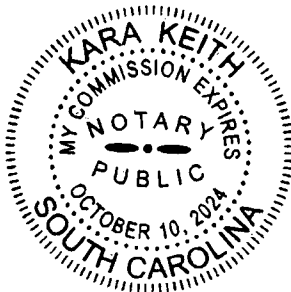




EXHIBIT A: DESCRIPTION OF REAL ESTATE

All of Lots 1 through 36 of The Townhomes at Smithfield III at Brunswick Plantation and Common Area containing 1.26 acres as described on a plat entitled "Survey for Smithfield Townhomes 3 of Lots 1-31" recorded in Map Cabinet 131, Pages 78-80 Brunswick County Register of Deeds.

EXHIBIT B: LIMITED COMMON ELEMENTS

The term "Limited Common Elements" shall include, in addition to any other classifications of Limited Common Elements contained in the Declaration, the following:

1. Each front porch and covered lanai/optional screen porches, if any. Notwithstanding that the covered lanai/optional screen porches, if any, are Limited Common Elements, such covered lanai/optional screen porches shall be regularly cleaned by the respective Owners.
2. The driveway, sidewalk and rear patio, if applicable, associated with each Townhome.
3. The covered porches adjacent to each Townhome. All landscaping and irrigation systems within such areas shall be maintained by the Association as a Common Expense and no alterations to such landscaping may be made by an Owner without the prior written approval of the Board of Directors. These areas may not be used for storage or for placement of other items other than as specifically set forth herein.
4. The fencing and landscape screening associated with each Townhome. All fencing and landscape screening shall be maintained by the Association as a Common Expense and no alterations to such fencing or landscape screening may be made by an Owner without the prior written approval of the Board of Directors.

The Limited Common Elements are for the exclusive use and benefit of the Townhome to which they are attached, subject to rules and regulations which may be promulgated by the Board of Directors of the Association.

Additional Limited Common Elements may be added if any Additional Real Estate becomes a part of Smithfield Townhomes 3 at Brunswick Plantation (a Townhome Community) in accordance with the terms of this Declaration.



EXHIBIT C: ARTICLES OF INCORPORATION

(See attached)



NORTH CAROLINA

Department of the Secretary of State

To all whom these presents shall come, Greetings:

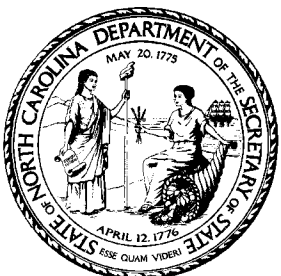
I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF INCORPORATION

OF

SMITHFIELD AT BRUNSWICK PLANTATION 3 HOMEOWNERS' ASSOCIATION, INC.

the original of which was filed in this office on the 24th day of November, 2021.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 24th day of November, 2021.

Elaine F. Marshall

Secretary of State



SOSID: 2311374 Date Filed: 11/24/2021 3:26:00 PM Elaine F. Marshall North Carolina Secretary of State C2021 328 00700

State of North Carolina Department of the Secretary of State

ARTICLES OF INCORPORATION NONPROFIT CORPORATION

Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. The name of the nonprofit corporation is: Smithfield at Brunswick Plantation 3 Homeowners' Association, Inc.

2. (Check only if applicable.) The corporation is a charitable or religious corporation as defined in NCGS §55A-1-40(4).

3. The name of the initial registered agent is: Dave Jolliff

4. The street address and county of the initial registered agent's office of the corporation is:

Number and Street: 211 Racine Drive, Suite 101

City: Wilmington State: NC Zip Code: 28403-8842 County: Brunswick

The mailing address if different from the street address of the initial registered agent's office is:

Number and Street or PO Box:

City: State: NC Zip Code: County:

5. The name and address of each incorporator is as follows:

Table with 2 columns: Name, Address. Row 1: Kara Keith, 1000 29th Avenue North Myrtle Beach SC, 29577-3171 United States

6. (Check either "a" or "b" below.)

a. The corporation will have members.

b. The corporation will not have members.

7. Attached are provisions regarding the distribution of the corporation's assets upon its dissolution.

8. Attached are provisions regarding the limitation of activities of the corporation.



9. Any other provisions which the corporation elects to include are attached.

10. The street address and county of the principal office of the corporation is:

Principal Office Telephone Number: (843) 300-2684

Number and Street: 211 Racine Drive, Suite 101

City: Wilmington State: SC Zip Code: 28403-8842 County: Brunswick

The mailing address if different from the street address of the principal office is:

Number and Street or PO Box:

City: State: Zip Code: County:

11. Principal Office Email Address: Privacy Redaction

12. (Optional): Listing of Officers (See instructions for why this is important)

Name	Address	Title

13. (Optional): Please provide a business e-mail address: Privacy Redaction

The Secretary of State's Office will e-mail the business automatically at the address provided at no charge when a document is filed. The e-mail provided will not be viewable on the website. For more information on why this service is being offered, please see the instructions for this document.

14. These articles will be effective upon filing, unless a future time and/or date is specified:

This is the 24th day of November, 2021.

Incorporator Business Entity Name

Kara Keith

Signature of Incorporator

Kara Keith Incorporator

Type or print Incorporator's name and title, if any

NOTES:

1. Filing fee is \$60. This document must be filed with the Secretary of State.

Item 7: The Dissolution Clause

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

**EXHIBIT D: BY-LAWS OF SMITHFIELD AT BRUNSWICK PLANTATION 3
HOMEOWNERS' ASSOCIATION, INC.**

ARTICLE I: NAME, PRINCIPAL OFFICE AND DEFINITIONS

Section 1. Name. The name of the Association shall be Smithfield at Brunswick Plantation 3 Homeowners' Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the State of North Carolina shall be located in the County of Brunswick. The Association may have such other offices, either within or without the State of North Carolina as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in that Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Smithfield Townhomes 3 at Brunswick Plantation (A Townhome Community) (as amended, renewed or extended from time to time, and hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

Section 4. Purpose. The purpose of the Association is to manage the affairs of Smithfield Townhomes 3 at Brunswick Plantation (A Townhome Community), a Community established pursuant to the terms of the Declaration therefor, filed or to be filed in the Office of the Register of Deeds for Brunswick County, North Carolina.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any member or individual person, firm or corporation.

The Association shall have all of the common law and statutory powers of a nonprofit corporation. The Association shall also have all of the powers necessary to implement the purposes of the Association and to provide for the general health and welfare of its membership.

ARTICLE II: ASSOCIATION – MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

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

- a. Class A. Class A members shall be all those Owners as defined in Article IV of the Declaration. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds such interest or interests in any Lot, all such persons shall be members; however, they shall select one (1) member to vote, which such member shall be designated as the "Voting Member" and shall be so designated in writing to the Secretary of the Association. In no event shall more than one (1) vote be cast with respect to any Lot.
- b. Class B. The sole Class B member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the class A votes plus one provided that the Class B membership shall continue only as set forth in Article IV of the Declaration. The Class B membership shall cease and be converted to Class A membership pursuant to the terms of Article IV, Section 5, of the Declaration.

Section 3. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Voting Members as may be designated by the Board of Directors either within the properties or as convenient thereto as possible and practical.

Section 4. Annual Meetings. The first meeting of the membership, whether a regular or special meeting, shall be held within ninety (90) days after the expiration of one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur no more than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the membership shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting shall be held at a date and time as set by the Board of Directors.

Section 5. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Voting Members representing at least ten (10%) percent of the total votes of the Association.

Section 6. Notice of Meetings. Written or printed notice stating the time and place of any meeting shall be delivered to each Voting Member entitled to vote at such meeting. Notice shall be either (1) hand-delivered, (2) sent prepaid by United States mail, or (3) sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the Voting Member, not less than ten (10) nor more than sixty (60) days in advance before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the Association's records, with postage prepaid. Notice given electronically shall be deemed to be delivered when dispatched, unless an error message is reported back to the sending system.

Section 7. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member or alternate shall be deemed waiver by such Voting Member of notice of the time, date and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 8. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time not more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. The required quorum at the reconvened meeting shall be one-half of the required quorum at the preceding meeting.

If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

Section 9. Voting. The voting rights of the Members shall be as set forth in the Articles of Incorporation, and such voting rights provisions are specifically incorporated herein.

Section 10. Proxies. Voting Members may vote in person or by proxy.

Section 11. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners or other group as the context may indicate, totaling more than fifty (50%) percent of the total number.

Section 12. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by alternate of the Voting Members representing more than fifty (50%) percent of the total vote of the Association shall constitute a quorum at all meetings of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Any provision in the Declaration concerning quorums is specifically incorporated herein. So long as a quorum is present at the opening of the meeting, business may be transacted until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum in attendance. Further, at any adjourned meeting at which a quorum is present at the reconvening of such meeting, any business may be transacted which might have been transacted at the original meeting notwithstanding the withdrawal of enough members to leave less than a quorum in attendance.

Section 13. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 14. Action Without a Meeting. Any action required by law to be taken at a meeting of the Voting Members, or any action which may be taken at a meeting of the Voting Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Voting Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Voting Members.

ARTICLE III: BOARD OF DIRECTORS NUMBERS, POWERS, MEETINGS

A. Composition and Selection.

Section 1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors each of whom shall have one (1) vote. Except as provided in Section 2 of this Article, the Directors shall be Members. In the case of an Owner which is a corporation or partnership, the person designated in writing to the Secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a Director. The initial Board of Directors shall consist of three (3) persons, but may be increased by Declarant at any time during the Class B control period to five (5) persons. The names and addresses of the first Board of Directors of the Association, who shall hold office until the first annual meeting of members and until qualified successors are duly elected and have taken office, shall be as follows:

President	Dave Jolliff	11822 Highway 17 Bypass S., Murrells Inlet, SC 29576
Vice President	Mark Priewe	11822 Highway 17 Bypass S., Murrells Inlet, SC 29576
Secretary/Treasurer	Georgia Kenny	11822 Highway 17 Bypass S., Murrells Inlet, SC 29576

Section 2. Directors During Class B Control. The Directors who shall serve on the Board of Directors of the Association shall be selected by the Class B Member acting in its sole discretion

and shall serve at the pleasure of the Class B Member until the first annual meeting of the membership following termination of Class B control at which time the Board of Directors shall be increased to five (5) Members, if not previously increased by Declarant to five (5) persons.

Within one hundred twenty (120) days after termination of Class B control, the Class B member shall call a meeting, as provided in Article II, Section 5, of these By-Laws for special meetings, to advise the membership of the termination of the Class B member's control or, in the alternative, shall notify each member by U. S. Mail that the Class B membership has terminated.

The Directors selected by the Class B member pursuant to this Section need not be Members as provided in Section 1 of this Article.

Section 3. Veto. This Section 3 may not be amended without the express, written consent of the Class B member, so long as the Class B membership exists. So long as the Class B membership exists, the Class B member shall have a veto power over all actions of the Board and any committee, as is more fully provided in this Section. This veto power shall be exercisable only by the Class B member, its successors, and assigns who specifically take this power in a recorded instrument. The veto power shall be as follows: No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

- a. The Class B member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings with Article III, Sections 10 and 11, of these By-Laws as to regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and
- b. The Class B member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of the meeting relative to any prospective action, policy, or program to be implemented by the Board, any committee, or the Association. The Class B member and its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class B member shall have and is hereby granted a veto power over any such action, policy, or program authorized by any committee or the Board of Directors and to be taken by any committee or Board of the Association or any individual member of the Association if Board, committee, or Association approval is necessary for said action. This veto may be exercised by the Class B member, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. Any veto shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association.

Section 4. Number of Directors. The number of Directors in the Association shall not be less than three (3) nor more than five (5), as provided below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation.

Section 5. Nomination of Directors. Except with respect to Directors selected by the Class B Member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Voting Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 6. Election and Term of Office. Notwithstanding any other provision contained herein: At the first annual meeting after the termination of Class B control, five (5) Directors shall be elected. Two (2) of the Directors, elected pursuant to this Section, shall be elected to serve for a term of three (3) years. Two (2) of the remaining Directors shall be elected to serve for a term of two (2) years, with the final Director elected to serve for a one (1) year term. Members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association. Directors may be elected to serve any number of consecutive terms. Each member elected thereafter shall be elected for a two (2) year term.

The Association shall publish the names and addresses of all officers and board members of the Association within thirty (30) days of their election.

Section 7. Removal of Directors and Vacancies. Any Director of the Association may be removed, with or without cause, by a vote of the Voting Members with a majority vote of the membership. Any Director whose removal is sought will be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall then and there be elected to fill the vacancy by the Voting Members responsible for such removal.

Any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment for more than thirty (30) days may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board. In the event of the death, disability, or resignation of a Director, a vacancy may be declared by the Board and it may appoint a successor. Any Director appointed by the Board shall serve for the remainder of the term such successor was appointed to fill.

Section 8. Voting Procedure for Directors. At any election of Directors to the Board of Directors, each Voting Member may cast, in respect to each vacancy, as many votes as he or she is entitled to exercise under the Articles of Incorporation. The candidates receiving the largest number of votes shall be elected.

B. Meetings.

Section 9. Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by a majority of Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telegram, charges prepaid. All such notices shall be given by use of the Director's telephone number or shall be sent to the Director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 12. Notice. Notices of Board of Directors meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) facsimile, computer, fiber optics or other electronic communication device, with confirmation of transmission. All such notices shall be given at the Director's telephone number, fax number, electronic mail number, or sent to the Director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices sent by personal delivery, telephone, or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting.

Section 13. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly

held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 14. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting until such time and place as they may determine. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 15. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by Members holding a majority of the total vote of the Association at a regular or special meeting of the Association; provided any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors.

Section 16. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

Section 17. Open Meetings. Subject to the provisions of Section 18 of this Article, all meetings of the Board shall be open to all Voting Members, but Voting Members other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a Director. In such case, the President may limit the time any Voting Member may speak.

Section 18. Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 19. Powers. Subject to the restrictions and limitations contained in the Declaration, the Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, the Board of Directors shall have the power and authority to act on all matters as are not provided for by the Declaration, Articles, or these By-Laws as directed exclusively by the Voting Members or the membership generally.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

- a. preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;
- b. making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Lot's proportionate share of the Common Expenses shall be payable in equal monthly installments, or as determined by the Board of Directors;
- c. providing for the operation, care, upkeep, and maintenance of all of the Common Elements;
- d. designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Elements and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- e. collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the Directors' best business judgment, in depositories other than banks;
- f. making and amending rules and regulations;
- g. opening of bank accounts on behalf of the Association and designating the signatories required;

- h. making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Elements in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;
- i. enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- j. obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- k. paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;
- l. keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and Lenders, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting principles;
- m. making available to any prospective purchaser of a Lot, any Owner of a Lot, any first Lender, and the holders, insurers, and guarantors of a first Deed of Trust on any Lot, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Lot, and all other books, records, and financial statements of the Association; and
- n. permitting utility suppliers to use portions of the Common Elements reasonably necessary to the ongoing development or operation of the properties.

Section 20. Management Agent.

- a. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 19 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

- b. No management contract may have a term in excess of three (3) years and must permit termination by either party without cause and without termination fee or penalty on written notice of not less than sixty (60) days.

Section 21. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

- a. accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- b. accounting and controls shall conform to generally accepted accounting principles;
- c. cash accounts of the Association shall not be commingled with any other accounts;
- d. no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise unless it benefits the Association;
- e. any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;
- f. commencing at the end of the month in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:
 - i. an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
 - ii. a variance report reflecting the status of all Association ledger accounts in an "actual" versus "approved" budget format;
 - iii. a balance sheet as of the last day of the preceding period; and
 - iv. a delinquency report listing all Owners who are delinquent in paying the assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (A monthly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of each month unless otherwise determined by the Board of Directors); and
- g. an annual report as of the end of the fiscal year consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited, reviewed, or unaudited

basis, as determined by the Board, by an independent certified public accountant for any fiscal year in which the gross income of the Association exceeds Fifty Thousand and No/100 (\$50,000.00) Dollars. If said report is not prepared by an independent certified public accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

Section 22. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Elements or for the purpose of funding budgetary shortfalls, without the approval of the membership; provided, however, the Board shall obtain Voting Member approval by majority vote for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year.

Section 23. Rights of the Association. With respect to the Common Elements, and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other Owners or residents associations, both within and without the properties. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the Association.

The Association shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) executed during the period of Class "II" control unless such contract, lease or other agreement contains a right of termination exercisable by either party without penalty at any time, with or without cause, upon not more than ninety (90) days' notice to the other party.

Notwithstanding anything to the contrary contained herein, the Association, through its Board of Directors, shall have the right to enter into a declaration of easement and covenant to share costs or similar arrangement whereby the Association assumes maintenance responsibility for property which it does not own, or grants easements to entities which are not Members, in consideration for payment by the Owner of such property or such nonmembers of all or a portion of the costs associated with such maintenance or use.

Section 24. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or to use the Common Elements for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any occupant of a Lot violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner

shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

- a. Notice. Prior to imposition of any sanction hereunder, except the suspension of voting rights for nonpayment of assessments, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.
- b. Hearing. If a hearing is requested in a timely manner, the hearing before the Covenants Committee shall be held in executive session affording the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.
- c. Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.
- d. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

ARTICLE IV: OFFICERS

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the membership, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term. The names and addresses of the first Board of Directors of the Association, who shall hold office until the first annual meeting of members and until qualified successors are duly elected and have taken office, shall be as follows:

President	Dave Jolliff	11822 Highway 17 Bypass S., Murrells Inlet, SC 29576
Vice President	Mark Priewe	11822 Highway 17 Bypass S., Murrells Inlet, SC 29576
Secretary/Treasurer	Georgia Kenny	11822 Highway 17 Bypass S., Murrells Inlet, SC 29576

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have the responsibility for the preparation of the budget as provided for in the Declaration.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors. Provided however, agreements, contracts and checks may be executed by the Management Agent.

ARTICLE V: COMMITTEES

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and conduct all hearings held pursuant to Article III, Section 24 of these By-Laws.

ARTICLE VI: MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

- a. Inspection by Members and Lenders. The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Lender, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the properties as the Board shall prescribe.
- b. Rules for Inspection. The Board shall establish reasonable rules with respect to:
 - i. notice to be given to the custodian of the records;
 - ii. hours and days of the week when such an inspection may be made; and
 - iii. payment of the cost of reproducing copies of documents requested.

- c. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

- a. if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member or Voting Member; or
- b. if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Prior to the termination of the Declarant Control Period, Declarant may unilaterally amend these By-Laws at any time, and from time to time, if such amendment is necessary (i) to bring any provision into compliance with any applicable government statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units and/or Lots; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of Deed of Trust loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots and/or Units. For so long as Declarant owns any Lot or Dwelling Unit (as defined in the Declaration) within the Property, Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon the rights of the Members. Thereafter and otherwise, but subject to the provisions hereinafter provided, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent of Voting Members representing two-thirds (2/3) of the total votes of the Association, including two-thirds (2/3) of the votes of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Further, no amendment of any provision reserving a right specifically in favor of the Declarant may be amended without the Declarant's express consent. No amendment shall be effective until recorded in the public records of Brunswick County, North Carolina.

ARTICLE VII: LIABILITY AND INDEMNIFICATION

Section 1. Liability to the Association. No person shall be liable to the Association for any loss or damage suffered by the Association on account of any action taken or omitted to be taken by such person in good faith as a Director, officer, employee or agent of the Association if such person (i) exercised or used the same degree of care as an ordinary prudent person in a like position would use under similar circumstances; or (ii) took or omitted to take such action in reliance upon information, opinions, reports or statements, including financial statements and other financial data, in each case, prepared or presented by any officer, employee or committee of the Board of Directors of the Association, or legal counsel, public accountants or other professional persons engaged by the Association, but such person shall not be considered to be acting in good faith if such person has actual knowledge concerning the matter in questions that would cause such reliance to be unwarranted; or (iii) has not breached or failed to perform the duties of their position or office in compliance with the Act, Articles of the Association and By-Laws of the Association in a manner constituting willful misconduct or recklessness.

Section 2. Indemnification. Subject to North Carolina law, the Association shall indemnify any Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, against expenses (including attorney's fees), judgment, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the defense of any action, suit, or proceeding, whether civil, administrative, or investigative, in which he was, is made, or is threatened to be made a party by reason of being or having been a Director or officer or former Director or officer of the Association, or serving or having served at its request as a director or officer of another corporation, except in relation to matters as to which the person's acts or omissions are adjudged in the action, suit, or proceeding to be a breach of the person's duty to the Association. Such duty to the Association shall be to discharge the duties of the office in a manner that does not constitute willful misconduct or recklessness in the exercise of good faith and reasonable belief that the action or actions were in or not opposed to the best interest of the Association. The termination of any action, suit, or proceeding by adverse judgment, order, or settlement (whether with or without court approval) shall not, alone, create a presumption that the Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, did not properly discharge his duty to the Association. If several claims, issues, or matters are involved, a Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, may be entitled to indemnification concerning some matters even though indemnification may or may not be given concerning other matters. Any Director or officer serving in any capacity for another corporation, who were it not for the influence or vote of the Association would not be so serving, shall be deemed to be serving at the request of the Association. In addition:

- a. To the extent that an individual has been successful on the merits or otherwise in the defense of any action, suit, or proceeding referred to in this Section 2, or in the defense of any claim, issue or matter therein, the individual shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred in connection therewith.

- b. Any indemnification, against underlying liability, provided for in this Section 2 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of any Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 1. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; (b) if such an independent quorum is not obtainable, by majority vote of a committee duly designated by the full Board of Directors (in which designation directors who are parties may participate), consisting solely of two (2) or more directors not at the time parties to the proceeding; (c) by special legal counsel (1) selected by the independent quorum of the Board of Directors (or the independent committee thereof if no such quorum can be obtained), or (2) if no such independent quorum or committee thereof can be obtained, selected by majority vote of the full Board of Directors (in which selection directors who are parties may participate); or (d) by the Members, who are not directors who are at the time parties to the proceeding. Notwithstanding the foregoing, any Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, shall be able to contest any determination that he or she has not met the applicable standard of conduct, by petitioning a court of appropriate jurisdiction.
- c. Expenses incurred in defending any action, suit, or proceeding, whether civil, administrative, or investigative, may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of a written undertaking by or on behalf of any Director or officer or former Director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, to repay the amount paid by the Association if it shall ultimately be determined that he or she is not entitled to indemnification as provided in the Articles of Incorporation. No advance shall be given if the Association has completed the determination of conduct procedure as provided for in Section 2(b) and it is determined that the individual will be precluded from indemnification.
- d. The indemnification provided by this Section 2 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any By-Laws, agreement, vote of members or disinterested Directors, as a matter of law, or otherwise, both as to actions in the officer's or director's official capacity and as to actions in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

The indemnification and advancement of expenses provided by, or granted pursuant to the Articles of Incorporation shall vest at the time of occurrence or performance of any event, act or omission giving rise to any action, suit or proceeding of the nature referred to in these Articles and, once



vested, shall not later be impaired as a result of any amendment, repeal, alteration or other modification of any or all of these provisions.

IN WITNESS WHEREOF, Smithfield at Brunswick Plantation 3 Homeowners' Association, Inc., has caused these presents to be executed this 21st day of December, 2021.

SMITHFIELD AT BRUNSWICK PLANTATION 3
HOMEOWNERS' ASSOCIATION, INC.

By: DAVE JOLLIFF
Name: D. Joliff
Its: HOA President