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NEW HANOVER COUNTY, NC  
TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS

NC FEE \$38.00

**DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
WATERSTONE**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA AND/OR THE STATE OF NORTH CAROLINA. (WITH EXECEPTION TO ARTICLE VI SECTION 3(J), DEFINED HEREIN, WHICH PERMITS ALL OWNERS TO DISPLAY AN AMERICAN AND/OR NORTH CAROLINA FLAG 4' X 6' OR SMALLER)**

*Prepared by:*  
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STATE OF NORTH CAROLINA  
 COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS  
 CONDITIONS AND RESTRICTIONS  
 FOR WATERSTONE SUBDIVISION**

This Declaration, made the 25<sup>th</sup> day of November, 2017 by **MCCLAMMY FARMS, LLC**, a North Carolina limited liability company, hereinafter referred to as "DECLARANT" or "DEVELOPER" for the purposes hereinafter stated;

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real property located in New Hanover County, North Carolina, known as **WATERSTONE SUBDIVISION**, which is shown on a plat (the "**Plat**") recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 64 Page 5, to which reference is made for a more particular description (the "**Property**");

**NOW, THEREFORE**, Declarant declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "**Act**"), as well as the following easements, restrictions, covenants, and conditions.

**ARTICLE I.  
DEFINITIONS**

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

**SECTION 1.** Additional Property shall mean and refer to any lands, in addition to the above described Property, which are located within one (1) mile of the Property and which are annexed to and made a part of the Planned Community in accordance with 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 Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot as is more specifically set forth in this Declaration. The Allocated Interest for the Common Expense Liability need not be the same as the Allocated Interest for voting purposes. The votes allocated to each Lot are set forth in Article III herein and the Common Expense Liability allocation for each Lot is set forth in Article IV herein. The definition of Allocated Interest as set forth in N.C.G.S. §47F-1-103(2) shall not apply to this Planned Community.

**SECTION 3.** Association shall mean and refer to **WATERSTONE OF WILMINGTON HOMEOWNERS ASSOCIATION, INC.**, a North Carolina non-profit corporation, its successors and assigns, the owners association organized pursuant to the Act for the purposes set forth herein.

**SECTION 4.** Builder shall mean a Person purchasing a vacant lot for the purpose of constructing a home for sale to a third party and not for use by a principal, director, shareholder, officer, member, manager, or partner of such Builder.

**SECTION 5.** Common Elements shall mean and refer to all lands and easements within or appurtenant to the Planned Community owned, enjoyed, maintained or leased by the Association, other than a Lot, and intended for the common use and enjoyment of the Owners, and all facilities located thereon, including, without limitation, stormwater retention ponds, wetlands/flood control systems and stormwater runoff system, drainage easements, sign easement areas, private roads, or sidewalks within the Planned Community. Common Elements shall also include any areas designated on any plats for the Planned Community as "Open Space", "Common Area", "Common Element", "Recreation Area", "Amenity Area", "Conservation Area(s)",

“Wetlands”, “Park” or “Park Area”, or other designation, whether owned by the Association, the Declarant, or any other Person.

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

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

**SECTION 8.** Declarant shall be used interchangeably with Developer and shall mean and refer to MCCLAMMY FARMS, LLC, its successors, and its assign(s), if such assign(s) acquire a Special Declarant Right in accordance with N.C.G.S. §47F-3-104.

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

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

**SECTION 11.** Executive Board or Board shall mean the Board of Directors of the Association, who shall be the body designated in this Declaration to act on behalf of the Association.

**SECTION 12.** Limited Common Elements shall mean the real property, areas and facilities which are intended for the exclusive use of one or more, but less than all of the Lots as shown and designated on any maps of sections of the Planned Community which are or may be recorded in the New Hanover County Registry or which may be annexed to this Declaration by any amendment annexing Additional Property and all facilities located thereon.

**SECTION 13.** Limited Common Expenses shall mean actual and estimated expenses of maintaining, operating, repairing, and replacing the Limited Common Elements, including insurance, reasonable reserves and utilities as may be found necessary and appropriate by the Executive Board for the benefit of the Limited Common Elements.

**SECTION 14.** Lot(s) shall mean and refer to any numbered lot shown on the Plat, and any numbered lot that may be shown on any plats of any part of the Additional Property that may be hereafter recorded in the office of the Register of Deeds of New Hanover County. The Lot(s) are the portions of the Planned Community designated for separate ownership by a Lot Owner or Lot Owners.

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

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

**SECTION 17.** Person means a natural person, a business or nonprofit corporation, limited liability company, trustee(s) of a business trust, trustee(s) of charitable or non-charitable trust, limited or general partnership, joint venture, government, governmental subdivision, governmental agency, or other legal entity.

**SECTION 18.** Planned Community shall mean and refer to the Property plus any Additional Property made a part of the Planned Community by the annexation in accordance with this Declaration.

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

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

**SECTION 21.** Special Declarant Rights means any and all rights, powers, and privileges reserved for the benefit of the Declarant in this Declaration, including, but not limited to, (i) the right to complete improvements intended or planned by Developer for the Property or Additional Property; (ii) the right to exercise any development or other right reserved to the Declarant by this Declaration or otherwise; (iii) the right to maintain within the Planned Community sales offices, management offices, construction offices/trailers, signs advertising the Planned Community, and models; (iv) the right to use the Common Elements for the purpose of making improvements within the Planned Community; (v) the right to make the Planned Community part of a larger planned community or group of planned communities; (vi) the right to make the Planned Community subject to a Master Association; (vii) the right to appoint or remove any officer or Executive Board member of the Association or any Master Association during the Declarant Control Period (viii) the right to permit or cause other land to be annexed to the Planned Community in accordance with this Declaration, and (ix) the rights reserved to the Declarant in Article V of this Declaration.

**SECTION 22.** Stormwater Permit shall mean State Stormwater Permit Number SW8 060745 issued by the North Carolina Division of Water Quality ("DWQ"), Department of Environment and Natural Resources ("DENR").

## ARTICLE II.

### PROPERTY RIGHTS AND EASEMENTS

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

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners;

(b) The Association may grant a security interest in or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners of at least eighty percent (80%) of the Lots, excluding the Developer; provided, however, that the Association may without the consent of the Owners grant easements, leases, licenses and concessions through or over the Common Elements. No conveyance or encumbrance of Common Elements shall deprive any Lot of its rights of access or support. The Association shall be responsible for the maintenance of all Common Elements and any and all stormwater improvements at such time when sixty-six percent (66%) of the Lots are sold.

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

(a) Easements as necessary in the lands constituting the Common Elements and the rear and front ten (10) feet of each Lot and side five (5) feet of each Lot for the installation and maintenance of utilities and drainage facilities (including the right to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of New Hanover County; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to 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.) No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. These easement areas (whether or not shown on the recorded plats for the Planned Community) but not the improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

(b) 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.

(c) Easements over, under, and across all streets, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress to and from any Additional Property, and for the installation of utilities for any Additional Property.

(d) Easements shown and depicted on any recorded map or plat and which affect any Lot or Limited Common Element or which serve the Planned Community or are necessary for the development of the Planned Community.

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

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

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

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

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

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

### **ARTICLE III.**

#### **HOMEOWNERS' ASSOCIATION**

**SECTION 1. Formation of Association.** The Association was formed on May 3, 2017. The Association is a North Carolina nonprofit corporation organized pursuant to the North Carolina Nonprofit Corporation Act for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and facilities located on the Common Elements and any Limited Common Elements and facilities located on the Limited Common Elements, the stormwater runoff system, sign easement areas and other property and facilities maintained by the Association; to enforce covenants, conditions and restrictions of this

Declaration; and to make and enforce rules and regulations governing the Owners' use and occupation of Lots. The Association shall perform its functions in accordance with this Declaration, its Articles of Incorporation, and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

**SECTION 2. Membership.** Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from fee simple ownership of a Lot or fee simple ownership of an undivided interest in a Lot.

**SECTION 3. Voting Rights.** The Association shall have two classes of voting Membership.

*Class A.* Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

*Class B.* The Declarant shall be a Class B Member and shall be entitled to three (3) votes for each Lot owned and for each planned but currently unplatted Lot to be in the Planned Community. The total number of planned Lots for the Planned Community is currently one hundred forty seven (147) Lots; provided however, that the actual number of Lots may be more or less, and the Class B member makes no representation whatsoever regarding the actual number of Lots to be included in the Planned Community. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

(a) when the total vote outstanding in the Class A Membership equals the total vote outstanding in the Class B Membership (taking into account all Lot(s), including Lots(s) shown on the Plat, and Lot(s) added to the Planned Community through the annexation of additional land as provided in this Declaration;

(b) on December 31, 2032; or

(c) upon the voluntary surrender of all Class B Membership by the holder thereof.

**SECTION 4. Declarant Control Period.**

(a) The Declarant Control Period shall commence on the date this Declaration is executed, and shall end (i) when three-fourths (3/4ths) of the Lots are no longer owned by the Declarant (taking into account all Lot(s), including Lots(s) shown on the Plat, and Lot(s) added or which are planned to be added to the Planned Community through the annexation of additional land as provided in this Declaration), (ii) December 31, 2032, or (iii) the Declarant executes a written document stating the Declarant Control Period under this Declaration has ended, whichever occurs first.

(b) During the Declarant Control Period, the Declarant shall have the right to designate and appoint the Executive Board, the right to remove any Person or Persons designated and appointed by the Declarant to serve on the Executive Board, and the right to designate and appoint a Person or Persons to serve on the Executive Board for the remainder of the term of any Person serving on the Executive Board who may resign, die, or be removed by the Declarant.

**SECTION 5. Government Permits.** After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, land use, 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. Declarant reserves the right to assign any such permits, easements, or agreements to the Association, in which case the Association shall be required to assume the same. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit. The WATERSTONE OF WILMINGTON HOMEOWNERS ASSOCIATION, INC., shall be responsible for the maintenance of all roads until such time as the roads have been accepted by the NCDOT as well as all stormwater matters including but not limited to the stormwater pond and the stormwater permit.

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

**SECTION 7. Insurance.** The Executive Board on behalf of the Association, as a Common Expense, may at all times keep the Common Elements and other assets of the Association, if any, insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. At a minimum, the Executive Board shall maintain the insurance coverages required by the Act. The Executive Board shall maintain liability insurance with mandatory Directors and Officers coverage.

**SECTION 8. Architectural Control Committee.** The Executive Board shall perform all duties of the Architectural Control Committee if no such committee is appointed by it, subject, however, to the Special Declarant Rights. Any Architectural Control Committee appointed by the Executive Board shall consist of at least 3 members.

#### **ARTICLE IV: COVENANTS FOR ASSESSMENTS**

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

- (a) Annual Assessments;
- (b) Special Assessments;
- (c) Insurance Assessments;

- (d) Ad Valorem Tax Assessments;
- (e) Working Capital Assessments; and
- (f) Individual Assessments.

The Assessments, together with interest, costs, and Reasonable Attorneys' 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 Attorneys' Fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**SECTION 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and residents of the Planned Community and for the maintenance, repair, improvement, and replacement of the Common Elements and any Limited Common Elements. The funds arising from said assessments or charges, may be used for any or all of the following purposes: operation, maintenance and improvement of the Common Elements and any Limited Common Elements, including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing and funding reserve accounts; establishing working capital; paying dues and assessments to any organization or Master Association or other association of which the Association is a member; and in addition, doing any other things necessary or desirable as determined by the Executive Board to keep the Common Elements and Limited Common Elements in good operating order and repair.

**SECTION 3. Annual Assessments.** The Executive Board shall adopt a proposed annual budget at least sixty (60) days before the beginning of each fiscal year of the Association. Within thirty (30) days after adoption of the proposed budget for the Planned Community, the Executive Board shall provide to all of the 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 Executive 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 date in each Fiscal Year upon which the Annual Assessment shall become due and payable shall be established by the Executive Board. The Executive Board shall have the authority to require the Assessments to be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. The Board of Directors shall be entitled to raise the Annual Assessments by a rate of ten percent (10%). In the event the Board of Directors desire to raise the Annual Assessments by greater than ten percent (10%), an approval of two-thirds (2/3<sup>rd</sup>) of the Lot owners shall be required.

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

(a) To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements and any Limited Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3<sup>rd</sup>) of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Members not less than ten (10) days or more than sixty (60) days in advance of the meeting.

(b) Without a vote of the Members, to provide funds to reimburse the Declarant as provided for in these Declarations.

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

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

**SECTION 7. Working Capital Assessments.** Upon acquisition of record title to a Lot by the first Owner other than the Declarant or a Builder, such first Owner shall pay the sum of One Thousand and no/100 Dollars (\$1,000.00) to the Association as working capital to be used for operating and capital expenses of the Association. Such amounts paid for working capital are not to be considered as advance payment of the Annual or any other Assessments. Working Capital Assessment amounts may be adjusted by the Board at its sole discretion.

**SECTION 8. Individual Assessments.** In addition to the other Assessments set forth in this Article IV, the Executive Board may levy an Individual Assessment against specific Lot(s) for the following purposes:

(a) For the payment of Limited Common Expenses associated with the maintenance, repair, or replacement of a Limited Common element against the Lot or Lots to which the Limited Common Element is assigned.

(b) For the payment of any Common Expenses which are designated to benefit specific Lot(s).

(c) For the payment of those amounts levied against any Lot owned by an Owner under Article VIII, Sections 2(a) and (b) and Article VI, Section 4.

**SECTION 9. Rate of Assessment.** All Assessments except Individual Assessments shall be levied at a uniform rate against all Lots.

**SECTION 10. Commencement of Assessments.** Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant. The Declarant shall not be required to pay Assessments.

**SECTION 11. 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 or at any other interest rate adopted by the Executive Board. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. The Association may collect Reasonable Attorneys' Fees from any Owner for attorney's fees incurred by the Association as a result of any Owner's failure to timely pay any Assessment or installment thereof. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

**SECTION 12. 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) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under

power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to but not limited to N.C.G.S. §47F-3-102, §47F-3-107, §47F-3-107.1, §47F-3-115, §47F-3-116, and §47F-3-116.1 of the Act are enforceable as Assessments.

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

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

(d) Any judgment, decree, or order in any action brought under this section shall include costs and Reasonable Attorneys' Fees for the prevailing party.

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

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

## **ARTICLE V.**

### **RIGHTS OF DEVELOPER**

In addition to any and all other rights, powers and privileges reserved to the Declarant in this Declaration, the Declarant shall have, and there are hereby reserved to the Declarant, as part of the Special Declarant Rights defined in Article I, Section 21, of this Declaration, the following rights, powers and privileges.

**SECTION 1. Architectural Control Committee/Executive Board.** All duties and responsibilities conferred upon the Architectural Control 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, any Additional Property, or the Planned Community. The Declarant shall be entitled during the Declarant Control Period to appoint and remove the officers of the Association and members of the Executive Board.

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

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

**SECTION 3. Amendment of Declaration by the Declarant.** This Declaration may be amended by the Declarant without approval of the Members or 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 incorporate or reflect any platting change as permitted by this Article or otherwise permitted under this Declaration.
- (f) to accomplish the purposes of Article V, Section 2 above.
- (g) to conform, by amendment or otherwise, 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 Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. The Declarant may at any time amend this Declaration to change the maximum allowable built-upon area as permitted by DENR. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.

**SECTION 4. Annexation of Additional Property.** Declarant may annex to and make a part of the Planned Community any Additional Property without the consent of the Association or any Lot Owners. Except for the annexation of Additional Property by the Declarant, the annexation of Additional Property to the Planned Community shall require the assent of the Owners of Lots to which at least sixty-seven percent (67%) of the votes of the Class A Members who are voting in

person or by proxy at a meeting called for this purpose are allocated; provided, however, Additional Property may be annexed to the Planned Community by the Declarant or any assignee of Special Declarant Rights without the assent of the Owners of Lots so long as the Additional Property is used for residential purposes, roads, utilities, drainage facilities, amenities, landscape areas, and other facilities not inconsistent with residential developments. Subdivisions or Planned Communities formed from Additional Property need not have the same name as prior portions of the Planned Community.

## ARTICLE VI.

### USE RESTRICTIONS. ARCHITECTURAL CONTROL AND MAINTENANCE

**SECTION 1. Approval of Plans for Building and Site Improvements.** No dwelling, wall or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. If the Architectural Control Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and full compliance with this Article will be deemed to have occurred. Refusal or approval of any such plans, location, or specification may be based upon any ground, including purely aesthetic and environmental considerations that in the sole and uncontrolled discretion of the Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Architectural Control Committee for its records. The Architectural Control Committee shall not be responsible for any structural or other defects in plans and specifications submitted to it or in any structure erected according to such plans and specifications.

### **SECTION 2. Minimum Standards for Site Improvements.**

(a) Each dwelling shall have a minimum of two thousand (2,000) square feet of enclosed, heated dwelling area; provided, however, the Architectural Control Committee may permit a dwelling to have a minimum of one thousand eight hundred (1,800) square feet if the Committee in its sole discretion finds that the variance will not adversely impact property values within the Planned Community. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling, which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open/screened porches, and like areas.

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

(c) The exterior of all dwellings 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, due to strikes, fires, national emergency, natural calamities, or the complexity of design and construction.

(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 Architectural Control Committee so as to preclude the same from causing an unsightly view from any highway, street, or way within the Planned Community, or from any other residence within the Planned Community. All mail boxes shall be provided in amenity area. No mail or newspaper boxes shall be permitted on any Lot. No fences shall be permitted unless the design, placement, and materials of any fence are approved by the Architectural Control Committee. 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 the Architectural Control Committee.

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

### SECTION 3. Use Restrictions.

(a) Land Use and Building Type. No Lot shall be used for any purpose except for residential purposes, subject, however, to the rights of the Declarant contained herein. All Lots are restricted for construction of one single family dwelling (plus, a detached garage, if there is not one attached to the residence, and such other accessory buildings as may be approved by the Architectural Control Committee).

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

(c) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, shed, 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 Architectural Control Committee.

(d) Vehicles/Boats. No boat, motor boat, personal water craft, camper, trailer, motor or mobile homes, tractor/trailer, construction equipment or similar type vehicle/equipment, shall be permitted to remain on any Lot or on any street at any time, without the written consent of the Executive Board. No inoperable vehicle or vehicle without current registration and insurance will be permitted on any Lot, street or Common Element. All lawn maintenance equipment shall be stored when not in use, in a method so as not to be visible from the street. The Association shall have the right to have all such vehicles, boats, or equipment towed away or removed at the Owner's expense. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street.

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

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

(g) Construction in Common Elements. No Person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Executive Board.

(h) Signs. No signs (including "for sale" or "for rent" signs), other than political signs (as defined in N.C.G.S. §47F-3-121), shall be permitted on any Lot or in the Common Elements

without permission of the Executive Board; provided, however, the Declarant may, so long as Declarant owns any Lot, maintain for sale signs on Declarant's Lots and maintain signs and marketing materials on the Common Elements advertising the Planned Community. Additionally, McClammy Farms, LLC, their successors, and or assigns shall have the ability to maintain marketing materials in the subdivision as long as they or the developer owns lots.

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

(j) Storage Sheds. No Lot Owner shall be allowed to have a storage shed, outbuilding, or built-upon area on any Lot(s).

(k) Flags/Statuary. No flags, outdoor statuary, or other decorative objects may be placed on any Lot unless and until permission for the same has been granted by the Architectural Control Committee. **Notwithstanding any other provision in this Section, either the American Flag or the North Carolina flag having the maximum dimensions of four feet by six feet (4'x6') may be flown on a pole no longer than 5 feet 6 inches from a pole holder attached to the home in an approved location which can be reached by hand from the ground below so as to be easily installed and removed. No flagpoles shall be installed in any other locations on any Lot.** Flags will be displayed in accordance with traditional rules and patriotic customs set forth in 4 U.S.C. §5-10, as amended, governing the display and use of the American Flag. The Association may display the American Flag or the North Carolina flag from flagpoles or otherwise on any Common Element. However, any Lot used as a Model Home shall be allowed to have any size, type, or number of flags.

**SECTION 4. Maintenance**. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. All shrubs, trees, grass and plantings shall be kept neatly trimmed and properly cultivated. In the event that any maintenance activities are necessitated to any Common or Limited Common Element 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 Executive Board, 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 and become an Individual Assessment levied against said Owner's Lot.

## ARTICLE VII.

### STORMWATER PERMIT/FACILITIES

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

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

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

**SECTION 4. Enforcement of Stormwater Runoff Regulations.**

(a) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 060745, as issued by the North Carolina Division of Energy, Mineral, and Land Resources under the Stormwater Management Regulations.

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

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

(d) The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Energy, Mineral, and Land Resources.

(e) Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Energy, Mineral, and Land Resources.

(f) The maximum allowable built-upon area per Lot is Three Thousand Eight Hundred Fifty (3,850) square feet. This allotted amount includes any built-upon area constructed within the Lot property boundaries, and that portion of the right-of-way between the front Lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.

(g) In the case of a lot within CAMA's regulated AEC, where the Division of Coastal Management calculates a different maximum allowable built-upon area for that lot than is shown herein, the governing maximum built-upon area for that lot shall be the most restrictive of the two.

(h) 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.

(i) Each lot shall maintain a 30 foot wide vegetated buffer between all impervious areas and surface waters and a 50 foot wide buffer for projects located in the 20 coastal counties.