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NORTH CAROLINA  
ONSWLOW COUNTY

**DECLARATION OF  
CONDITIONS, RESERVATIONS AND RESTRICTIONS  
OF BROOK RIDGE**

Prepared by: Gaylor Edwards & Vatcher, P.A., Attorneys

**THIS DECLARATION OF CONDITIONS, RESERVATIONS AND RESTRICTIONS** (the "Declaration"), is made this 11<sup>th</sup> day of September, 2013, by **SOUTH STATE DEVELOPMENT, LLC**, a North Carolina limited liability company, hereinafter called "Declarant";

**W I T N E S S E T H:**

**WHEREAS**, Declarant is the owner of the real property described in Article II of this declaration and desires to create thereon a residential community with roads and streets; and

**WHEREAS**, Declarant desires to provide for the orderly development and preservation of the values of the real property described in Article II, and to that end imposes the covenants, restrictions, and easements hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

**NOW, THEREFORE**, the Declarant declares that the real property described in Article II hereof, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, and easements hereinafter set forth.

**ARTICLE I: DEFINITIONS**

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the Brook Ridge HOA, Inc., a non-profit corporation, its successors and assigns.

(b) "Owner" shall mean and refer to the legal or equitable owner, whether one or more persons or entities, vested with title to any Lot, whether such ownership be in fee simple title or as land contract vendee, but excluding any person or entity vested with title solely as security for the performance of an obligation of the Owner.

(c) "Properties" shall mean and refer to all lands described in Article II hereof, as are subject to this Declaration or any Supplemental Declaration.

(d) "Lot" shall mean and refer to any plot of land shown upon any original recorded subdivision map of the Properties, with the exception of the streets and roadways.

(e) "Architctural Control Committee" shall initially mean and refer to the Declarant, or such other entity or individual as Declarant may appoint, until all Lots in the Subdivision have been fully developed and permanent improvements constructed thereon and sold to permanent residents at which time the Declarant appoint, and transfer the powers to three (3) Lot Owners which shall thereafter be the Architectural Control Committee. The Architectural Control Committee members shall not be entitled to compensation for their services absent Association approval, but may impose a reasonable fee, to be delivered when plans and specifications are submitted, to cover the expense of any consulting fees.

#### **ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION**

All that certain real property situated in Onslow County, North Carolina and more particularly shown and described on a plat entitled "Final Plat, Brook Ridge, Section I-A, a Planned Residential Development", dated 07/10/13, prepared by Parker & Associates, Inc., and recorded in Map Book 67, Pages 52 - 52A, Cabinet N, (consisting of two sheets) in the Office of the Register of Deeds of Onslow County, North Carolina, the "Subdivision Plat".

#### **ARTICLE III: RESIDENTIAL USE**

All lots as described in the Subdivision Plat shall be limited to residential use only. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single-family dwelling, together with private garages or outbuildings incidental thereto. Provided, however, the Declarant shall have the right and privilege to use homes built by it as model homes from which to conduct sales operations of the remaining homes of The Properties. No Lot shall be re-subdivided unless part of the subdivided Lot becomes a part of a whole Lot, and the remainder of the subdivided Lot satisfies the Onslow County subdivision ordinances requirements for a single family dwelling lot.

#### **ARTICLE IV: CONSTRUCTION STANDARDS**

Only site-built residential dwellings shall be allowed. All dwellings shall have a minimum enclosed heated living area of 1,400 square feet, if a one story dwelling, and not less than 800 square feet on the ground floor, if a two story dwelling. Garages, decks, terraces, open porches, basements and like areas shall not be included in the computation of the square footage for the purpose of this Article.

#### **ARTICLE V: SETBACK LINES**

No building shall be located on any Lot nearer to the front line or nearer to the side street line than the minimum set back lines shown on the recorded plat. No building shall be located any closer to a side or rear property line than eight (8) feet. However, a 10% variance is allowed, exclusive of open porches or attached garages. For the purposes of this covenant, eaves, steps and open porches shall not be a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

#### **ARTICLE VI: ARCHITECTURAL CONTROL COMMITTEE**

**Section 1.** The purpose of the Architectural Control Committee is to assure that the installation, construction, or alteration of any building, wall, fence or other structure or improvement ("Structures") on any Lot is in accordance with the standards set forth in this Declaration as interpreted and determined by the Architectural Control Committee. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

**Section 2.** To preserve the architectural appearance of the Properties, no construction or placement of

any Structure, or improvement of any nature whatsoever, shall be commenced or maintained by any Owner, family member of an Owner, tenant, visitor, guest, servant, agent or employee with respect to any Lot or any portion thereof, including without limitation, the construction or installation of any building or part thereof, garage, porch, gazebo, shed, driveway, sidewalk, greenhouse or bathhouse, playhouse, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarters or any other temporary or permanent improvement or landscaping (other than planting or pruning of flowers and shrubs) on such Lot, nor shall any exterior addition, change or alteration thereof be made, unless and until the plans and specifications showing the nature, color, type, shape, height, materials and the location of the same shall have been submitted to and approved, in writing, as to the harmony of external design, location and appearance in relation to the surrounding Structures and topography by the Architectural Control Committee. The Architectural Control Committee shall have the sole discretion to determine whether the plans and specifications submitted for approval are acceptable and in compliance with the total scheme of the Properties. If such plans or specifications are not approved or disapproved within thirty (30) days from the date of receipt thereof by the Architectural Control Committee, then same shall be deemed approved by default.

#### **ARTICLE VII: ROADWAYS, EASEMENTS**

Every Owner shall have a right and easement for ingress, egress, regress, access, utility and drainage purposes in and over the roadways or streets shown on the Subdivision Plat, and such easement shall be appurtenant to and shall pass with the title to every Lot, whether or not specifically referenced in any deed of conveyance for such Lot. The streets shall be dedicated to public use and shall be maintained by the Declarant until such streets are accepted into the state road system or other public road system, or until such time as said streets are conveyed to the Association for maintenance if not accepted by the North Carolina Department of Transportation, or other public entity, for maintenance.

#### **ARTICLE VIII: UTILITIES AND EASEMENTS**

All electrical service and telephone lines between the street service and any residence shall be placed underground and no outside electrical lines shall be placed overhead, without the prior written approval of the Declarant or the Association. Any waiver of this restriction shall not be deemed a waiver as to any other Lot or lines. The Declarant, or its successors or assigns, reserves the right to subject the Properties to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to said utility company by each Lot Owner for a pro rata share of the installation and maintenance expenses. The Declarant shall be entitled to reimbursement from each Lot Owner for any water and/or sewer permits, tap fees or meters which have been obtained at the Declarant's expense.

The Declarant reserves for itself, its successors or assigns, an easement and right at any time in the future to grant to public utility companies easements, deemed necessary or desirable by the Declarant, its successors or assigns, in its sole discretion, for utilities along the front, side, and rear lines of all Lots for the construction and perpetual maintenance of conduits, pipes, poles, wires, and fixtures for electric lights, telephones, drainage, gas, water, sewer and other public and quasi-public utilities and to trim any trees which at any time may interfere or threaten to interfere with the maintenance of such services, with right of ingress to and egress from and across said premises to employees of said utilities.

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear ten (10) feet and side eight (8) feet of each lot. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement areas of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

#### **ARTICLE IX: NUISANCES, TRASH STORAGE, AND LOT MAINTENANCE**

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. All Lots, whether occupied or unoccupied, shall be well maintained and no un-attractive growth or accumulation of rubbish or debris shall be permitted to remain on a Lot. No Lot shall be used in whole, or in part, for the storage of trash or rubbish of any character, other than as herein after provided. Trash, garbage or any other waste material shall be kept in sanitary containers. Equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Storage of any property or materials which detract from the appearance of the neighborhood, or emit foul or obnoxious odors is prohibited. All trash and storage shall be stored in the rear of the dwelling or within an enclosed facility and in such a manner so as not to be viewed from the streets or neighboring Lots. No elevated tanks of any kind shall be erected, placed, or permitted on any part of the Properties, except as approved by the Declarant, or the Association. Any tanks approved shall be adequately concealed from view from the streets and neighboring Lots. Declarant reserves, for itself and for the Association, the right to enter upon and cut grass, weeds or undergrowth and remove any prohibited property or materials on any Lot or easement, but shall be under no obligation to do so. The Declarant, or the Association, may contract for, and assess the Lot Owner, any maintenance or repair expenses incurred to enforce this covenant.

#### **ARTICLE X: MOTOR VEHICLES RESTRICTIONS**

Any motor vehicle parked on any Lot shall have a current license plate, registration and inspection sticker. No motor vehicles, other similar vehicles or equipment shall be repaired or placed on blocks or stands, except in an enclosed garage. No motor vehicles shall be parked between the front of the dwelling and any adjoining street, other than in the driveway. No boats, trailers, motor homes or campers shall remain parked between the front of a dwelling and any adjoining street, nor nearer than ten (10) feet to any side Lot line. Except when used during and as a part of the construction of a dwelling on the Lot, no trucks or buses (other than pickup trucks of one-ton capacity or less, small vans or small trailers) shall be parked overnight on any Lot, except in an enclosed garage.

#### **ARTICLE XI: FENCES**

No fence over a height of six (6) feet shall be constructed between a line extending from the mid-point of the side of the primary dwelling to each side lot line and the rear property line. The finished sides of any fence allowed must face toward: (i) the front property line for that portion extending from the mid-point of the side of the primary dwelling to each side lot line, (ii) the side lot line for that portion on or immediately adjacent to a side lot line and (iii) the rear property line for that portion on or parallel to the rear property line. No fence shall be erected between a line extending from the mid-point of the side of the primary dwelling to each side lot line and the street right of way, provided however, a decorative fence of complimentary architectural design not exceeding a height of one (1) foot may be located nearer to the front property line than described above. On lots abutting more than one street, there shall be no fences located nearer any street right of way than the most distant portion of the wall of the dwelling facing that street right of way. No welded or webbed wire fence shall be allowed unless the exterior of any such fence shall be concealed by decorative wood or shrubbery.

#### **ARTICLE XII: ANIMALS**

No animals, livestock or poultry of any kind shall be raised or kept on any lot except as follows: dogs, cats or other household pets, may be kept, provided that they shall not be kept or maintained for any commercial purpose, and provided they are not allowed to run at large and are at all times within an enclosed fence, or are leashed and under the direct control of the owner, or family members.

#### ARTICLE XIII: SIGNS AND MAILBOXES

No billboard, sign or advertising device of any character shall be erected, placed, permitted, or maintained on any Lot, except one sign of not more than one (1) foot square with name and address of owner, other than a "for sale" or "for rent" sign by the owner or his agent of not more than three (3) square feet.

Mailboxes shall be located no nearer to the paved portion of the public road abutting each lot than 12 inches. Mailboxes shall also be of a type, size, and design as that which is originally approved by the Declarant. No brick or stone mailboxes shall be permitted.

#### ARTICLE XIV: SIGHT DISTANCE EASEMENTS

No fence, wall, hedge or shrub planting which obstructs sight distance lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area as shown by the typical sight distance at the street intersections as shown on the recorded plat. Nothing shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

#### ARTICLE XV: STORMWATER MANAGEMENT

A. The following covenants in this section 4 are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 121004 as issued by the Division of Water Quality under NCAC 2H.1000.

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

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

D. These covenants pertaining to stormwater listed in this Article may not be altered or rescinded without the consent of the State of North Carolina, Division of Water Quality.

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

F. The maximum built-upon area per lot is 7,360 square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries and that portion of the right-of-way between the front lot line and the edge of the pavement. Built-upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina, driveways, and parking areas, but does not include open wood decking or the water surface of swimming pools.

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

H. For those Lots adjacent to surface waters, each Lot will maintain a minimum 50 foot wide vegetated buffer adjacent to such surface waters.

I. All roof drains shall terminate at least 50 feet from surface waters.

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

K. All permitted runoff from outparcels or future development shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted.

#### ARTICLE XVI: ASSESSMENTS AND MEMBERSHIP

**Section 1. Purpose of Assessments.** The Association has been or will be formed at the direction of the Declarant pursuant to the rules and requirements of the Nonprofit Association Act (Chapter 55A) of the General Statutes of North Carolina as an association of the owners of the Lots. Its purposes are to: (1) oversee, inspect, maintain, repair and replace the Stormwater Management Facilities constructed pursuant to the Permit; (2)

enforce the provisions of the Permit; (3) enforce each Lot owner's obligations with respect to the Stormwater Management Facilities pursuant to this Declaration; (4) enforce each Lot owner's obligations with respect to all applicable North Carolina Sedimentation and Erosion Control Permits; said authority to be exercised, if and only if, and when and only when, Declarant transfers the Permit to the Association; (5) inspect, maintain, repair and replace any improvements constructed or located upon or under the septic system easements and access easements, including; (6) maintain the off-site septic system lots, if any, and septic system easements and access easements in a neat and orderly manner, including clearing of undergrowth, rubbish, debris, weeds or grass, including the mowing of same; (7) inspect, maintain, repair and replace signs and landscaping located within any Sign Easement; (8) inspect, maintain, repair and replace fences located within any Fence Easement. The Association shall have no authority with respect to the Lots located in the Properties until such time as Declarant transfers such rights to the Association.

**Section 2. Future Annexation.** The Declarant shall have the right, but not the obligation, to annex into the Properties additional property now, or in the future, owned by Declarant. From and after the date of such annexation, the annexed Lots shall be subject to the jurisdiction of the Association and the owners of the annexed Lots shall be members of the Association.

**Section 3. Membership in Association.** Each owner of a Lot within the Properties shall be a member of the Association. The Declarant, by this Declaration, and the owners of each individual Lot, by their acceptance of a deed thereto, covenant and agree with respect to the Association:

- (1) that for so long as each is an owner of a Lot within the Properties, each will perform all acts necessary to remain in good and current standing as a member of the Association; and
- (2) that any unpaid assessment, whether general or special, levied by the Association in accordance with this Declaration, the Articles of Incorporation (herein called the "Articles") or the Bylaws of the Association (herein called the "Bylaws") shall be a lien upon the Lot upon which such assessment was levied and also shall be the personal obligation of the person who was the owner of the Lot at the time the assessment fell due.
- (3) each membership in the Association shall relate to and have a unity of interest with an individual Lot which may not be separated from the ownership of said Lot. The books and all supporting documentation, the Declaration, the Articles, the Bylaws, and all amendments thereto shall be available for examination by all Lot owners, and their lenders or their lenders' agents during normal business hours at the principal office of the Association.

**Section 4. Classes of Membership.** The Association shall have two (2) classes of voting membership, as follows:

**Class A:** Initially, the Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Person shall be members. Provided, however, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. If multiple owners of a Lot cannot provide written verification of the authority of a designated individual to cast their vote, then no vote may be cast by that particular Lot Owner. Any Class A member may assign its voting rights to the Declarant, whether or not the Declarant owns any other Lot, which shall entitle the Declarant to ten (10) votes for such Lot as a Class B member.

**Class B:** The Class B member shall be the Declarant and shall be entitled to ten (10) votes for each Lot owned, or each Lot for which an assignment of voting rights has been granted from a Class A member. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events:

- (i) at such time as all of the Lots have been sold and are occupied by permanent residents thereof; or
- (ii) ten (10) years from the date of recordation of this Declaration; or
- (iii) when, in its discretion, the Declarant so determines.

**Section 5. Obligations for Stormwater Management Facilities.** The Declarant shall, at its sole cost and expense, initially construct all Stormwater Management Facilities required to be located upon the Lots and Properties or upon any property annexed into the Properties by the Declarant to the standards required by the applicable Permit. Upon completion of the construction of said Stormwater Management Facilities located in the Properties, the Declarant shall transfer the applicable Permit to the Association and the Association shall accept the transfer of the applicable Permit from the Declarant upon the earlier to occur of: (i) the date the North Carolina Department of Environment and Natural Resources allows such transfer to occur; or, (ii) the date upon which at least fifty percent (50%) of the Lots in the Properties are conveyed to owners, other than Declarant. Prior to any such

transfer, the Stormwater Management Facilities for the Properties, including any property annexed by Declarant into the Properties, shall be certified, either by state inspection or by a licensed engineer, as being in compliance with the applicable Permit prior to such assignment or transfer. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as the holder of the Permit occurring after Declarant tenders transfer of the Permit to the Association following the approval of such transfer by the North Carolina Department of Environment and Natural Resources and the certification of compliance as set forth above. Further, Declarant may bring an action for specific performance of the obligations of the Association pursuant to this paragraph. From and after the transfer of the Permit from the Declarant following the approval of the North Carolina Department of Environment and Natural Resources, the oversight, supervision, management and administration of the Permit shall be the sole responsibility of the Association. The Association's duties with regard to the Permit shall be carried out in accordance with the terms and conditions of this Declaration, the Articles, the Bylaws and the Permit. The Association hereby is granted and conveyed an easement over, under and upon each Lot and future lots in the Properties for the purpose of access to and inspection, maintenance, repair and replacement of all Stormwater Management Facilities located upon each Lot and future subdivided lot. In the event, the Declarant annexes additional property into the Properties and transfers the applicable Permit to the Association, the Association shall have, and hereby is granted and conveyed, an easement over, under and upon each annexed Lot for the purpose of access to and inspection, maintenance, repair and replacement of all Stormwater Management Facilities located upon each annexed lot.

**Section 6. Expenses of the Association.** The expenses of the Association shall include:

- (1) All amounts expended by the Association in holding and being responsible for the obligations of the Permit and overseeing, supervising, administering, managing, repairing, replacing and insuring all Stormwater Management Facilities and Sedimentation and Erosion Control facilities located within the Properties as required by this Declaration; all amounts expended to maintain the access easements in a neat and orderly manner, including clearing of undergrowth, rubbish, debris, weeds or grass, and mowing of same; all amounts expended by the Association in enforcing the provisions of this Declaration, as may be amended; all amounts expended by the Association in the performance of its duties hereunder from and after the time Declarant transfers the Permit; and all amounts expended by the Association in legal, engineering or architectural fees and all similar fees which may be incurred by the Association from time to time in performing the functions delegated to the Association by this Declaration.
- (2) All amounts expended by the Association in carrying out any duty or obligation as may be required or allowed by this Declaration, the Articles or the Bylaws.
- (3) All amounts expended by the Association in operating, administering, managing, repairing, replacing, improving, paying all taxes imposed on and insuring the improvements, including landscaping, situated in the Sign Easement.
- (4) All amounts expended by the Association for the maintenance, repair and replacement of any fence erected in the Fence Easement as shown on the recorded plat of the Properties.
- (5) All amounts expended by the Association in repairing, replacing, and improving the force main/supply lines of any wastewater treatment systems and/or sanitary sewer (septic system) easements, if any, dedicated for such purpose.

**Section 7. Payment of Assessments.** Each purchaser or grantee of any Lot in the Properties which has been improved by the construction of a single family residence thereon and occupied by such purchaser or grantee, individually or by his/her/their tenants or assigns, by acceptance of a deed for the same (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association annual general assessments or charges as hereinafter provided. The annual general assessments, together with interest, costs and reasonable attorneys' fees, shall be a separate charge and lien on the land and, subject to the limitations set forth herein, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessments, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligations of the person who was the owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot, unless expressly assumed by them, but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.

- (1) Until January 1, 2014, the annual general assessment shall be (\$0.00) per Lot,

commencing on January 1, 2014, the annual general assessment shall be not more than **One Hundred Dollars (\$100.00) per Lot.**

(2) From and after January 1, 2014, the annual general assessment may be increased upon the vote of a majority of the Board of Directors of the Association by no more than twenty percent (20%) of the annual general assessment, for the preceding year.

(3) Any increase of the annual general assessment, exceeding twenty percent (20%) of such assessment for the preceding year must be approved by the owners of at least two-thirds (2/3) of the Lots subject to such assessment, who are voting in person or by proxy at a meeting called for this purpose.

(4) Once the annual general assessment has been set, notice of the annual general assessment shall be given to all Lot owners. It is provided, however, that no owner is relieved from the obligation to pay the assessment because of failure to give such notice. After the initial notice of the assessment, no bills for such assessment will be forwarded to any owner, but such assessment thereafter shall become due and payable as provided by the Board of Directors.

(5) As provided in the Bylaws, and subject to the restrictions and limitations provided herein, the Board of Directors shall establish an Annual Budget in advance for each fiscal year. Such budget shall project all expenses for the forthcoming fiscal year which may be required for the proper operation, management and maintenance of the Stormwater Management Facilities, the North Carolina Sedimentation and Erosion Control Permits, the "Entrance Signs" situated in any Sign Easement, any fence situated in any Fence Easement, and the Association, including a reasonable allowance for contingencies and reserves. The budget shall take into account any projected or anticipated income. Upon adoption of such Annual Budget by the Board of Directors, copies of the Budget shall be delivered to each owner together with a statement of the applicable assessment(s) for each Lot as provided herein, based upon such budget; however, the non-delivery of a copy of said Budget shall not affect the liability of any owner for such assessment(s). The Annual Budget for the annual general assessment shall be divided by the number of Lots subject to the annual general assessments at the time of the annual meeting of the members and the quotient shall be the annual general assessment per Lot for the succeeding fiscal year.

(6) All monies collected by the Association shall be treated as the separate property of the Association and such monies may be applied by the Association to the payment of any expense of operating and managing the Association or the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles and the Bylaws. As monies for any assessment are paid into the Association by any owner, the same may be commingled with monies paid to the Association by the other owners. Although all funds and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer said owner's membership interest therein, except as an appurtenance of said owner's Lot. When the owner of a Lot shall cease to be a member of the Association by reason of said owner's divestment of ownership of such Lot, by whatever means, the Association shall not be required to account to such owner for any share of the fund or assets of the Association, including any monies which said owner may have paid to the Association, as all monies which any owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Association.

(7) Written notice of any meeting called for the purpose of taking any action requiring a meeting shall be sent to all members not less than twenty (20) days, or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast **ten percent (10%)** of the votes of all members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 8. Uniform Rate.** Annual general assessments, and special assessments shall, except as otherwise provided herein, be fixed at a uniform rate for all Lots.

**Section 9. Commencement of Assessments.** The annual general assessments provided for herein shall commence as to each Lot which has been improved by the construction of a single family residence thereon and occupied by the purchaser or grantee, individually or through his/her/their tenants or assigns, on the date of recordation of the deed for such Lot in the Office of the Register of Deeds of Onslow County and shall be prorated on a calendar year basis through the date of such recordation. The annual general assessments shall be assessed for

each calendar year thereafter and shall be payable annually, or more frequently, with the due date for such payments and payment frequency, being as established by the Board of Directors.

**Section 10. Purpose of Assessments.** The annual general assessment levied by the Association shall be used exclusively to oversee, inspect, maintain and repair the Stormwater Management Facilities, Sign Easement and Fence Easement areas, if any; to enforce the provisions of this Declaration relating to the Stormwater Management Facilities, the Permit, the applicable North Carolina Sedimentation and Erosion Control Permit; to pay the expenses of the Association from and after the time, if ever, Declarant transfers the Permit to the Association. The Association's functions shall be to oversee, inspect, maintain and repair the Stormwater Management Facilities, Sign Easement and Fence Easement areas; to enforce the provisions of this Declaration relating to the Stormwater Management Facilities, the Permit, the applicable North Carolina Sedimentation and Erosion Control Permits. The annual limited common assessment, if any, levied by the Association shall be used exclusively to oversee, inspect, maintain and repair the off-site septic systems and repair areas, if any. The powers of the Association may not be expanded beyond those purposes. Nothing herein relieves the owner of a Lot from said owner's obligation to maintain the areas upon said owner's Lot upon which the Stormwater Management Facilities and sanitary sewer (septic system) and access easements are located as provided herein and not to damage or allow damage to occur to said Stormwater Management Facilities, and to comply with the provisions of all applicable North Carolina Sedimentation and Erosion Control Permits.

**Section 11. Certificates of Payment.** 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 12. Special Assessments.** General special assessments, and specific special assessments may be levied against Lots for such reasons as are provided in this Declaration, the Articles or the Bylaws, and on such terms as provided by the directors and the members. Upon a two-thirds (2/3) vote of the Directors and a two-thirds (2/3) vote of the owners of Lots who are voting in person or by proxy at a meeting duly called for this purpose, the Association may levy and impose special assessments. The purposes for which special assessments may be levied are limited to providing funds to pay for the oversight, inspection, maintenance and repair of the Stormwater Management Facilities, Sign Easement and Fence Easement areas, if any, off-site septic systems and repair areas, if any, to enforce the provisions of this Declaration relating to the Stormwater Management Facilities, the Permit and all applicable North Carolina Sedimentation and Erosion Control Permits, Sign Easement and Fence Easement areas, and off-site septic systems and repairs areas, which exceed the general assessment and/or limited common assessment funds, then on hand to pay same and to provide a contingency fund for capital improvements and extraordinary expenses. General special assessments shall be levied at a uniform rate for all Lots to which such assessments may be charged as set forth in this Declaration. Specific special assessments may be assessed against the owner of a Lot after written notice has been given by the Association to the owner of said Lot at the address of the owner appearing upon the records of the Association by United States mail, postage prepaid, that the Stormwater Management Facilities located on said Lot have been damaged by the act or negligent failure to act of said owner or that said owner has failed to comply with all applicable North Carolina Sedimentation and Erosion Control Permits and such Stormwater Management Facilities are in need of repair or replacement in order to comply with the Permit or actions must be taken in order to comply with the applicable North Carolina Sedimentation and Erosion Control Permits and the owner of said Lot has not taken the necessary action to bring the Stormwater Management Facilities located on said owner's Lot into compliance with the Permit or to comply with the provisions of all applicable North Carolina Sedimentation and Erosion Control Permits within thirty (30) days after the mailing of said notice. If said owner commences the necessary action to repair or replace the Stormwater Management Facilities or septic system and/or septic system easement located on said owner's Lot and to bring the Stormwater Management Facilities into compliance with the Permit or to bring the Lot into compliance with the applicable North Carolina Sedimentation and Erosion Control Permits, within the thirty (30) day period set forth above, the imposition of a specific special assessment shall be deferred by the Association for the period during which said owner diligently pursues to completion the repair or replacement of the Stormwater Management Facilities located on said Lot or compliance with the applicable North Carolina Sedimentation and Erosion Control Permits. Specific special assessments shall be limited to the amount of funds actually expended, or in the discretion of the Board of Directors, the amount of funds reasonably estimated by the Board of Directors will be expended, by the Association to repair or replace the Stormwater Management Facilities located upon the Lot or to comply with the applicable North Carolina

Sedimentation and Erosion Control Permit upon which the specific special assessment is assessed. Special assessments, either general or specific, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the provisions set forth in this Declaration, shall be a continuing lien upon the Lot against which each such assessment is made. The personal obligation of an owner of a Lot for delinquent special assessments, whether general or specific, or limited common assessment, shall not pass to a successor in title to a Lot, unless expressly assumed by the successor, but, subject to the provisions of this Declaration, delinquent special assessments shall continue to be a lien upon such Lot.

**Section 13. Liens for Non-Payment of Assessments.** Any annual general assessment, annual limited common assessment, if any, general special assessment, or specific special assessment, if not paid within thirty (30) days after the date such assessment is due, shall be subject to a late payment charge, and shall bear interest at the maximum legal rate of per annum thereafter. The Association may record a claim of lien against the Lot for such delinquent assessments and charges, together with costs of collection, court costs, and reasonable attorneys' fees in the Office of the Clerk of Superior Court of Onslow County in accordance with Section 47F-3-116 of the North Carolina General Statutes, or file a suit to collect such delinquent assessments and charges. The Association may file Notice of Lis Pendens, bring an action at law against the owner personally obligated to pay the same and/or bring an action to foreclose the lien against the Property. The lien of any assessment 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 foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessment 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. No owner may waive or otherwise escape liability for the assessments provided for herein.

**Section 14. Amendments.** In the event the Articles of Incorporation and/or Bylaws of the Association are amended to expand the rights and duties of the Association, those amendments shall have no effect on the Lots or the Properties unless, by recorded amendment to this Declaration, joined in by Declarant.

#### ARTICLE XVII: PROVISIONS RELATING TO WETLANDS

All of the properties subject to these Covenants and Restrictions shall also be subject to the following Special Provisions Relating to Wetlands. In developing the subject real property, the Declarant has agreed with the Department of the Army Corps of Engineers (pursuant to a permit issued by the Corps of Engineers) to restrict and prohibit any future filling or other detrimental activities in the wetland areas, which presently exist within the identified areas of the property. Accordingly, all wetlands shown and delineated on the recorded map of the Properties set forth in Article II hereof, shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area: (a) fill, grade, excavate or perform any other land disturbing activities; (b) cut, mow, burn, remove or harm any vegetation; (c) construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers or any other permanent or temporary structures, (d) drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area; (e) dump or store soil, trash, or other waste; (f) allow animal grazing or watering or use for any other agricultural or horticultural purpose on such conservation areas. This covenant is intended to ensure continued compliance with the mitigation condition of authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, 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 Declarant, the owner of any lot in the Properties and all persons or entities claiming under them.

This Article IV cannot be amended or modified without the express written consent of the U.S. Army Corps of Engineers, Wilmington District, or its authorized successor.

#### ARTICLE XVIII: COMPLIANCE WITH NCDOT TRAFFIC MAINTENANCE STANDARDS

Driveway headwalls, fences, mailboxes, newspaper delivery boxes or other roadside obstructions, constructed within the right of way of any street as shown on the recorded plat of the Properties in a location or out of materials determined to be a traffic safety hazard by the North Carolina Department of Transportation or the Declarant, shall not be permitted. It shall be the duty of the Owner of any Lot to remove such obstruction, at the Owner's sole expense, within thirty (30) days following written notification of such objection by the North Carolina Department of

Transportation or Declarant. In the event any Owner fails to remove an obstruction within the thirty (30) day period following receipt of notice of the objection, Declarant shall be entitled, but not obligated, to remove the obstruction and recover the expense and cost, including reasonable attorney's fees, incurred in the removal.

#### **ARTICLE XIX: ANNEXATION OF ADDITIONAL PROPERTY**

The Declarant, for itself and its successors and assigns, hereby expressly reserves the right, but shall in no way be obligated, to expand the real property which is subject to this Declaration without the consent or joinder of any Owner or Owners of any Lot or Lots or person or entities having a lien or security interest in such Lot or Lots, by annexing, from time to time other real property into the Subdivision

An amendment to this Declaration shall be made and recorded in the office of the Register of Deeds of Onslow County, North Carolina, to include each portion of the real property which is to be subject to this Declaration, and each such portion of the real property shall constitute an addition to the Subdivision. The right of the Declarant, or its successors and assigns, to expand the Subdivision as herein provided shall expire fifteen (15) years following the date of recordation of this Declaration.

#### **ARTICLE XX: SUPPLEMENTAL DECLARATION(S)**

The Declarant shall have the right, from time to time, to record Supplemental Declarations which may designate specific use and other restrictions within other real property annexed into the Subdivision, may create Common Areas within such other real property for the use of all owners in the Subdivision, as may be expanded, and may create a separate owners association exclusively for such other real property; and may exercise all rights reserved in this Declaration, provided however, no Supplemental Declaration shall avoid membership in the Association by Owners of Lots in said other real property, nor shall any Supplemental Declaration modify or amend the terms of this Declaration or any prior Supplemental Declaration for another tract annexed, without the required consent of Owners of all tracts of land constituting the then existing Subdivision.

#### **ARTICLE XXI: ENFORCEMENT**

Enforcement shall be by proceedings at law or in equity against any person or person violating or attempting to violate any covenant, either to restrain violations or to recover damages. In the event any proceeding is commenced to enforce the provisions of this Declaration, the non-prevailing party shall be obligated to pay, in addition to any monetary damages or other award granted by the court, the expenses and costs of such proceeding, including reasonable attorneys' fees of the prevailing party.

#### **ARTICLE XXII: MODIFICATION**

These restrictions are subject to being altered, modified, canceled or changed at any time as to said subdivision as a whole, or as to any subdivided lot or part thereof, by written document executed by the Declarant, its successors in title, or assigns, and by the owners of lots to which at least sixty seven percent (67%) of the votes in the Association are allocated, and recorded in the Office of the Register of Deeds of Onslow County, North Carolina. If the Declarant is entitled to at least sixty seven (67%) percent of the votes in the Association, the Declarant may alter or amend these covenants without the consent of any other owner. Provided however, the Declarant, without the consent or joinder of any owner, may annex additional properties to the subdivision, and exercise any other development rights.

#### **ARTICLE XXIII: TERM**

The covenants, easements and restrictions set forth in this Declaration, as may be amended, are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration is recorded, after which such time said Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change this Declaration, in whole or in part, with the exception of Article XVI.

**ARTICLE XIV: SEVERABILITY**

Invalidation of anyone of these covenants by judgment or Court Order shall in no way affect any of the other provisions which shall remain in full force and effect.

**IN TESTIMONY WHEREOF**, Declarant, has executed this instrument the day and year first above written.

**SOUTH STATE DEVELOPMENT, LLC**

By: \_\_\_\_\_

Elijah T. Morton  
Manager

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

I, a notary public of the county and state aforesaid, do hereby certify that Elijah T. Morton personally came before me this day and acknowledged that he is the Manager of South State Development, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the limited liability company, he signed the foregoing instrument in its name on its behalf for the purposes set forth therein and in the capacity indicated.

Witness my hand and official seal this the 11<sup>th</sup> day of September, 2013.

\_\_\_\_\_  
Notary Public

My commission expires:

7-18-17

