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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
CAPE FEAR NATIONAL AT BRUNSWICK FOREST**

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STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CAPE FEAR NATIONAL AT BRUNSWICK FOREST** (herein "Declaration") is made effective as of the 1st day of December, 2008 by **FUNSTON LAND & TIMBER, LLC**, a North Carolina limited liability company with its principal offices in Brunswick County, North Carolina (herein, "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Brunswick County, North Carolina, known as **CAPE FEAR NATIONAL AT BRUNSWICK FOREST** (referred to herein as "Cape Fear National") which consists or will consist of detached single family dwellings, which real property is more particularly described by Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Declarant now owns or may acquire other lands which at Declarant's option and subject to the terms and conditions of the Master Declaration, may be added to Cape Fear National; and

WHEREAS, Cape Fear National is a "Neighborhood" within a larger planned community known as **BRUNSWICK FOREST**, and is subject to and bound by that Declaration of Covenants, Conditions, and Restrictions for Brunswick Forest Residential Property (the "Master Declaration"), recorded in Book 2359, Page 362, of the Brunswick County Registry, as the same may be amended from time to time; and

WHEREAS, Declarant desires to subject the Property to this Declaration and form an



association of owners within Cape Fear National at Brunswick Forest to provide for, among other things, the preservation of the property values and the desirability and attractiveness of the real property in Cape Fear National, and to provide for the establishment and the continued maintenance of the Limited Common Area and the landscaping of lawns of the Units owned by the Owners of Units in Cape Fear National.

NOW THEREFORE, Declarant declares that the Property described in Exhibit A shall be held, sold, and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, and assigns.

ARTICLE I
Definitions

The definitions of terms as set out in the Master Declaration, except as specifically modified or changed by this Declaration, are adopted and incorporated herein by reference.

The following additional definitions shall apply for purposes of this Declaration:

"Board of Directors" or "Board" shall be used interchangeably and means the body responsible for administration of the Cape Fear National Association.

"Bylaws" shall mean the Bylaws of the Cape Fear National Association, as they may be modified or amended from time to time. The Cape Fear National Association shall make the current Bylaws available to Owners but shall not be required to record the same.

"Cape Fear National Association" or "Association" shall mean and refer to the "Cape Fear National at Brunswick Forest Neighborhood Association, Inc.", a North Carolina non-profit corporation, its successors and assigns.

"Common Area": all real and personal property, including easements, which the Brunswick Forest Master Association, Inc. owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the owners of Brunswick Forest.

"Common Expenses" shall mean any and all expenditures made by or financial liabilities of the Cape Fear National Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws and N.C.G.S. § 47F-1-103(5), including but not limited to the maintenance of any Limited Common Areas.

"Landscape Guidelines" shall mean the guidelines and standards for design, landscaping, care and grooming of Lawn Maintenance and Landscape Elements, as said guidelines and standards may be amended from time to time. The initial Landscape Guidelines shall be prepared by the Declarant, who, subject to Master Declarant's consent, shall have the full authority to amend the same during the Declarant Control Period (as said period is defined in Article IV). After the Declarant Control Period, the Cape Fear National Association may amend the Cape Fear National Landscape

Guidelines if sixty-seven percent (67%) of the then Unit Owners agree. The Declarant shall make the Cape Fear National Landscape Guidelines available to Owners but shall not be required to record the same.

“Lawn Maintenance and Landscape Elements” shall mean all real and personal property, including easements, which the Declarant or the Cape Fear National Association may maintain within the Property from time to time. This term shall include the care and grooming of all vegetative elements existing on each Unit beginning at the time said Unit is conveyed from a builder to a Member of the Cape Fear National Association.

“Limited Common Area” shall mean all real and personal property which Funston Land & Timber, LLC, as Master Declarant under the Master Declaration, has designated or designates at any time for the exclusive use or primary benefit of Owners and occupants within Cape Fear National, as more particularly described in Article VI. Limited Common Areas may be designated in the Master Declaration, this Declaration, or may be shown and designated on any maps of Cape Fear National or Brunswick Forest which are or may be recorded in the Brunswick County Registry; or may be designated in any Supplemental Declaration or amendment to the Master Declaration annexing additional properties. Unless the Master Declarant designates and reserves Limited Common Areas for the exclusive use of specific Units, then Limited Common Area shall be deemed to serve all of the Units within Cape Fear National and all costs associated with the maintenance, repair, replacement and insurance thereof shall be a Common Expense.

“Master Association” shall mean Brunswick Forest Master Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

“Master Governing Documents” shall mean the Master Declaration and any amendments of supplemental declarations thereto, the By-Laws and Articles of Incorporation of the Master Association, the Architectural Design Standards, the Restrictions and Rules, resolutions by the Master Association Board of Directors, and recorded plats of Brunswick Forest, as any one or more of which may be amended from time to time.

“Member” shall mean a person subject to membership in the Cape Fear National Association pursuant to Article IV.

“Owner” shall mean the record owner, whether one or more persons or entities, of fee simple title to any Unit, but excluding those parties who have an interest in a Unit merely as security for the performance of an obligation.

“Member” shall mean a person subject to membership in the Cape Fear National Association pursuant to Article IV.

“Unit” shall mean any portion of the Property, whether improved or unimproved, designated for separate ownership by an Owner and shown on a recorded subdivision plat. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon.



ARTICLE II
Master Declaration

Declarant hereby adopts by reference, as if fully set out herein, all provisions of the Master Declaration, and any supplements or amendments thereto presently existing or hereafter adopted.

ARTICLE III
Architectural Design Standards

Section 1. Cape Fear National Architectural Standards. In addition to the guidelines and restrictions contained in the Master Declaration and this Declaration, the Property shall be subject to any architectural design standards for Cape Fear National at Brunswick Forest (the "Cape Fear National Architectural Standards") which may be adopted by the Architectural Review Committee (herein the "ARC") of the Master Association in accordance with the provisions of the Master Declaration.

Section 2. Obligation to Diligently Pursue Construction; Options to Purchase or Complete Construction.

(a) Each Owner agrees to use its best efforts to commence construction of improvements on or before the day that is ten (10) years after the date of the Recordation of a deed from Declarant or an affiliate of Declarant to a party other than Declarant or an affiliate of Declarant (each such Recordation being referred to herein as a "Declarant Conveyance").

(b) Once construction has been initiated on a Unit, the Owner thereof must complete construction within one (1) year.

(c) If an Owner has not commenced construction within ten (10) years after a Declarant Conveyance as required by Article III(2)(a), then in such case, Declarant may at any time within a period of one hundred eighty (180) days from the expiration of such ten (10) year period, at Declarant's option, repurchase such Unit from the Owner and require the Owner to reconvey such property to Declarant or its designee, free and clear from all liens and encumbrances not otherwise imposed by this Declaration. If such option is exercised, Declarant shall refund or pay to the Owner (as the case may be) a purchase price equal to ninety percent (90%) of the original purchase price paid by Owner to Declarant (or the affiliate of Declarant, as the case may be) and enter into exclusive possession of such property free and clear from all liens and encumbrances not otherwise imposed by this Declaration. The Owner shall be specifically liable to Declarant for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in retaking and restoring the property to its condition as of the date of the applicable Declarant Conveyance, and such costs and expenses shall be deducted from the purchase price. In the event the Owner shall have altered the property in any manner, by making partial improvements, or otherwise, from and after the applicable Declarant Conveyance, the Owner shall also be liable to Declarant for the reasonable cost of restoring the Unit to its condition as of the date of such Declarant Conveyance (although Declarant shall have the option to use such monies for the purpose of completing any such improvements if Declarant so desires).

The option reserved in this Article III(2)(c) shall be exercised by giving written notice to the Owner at his or its last known address and such notice shall be deemed to have been given at the



time that it is deposited, properly addressed, certified mail, postage prepaid, in an official depository of the United States Postal Service. Declarant agrees to subordinate its rights under this Article III(2)(c) to the rights of any Mortgagee providing construction or interim financing to any Owner for the construction of improvements on any such Owner's Unit.

(d) If an Owner has not commenced construction within ten (10) years after a Declarant Conveyance as required by Article III(2)(a) and Declarant has elected not to repurchase the Unit as provided in Article III(2)(c) above, OR if an Owner has not completed construction within one (1) year following commencement thereof as required by Article III(2)(b), then in such case the Master Association, the Declarant, the Board and the Cape Fear National Association shall each have the right (but not the obligation) to complete such construction on Owner's behalf and at such Owner's expense. In the event the Master Association, the Declarant, the Board or the Cape Fear National Association exercises the right provided in the immediately preceding sentence, then the Master Association, the Declarant, the Board and/or the Cape Fear National Association (as the case may be) shall be entitled to collect from such Owner, in addition to a reimbursement of all costs expended in the completion of construction of the Unit, an administrative fee for such work, which fee shall be equal to twenty percent (20%) of the costs incurred by such party in completing the work. Any and all of the foregoing costs and fees that may be incurred by or payable to the Master Association, the Declarant, the Board and/or the Cape Fear National Association shall be a charge and continuing lien upon such Unit until paid, and Declarant, the Board and/or the Cape Fear National Association may bring an action against such Owner, or foreclose the lien against the property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and, in either event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount payable to the Master Association, the Declarant, the Board and/or the Cape Fear National Association.

(e) If an Owner has not completed construction within one (1) year following commencement thereof as required by Article III(2)(b) and Declarant has elected not to complete the construction on Owner's behalf as provided in Article III(2)(d) above, then in such case the Master Association, the Declarant, the Board and the Cape Fear National Association shall each have the right (but not the obligation) to establish and levy fines for violations of this Article, including fines for continuing violations thereof. If the fines are not paid, the Master Association and or the Cape Fear National Association may levy Specific Assessments in accordance with the Master Declaration or this Declaration.

(f) The terms and conditions of this Article III(2) shall not apply to Declarant or any affiliate of Declarant or to any property within Cape Fear National owned by Declarant or any affiliate of Declarant.

ARTICLE IV

Cape Fear National at Brunswick Forest Neighborhood Association, Inc.

Section 1. Membership and Voting Rights. Every Owner of a Unit which is subject to this Declaration shall be a member of Cape Fear National at Brunswick Forest Neighborhood Association, Inc. (referred to herein as the "Cape Fear National Association"). Membership shall be appurtenant to and may not be separated from ownership of any Unit. Such membership is not intended to apply to those persons or entities holding an interest in any Unit merely as security for the performance of an obligation to pay money, e.g., mortgages or deeds of trust; however, if such



secured party should realize upon his security and become the fee owner of a tract, it and its assigns will be subject to all of the requirements and limitations imposed in this Declaration on Owners of tracts within Cape Fear National, including those provisions with respect to payment of Assessments.

Section 2. Membership Classes. The Cape Fear National Association shall initially have two classes of voting membership (additional classes of membership may be added to the Cape Fear National Association by Declarant in the event that additional property is annexed to Cape Fear National):

(a) Class "A". Class A Members shall be all Unit Owners except the Class "B" Member, if any.

(b) Class "B". The sole Class "B" Member shall be the Declarant.

Section 3. Voting Rights. The voting rights of each class of membership shall be as follows:

(a) The Class A Members shall be entitled to one vote for each Unit owned within Cape Fear National. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Unit. Fractional voting with respect to any Unit is hereby prohibited.

(b) The Class B Member shall be entitled to three (3) votes for each Unit it owns that is platted and three (3) votes for each Unit it owns that is planned but currently unplatted within Cape Fear National. The Class B Membership shall cease and be converted to a Class A Membership when Declarant owns 10% or less of such Units or upon Declarant's voluntary surrender of all Class B Membership.

The period during which there is Class B Membership is sometimes referred to herein as the "Declarant Control Period." During the Declarant Control Period, the Declarant shall have the rights, among others, to designate and select the members of the Board and the right to remove any person or persons designated and selected by the Declarant to serve on the Board, and to replace them for the remainder of the term of any person designated and selected by the Declarant to serve on the Board who may resign, die, or be removed by the Declarant.

Section 4. Voting Member. In accordance with the terms of the Master Declaration, the President of the Cape Fear National Association shall ex officio serve as the Voting Member and the Vice-President of the Cape Fear National Association shall serve as the Alternate Voting Member to cast all Master Association-level votes attributable or allocated to the Units within Cape Fear National. Provided however, until such time as the Master Declarant first calls for the Cape Fear National Association's President and Vice-President to be designated as the Cape Fear National Association's respective Voting Member and Alternate Voting Member (which call shall be in the form of a letter sent to the Cape Fear National Association's President), the Cape Fear National Members shall be entitled personally to cast the votes attributable to their respective Units on any issue requiring a membership vote under the Master Governing Documents.

Section 5. Rights of the Cape Fear National Association. The Cape Fear National Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws of the Cape

Fear National Association, the Planned Community Act, or Chapter 55A of the North Carolina General Statutes, or reasonably implied from or reasonably necessary to effectuate any such right or privilege, including but not limited to the right to perform cosmetic maintenance such as mowing and planting of stormwater retention facilities, which facilities adjoin Units but may not be located within the Property. Except as otherwise specifically provided in this Declaration, the By-Laws or the Articles of Incorporation of the Cape Fear National Association, all rights and powers of the Cape Fear National Association may be exercised by the Board without a vote of the membership.

ARTICLE V
Covenants for Assessments

Section 1. Creation of Lien and Personal Obligation of Assessments. Each Unit Owner covenants and agrees to pay to Cape Fear National Association the following assessments, as applicable (collectively the "Assessments"): 1) Base Assessments; 2) Special Assessments; 3) Insurance Assessments; 4) Working Capital Assessments; and 5) Transfer Fees.

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

Section 2. Base Assessments. At least ninety (90) days before the beginning of each fiscal year, the Board shall adopt a proposed annual budget, as follows:

A. Budget for the Base Assessments for Units within Cape Fear National consisting of the annual cost of operating and maintaining the Lawn Maintenance and Landscaping Elements, as said term is defined in Article I; improvements and maintenance of any Limited Common Area including but not limited to any entrance features serving the Property; enforcing this Declaration; payment of utilities; paying taxes, insurance premiums, legal and accounting fees; governmental charges; establishing working capital; and doing any other things necessary or desirable in the opinion of Cape Fear National Association to maintain the Property and the Lawn Maintenance and Landscape Elements to Community-Wide standards, and for such other expenditures as approved by the Board to promote the recreation, health, safety, and welfare of the Owners and residents of the Property;

B. Budget for the payment of dues and assessments to the Master Association (including but not limited to payment of the Master Association's Specific Assessments in connection with its maintenance of any entrance features serving the Property, as more particularly described in Article VII); and

C. Such other budgets as the Board deems appropriate

Within thirty (30) days after adoption of the proposed budgets for Cape Fear National, the Board shall provide to all Unit Owners a summary of the budget and notice of a meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum.



Each budget is ratified unless at the meeting seventy-five percent (75%) of all of the Unit Owners in the Cape Fear National Association entitled to vote on the particular budget rejects the budget. All Members shall be entitled to vote on the budget for the Base Assessments. In the event a proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board. The Base Assessments for each Unit shall be established based on the annual budget thus adopted, with all Units funding the budget for the Base Assessments; provided, however, that the first Base Assessments shall be set by the Declarant prior to the conveyance of the first Unit to an Owner. The due date for payment shall be established by the Board. The Board shall have the authority to require the Assessments to be paid in periodic installments. The Cape Fear National Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Cape Fear National Association setting forth whether the Assessments on a specified Unit have been paid. The annual budget shall include in each calendar year the amount budgeted by the Master Association for Base Assessments and Neighborhood Assessments, if any (as said assessments are defined and authorized in the Master Declaration) to be paid by all Unit Owners in Cape Fear National. The Cape Fear National Association shall collect as part of its Base Assessments the amounts budgeted for such Neighborhood Assessments, if any, and pay those Neighborhood Assessments to the Master Association on behalf of the Unit Owners. Owners will pay all other Master Association assessments, including the Master Association's Base Assessment, directly to the Master Association when due in accordance with the Master Declaration.

Section 3. Special Assessments. In addition to the Base Assessments authorized above, the Cape Fear National Association may levy, in any assessment year, a Special Assessment applicable to that year only to defray, in whole or in part, (a) the cost of any construction, reconstruction, repair or replacement of any Limited Common Area and/or Lawn Maintenance and Landscaping Elements; (b) the costs of paying special governmental assessments; or (c) any other costs or expense, provided that any such Special Assessment shall have the assent of one-half (1/2) of the affected Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

Section 4. Insurance Assessments. All premiums on insurance policies purchased by the Board or its designee and any deductibles payable by the Cape Fear National Association upon loss shall be a Common Expense, and the Cape Fear National Association may at any time levy against the Owners equally an "Insurance Assessment", in addition to the Base Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Base Assessment.

Section 5. Working Capital Assessments. At the time title to a Unit is conveyed to an Owner by Declarant, the Owner shall pay the sum of \$250.00 to the Cape Fear National Association as working capital to be used for operating and capital expenses of the Cape Fear National Association (**this Working Capital Assessment is in addition to any similar assessment imposed by the Master Declaration and due to the Master Association**). Such amounts paid for working capital are not to be considered as advance payment of the Base or any other Assessments. The Board may change the amount of the Working Capital Assessment from time to time. The Declarant may waive the Working Capital Assessment for any vendee who is a general contractor intending to build a residence on a Unit to be conveyed by the general contractor to others so long as the general

contractor agrees with the Declarant and the Cape Fear National Association to charge the Working Capital Assessment to the general contractor's vendee and to pay the same to the Cape Fear National Association at the time the general contractor conveys said Unit and residence.

Section 6. Transfer Fee. At the time title to a Unit is conveyed by an Owner, the purchaser shall pay to the Cape Fear National Association the sum of \$250.00 (**which Transfer Fee is in addition to any similar capital contribution fees or transfer fees which may be required to be paid to the Master Association pursuant to the Master Declaration**). Such amounts are not to be considered as advance payment of the Base or any other Assessments. The Transfer Fee shall be due at the closing of the conveyance of the Unit and if not so paid, the Cape Fear National Association shall have a lien against the conveyed Unit as provided in this Article for other Assessments. The Board may change the amount of the Transfer Fee from time to time. A Transfer Fee shall not be due upon conveyances by Declarant to a builder who buys the Unit for construction of a residence for resale; transfer of title by reason of an Owner's death, pursuant to a security instrument or by virtue of foreclosure; conveyances to an Owner's spouse or other co-owner without consideration; or conveyances to an entity owned entirely by the Owner transferring title, but the Transfer fee shall become due if such Owner later transfers any part of his ownership in the entity to another Person.

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

Section 9. Commencement of Assessments. Assessments for each Unit shall commence upon the date of acceptance by an Owner of a deed from Declarant. Declarant shall not be obligated to pay Assessments (but Declarant at its option subsidizes the Cape Fear National Association, if necessary, until the Cape Fear National Association has sufficient revenues).

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

Section 11. Lien for Assessments. The Cape Fear National Association may file a lien against a Unit when any Assessments levied against said Unit remains unpaid for a period of thirty (30) days or longer.

A. The lien shall constitute a lien against the Unit when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which said Unit is located. The Cape Fear National Association may foreclose the claim of lien in like manner as a mortgage on



real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 of the Act are enforceable as Assessments.

B. The lien under this section shall be prior to all liens and encumbrances on a Unit except (1) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the claim of lien in the office of the Clerk of the Superior Court, and (2) liens for real estate taxes and other governmental assessments and charges against the Unit.

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

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

E. Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the Assessments against the Unit which became due prior to the acquisition of title to the Unit by such purchaser. The unpaid assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners including such purchaser, its heirs, successors, and assigns.

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

ARTICLE VI **Limited Common Areas**

Section 1. Owners' Easements of Enjoyment. Every Owner whose Unit has assigned to it a Limited Common Area shall have a right and easement of use, access, and enjoyment in and to the Limited Common Area, which rights shall be appurtenant to and shall pass with the respective title to every Unit, subject to the following provisions: a) the Declaration, Bylaws, and rules and regulations and the Master Governing Documents; b) any restrictions or limitations in any deed or other instrument conveying any portion of the Limited Common Area to the Cape Fear National Association or the Master Association; c) the right of the Board to adopt rules regulating the use and enjoyment of the Limited Common Area and improvements thereon, including rules restricting use of the Limited Common Area to Owners and occupants of Units and their guests, and rules limiting the number of guests who may use the Limited Common Area; and the right of the Board to establish penalties for any infractions thereof; d) the right of the Board to impose reasonable charges, fines and other sanctions for late payment of assessments or other violations; e) the right of the Master Association, acting through the Master Association's Board of Directors, to dedicate or transfer all or part of the Limited Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Cape Fear National Association; f) the right of the Master Declarant to assign use of all or part of the Limited Common Area to additional Neighborhoods within



Brunswick Forest, as provided in Article XII of the Master Declaration; g) the right of the Master Declarant to redesignate all or part of the Limited Common Area as Common Area for Brunswick Forest, whereupon the costs of maintenance thereof would be deemed a Master Association Common Expense; h) the right of the owner of all or part of the Limited Common Area to convey such area to the Cape Fear National Association or the Master Association as provided in Article VII of the Master Declaration; i) the right of the Master Association, acting through the Master Association's Board of Directors, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and j) easements as provided in this Declaration and in the Master Declaration.

ARTICLE VII Maintenance

Section 1. Lawn Maintenance. Lawn maintenance, as more particularly described in the Cape Fear National Landscape Guidelines, will be provided by the Cape Fear National Association for all Units unless Declarant, by a supplemental declaration, excludes any such Units from yard maintenance. The cost of lawn maintenance for each Unit will be assessed by the Cape Fear National Association to the Owners and included in the Base Assessment annual budget.

Section 2. Limited Common Area Maintenance. The Cape Fear National Association will maintain, repair and replace all of the Limited Common Area, including but not limited to any neighborhood entrance features, but excepting any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner. The actual and estimated expenses of maintaining, operating, repairing, and replacing the Limited Common Area, including insurance, reasonable reserves, and utilities, as the Board may find necessary and appropriate pursuant to the Declaration, for the benefit of the Limited Common Area shall be assessed at a uniform rate to all Units. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, invitees, or licensees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject.

Section 3. Mailbox Kiosks. Individual mailboxes servicing each Unit in Cape Fear National shall be purchased by each Owner from the Master Association. Installation of the Owner's mailbox shall be that Owner's responsibility. Upon submission of a construction application to the Architectural Review Committee, each Owner will be required to purchase its mailbox from the Master Association (at a price which will be set in the applicable Architectural Design Standards and which price may change from time to time). The Owners may or may not be provided a choice of mailboxes from which to purchase. Each Owner will be responsible for the maintenance of the mailbox serving that Owner's Unit in accordance with the Community-Wide Standard (as said term is defined in the Master Declaration). In the event an Owner (or other occupant of a Unit) fails to perform any required maintenance on the mailbox serving its Unit in accordance with this Article in a manner reasonably satisfactory to the Board, in its sole discretion, then the Board shall have all rights described in Article XI(A) herein. Any alterations to or replacements of the initially purchased mailbox must be approved in advance by the Architectural Review Committee.

Section 4. Responsibility of the Owner. Except for the maintenance required of the Cape Fear National Association under Article VII, Sections 1-3, each Owner will be responsible for all other



required maintenance of the exterior and interior of his or her Unit. If an Owner of any Unit fails to maintain that Unit 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 Cape Fear National Association shall have the right, through its agents, contractors, and employees to enter upon the Unit of the defaulting Owner and to repair, maintain and restore the Unit and the exterior of the building and 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 Cape Fear National Association against such Owner and such Owner's Unit, shall become the personal obligation of such Owner and shall become a lien against such Unit enforceable in accordance with Article V. In the event of an emergency (as so deemed by the Board in its reasonable discretion), the Cape Fear National Association shall have the right, with or without prior notice to the Owner, to enter any Unit to make emergency repairs necessary for the proper maintenance and operation of the Property.

ARTICLE VIII
Easements

A. The Declarant reserves for itself, its successors, assigns, and the Cape Fear National Association easements over the Property as necessary to enable the Cape Fear National Association to fulfill its maintenance responsibilities under Article VII.

B. The Declarant reserves for itself, its successors, assigns, the Master Association and the Cape Fear National Association, easements over the Property for the following purposes: 1) the location, installation, construction, maintenance, inspection, repair, operation, replacement and/or removal of entrance or monument sign(s), fence(s), wall(s), fountains and/or other entranceway features for Cape Fear National; 2) passage and access for the purposes described herein; and 3) the removal of structures, fences, trees, shrubs and vegetation within the easement areas which interfere with the permitted uses described herein.

C. The Declarant and the Cape Fear National Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce this Declaration. The Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

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

ARTICLE IX
Rights of Declarant

The Declarant shall have, and there is hereby reserved to the Declarant, the following rights, powers, and privileges which shall be in addition to any other rights, powers and privileges reserved to the Declarant herein (but exercise of the rights reserved by or granted to the Declarant in this Article is subject to any approvals required to be given by the Master Declarant, the Master Association's Board of Directors, or others, pursuant to the terms of the Master Declaration or any other document requiring such approval):

A. To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over Cape Fear National or to qualify Cape Fear National or any Units and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Units and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, storm-water regulations, construction standards, aesthetics, and matters affecting the public health, safety, and general welfare. A letter from an official of any such corporation or agency, including without limitation, the North Carolina Department of Environmental and Natural Resources, the Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section. Declarant may at anytime alter the maximum allowable built-upon area for any Unit at anytime before the Unit is conveyed by the Declarant.

B. To comply with the terms of the Master Declaration.

C. So long as the Declarant or its designee shall retain ownership of any Unit and subject to the terms and conditions of the Master Declaration, Declarant may annex to and make a part of Cape Fear National any other real property, whether now owned or hereafter acquired by Declarant or others, and whether developed by the Declarant or others (the "Additional Property") without the assent of the Unit Owners so long as the Additional Property is used for residential purposes (including but not limited to multifamily, condominiums, Town Homes, Garden Homes, Patio Homes, apartments, Common Areas, roads, and other amenities related thereto). Declarant is not required to annex any land to Cape Fear National.

D. This Declaration may be amended without Unit Owner's approval by the Declarant (or the Board in the case of sub-paragraphs II, III, IV, and V hereof), as follows:

I. In any respect on or before December 31, 2018 provided Declarant retains ownership of any Unit, provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Unit and does not adversely affect the title to any Unit.



- II. To the extent this Declaration applies to Additional Property, including, but not limited to, amendments to add additional classes of Membership to the Cape Fear National Association, to add, alter Lawn Maintenance and Landscape Elements or Limited Common Areas, and to establish minimum square footage and other standards for structures.
- III. To correct any obvious error or inconsistency in drafting, typing, or reproduction.
- IV. To qualify the Cape Fear National Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.
- V. To incorporate or reflect any platting change as permitted by this Article or otherwise permitted herein.

E. So long as the Declarant or its designee shall retain ownership of any Unit, it may utilize any such Unit for offices, models, or other purposes relating to the development, construction, sale or rental of Units and dwellings located solely within Cape Fear National and or Brunswick Forest. In addition, in connection with any of the above activities the Declarant and its agents shall have the right to park vehicles and materials on any street or within the right of way thereof. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose.

F. So long as the Declarant or its designee shall retain ownership of any Unit, Declarant may amend this Declaration for the purpose of removing property then owned by the Declarant, its affiliates, or the Cape Fear National Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Property, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property.

ARTICLE X **Insurance**

Section 1. Limited Common Area Insurance. The Board of Directors on behalf of the Cape Fear National Association, as a Common Expense of all Unit Owners, must at all times keep the Limited Common Areas and other assets of the Cape Fear National Association insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Cape Fear National Association for all Members. The Cape Fear National Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Cape Fear National Association be brought into contribution with insurance purchased by Members or their mortgagees. The Cape Fear National Association at minimum shall maintain with regard to the Limited Common Areas the insurance coverage(s) required by the North Carolina Planned Community Act. In the alternative and in the Master Association's sole discretion, the Master Association may maintain such Limited Common Area insurance, whereupon the costs thereof shall be assessed by the Master Association equally to all of the Owners as a Neighborhood Expense and



shall be included in the Base Assessment annual budget.

Section 2. Fidelity Bond. The Cape Fear National Association may maintain, as a Common Expense paid by all Owners, blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Cape Fear National Association; provided, however, that if the Cape Fear National Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Cape Fear National Association. The premiums on all bonds required herein for the Cape Fear National Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Cape Fear National Association as a Common Expense.

ARTICLE X
Units Subject to Declaration

The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of Cape Fear National and the Units. All present and future owners, tenants and occupants of Units and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant, or occupant. The Covenants and Restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Unit, their heirs, successors, and assigns, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by eighty (80%) of the then Unit Owners has been recorded within the year preceding any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

ARTICLE XI
Enforcement and Remedies

Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, and the aggrieved party whether it be a Unit Owner, the Cape Fear National Association, or the Master Association may request restraint of the violation or damages resulting from said violation.

The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Cape Fear National Association, or the Owner of any Unit, their respective legal representatives, heirs, successors, and assigns. In addition, the covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Master Association, its respective legal representatives, successors, and assigns, as further provided in the Master Declaration, including but not limited to Section 7.9 thereof. The



Board shall be entitled to enforce its Articles of Incorporation, Bylaws, and Rules and Regulations. In addition to the remedies otherwise provided for herein concerning the collection of Assessments, the following remedies shall be available:

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

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

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

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

ARTICLE XII Amendments

Except in cases of amendments that may be executed by the Declarant and/or the Board, under this Declaration or by certain Unit Owners under Section 47F-2-118(b) of the Act, this Declaration may be amended by affirmative vote or written agreement signed by Owners of Units to which at least



sixty-seven percent (67%) of the votes in the Cape Fear National Association are allocated, or by the Declarant if necessary for the exercise of any Special Declarant Right or development or other right reserved to the Declarant herein. Notwithstanding anything to the contrary herein, any and all amendments to the Declaration shall be subject to the prior written consent by the Master Declarant in accordance with the terms of the Master Declaration, including but not limited to Section 10.4 and Section 19.2 thereof.

ARTICLE XIII
Brunswick Forest

The Property and all Units located in the Property are part of the Brunswick Forest planned community and are subject to and bound by that Declaration of Covenants, Conditions, and Restrictions for Brunswick Forest Residential Property “the Master Declaration”), recorded in Book 2359, Page 362, of the Brunswick County Registry, and all amendments thereto, **INCLUDING THE OBLIGATIONS TO (1) PAY ALL MASTER ASSOCIATION ASSESSMENTS WHICH ARE IN ADDITION TO THE ASSESSMENTS PROVIDED FOR IN THIS DECLARATION; (2) ABIDE BY THE ARCHITECTURAL REVIEW AND LAND RESTRICTIONS THEREUNDER, INCLUDING BUT NOT LIMITED TO THE PROVISIONS OF THE RESIDENTIAL DESIGN STANDARDS FOR CAPE FEAR NATIONAL AT BRUNSWICK FOREST, AND (3) COMPLY WITH THE TERMS OF ALL ADDITIONAL MASTER GOVERNING DOCUMENTS.** All Members of the Cape Fear National Association are also members of the Master Association. Cape Fear National at Brunswick Forest is a “Neighborhood” within Brunswick Forest as that term is defined in the Master Declaration. Under the terms of the Master Declaration, the Brunswick Forest Master Association, Inc. has the right to veto any action taken by the Cape Fear National Association hereunder and to require specific actions to be taken by the Cape Fear National Association.

ARTICLE XIV
Severability

Invalidation of any one of these covenants or any part thereof by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect, and the failure of any person or persons to take action to enforce these covenants shall not be construed as a waiver of any future enforcement rights.

ARTICLE XV
North Carolina Planned Community Act

It is the intent of the Declarant to comply with the requirements imposed on the Property by the Act and to the extent any of the terms of this Declaration violate the Act, the terms of the Act shall control.

-SIGNATURES BEGIN ON FOLLOWING PAGE-

IN TESTIMONY WHEREOF, the undersigned Declarant has caused this instrument to be executed as of the day and year first above-written.



FUNSTON LAND & TIMBER, LLC

By: _____
Name: Allen Jefferson Earp
Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

I ROSEMARY L Russell, a Notary Public, do hereby certify that Allen Jefferson Earp, personally came before me this day and acknowledged that he is the Manager of FUNSTON LAND & TIMBER, LLC, a North Carolina limited liability company, and that he in such representative capacity voluntarily signed this Declaration for the purposes stated therein.

Witness my hand and official stamp or notarial seal, this 20th day of November 2008.

Rosemary L Russell
Notary Public

My Commission Expires:

8/11/2010

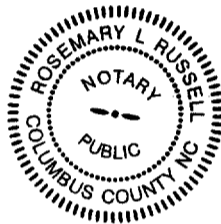




EXHIBIT A

BEING all of those certain tracts or parcels of land lying and being in Town of Leland, Towncreek Township, Brunswick County, North Carolina, and being more particularly described as follows:

All of that property in Phase 3, Section 1 of Brunswick Forest (also known as "Cape Fear National at Brunswick Forest"), as shown on a map thereof recorded in Map Book 54 at Page 44 of the Brunswick County Registry, reference to said map is hereby made for a more particular description.