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BY: ANDREA CRESWELL

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**NEW HANOVER COUNTY,**

**TAMMY THEUSCH PIVER**

**REGISTER OF DEEDS**

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Prepared by and Mail to: James Slaughter, Law Firm Carolinas  
P.O. Box 41027, Greensboro, NC 27404

NORTH CAROLINA

NEW HANOVER COUNTY

**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**  
**FOR THE VILLAGE AT MOTTS**  
**LANDING HOMEOWNERS'**  
**ASSOCIATION, WHICH INCLUDES:**

**BELLAMY PARKE ESTATES IN THE**  
**VILLAGE AT MOTTS LANDING**

**BELLAMY PARKE IN THE VILLAGE**  
**AT MOTTS LANDING**

**CYPRESS PARKE IN THE VILLAGE AT**  
**MOTTS LANDING**

**GLENN ELLEN IN THE VILLAGE AT**  
**MOTTS LANDING**

**MOTTS FOREST EAST IN THE**  
**VILLAGE AT MOTTS LANDING**

**MOTTS FOREST IN THE VILLAGE AT**  
**MOTTS LANDING**

**MOUNT CARMEL IN THE VILLAGE**  
**AT MOTTS LANDING**

**POINTE PLEASANT IN THE VILLAGE**  
**AT MOTTS LANDING**

**YORKE MEADOW IN THE VILLAGE**  
**AT MOTTS LANDING**

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for the above Declarations of Covenants, Conditions and Restrictions is made this 25<sup>th</sup> day of March, 2021 by The Village at Motts Landing Homeowners' Association ("Association").

WITNESSETH:

WHEREAS, properties (the "Property") recorded in the New Hanover County Registry were made subject to Declarations of Covenants, Conditions and Restrictions (the "Declaration") and amendments to the same, including but not limited to, the following:

(a) **Bellamy Parke Estates in the Village at Motts Landing:**

- a. Book 5426, Page 364 on July 23, 2009;
- b. Book 5490, Page 2401 on June 9, 2010;

(b) **Bellamy Parke in the Village at Motts Landing:**

- a. Book 5426, Page 387 on July 23, 2009;
- b. Book 5451, Page 2793 on November 20, 2009;
- c. Book 5452, Page 798 on November 23, 2009;
- d. Book 5490, Page 2404 on June 9, 2010;
- e. Book 5783, Page 2997 on November 22, 2013;
- f. Book 5785, Page 1723 on December 2, 2013;
- g. Book 5826, Page 1251 on July 14, 2014;
- h. Book 5850, Page 204 on November 7, 2014;
- i. Book 5861, Page 700 on January 6, 2015;

(c) **Cypress Parke in the Village at Motts Landing:**

- a. Book 5426, Page 410 on July 23, 2009;
- b. Book 5449, Page 92 on November 6, 2009;
- c. Book 5490, Page 2398 on June 9, 2010;
- d. Book 5641, Page 1214 on May 17, 2012;
- e. Book 5646, Page 1546 on June 8, 2012;
- f. Book 5713, Page 2537 on February 22, 2013;

(d) **Glen Ellen in the Village at Motts Landing:**

- a. Book 6149, Page 2575 on June 19, 2018;
- b. Book 6199, Page 1635 on March 6, 2019;
- c. Book 6220, Page 2153 on June 6, 2019;
- d. Book 6372, Page 1904 on October 29, 2020;
- e. Book 6374, Page 230 on November 2, 2020;

(e) **Motts Forest East in the Village at Motts Landing:**

- a. Book 6123, Page 1279 on February 28, 2018;
- b. Book 6157, Page 2479 on July 23, 2018;
- c. Book 6158, Page 108 on July 24, 2018;

(f) **Motts Forest in the Village at Motts Landing:**

- a. Book 5650, Page 257 on June 22, 2012;
- b. Book 5776, Page 2038 on October 15, 2013;
- c. Book 5920, Page 683 on September 24, 2015;

- d. Book 5920, Page 1868 on September 25, 2015;
- e. Book 5921, Page 2080 on September 30, 2015;
- f. ADD TERMINATION PAGES LATER ONCE FILED;
- (g) **Mount Carmel in the Village at Motts Landing:**
  - a. Book 5851, Page 2136 on November 17, 2014;
  - b. Book 5861, Page 697 on January 6, 2015;
  - c. Book 6019, Page 263 on November 21, 2016;
- (h) **Pointe Pleasant in the Village at Motts Landing:**
  - a. Book 5706, Page 1828 on January 25, 2013;
  - b. Book 5714, Page 2157 on February 25, 2013;
  - c. Book 5715, Page 1650 on February 27, 2013;
  - d. Book 5724, Page 1106 on April 1, 2013;
  - e. Book 5773, Page 598 on September 30, 2013;
  - f. Book 5781, Page 1410 on November 7, 2013;
  - g. Book 5791, Page 988 on January 2, 2014;
  - h. Book 5803, Page 260 on March 17, 2014;
  - i. Book 5814, Page 2535 on May 19, 2014;
  - j. Book 5815, Page 1218 on May 22, 2014;
  - k. Book 5818 Page 2961 on June 9, 2014;
  - l. Book 5861, Page 703 on January 6, 2015;
  - m. Book 5894, Page 80 on June 4, 2015;
  - n. Book 5920, Page 1868 on September 25, 2015;
  - o. Book 5921, Page 2080 on September 30, 2015;
- (i) **Yorke Meadow in the Village at Motts Landing:**
  - a. Book 6035, Page 484 on February 3, 2017;

WHEREAS, each Declaration defines "Association" as "The Village at Motts Landing Homeowners' Association" and did not create separate planned communities;

WHEREAS, [ADD MOTTS FOREST TERMINATION FILING DETAILS LATER ONCE FILED];

WHEREAS, the intent and scheme of all filed declarations was to have a single master association, The Village at Motts Landing Homeowners Association, govern all properties;

WHEREAS, the Declaration provides that the Declaration may be amended "upon the vote of not less than sixty-seven percent (67%) of the votes in the Association," and such approval has been obtained;

WHEREAS, N.C.G.S. § 47F-2-117 provides that a Declaration may be amended by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated, and such approval has been obtained; and

WHEREAS, this instrument is executed to provide for the following Amended and Restated Declaration, with the purpose of amending and combining the Declaration of Bellamy

Parke Estates in the Village at Motts Landing, Bellamy Parke in the Village at Motts Landing, Cypress Parke in the Village at Motts Landing, Glen Ellen in the Village at Motts Landing, Motts Forest East in the Village at Motts Landing, Motts Forest in the Village at Motts Landing, Mount Carmel in the Village at Motts Landing, Pointe Pleasant in the Village at Motts Landing, and Yorke Meadow in the Village at Motts Landing into a single document governed by the Village at Motts Landing Homeowners' Association as well as to add additional language governing the townhomes from Motts Forest in the Village at Motts Landing into the Declaration;

NOW THEREFORE, the Declaration described above is combined and amended to read as follows:

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

## **AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGE AT MOTTS LANDING HOMEOWNERS' ASSOCIATION**

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGE AT MOTTS LANDING HOMEOWNERS' ASSOCIATION, hereinafter referred to as "Declaration," is made and effective on the date it is recorded in the Office of the Register of Deeds of New Hanover County, North Carolina:

All of the Property described herein 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") and the following easements, restrictions, etc., which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the above-described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

### **ARTICLE I** **DEFINITIONS**

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

SECTION 2. "Allocated Interests" means the undivided interest in the Common Elements and Common Expense liability and votes in the Association allocated to each Lot.

SECTION 3. "Association" shall mean and refer to The Village at Motts Landing Homeowners' Association ("Association"), its successors and assigns.

SECTION 4. "Board" or "Board of Directors" shall mean and refer to the body designated in this Declaration or otherwise to act on behalf of the Association.

SECTION 5. "Building" shall mean and include, but shall not be limited to, both the main portion of a structure built on lots within the Property for permanent use and all projections or extensions thereof, including, but not limited to, garages, outside platforms and decks, canopies, porches and outbuildings.

SECTION 6. "Common Elements" shall mean all real and personal property, and interests therein, now or hereafter owned or leased by the Association for the common use and enjoyment of Owners as provided under this Declaration, and their Occupants, lessees and guests, including but not limited to private streets and roads, if any, recreational spaces, fences, any directory signage, gravity sewer lines not maintained by a public agency, and detention or retention ponds, and/or as shown on the Plat, or any subsequent plats of the Property.

SECTION 7. "Common Expenses" means the expenses or financial liabilities for the operation of the Association. These include: (a) expenses of administration, maintenance, repair

or replacement of the Common Elements; (b) expenses declared to be Common Expenses whether annual or special by the planned community documents or by the Act; (c) expenses agreed upon as Common Expenses whether annual or special by the Association; and (d) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

SECTION 8. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot as permitted under the Act, this Declaration, or otherwise by law.

SECTION 9. "Declarant" or "Developer" shall mean and refer to AFTEW PROPERTIES, LLC.

SECTION 10. "Declaration" shall mean this instrument as it may be from time to time modified, amended, or revised.

SECTION 11. "Improvements" shall mean and include, but shall not be limited to, buildings, outbuildings, roads and driveways (other than those dedicated to public use), parking areas, fences, screened walls, retaining walls, loading areas, signs, utilities, lawns, landscaping, irrigation and walkways located on Lots, together with any construction work or treatment done or applied to a Lot in connection therewith and any storm water drainage lines or facilities and any piping related thereto.

SECTION 12. "Lot" shall mean and refer to any numbered or lettered plot of land shown upon any recorded map of the Property designated for separate ownership by a Lot Owner. All Lot numbers in this Amended Declaration are from the original declarations.

SECTION 13. "Master Association" or "Association" shall mean The Village at Motts Landing Homeowners Association, as defined in the Act.

SECTION 14. "Members" shall mean and refer collectively to all lot owners within the Property, who shall be members of the Master Association.

SECTION 15. "Motts Forest in the Village at Motts Landing" or "Motts Forest" is a community within the Association consisting of townhomes that is a part of the Master Association. Motts Forest was originally subject to an additional Declaration filed in Book 5650, Page 257 of the New Hanover County Registry and subsequently amended to add additional lots, but has since been terminated and the provisions governing the Townhome Lots have been incorporated into this Declaration, except as provisions in this Declaration may specifically exclude or provide for additional obligations upon the Townhomes.

SECTION 16. "Occupant" shall mean any person or entity who occupies, or who has the right to occupy, all or part of any Lot which is a part of the Property, whether such occupancy or right of occupancy is based on ownership, lease, license or easement.

SECTION 17. "Owner" or "Lot Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot, or any portion thereof, which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 18. "Person" means an individual, corporation, business, trust, estate, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

SECTION 19. "Planned Community" shall mean and refer to the Property plus any Additional Property made a part of it by the exercise of any Special Declarant Right.

SECTION 20. "Property" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be bought within the jurisdiction of the Association and this Declaration.

SECTION 21. "Purchaser" means any person, other than a declarant or a person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (a) a leasehold interest (including renewal options) of less than 20 years, or (b) as security for the performance of an obligation.

SECTION 22. "Recreational Space" and "recreational amenities" shall be those areas designated on the Plat which are reserved and set aside for recreational use by the owners, tenants, guests and invitees of all of the Lot owners within any of the divisions within The Village at Motts Landing. These areas may include both active recreation areas where improvements, structures or facilities are erected for recreational use and passive recreation areas which have no improvements.

SECTION 23. "Special Declarant Rights" means the rights reserved for the benefit of a Declarant to: (a) complete Improvements indicated on the Plat filed with the Declaration; (b) exercise any development right reserved to the Declarant by this Declaration or otherwise; (c) to maintain sales offices, management offices, signs advertising the Planned Community, and models; (d) use easements through the Common Elements for the purpose of making improvements within the Planned Community; (e) to make the Planned Community part of a larger planned community or group of planned communities; (f) to make the Planned Community subject to a Master Association; (g) to appoint or remove any officer or Board Member of the Association or any Master Association during the Declarant Control Period; (h) to permit other land to be annexed to and made a part of the Planned Community in accordance with the terms of this Declaration.

SECTION 24. "Townhome" shall mean a single family dwelling with a common wall located on or approximately on a common lot line with an adjacent Townhome. All Townhomes currently exist only in Motts Forest and on Lots 131-136, Sec. 10, and Lots 389 and 390, Sec. 11 in Pointe Pleasant.

SECTION 25. "Townhome Lot" or "Townhome Lots" shall mean any portion of the Property, whether improved or unimproved, designated for separate Townhome ownership by an

Owner, shown as a lot on a recorded subdivision plat, and designated by Declarant by annexation or any Amendment or any supplemental declaration for use as a Townhome Lot on which a single family dwelling with a common wall located on or approximately on a common lot line with an adjacent Townhome Lot may be constructed. The term shall refer to the individual lot and land which is part of the Townhome as well as any improvements thereon.

SECTION 26. "Townhome Maintenance Elements" shall mean the exterior of all Townhomes, including by way of illustration, but not limited to, roofs, gutters, downspouts, exterior building surfaces, brick walls and other exterior improvements, driveways, walkways, and privacy fences, but excluding electrical fixtures, doors and door frames, windows and window frames, hose bibs, and irrigation systems and controls.

## **ARTICLE II** **EASEMENTS**

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

SECTION 2. Easements in Favor of Declarant. The following easements are reserved to Declarant, Declarant's successors and assigns:

- a) easements as necessary in the lands constituting the Development for the installation and maintenance of utilities and drainage facilities; including, specifically, the right to grant a:
  - a. Bellamy Parke in the Village at Motts Landing – 10 foot wide easement over and adjacent to the front property line of each and every Lot
  - b. Bellamy Parke Estates in the Village at Motts Landing – 10 foot wide easement over and adjacent to the front property line of each and every Lot
  - c. Cypress Parke in the Village at Motts Landing – 10 foot wide easement over and adjacent to the front property line of each and every Lot
  - d. Glenn Ellen in the Village at Motts Landing – 10 foot wide easement over and adjacent to the front property line of each and every Lot
  - e. Motts Forest East in the Village at Motts Landing – 15 foot wide easement to Lots 25 through 48, all other lots will be granted the right to a 10 foot wide easement over and adjacent to the front property line of each and every Lot
  - f. Motts Forest – see additional provisions below
  - g. Mount Carmel in the Village at Motts Landing – 10 foot wide easement over and adjacent to the front property line of each and every Lot
  - h. Point Pleasant in the Village at Motts Landing – 10 foot wide easement over and adjacent to the front property line of each and every Lot
  - i. Yorke Meadow in the Village at Motts Landing – 10 foot wide easement over and adjacent to the front property line of each and every Lot

and including the right of Declarant to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone or communication lines, including, but not



limited to, that communication easement as granted and recorded in Book 5041 at Page 1456 et seq in the New Hanover County Registry, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of New Hanover County; the right to cut drain ways for surface water whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the owner of such Lot; and the right to subject the Property and any Additional Property to a contract with Duke Progress Energy, for the installation of street lighting, which contract requires a continuing monthly payment to Progress Energy Carolinas, Inc. by each resident customer for street lighting service (such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service).

b) easements over all private streets and sidewalks, if any, access easements, and Common Areas within the Development as necessary to provide access, ingress and egress, to any Additional Property.

c) an easement of unobstructed access over, on, upon, through and across each Lot and the Limited Common Area located thereon, if any, at all reasonable times to perform any maintenance and repair to the Limited Common Areas required by this Declaration. This easement shall also run in favor of the Association and the Association's agents, employees, successors and assigns.

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

a) an easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Area in the performance of their duties.

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

c) the Association is granted an easement over each Lot for the purposes of exercising its rights under Article VI, Section 5 or other provisions of this Declaration.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on

the Declarant, its successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional 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.

#### **ADDITIONAL EASEMENT PROVISIONS APPLICABLE TO MOTTS FOREST:**

SECTION 1. Easement Provisions Applicable to Motts Forest. The following easements are specific to Townhomes:

- a) The Declarant reserves for itself, its successors, assigns, and grants to the Association, easements over the Property as necessary to enable the Association to fulfill its maintenance responsibilities and easements as described in this Declaration. Each deed from the Declarant of a Townhome Lot shall be deemed to convey to the grantee such easements, as an appurtenance to the Townhome Lot, and shall be deemed to make conveyance of the Townhome Lot subject to such easements, as an appurtenance to the abutting Townhome Lot, regardless of whether specific mention of such easements is made therein.
- b) The Declarant reserves for itself, its successors, assigns, and grants to the Association, an easement of a width of a minimum of five (5) feet, or greater if otherwise shown on the recorded Map for the subdivision, for a non-municipal easement for utilities and drainage along and inside the front, side, and rear lines of all Townhome Lots (excluding any side line upon which a common wall between Townhome improvements are constructed) for the purpose of installing, inspecting, repairing any drain ways, swales, ditches or gutters for surface water. No structures or plantings or other materials shall be placed or permitted to remain upon such easement areas which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with the established slope ratios or create erosion problems.
- c) The Declarant reserves, and the Declarant grants to the Association, easements described as follows: Each Townhome Lot shall be and is subject to an easement for encroachments for common walls and supporting footings, and for construction settling, and overhangs, and for construction, repair and maintenance of common walls of Townhomes and portions of Townhome improvements which may not be or which may become in imperfect alignment with the common boundary lines of adjacent Townhome Lots. Every portion of a Townhome improvement constructed on a Townhome Lot and contributing to the support of any abutting Townhome improvement shall be burdened with an easement of support for the benefit of such abutting Townhome Lot. If adjoining Townhomes are partially or totally destroyed, and then rebuilt, the Townhome Lots so affected shall remain subject to such easements for such encroachments of the adjacent Townhomes or Limited Common Areas resulting from reconstruction.

- d) The Declarant reserves for itself, its successors, assigns, and the Association a four foot (4') buffer easement as shown on the recorded plats of the Property easement in order to maintain such areas in such manner as the Association may, in its discretion, deem appropriate, and as may be required by the municipality. Declarant, the Association and their successors, assigns and designees shall have a ten (10) foot perpetual nonexclusive right and easement along and inside the side lines of any Townhome Lot (but not through a Townhome structure) which abuts or adjoins the four foot (4') buffer easement to the extent reasonably necessary to exercise their rights under this Section.
- e) The Declarant reserves for itself, its successors, assigns, and the 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, 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.
- f) The Declarant and Association shall also have the right, but not the obligation, to enter upon any Townhome Lot, including any Townhome improvements thereon 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.

### ARTICLE III HOMEOWNERS' ASSOCIATION

SECTION 1. Formation of Association. The Village at Motts Landing Homeowners' Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Areas and to provide any other services provided in this Declaration or agreed to by a majority of the Members.

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

SECTION 3. Voting Rights. The Association shall have two classes of voting Membership, defined as follows:

A. Class A. Class A Members shall be all of the Owners. Class A Members shall be entitled to one (1) vote per 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 determined by the Members holding a majority interest in the Lot, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

B. Class B. The Declarant shall be a Class B Member and shall be entitled to three (3) votes per each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of the earliest of any of the following events:

- (1) when ninety percent (90%) of the Lots within the Planned Community have been sold or conveyed by the Declarant to purchasers;
- (2) on the date provided in any instrument recorded in the New Hanover County Registry pertaining to that community; or
- (3) upon the voluntary surrender of all Class B Membership by the Declarant.

SECTION 4. Powers, Privileges, Rights and Obligations. In addition to the rights and powers granted to the Association in its charter and to the rights and powers with regard to assessments set forth in this Declaration, the Association shall have and possess and shall perform and exercise the following powers, privileges, rights and duties:

A. The Association, acting through the Board as described in the Bylaws, shall be entitled to make and amend reasonable rules and regulations governing use of the Common Elements and the conduct of the Owners.

B. The Association shall be responsible for the operation, upkeep, maintenance, protection, preservation, repairs, reconstruction and/or replacement of (i) the Common Elements and improvements and additions thereto, including, but not limited to, private streets and rights of way, if any, and (ii) the Limited Common Elements, if any; (iii) any utility easements or drainage easements used for the benefit of more than one lot owner; provided, however, that in the event that any of the above activities are necessitated by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, or is caused by fire, wind, rain, blowing water, lightning, smoke or other hazard or casualty, 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 of the Association, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may be added to the annual assessment levied against said Owner's Lot.

C. The Association may engage in such other activities as authorized by a majority of the Members.

D. The Association may suspend the voting rights and privileges of an Owner for any period during which any Assessments against the Owner's lot remain unpaid and for a period not to exceed sixty (60) days for an infraction of the published rules and regulations of the Association.

E. The Association may mortgage or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least eighty percent (80%) of the votes in the Association.

F. The Board of Directors on behalf of the Association, as a Common Expense, may at all times keep the Common Elements and other property of the Association, if any, insured against loss or damage by fire or other hazards and other such risks, including, but not limited to directors' liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each Member to insure his personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees.

G. The Association may maintain, as a Common Expense paid by all Owners, error and omissions insurance and blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association, provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

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

SECTION 6. Common Elements. The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element within the Planned Community from the date of completion of its construction or improvement by the Developer, whether or not (a) such Common Element has actually been deeded to the Association, or (b) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Element has been transferred from the Declarant to the Association or assumed by the Association.

#### **ARTICLE IV**

#### **COVENANTS FOR ASSESSMENTS**

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed for the Owner's Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

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

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

Assessments shall also be collected from Lots in the gated area (Pamela's Place) of Pointe Pleasant in the Village at Motts Landing for gated entrance maintenance and repair and for the private road maintenance and repair or any costs associated therewith.

Provided, further, any lots sold to a builder as a vacant lot will be exempt from annual assessments or working capital assessments for a period of one year from when sold by the Declarant to a builder or until sold to a third party, whichever occurs first.

SECTION 2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and Additional Property and for the improvement and maintenance of the Common Areas and any Limited Common Areas. The funds arising from said assessments or charges, may be used for any or all of the following purposes: operations, maintenance and improvement of the Common Areas, and any Limited Common Areas, including payment of utilities, enforcing this Declaration, paying taxes, insurance premiums, legal and accounting fees and governmental charges, establishing working capital, and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Areas and any Limited Common Areas in good operating order and repair including, but not limited to, maintenance of ditches, ponds, woodlands, entry ways, berms and fences, easements, common area, utilities and common area amenities.

In addition, Townhome assessments or Pamela's Place assessments levied by the Association shall be used for the maintenance, insurance or other expenses as may be required by this Declaration.

SECTION 3. Annual Assessments. The Board of Directors shall adopt a proposed annual budget at least ninety (90) days before the beginning of each fiscal year. Within thirty (30) days after the adoption of the proposed budget for the Planned Community, the Board shall provide to all Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall

be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Board. The Board shall have the authority to require that the Assessments be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or managing agent of the Association setting forth whether the Assessments on a specified Lot have been paid.

To assist in the preparation of the annual budget, the Board shall appoint a committee composed of Townhome Owners to provide recommendations as to the Townhome Budget, taking into account expense items that are to be paid solely by Townhome Owners. The Board shall also appoint a committee composed of Pamela's Place Owners to provide recommendations as to the Pamela's Place Budget, taking into account expense items that are to be paid solely by the Pamela's Place Owners. The Board may appoint such other committees of Owners as the Board deems appropriate to assist with recommendations to the annual budget.

SECTION 4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any storm debris clean-up or removal, or any construction, reconstruction, repair, replacement of a capital improvement upon the Common Elements and any Limited Common Elements, including but not limited to all utility rights of way, drainage easements or any other easements for the benefit of the lot owners or the association and fixtures and personal property related thereto, or any other costs or expense, provided that any such Special Assessment shall have the assent of the majority of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

In addition, the Association may levy a Townhome Special Assessment or Pamela's Place Special Assessment for the purpose of defraying, in whole or in part, the cost of any maintenance elements or any other costs or expense specific to either the Townhomes or Pamela's Place, provided that any such Special Assessment shall have the assent of the majority of the Townhome or Pamela's Place Owners who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. Insurance Assessment. All premiums on insurance policies purchased by the Board or its designee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may in any assessment year levy against the Owners equally an "Insurance Assessment," in addition to the Annual Assessments provided for above, which shall be in an amount sufficient to pay the annual cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

In addition, all premiums on insurance policies purchased by the Board or its designee on Townhomes and any deductibles payable by the Association upon loss to the Townhomes shall be a Townhome Expense, and the Board may at any time levy against the Townhome Owners equally an "Insurance Assessment," in addition to the Annual Assessment, which shall be in an amount

sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of their Annual Assessment.

In addition, all premiums on insurance policies purchased by the Board or its designee on traffic gates and operation and control equipment and any deductibles payable by the Association upon loss thereto shall be an expense of the Owners of Lots within the gated area and the Board may at any time levy against those Owners equally an "Insurance Assessment," in addition to the Annual Assessment, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of their Annual Assessment.

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

SECTION 7. Working Capital Assessments. At the time title to a Lot is first conveyed to an Owner by Declarant, the Owner shall pay to the Association as working capital the amount of \$250.

Provided, however, that builders shall not be required to pay any working capital until the Lot is sold to a third party or the property is occupied as a residence, whichever occurs first. Such funds may be used for initial operating and capital expenses of the Association such as prepaid insurance, supplies, and furnishings, fixtures and equipment for the Common Elements, etc. Amounts paid into the working capital fund are not to be considered as advance payment of the Annual or any other assessments. Any working capital funds remaining after the last Lot has been sold by Declarant shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

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

SECTION 9. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant, unless otherwise provided by this Declaration.

SECTION 10. Effect of Nonpayment of Assessments and Remedies of the Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the Owner's Lot in the same manner as a deed of trust under power of sale as allowed under North



Carolina Law, or pursue such options as may be available by State statute. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Element or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted.

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

A. Any assessment attributable to a lot which remains unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided in this section. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to North Carolina General Statutes, including sections 47F-3-102, 47F-3-107, 47F-3-107A and 47F-3-115 of the Act, are enforceable as Assessments.

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

C. The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing of the claim of lien in the Office of the Clerk of Superior Court.

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

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

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

SECTION 12. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Association Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

SECTION 13. Subordination Of The Lien To Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

## **ARTICLE V**

### **RIGHTS OF DEVELOPER/DEVELOPER CONTROL**

The rights, powers, and privileges reserved to the Declarant under this Article shall be in full force and continue until the earlier the following: (a) such time as ninety percent (90%) of the Lots within the Planned Community have been sold or conveyed by the Declarant to purchasers; (b) on the date provided in any instrument recorded in the New Hanover County Registry pertaining to that property; or (c) such time when the Declarant voluntarily relinquishes the rights described in this Article (the "Developer Control Period"). Management and control can be voluntarily transferred by Declarant to the Owners at any time.

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:

SECTION 1. The Association/Period of Declarant Control. All the powers and duties of the Board of Directors of the Association may be exercised by the Declarant, and the Declarant shall appoint all members of the Board of Directors, until such time as ninety percent (90%) of the Lots within the Development have been sold or conveyed by the Declarant to purchasers (the "Developer Control Period"). Management and control can be voluntarily transferred by Declarant to the Owners at any time.

SECTION 2. The Architectural Review Committee. All duties and responsibilities conferred upon the Architectural Review Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property. Thereafter, the Architectural Review Committee shall be as designated in this Declaration.

SECTION 3. Plan of Development. The right to change, alter or redesignate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Development (so long as the Declarant retains title to said lands) including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract; to eliminate

from this Declaration Lots that are not otherwise buildable or are needed for access or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site or access area or roadway.

SECTION 4. Amendment of Declaration by the Declarant. This Declaration may be amended by the Declarant or by the Board of the Association, as the case may be, as follows:

- A. In any respect, prior to the sale of the first Lot.
- B. To the extent this Declaration applies to Additional Property.
- C. To correct any obvious error or inconsistency in drafting, typing or reproduction.
- D. To qualify the Association or the Property and Additional Property, or any portion thereof, for tax exempt status.
- E. To include any platting change as permitted herein.
- F. To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, 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 Veterans Administration, 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 Developer Control Period, shall be entitled to amend this Declaration pursuant to this Section 4, F.

SECTION 5. The Declarant, during the Declarant Control Period, and the Homeowners Association thereafter agrees to install a fence and landscape around the fence boundary the small cemetery area known as the Martindale-Biddle Family Cemetery contained within the boundary of The Village at Motts Landing and further agrees that it will maintain this cemetery areas as it has been in the past.

## ARTICLE VI

### USE RESTRICTIONS AND ARCHITECTURAL CONTROL

SECTION 1. Building and Site Improvement. No dwelling, wall or other structure, including fences, shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the

Declarant, or its designee, or, after the sale of all Lots by Declarant, by the Board of Directors of the Association, or by an Architectural Review Committee ("ARC") composed of three (3) or more representatives appointed by the Board. In the event the Declarant, or its designee, or, if applicable, the Board, or the ARC, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant, the Board, or ARC shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Declarant, the Board, or ARC, as the case may be, for its records. Neither the Declarant, the Board, nor the ARC shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

SECTION 2. Approval of Plans. No house plans will be approved unless the proposed house shall have a minimum of 2,000 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas. The Declarant, during the Declarant Control Period and thereafter the ARC, shall have the authority to reduce the minimum square footage requirement by no more than ten percent, or to grant up to ten percent (10%) variance on any fixed standard contained in these restrictions where in the sole discretion of the Declarant or the ARC the strict enforcement of the standard would create an undue hardship.

A. Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines shall be established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any lot shall be controlled by and must be approved absolutely by the Declarant, the Board, or the ARC, as the case may be provided, however, each Lot owner must comply with any local or state statute, law ordinance or regulation pertaining to any setback lines.

B. The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, and the Owner or Builder has been granted a hardship extension by the Declarant or the ARC.

C. No structure shall be erected, altered, placed or permitted to remain on any Lot, except one single family brick dwelling not to exceed one and one-half stories in height. No garage apartments are allowed.

D. All service utilities, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Declarant, the Board or the ARC, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes shall be uniform

in design. Design for mail and newspaper boxes shall be furnished by Declarant. Fences shall be permitted on any Lot; provided, however, that the design and materials of any fence are approved by the Declarant, the Board, or the ARC, as the case may be, and provided further, that no fence shall be over six feet in height or forward of a point located fifteen feet to the rear of the front elevation of the dwelling on the Lot. Clotheslines are not permitted on any Lot.

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

SECTION 3. Land Use and Building Type. No Lot shall be used for any purpose except for residential purposes. All numbered Lots are restricted for construction of single family dwellings only. Different and amended land use restrictions and architectural control guidelines may be established for Additional Property added to the Development by Declarant; provided, however, that no Lot may be used for other than single family dwellings except pursuant to approval of the Members in accordance with this Declaration.

SECTION 4. Nuisances. No noxious or offensive activity, displays or signage shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on the Owner's Lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

SECTION 5. Lot Maintenance. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. In the event the Owner fails to do so, then, after twenty days' notice from the Board, the Association or its designee may enter upon the Lot and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass, and in such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Lot, including collection costs and such amounts shall be due and payable as an assessment. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of assessment liens.

SECTION 6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Association or its designee; provided, however, that this shall not prevent the Declarant, its designees or assigns from maintaining a construction trailer or office on any part of the Development until the construction of dwellings on all Lots is completed. Provided that any temporary structure must comply with all governmental laws regulations whether state or local pertaining to said structures. However, nothing herein shall be meant to prevent the construction of storage and utility buildings which have received written approval of the Declarant or ARC. It is the express intention of the Developer

that no trailer or mobile home (including a double-wide mobile home or modular home) shall be allowed on said property.

SECTION 7. Vehicles/Boats. No boat, motor boat, camper, school bus, trailer, motor or mobile homes, tractor/trailer, vehicles rated to handle over three quarter (3/4) ton load capacity, or similar type vehicle shall be permitted to remain on any Lot or on any street at any time, without the written consent of the Association or its designee. The Association's consent may be conditioned on keeping said vehicles or boats in a fenced or screened area in the rear yard as approved by the Association. No inoperable vehicle or vehicle without current registration and insurance, will be permitted on any Lot, street or Common Element. The Association shall have the right to have all such vehicles towed away at the owner's expense. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street. Due to noise concerns, safety, liability and property damage reasons, no motorized, gas or electric vehicles, including dirt bikes and all-terrain vehicles (ATV's) are permitted on the Common Element/Open Space or grounds of the properties or on lots yet to be built on. Only maintenance equipment needed to maintain the grounds is exempt from this rule.

SECTION 8. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and do not exceed three (3) pets in one household, and provided further that they are not allowed to run free, are at all times kept properly leashed and personally escorted and shall not become a nuisance or bother to other Owners or the neighborhood. The Association may adopt reasonable rules regarding household pets designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls to include bark collars, pet occupancy limits based on size and facilities of the Lot and fair share use of the Common Elements. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed or keep mammals, birds, fish, or reptiles of any kind for commercial purposes.

Owners must promptly remove any and all animal excrement from any and all Common Elements and Lot(s) and keep such area(s) clean and free of pet debris. All animals must be properly licensed and tagged for identification, and all animals must maintain current vaccinations required by law.

SECTION 9. Statuary, Television Satellite Dishes and Antennas. No front or side yard statuary and no outside radio or television antennas shall be erected on any Lot or dwelling unit. Provided it is not visible from the road in front of the homes, satellite dishes not larger than eighteen inches (18") may be installed in the rear of homes or on the roof portion of the home with approval from the Association. As to Townhomes, no satellite dishes or antennas are permitted on the roof.

SECTION 10. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be clear, white or non-frost lights or bulbs.

SECTION 11. Landscaping. Prior to initial occupancy of the residence constructed on each Lot, the front yard, side yard, and rear yard areas of such Lot must be sodded; provided, however, that any areas to be used as planting beds for trees and shrubs need not be sodded so long as such beds are planted prior to initial occupancy of the Lot. The Declarant, the Board or the ARC, as the case may be, may on account of adverse weather conditions or for other good cause shown permit such landscaping to be done within a period of six months after initial occupancy of the residence.

Except as specifically provided below, each improved lot will include mandatory lawn maintenance service provided through the Homeowner's Association and be assessed a monthly lawn maintenance fee by the Association.

Each Lot Owner shall be required to maintain their own sodding in the front, side, and rear yard areas of the Lot in order to prevent erosion, stormwater runoff, and any damage to wetlands, drainage easements, ditches, swales, and any other stormwater runoff basins or facilities on the Property. The sod and landscaping shall be maintained by the Lot Owner in a healthy and lush condition at all times, and dead or unhealthy sod, trees, plants, or other vegetation shall be promptly removed and replaced. Furthermore, each Lot Owner shall indemnify and hold harmless the Declarant, and/or the Association, as the case may be, from any cost, claim, or expense arising from any damages to wetlands, drainage easements, ditches, swales, and any other stormwater runoff basins or facilities caused by the failure of the Lot Owner to maintain sodding in the front, side, and rear yard areas of the Lot.

SECTION 12. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Areas except the direction or with the express written consent of the Association.

SECTION 13. Subdividing. Subject to the provisions of Article V hereof, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board of Directors of the Association.

SECTION 14. The following general prohibitions and requirements shall apply and control the improvements, maintenance and use of all Lots:

- A. No mobile home, trailer, tent, or temporary house, temporary garage or other temporary outbuildings shall be placed or erected on any Lot, provided, however, that the ARC or Declarant may grant permission for temporary structures for storage of materials during Construction.
- B. During construction of improvements on any Lot, adequate portable sanitary toilets must be provided for the construction crew.
- C. Construction activity on a Lot shall be confined within the boundaries of said Lot. Each Lot Owner shall have the obligation to collect and dispose of all rubbish and trash resulting from construction on his Lot.

- D. All dwellings and permitted structures erected or placed on any Lot shall be constructed of material of good grade, quality and appearance, and all construction shall be performed in good workmanship manner and quality. The covering for all roofs shall be shingles or materials approved by the ARC or Declarant. Materials and colors for the exterior of all dwellings and permitted structures must be approved by the ARC or Declarant.
- E. Except structures erected by the Declarant or Declarant's Approved Builders, no structure erected upon any Lot may be used as a model exhibit or model house unless prior written permission to do so shall have been obtained from the ARC or Declarant.
- F. Any improvement on any Lot that is destroyed in whole or in part by fire or other casualty shall be either rebuilt or torn down and all debris removed and the Lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three (3) months.
- G. No stripped, partially wrecked, junk motor vehicle, or part thereof, or any motor vehicle not displaying a current valid license plate shall be permitted to be parked or kept on any Lot.
- H. Parking of vehicles on any street in the community shall be allowed only in accordance with the policy determined by the Board. No truck nor other vehicle in excess of a three quarter (3/4) ton load capacity, boat, vessel, motorboat, camper, trailer, motor or mobile home, or similar type vehicle or apparatus shall be parked or kept overnight or longer, on any street or on any Lot unless it is stored in an enclosed garage and in such a manner as to not be visible to the Owners of other Lots or the users of a street or recreation area. All tools or other materials stored in vehicles for overnight parking shall be kept out of sight. No customized vehicles that are unsightly in appearance as determined by the Board or the Declarant shall be allowed.
- I. No outdoor poles, clotheslines or similar equipment shall be erected or located upon any Lot.
- J. All trash receptacles and garbage cans shall be screened so as not to be visible by the Owners of other Lots or the users of any street or recreation area. All such screening shall be approved by the Declarant or the ARC.
- K. No fuel tanks or similar storage receptacles may be exposed to view. The placement of any such receptacles must be approved by the ARC or Declarant and may only be located within the main dwelling house, within an accessory building, within a screened area, or buried underground.



- L. No advertising signs or billboards or other advertising structure(s) of any kind shall be erected on any Lot or displayed to the public on any Lot subject to these restrictions except that one sign of not more than six square feet in area may be used to advertise a completed dwelling for sale or rent. No "For Sale" signs are allowed on any vacant Lots except with approval by Declarant or ARC. Only the sign design approved by the Declarant or the ARC may be used or placed upon any lot to advertise a completed dwelling for rent or sale. This covenant shall not apply to signs erected by the Declarant used to identify and advertise the community as a whole, or construction identification signs approved by the ARC or Declarant showing Lot numbers and name of builder, or for a homeowner for the purposes of identifying the homeowner as the resident on said Lot. Said identification sign shall not exceed in size a total of six square feet. All signs permitted by this Declaration must be approved by Declarant or ARC. Declarant, ARC or agent of either has the right to enter upon the Lot or unit and remove any unapproved sign.
- M. All dwelling connections for all utilities, including, but not limited to, water, electricity, gas, telephone, and television shall be run underground from the proper connecting points to the dwelling structure in such manner as may be acceptable to the appropriate utility authority. The cost for such underground service shall be shared by the Owner and utility company in conformity with existing utility company policy, if any.
- N. No fence shall be erected or hedge grown on any Lot unless approved by the Declarant or ARC in accordance with this Declaration. All fences constructed hereunder shall be maintained in their original condition by the Lot Owner. All fences shall meet any applicable local governmental regulations.
- O. No immoral, improper, illegal, noxious or offensive activity shall be permitted on any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the Declarant or any Owner(s). There shall not be maintained any plants or animals, or device or anything of any sort whose normal activities or existence 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 by the Owner(s) thereof.
- P. No decorative objects may be placed on any Lot without the written approval of the Declarant or the ARC.
- Q. Burning as a means of clearing brush shall not be permitted. Burning may be allowed under appropriate circumstances if approved by the Declarant or the ARC and the Owner has obtained all necessary government permits.
- R. No yard sales or garage sales shall be permitted upon any Lot.
- S. In certain instances, conservation areas or green ways, or vegetative buffers may be conveyed with a Lot to an Owner. Such areas are for conservation purposes and

as such, not for Owner's private use. No fences or structures of any type may be erected in said areas and no type of vegetation and no sod may be removed except as provided hereinafter.

"The areas shown on the Plat as the conservation areas shall be maintained in perpetuity in their natural or mitigated condition. Therefore, no person shall perform any of the following activities within the identified conservation areas:

- i Fill, grade, excavate or perform any other land disturbing activities,
- ii Cut, mow, burn, remove or harm any vegetation,
- iii Construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other temporary or permanent structures,
- iv Drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area,
- v Pump or store sod, trash, or other waste, and/or
- vi Graze or water animals, or use for any agricultural or horticultural purpose.

This covenant is intended to ensure continued compliance with the mitigation condition of the Clean Water Act authorization issued by the United States of America, Army Corps of Engineers, Wilmington District, Action ID 200101165, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it."

Notwithstanding the foregoing, any area identified as a Conservation or Buffer Area on any map or revision of lots map may be conveyed with a Lot or Lots or may be conveyed to one or more Lot Owners, or may be conveyed to the Association. These area(s) are for conservation or buffer purposes and, as such, not for the Owner(s)' private use. No structures other than those fences, signs, entranceway structures, landscaping or similar construction by the Declarant shall be permitted in these Area(s). In the case of conveyance of a Conservation or Buffer Area as set forth herein the Association shall have an easement to go upon the area(s) to maintain such areas, Declarant and Association further reserve the right and an easement to change, reconstruct or construct any fences, signs, entranceway structures, landscaping or the equivalent in and over the Conservation or Buffer Area(s).

If Owner(s), his agents, guests, lessees or licensees shall in any way disturb or damage any vegetation or structure, including fences and signs located in any "Conservation or Buffer Area" as determined by the Board, the Board may impose a fine as permitted by law. Further, the Board or its designee, after twenty (20) days' notice, may remedy the violation or perform any required maintenance or other activities, all at the expense of the Owner. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be

chargeable to the Lot as an assessment, including collection costs and a fifteen percent (15%) administrative fee and any reasonable attorneys' fees.

- T. Nothing shall be kept and no activity shall be carried on upon any Lot or on the Common Elements which will increase the rate of insurance for the property or the contents thereof. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his Lot or on the Common Elements which will result in the cancellation of insurance on any portion of the property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be permitted on any portion of the Common Elements.
- U. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction of and with the express written consent of the Association or Declarant.
- V. The Common Elements shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Lots, subject to any rules or regulations that may be adopted by the Association.
- W. All lawn mowers, bicycles, toys and other similar objects must be stored when not in use so as not to be visible by the Owners of other Lots or the users of any street or recreation area. Gas or charcoal grills, or other similar portable cooking appliances, are not required to be stored out of sight provided that they are placed along the footprint of the rear house and do not become unsightly in appearance as determined by the Board of Directors.
- X. Declarant does not grant permission or recommend that any material be buried on any Lot in the Village At Motts Landing, including, but not limited to any easement area, Common Elements, Limited Common Elements, or area where any structure shall be constructed. If any material is buried on any Lot, it is recommended that all subsequent purchasers be advised of the location and type of material(s) deposited. No hazardous, illegal, or governmental regulated material(s) shall be deposited on any Lot in The Village At Motts Landing.
- Y. Lots may not be rented or leased for periods less than one year without the express written permission of the Board, which may also require a copy of all leases.

#### **ADDITIONAL DESIGN AND PERMITTED USES PROVISIONS APPLICABLE TO TOWNHOMES:**

In addition to the guidelines and restrictions above, Townhomes shall be subject to any design standards (the "Motts Forest Design Standards") which may be adopted by the ARC to provide for the townhome plans specifically approved and authorized by the Association.

SECTION 1. Only Townhomes or improvements related thereto as set forth hereafter shall be commenced, erected, or maintained upon the Townhome Lots. No Townhome Lot

improvements shall be constructed unless first reviewed and approved by the Declarant, or after appointment of the ARC, then the ARC, as herein provided, for compliance with Motts Forest Design Standards. No exterior addition to or change or alteration thereto shall be made, including change of color, until the plans and specifications showing the nature, kind, shape, heights, materials, 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 Declarant, or the ARC. Townhomes must be preapproved by the Declarant or the ARC prior to construction by submitting a set of plans and specifications to the Declarant via registered or certified mail or via overnight courier. Any Townhome design must be consistent in exterior appearance to the existing Townhomes within the same section of Motts Forest. In the event the Declarant, or its designee, or, if applicable, the Board, or the ARC, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Declarant or the ARC shall notify Owner if complete plans and specifications have not been received. Declarant, subject to the provisions herein, may assign these duties to the Board or to the ARC.

SECTION 2. All duties and responsibilities conferred upon the Board or the ARC by this Declaration or the Bylaws of the Association may be exercised and performed by the Declarant or its designee at its discretion, so long as Declarant shall own any Lot which entitles Declarant to Class B Membership or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

SECTION 3. Until such time as the ARC has been established, the Declarant shall perform the functions as outlined above and elsewhere herein. Where the term "The Declarant" or "ARC" has been used, this term shall be construed to mean that only one of the two entities will perform the duties and function, and once the ARC is established, the ARC will perform the duties and functions as outlined above. Upon the appointment and organization of the ARC, the ARC shall adopt such administrative procedures as will ensure the submission, review and approval of any and all buildings and/or improvements that are to be constructed. During the period in which Class B membership exists, Declarant shall be entitled to appoint all members of the ARC.

SECTION 4. No construction, which term shall include within its definition clearing, excavation, grading and other site work, shall take place except in strict compliance with this Article, and until the approval of the ARC or Declarant has been obtained for the improvements placed thereon.

SECTION 5. Since the establishment of standard inflexible building setback lines in location of townhomes on Lots tends to force construction of homes directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related concerns, no specific setback lines are established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the Declarant reserves the right to select the precise site location of each house or other structure on each Lot in its sole discretion and to arrange the same in such manner and for such reasons as the Declarant deems sufficient. In any event, no house shall be erected closer to the front Lot line or nearer to any side Lot line than the minimum distances established by applicable

governmental ordinances. Upon appointment of the ARC, such discretion reserved to the Declarant may be exercised the ARC.

SECTION 6. Any installation of a drainage pipe must be approved by Declarant or ARC in accordance with the terms of this Article. In addition, all such installations must comply with all applicable governmental statutes, ordinances and regulations, including, but not limited to, the State of North Carolina Department of Transportation and North Carolina Department of Environmental Quality standards.

SECTION 7. All improvements, driveway connections, and plantings, including, but not limited to, drainage pipes, landscape materials, irrigation systems, walls, and fences, located within the road right-of-way must meet North Carolina Department of Transportation ("DOT") specifications and must be approved by Declarant or ARC. Lot Owner shall be responsible for all roadway repairs required because of damage caused by Lot Owners for failure to comply with this paragraph, whether such damage occurs before or after the road has been accepted and approved by the appropriate government agency as a public road. Declarant shall not be responsible for any such roadway repairs.

SECTION 8. The ARC or Declarant shall have jurisdiction over all original construction on any Lot and later changes or additions after initial approval thereof together with any modifications, additions or alterations subsequently to be constructed on any Lot or made to any improvements initially approved, including any exterior change or alteration and change of color.

SECTION 9. The ARC or Declarant shall have the right to disapprove any plans, specifications and details submitted to it in the event the same are not in accordance with any of the provisions of this Declaration and any Motts Forest Design Standards which may be in effect at the time. Disapproval of plans, location, specifications or details may be based upon any grounds, including purely aesthetic considerations which the ARC or Declarant, in its sole and uncontrolled discretion, shall deem sufficient.

SECTION 10. The ARC, or its agent, or the Declarant shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans, specifications and details.

SECTION 11. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of any residence or permitted pertinent structures, or to paint the interior of the same any color desired.

SECTION 12. Neither the Declarant nor the ARC nor the Board nor any ARC agent thereof shall be responsible in any way for any defects in plans, specifications or details submitted, revised or approved in accordance with the provisions contained herein or in the guidelines, nor for any structural or other defect in any construction.

SECTION 13. Owner(s) shall be responsible for compliance with all applicable governmental statutes, ordinances and regulations including, but not limited to, land use, zoning, and building regulations.

**ARTICLE VII**  
**ANNEXATION OF ADDITIONAL PROPERTY**

SECTION 1. Declarant may annex to and make a part of the Development any other real property which Declarant now owns or which Declarant may hereafter acquire or develop (the "Additional Property"), as follows:

A. Except as provided in subparagraph B, below, annexation of Additional Property to the Development shall require the assent of a majority of the Members who are voting in person or by proxy at a meeting called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting.

B. The Declarant owns all of the Property within Section 1 Phase 2B which will be developed as part of this Community. The Declarant owns additional adjacent property to Section 1, Phase 2B which the Declarant may, but is not required to develop as part of the Community under this Declaration. The additional property which may be annexed may be shown as lands "to be developed" or "future development" on the various maps of the Village at Motts Landing and constituted approximately 291 acres of land owned by the Declarant bounded by Highway 421 on the East, Sanders Road on the South, River Road on the West and Motts Creek and various adjacent landowners on the North provided 36 acres of the proposed future development is on the West side of River Road. Additional Property may be annexed to the Development by the Declarant or its assigns without the assent of the Members so long as the Additional Property can be used for residential purposes and related facilities usually appurtenant to residential developments, recreational facilities and Common Areas, provided however the 21.71 acres out parcel on Carolina Beach Road may be used for commercial development and the area labeled as future development along Sanders Road may be used as multi-family residential.

SECTION 2. Annexation of Additional Property shall occur upon the recording, in the Office of the Register of Deeds for the county where the Additional Property is located, of (a) a subdivision plat for the Additional Property and (b) a supplemental declaration stating that the Additional Property is made a part of the Development and is subject to this Declaration. Upon recording of such plat and supplemental declaration, the Additional Property shall become fully subject to the terms of this Declaration, and the lot owners of the additional property will be subject to the Declaration and members of the Homeowners Association except to the extent that the Declarant amends the applicability of this Declaration to the Additional Property.

SECTION 3. Nothing herein shall prevent Declarant from using the name "The Village at Motts Landing" in conjunction with the development of other real property which is not made part of the Development and subject to this Declaration.

## **ARTICLE VIII**

### **RESTRICTIONS ON JURISDICTIONAL WETLANDS**

SECTION 1. The areas shown as 61.39 acres of jurisdictional I wetlands less and excepting a 1.55 acre portion used for wetland crossing on that plat prepared by Sherwin Cribb, R.L.S. of the Village at Mott's Landing prepared by Sherwin D. Cribb dated January 12, 2005, revised on February 27, 2006, shall be maintained in perpetuity in their natural condition. No person or entity shall fill, grade, excavate, or perform any other land disturbing activities; nor cut, remove any vegetation except for removal of dead, dying or diseased vegetation or trees and noxious or poisonous vegetation as permitted under Section 2 of this Article; nor construct any structures, nor allow animal grazing or watering or any other agricultural use on such wetlands. This covenant is intended to ensure continued compliance with the authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, Action ID 200101165, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming through or under it, including, but not limited to any adjacent homeowner's or any homeowners' association to whom the owner may assign or convey its rights. Modification of this particular Section 1 of Article VIII will require written consent of the U.S. Army Corps of Engineers. The wetlands as well as the road locations for Phase I of the Village at Mott's Landing are shown on the map for the wetlands and roads prepared by Sherwin D. Cribb and recorded in. Map Book 53, at Pages 269 through 271 of the New Hanover County Registry.

SECTION 2. The wetland map referred to in Section 1 of this Article designates Wetland A areas and Wetland B areas. Notwithstanding the provisions of Section 1 of this Article, pile supported structures on the Wetland Area A will be permitted at areas as designated on the wetland map referred to above. In addition, notwithstanding Section 1 of this Article with respect to the areas in Wetland Area B the following activities will be permitted without further consent of the United States Army Corps of Engineers: establish and maintain pervious surface, nature trails; remove noxious or poisonous plants such as poison ivy, poison oak; repair or remove storm damage and/or dying or diseased vegetation and trees; erect, build and maintain pile supported structures not requiring permits pursuant to 33 CFR 323.3.

## **ARTICLE IX**

### **LOTS SUBJECT TO DECLARATION AND ENFORCEMENT**

SECTION 1. Lots Subject to Declaration. The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of the Planned Community and the Lots contained in it. All present and future Owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, their heirs, successors and assigns, as though such provisions were made apart of each and every deed of conveyance or lease for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be

automatically extended for successive periods of ten (10) years, unless terminated by the Lot Owners as prescribed under the North Carolina Statutes.

SECTION 2. Enforcement and Remedies. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The 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. In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Articles or Rules and Regulations, the Board or its designee, after twenty (20) days' notice, may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner, and such entry shall not be deemed a trespass. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot as an assessment, including collection costs and a fifteen percent (15%) administrative fee and any reasonable attorneys' fees. Such amounts shall be due and payable within twenty (20) days after Owner is billed. If not paid within said twenty (20) day period, the amount thereof may immediately be added to and become a part of the assessment levied against said Owners Lot. In the event that any maintenance activities are necessitated to any Common or Limited Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors of the Association, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may immediately be added to and become a part of the Annual assessment levied against said Owner's Lot.

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

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

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



## ARTICLE X RIGHT OF FIRST REFUSAL

All lots subject to this Declaration are subject to a right of first refusal to repurchase by the Declarant upon any resale transfer to any third party for a period of three (3) years after the date of initial sale by the Declarant provided this right of first refusal will not apply to, a) gifts between related parties nor to transfers between related entities where the principals of the grantee entity own at least fifty percent (50%) of the ownership interest in the grantor entity, b) any sale to any third party where the sale price for the lot exceeds the purchase price which the initial purchaser paid to the Declarant for the lot, c) any involuntary sales including but not limited to any foreclosure or judicial sale or a deed in lieu of foreclosure. In the event of a sale which gives right to the Declarant to exercise its right of first refusal, then the owner shall contact the Declarant in writing and furnish the Declarant a copy of the proposed sales agreement or sales price which is acceptable to the owner and the Declarant shall have five (5) business days to accept the proposed sales price and terms by written acceptance delivered to the owner, and upon such written acceptance, the Declarant shall close on the purchase within ten (10) days of Declarant's receipt of the notice from the owner to the Declarant. If the Declarant does not elect to exercise, its right of first refusal, then the owner may thereafter convey said lot upon the terms and conditions presented to the Declarant at any time within a period of ninety (90) days after the Declarant declines the right of first refusal, if the Declarant declines in writing, or within a period of ninety (90) days after the expiration of the five (5) business days for acceptance by Declarant, if the Declarant fails to exercise or to decline the right of first refusal in writing.

## ARTICLE XI GENERAL PROVISIONS

SECTION 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2. Enforcement of Storm Water Runoff Regulations. The following covenants are intended to ensure ongoing compliance with state stormwater management permit number SW8 030917, SW8 150905, SW8 150113, as issued by the Division of Water Quality under NCAC 2H.1000. These covenants may not be changed or deleted without the consent of the State of North Carolina, Division of Water Quality.

2.1 The maximum allowable built upon area per lot as recorded is shown on the attached Exhibit documents from the original filings for each community, which are attached hereto and incorporated by reference, subject to future filings. These allotted amounts include any built upon area constructed within the lot property boundaries and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to structures, asphalt, gravel, concrete, brick, stone, slate and coquina, but does not include raised open wood decking or the water surface of swimming pools.

2.2 All runoff from the built upon areas on the lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales to collect lot runoff and directing them into the stormwater system or into the street. Lots that will naturally drain into the system are not required to provide these additional measures.

2.3. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is strictly prohibited by any persons.

2.4. Built-upon area in excess of the permitted amount requires state stormwater management permit modification prior to construction.

2.5.

- a. Bellamy Parke in the Village at Motts Landing – All permitted runoff from out parcels or future development shall be directed into the permitted stormwater control system.
- b. Bellamy Parke Estates in the Village at Motts Landing – All permitted runoff from out parcels or future development shall be directed into the permitted stormwater control system.
- c. Cypress Parke in the Village at Motts Landing – All permitted runoff from out parcels or future development shall be directed into the permitted stormwater control system.
- d. Glenn Ellen in the Village at Motts Landing – All permitted runoff from out parcels or future development shall be directed into the permitted stormwater control system.
- e. Motts Forest East in the Village at Motts Landing – All permitted runoff from built upon areas of the lot, out parcels or future development shall be directed into the permitted stormwater control system.
- f. Motts Forest in the Village at Motts Landing – All permitted runoff from townhome Lots or future development shall be directed into the permitted stormwater control system.
- g. Mount Carmel in the Village at Motts Landing - All permitted runoff from out parcels or future development shall be directed into the permitted stormwater control system.
- h. Pointe Pleasant in the Village at Motts Landing - All permitted runoff from out parcels or future development shall be directed into the permitted stormwater control system.
- i. Yorke Meadows in the Village at Motts Landing - All permitted runoff from out parcels or future development shall be directed into the permitted stormwater control system.

These connections to the stormwater control system shall perform in a manner that maintains the integrity and performance of the system as permitted.

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

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

2.8 These covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

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

2.10

- a. Bellamy Parke in the Village at Motts Landing – Each lot or built up area will maintain a 30' wide vegetated buffer between all impervious areas and the mean high water line of surface waters.
- b. Bellamy Parke Estates in the Village at Motts Landing – Each lot or built up area will maintain a 30' wide vegetated buffer between all impervious areas and the mean high water line of surface waters.
- c. Cypress Parke in the Village at Motts Landing – Each lot will maintain a 30' wide vegetated buffer between all impervious areas and surface waters.
- d. Glenn Ellen in the Village at Motts Landing – Each lot or built upon area will maintain a 30' wide vegetated buffer between all impervious areas and the mean high water line of surface waters.
- e. Motts Forest East in the Village at Motts Landing – Each lot or built up area will maintain a 30' wide vegetated buffer between all impervious areas and the mean high water line of surface waters.
- f. Motts Forest in the Village at Motts Landing – Each lot or built up areas will maintain a 30' wide vegetated buffer between all impervious areas and the mean high water line of surface waters.
- g. Mount Carmel in the Village at Motts Landing - Each lot or built up area will maintain a 30' wide vegetated buffer between all impervious areas and the mean high water line of surface waters.
- h. Pointe Pleasant in the Village at Motts Landing - Each lot or built up area will maintain a 30' wide vegetated buffer between all impervious areas and the mean high water line of surface waters.
- i. Yorke Meadows in the Village at Motts Landing - Each lot or built up area will maintain a 30' wide vegetated buffer between all impervious areas and the mean high water line of surface waters.

2.11 All roof drains shall terminate at least 30' from the mean high water mark of surface waters.

2.12 Filling in, piping or altering any designated 5:1 curb outlet swale associated with the development is prohibited by any persons.

2.13 This project proposes a curb outlet system. Each designated curb outlet swale shown on the approved plan must be maintained at a minimum of 100' long with 5:1 (H:V) side

slopes or flatter, have a longitudinal slope no steeper than 5% carry the flow from a 10 year storm in a non-erosive manner, and maintain a dense vegetated cover and be located in either a dedicated common area or a recorded drainage easement. All runoff on the lots within the high-density portion of the project must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales and directing them into the pond or street. Lots that will naturally drain into the system are not required to provide these measures.

#### 2.14

- a. Bellamy Parke in the Village at Motts Landing – The lots draining to curb outlets are Lots 31-44 inclusive, 51-58 inclusive, 67-69 inclusive, 77-89 inclusive, 130-132 inclusive, 179-184 inclusive and 203-227 inclusive. All other lots drain to the ponds.
- b. Bellamy Parke Estates in the Village at Motts Landing – The lots draining to curb outlets are Lots 31-44 inclusive, 51-58 inclusive, 67-69 inclusive, 77-89 inclusive, 130-132 inclusive, 179-184 inclusive and 203-227 inclusive. All other lots drain to the ponds.
- c. Cypress Parke in the Village at Motts Landing – The lots draining to curb outlets are Lots 31-44 inclusive, 51-58 inclusive, 67-69 inclusive, 77-89 inclusive, 130-132 inclusive, 179-184 inclusive and 203-227 inclusive. All other lots drain to the ponds.
- d. Glenn Ellen in the Village at Motts Landing – The lots draining to curb outlets are Lots 31-44 inclusive, 51-58 inclusive, 67-69 inclusive, 77-89 inclusive, 130-132 inclusive, 179-184 inclusive and 203-227 inclusive. All other lots drain to the ponds.
- e. Motts Forest East in the Village at Motts Landing – The lots draining to curb outlets are Lots 25 through 72. No lots drain to the ponds.
- f. Motts Forest in the Village at Motts Landing – The lots draining to curb outlets are Lots 31-33 inclusive, 51-58 inclusive, 67-69 inclusive, 77-89 inclusive, 130-132 inclusive, 179-184 inclusive and 203-227 inclusive. All other lots drain to the ponds.
- g. Mount Carmel in the Village at Motts Landing - The lots draining to curb outlets are Lots 31-44 inclusive, 51-58 inclusive, 64-70 inclusive, 78-90 inclusive, 131-132 inclusive, 155, 179-184 inclusive, 213-226 inclusive, 372-377 inclusive and 386-388 inclusive. All other lots drain to the ponds.
- h. Pointe Pleasant in the Village at Motts Landing - The lots draining to curb outlets are Lots 31-44 inclusive, 51-58 inclusive, 67-69 inclusive, 77-89 inclusive, 130-132 inclusive, 179-184 inclusive and 203-227 inclusive. All other lots drain to the ponds.
- i. Yorke Meadows in the Village at Motts Landing - The lots draining to curb outlets are Lots 25-74 inclusive, 87-92 inclusive, 93-96 inclusive and 227-255 inclusive. All other lots drain to the ponds.

2.15 Filling in, piping or altering any 3:1 vegetated conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is prohibited by any persons.

2.16 Lots within CAMA's Area of Environmental Concern may have the permitted built-upon area reduced due to CAMA jurisdiction within the AEC.

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

SECTION 4. Amendment of Declaration. Except as provided elsewhere herein, the covenants and restrictions of this Declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or by the Declarant if necessary for the exercise of any development right. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant.

In addition, this Declaration may be amended by the Declarant or by the Board of the Association to (a) correct any obvious error or inconsistency in drafting, typing or reproduction; (b) qualify the Association or the Property and Additional Property, or any portion thereof, for tax exempt status; (c) include any platting change as permitted herein; or (d) conform this Declaration to the requirements of any law or governmental agency relating to the property, including, without limitation, storm water, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare.

## **ARTICLE XII**

### **ADDITIONAL PROVISIONS APPLICABLE TO TOWNHOMES**

#### **MAINTENANCE, REPAIR AND REPLACEMENT**

SECTION 1. Townhome Maintenance. The Association shall provide all exterior maintenance upon Townhomes as follows: exterior paint, repair, replace and care of roofs, gutters, downspouts, the exterior surfaces of, brick walls and other exterior improvements. Such exterior maintenance shall not include glass surfaces, exterior doors, heating and air conditioning equipment (HVAC), and window frames (i.e., entire window, not just the glass) unless approved by the Board, except the Association shall be responsible for painting exterior doors. 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 Townhome is subject.

SECTION 2. Maintenance. Maintenance provided to Townhomes, including but not limited to Lawn Maintenance, shall be assessed by the Association to the Townhome Owners and included in the annual budget.

SECTION 3. Responsibility of the Owner. Except for the maintenance specifically required of the Association under this Declaration, each Townhome Owner will be responsible for all other required maintenance of the exterior and interior of the Townhome improvements on such Owner's Townhome Lot, including the fixtures and mechanical systems (including utilities connections) located in the Townhome improvements to the Townhome Lot to the extent current repair shall be

necessary in order to avoid damaging other Persons, Townhome Lots, the Limited Common Area or the Common Area. All fixtures, equipment, and mechanical systems (including utilities connections) installed and included in Townhome improvements to a Townhome Lot, commencing at a point where the fixtures, equipment, and mechanical systems (including utilities connections) enter the Townhome improvements to the Townhome Lot, shall be maintained and kept in repair by the Owner. The Owner, at the Owner's expense, shall maintain, repair or replace the heating and air conditioning units (HVAC), air handling units, heat exchanger, heat outlet, enclosures and mechanical attachments for the Owner's unit. The Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of any Townhome improvements to any Townhome Lot, or impair any easement or hereditament. An Owner is responsible for a repair resulting from a casualty occurring within, or affecting the inside of the Townhome improvements to such Owner's Townhome Lot. Each Owner shall be responsible for removing all snow, leaves and debris from all doorsteps or stoops appurtenant to his Townhome.

If an Owner of any Townhome Lot fails to maintain that Townhome 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 Townhome of the defaulting Owner and to repair, maintain and restore the Townhome Lot and the exterior of the improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration plus a fifteen percent (15%) administrative fee shall immediately be deemed a Special Assessment levied by the Association against such Owner and such Owner's Townhome Lot, shall become the personal obligation of such Owner and shall become a lien against such Townhome Lot enforceable in accordance with this Declaration. In the event of an 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 Townhome improvements to any Townhome Lot to make emergency repairs necessary for the proper maintenance and operation of the Property.

## **INSURANCE AND RECONSTRUCTION**

**SECTION 1. Townhome Insurance.** Commencing not later than the time of the first conveyance of a Townhome Lot to a Person that is not a Declarant, it shall be the duty of the Association to maintain in effect fire and casualty and general liability insurance covering the Townhome improvements constructed on Townhome Lots as follows, to the extent it is reasonably available:

(a) **Amount and Scope of Insurance.** All insurance policies necessary or desirable upon any Townhome improvements constructed on Townhome Lots (except personal property within Townhome improvements) shall be secured by the Board of Directors, or its designee, on behalf of the Association. Such insurance shall at a minimum cover against loss or damage by fire or other hazards normally insured against in an amount after application of any deductibles of not less than one hundred percent (100%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date exclusive of land excavation, foundations and other items normally excluded from property policies.

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

- (1) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Townhome Lot Owners and their employees, agents, tenants and invitees,
- (2) a waiver by the insurer of its right to repair and reconstruct instead of paying cash,
- (3) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured and all mortgagees,
- (4) coverage will not be prejudiced by act or neglect of the Townhome Lot Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of Motts Forest or any Townhome over which the Association has no control,
- (5) the master policy maintained by the Association cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Townhome Lot Owners,
- (6) the master policy maintained by the Association cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured,
- (7) each Townhome Lot Owner is an insured person under the policy to the extent of the Townhome Owner's insurable interest,
- (8) if at the time of a loss under the policy, there is other insurance in the name of a Townhome Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(c) Premiums. All premiums on the insurance policies required by this section and any deductibles payable by the Association upon loss shall be a Townhome Insurance Assessment as described elsewhere in this Declaration,

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

(e) Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of A or better by the current issue of Best's Insurance Reports. All Townhome insurance policies shall be written for the benefit of the Board of Directors and the Townhome Lot Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors. Certificates of insurance shall also be obtained and issued by Association to each mortgagee, if any, upon request of such mortgagee,

(f) Townhomes -- Individual Policies. If such insurance is not readily available to the Association, then the Board of Directors may turn the insurance coverage for the Townhome Lots over to the Townhome Lot Owners to purchase individual policies under such terms and conditions as the Association may prescribe, provided written notice is provided to the Townhome Lot Owners. If the Association shall determine that it would be more economically feasible in lieu of the Association maintaining a master policy for the Townhome Lot Owners to purchase insurance policies covering each Townhome Lot Owner individually, then upon the assent of sixty-seven percent (67%) of the Townhome Owners (which votes may be cast in person or proxy) and the concurrence of the Class B Member, the insurance coverage for the Townhome Lots may be turned over to the Townhome Lot Owners to purchase individual policies under such terms and conditions as the Association may prescribe. If the responsibility for maintaining the insurance coverage on the Townhome Lots is turned over to the individual Townhome Lot Owners under the provisions of this paragraph, then the Association shall be named as additional insured on each policy, each Townhome Lot shall be insured for its full replacement value, and the provisions of this Section shall be modified accordingly. Upon failure of any Townhome Lot Owner to obtain and maintain such insurance, the Association may bind such insurance coverage in its own name, naming the Townhome Lot Owner as an additional insured, and may advance premiums for such insurance, and may make an Insurance Assessment against such Townhome Lot Owner for any premium so advanced,

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

(1) all reasonable expenses of the insurance trustee shall be first paid or provisions made therefor,

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

SECTION 2. Owners' Insurance. It shall be the responsibility of each Owner, at such Owner's expense, to maintain additional fire and casualty and extended coverage insurance upon such Owner's personal property and any alterations or other improvements made to such Owner's Townhome, and general liability insurance. Each Owner shall obtain and maintain general liability insurance in the amount of at least \$100,000.00 per occurrence. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Townhome Lot as the Owner, in the Owner's sole discretion, shall conclude to be desirable. However, no such insurance coverage obtained by the Owner shall operate to decrease the amount which the Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association resulting from insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from



the Owner as if the amount were an Insurance Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner. The Board may require an Owner to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association

SECTION 3. Distribution of Insurance Proceeds. All policies of property insurance procured by the Association shall provide that all losses shall be adjusted with, and all proceeds shall be payable to the Association as insurance trustee. The Association shall have exclusive authority to negotiate any and all losses under such policies, and the Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner to adjust all claims arising under such policies and to execute and deliver releases upon the payment of claims. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

A Proceeds on account of damage to any improvements in the Limited Common Areas shall be held by the Association and applied in the manner provided in this Declaration,

B Proceeds on account of damage to Townhome Lots shall be held in undivided shares for the Owners of damaged Townhome Lots in proportion to the cost of repairing the damage to each such Owner's Townhome Lot, which cost shall be determined by the Association.

C In the event a mortgagee endorsement or certificate has been issued with respect to a Townhome Lot, the share of that Owner shall be held in trust for the owner and its Mortgagee, as their respective interest may appear.

D Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the manner provided in this Declaration.

SECTION 4. Responsibility for Reconstruction or Repair. If any portion of the Property is damaged by perils covered by property insurance maintained by the Association, the Association shall cause such damaged portions to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any, and any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original development of the Property, except as provided to the contrary in NCGS § 47F-3-113(g). In addition, if such damage renders one or more of the then existing Townhome improvements on Townhome Lots on the Property uninhabitable, the Association may, with the affirmative vote of eighty percent (80%) of the votes of the Members and the written approval of the holders of eighty percent (80%) of the Mortgagees then in force with respect to the Townhome Lots, and with the approval of one hundred percent (100%) of the Owners and Mortgagees of the Townhome Lots having damaged Townhome improvements proposed not to be rebuilt, elect not to reconstruct or repair such damaged Townhomes. A meeting shall be called within ninety (90) days after the occurrence of such casualty. Upon any such election, the insurance proceeds attributable to such damage shall be

promptly distributed to the Owners whose Townhome Lots were damaged, or to their Mortgagees in accordance with the terms of the mortgage covering that Townhome, in proportion to the reasonable cost of repairing damage to such Townhome Lots, provided, however, that no Owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his Townhome Lot have been paid, released or discharged and any debts resulting from such damage or destruction has been removed from the Property.

If (a) the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Property by fire or other casualty, or (b) the damage or destruction is caused by any casualty not insured against, or (c) insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements within the Limited Common Areas shall be accomplished promptly by the Association and the extent of such repairs shall be an expense of the Association, and the repair or reconstruction of any improvements contained within any Townhome shall be accomplished promptly by the Owner of the affected Townhome Lot at such Owner's expense.

**SECTION 5. Procedure for Reconstruction or Repair.** In the event of a casualty causing damage to any portion of the Property, the following provisions shall govern and apply

A Immediately after a casualty which causes damage to any portion of the Property, the Association shall obtain, or cause the affected Owners to obtain, reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

B If the proceeds of the casualty insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the professional fees and premiums, if any), one or more special assessments shall be made against all Owners of the affected Townhome Lots (with respect to any deficiency in insurance proceeds for damage or destruction to Townhome improvements to Townhome Lots or other improvements to Townhome Lots) or all Owners (with respect to any deficiency in insurance proceeds for damage or destruction to the Limited Common Areas or the improvements thereon) in sufficient amount to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association, provided, however, that the Association may borrow funds to pay for such costs with the assent of eighty percent (80%) of the members of the Association voting at a meeting duly called for such purpose.

C The proceeds of the property insurance referred to above and the sums deposited with the Association from collections of special assessments and proceeds of authorized loans, as provided in Section 7(b), shall constitute a construction fund which shall be held by the Association and applied to the payment of the cost of reconstruction and repair of the Property from time to time as the work progresses, but not more frequently than once in any calendar month. The Association shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request signed by an architect in charge or engineer in charge of the work who shall be selected by the Association, certifying that the sum then requested is justly due to contractors, subcontractors, materialmen, architects, engineers or other persons who have rendered services or

furnished materials in connection with the work, giving a brief description of the services and materials, and certifying that the sum requested does not exceed the value of the services and materials described in the certificate. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds, and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association which may use such excess funds for any purpose not in violation of this Declaration in the sole discretion of the Board.

## **PARTY WALLS**

SECTION 1. General Rules of Law to Apply. Each wall that is built as a part of the Townhome improvements to a Townhome Lot upon the Properties and placed on (or approximately on the common dividing line between abutting Townhome Lots within the easement herein reserved and granted or deemed granted for encroachment) shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto. If any portion of the structures constructed on each Townhome, including any party wall, any extension of a party wall, or any common fence, protrudes over an adjoining Townhome Lot, or onto the Limited Common Areas, such structure, wall or fence shall be deemed to be a permitted encroachment upon the adjoining Townhome or Limited Common Area, 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 Owners or the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the encroaching structure, wall, or fence. The foregoing provision also shall apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant. The provisions of this Article on Party Walls shall be perpetual in duration and shall not be affected by an amendment of this Declaration.

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

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

SECTION 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent 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.

SECTION 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title, provided the owner entitled to contribution has filed a lis pendens

against the owner from whom contribution is sought and the lis pendens is properly reduced to judgment.

SECTION 6. Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every Owner shall have an easement and right of entry upon the Townhome of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Townhome or Townhomes to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

THE VILLAGE AT MOTTS LANDING  
HOMEOWNERS' ASSOCIATION

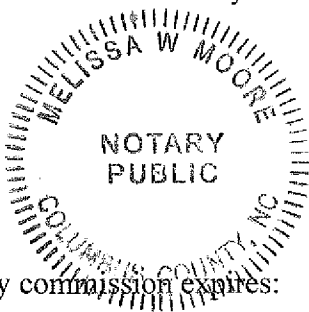
BY:

Roy Van Teyens  
Roy Van Teyens, President

NORTH CAROLINA  
NEW HANOVER COUNTY

I, a Notary Public of the County and State aforesaid, certify that Roy Van Teyens personally came before me this day and acknowledged that he is President of The Village at Motts Landing Homeowners' Association, and that he, President, being authorized to do so, executed the foregoing on behalf of The Village at Motts Landing Homeowners' Association.

WITNESS my hand and official stamp or seal, this 25<sup>th</sup> day of March, 2021.



My commission expires:

April 3, 2023

Melissa W. Moore  
Notary Public

Melissa W. Moore  
Printed Name

**EXHIBITS**

(AS REFERENCED IN ARTICLE XI § 2.1)

BELLAMY PARKE

**EXHIBIT "A"****TOTAL IMPERVIOUS AREA/LOT  
THE VILLAGE AT MOTTS LANDING**

<u>Lot Number(s)</u>	<u>Square Footage</u>
1 - 25	5,000
75 - 81	4,500
89	5,000
90 - 135	4,500
136 - 154	5,000
155 - 226	4,500

## BELLAMY PARKE ESTATES

## EXHIBIT "A"

TOTAL IMPERVIOUS AREA/LOT  
THE VILLAGE AT MOTTS LANDING

<u>Lot Number(s)</u>	<u>Square Footage</u>
1 - 25	5,000
75 - 81	4,500
89	5,000
90 - 135	4,500
136 - 154	5,000
155 - 226	4,500



CYPRESS PARKE

**EXHIBIT "A"****TOTAL IMPERVIOUS AREA/LOT  
THE VILLAGE AT MOTTS LANDING**

<u>Lot Number(s)</u>	<u>Square Footage</u>
1 - 25	5,000
75 - 81	4,500
89	5,000
90 - 135	4,500
136 - 154	5,000
155 - 226	4,500

GLENN ELLEN

**EXHIBIT "A"**

**TOTAL IMPERVIOUS AREA/LOT  
THE VILLAGE AT MOTTS LANDING**

Lot Number(s)

Square Footage

330-340  
344-352

BUA allowable is 5,000 sf per lot  
BUA allowable is 5,000 sf per lot

Book 6374 Page 234

GLENN ELLEN  
as Amended October 30, 2020  
Book: 6374 Page: 230  
New Hanover County Register

**EXHIBIT "A"**

**TOTAL IMPERVIOUS AREA/LOT  
THE VILLAGE AT MOTTS LANDING**

Lot Number(s)

Square Footage

283-285  
290-309  
313-320

7,000  
7,000  
7,000

## MOTTS FOREST

## EXHIBIT B

TOTAL IMPERVIOUS AREA PER LOT  
THE VILLAGE AT MOTTS LANDING

<u>Lot Number(s)</u>	<u>Square Footage</u>
1 - 25	5,000
75 - 81	4,500
89	5,000
90 - 135	4,500
136 - 154	5,000
155 - 226	4,500
TOWNHOME LOTS	
1 - 24	3,000

MOTTS FOREST EAST

**EXHIBIT "A"**

**TOTAL IMPERVIOUS AREA/LOT  
THE VILLAGE AT MOTTS LANDING**

<u>Lot Number(s)</u>	<u>Built Upon Area per Lot</u>
25-72 inclusive (*exclude Lt 48)	3800 square feet

\*Lot 48 will not be developed

MOUNT CARMEL
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**EXHIBIT "A"**

**TOTAL IMPERVIOUS AREA/LOT  
THE VILLAGE AT MOTTS LANDING  
PHASE 1C AND SUBSEQUENT PHASES**

<u>Lot Number(s)</u>	<u>Square Footage</u>
26 - 46	5,000
47 - 72	4,500
73 - 74	4,500
82 - 88	4,500
372 - 378	5,000
382 - 385	4,500
 <u>Duplexes</u>	
1 - 2	6,000
3 - 4	6,000
5 - 6	6,000
7 - 8	6,000
9 - 10	6,000
11 - 12	6,000
13 - 14	6,000
15 - 16	6,000
17 - 18	6,000
19 - 20	6,000
21 - 22	6,000
23 - 24	6,000

POINTE PLEASANT

**EXHIBIT "A"**

**TOTAL IMPERVIOUS AREA/LOT  
THE VILLAGE AT MOTTS LANDING**

<u>Lot Number(s)</u>	<u>Square Footage</u>
1 - 25	5,000
75 - 81	4,500
89	5,000
90 - 135	4,500
136 - 154	5,000
155 - 226	4,500

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YORKE MEADOW

**EXHIBIT "A"****TOTAL IMPERVIOUS AREA/LOT  
THE VILLAGE AT MOTTS LANDING**

<u>Lot Number(s)</u>	<u>Built Upon Area per Lot</u>
25-74 inclusive	3500 square feet
87-92 inclusive	3500 square feet
93-98 inclusive	5000 square feet
227-255 inclusive	5000 square feet