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BK 1588 PG 413

FOR REGISTRATION REGISTER OF DEEDS
JENNIFER LEGGETT WHITEHURST
BEAUFORT COUNTY, NC
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NORTH CAROLINA
BEAUFORT COUNTY

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS, that this Declaration of Covenants, Conditions and Restrictions is made and entered into on this 30th day of May, 2007 by BATTALINA CREEK, LLC, a North Carolina Limited Liability Company (hereinafter referred to as the Declarant), and all purchasers of Lots within the Subdivision known as Battalina Creek Subdivision.

WITNESSETH:

WHEREAS, Declarant owns the real property described as BATTALINA CREEK, as shown on the Survey by Anthony J. Hamm, The East Group, Professional Land Surveyor, recorded in Plat Cabinet G, Slides 94-3 through 94-5, BEAUFORT COUNTY Registry, (herein called "The Property"), the Declarant intends to create thereon 52 residential Lots for a residential community together with streets, roads, open spaces, landscaping, entrances, drainage facilities, sewer lines, access easements, waste disposal sites, site lighting and signage, and any common facilities shown on the plat of The Property or a portion thereof; and,

WHEREAS, in order to sell lots in The Property subject to certain protective restrictions, reservations and covenants; in order to insure the most beneficial development of said subdivision; to prevent any such use thereof as might tend to diminish the value or pleasurable enjoyment thereof; to provide for the preservation of the values and amenities in the Community and for the maintenance of the common facilities, Declarant hereby subjects The Property to the covenants, conditions, restrictions, easements, charges and liens, set forth herein, each and all of which is, and are, for the benefit of said real property and each owner of a portion thereof; and,

WHEREAS, the Declarant's present intention, stated here for information of present intent only and not as a warranty or representation of a future fact, is to develop the community with single family residential lots.

NOW, THEREFORE, the Declarant declares that The Property is, and shall be held, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of the covenants, conditions, restrictions, charges and as hereinafter set forth.

ARTICLE ONE
DEFINITIONS

The following words when used in this Declaration or any amended or Supplemental Declaration (unless the context shall require otherwise) shall have the following meaning:

“Assessment(s) or assessment(s)” or “Common Charges” shall mean and refer to the assessment(s) and charges levied by the Declarant against Members who are the Owners of Lots or Dwelling Units in The Property within BATTALINA CREEK, as applicable, and words Assessment(s) or assessment(s) shall have the same meaning as Common Charges, unless the context requires otherwise.

“BATTALINA CREEK” shall mean and refer to that community consisting of single family lots and residences, and recreational and supporting facilities.

“Common Expenses” shall mean and refer to:

- (a) Expenses of administration, operation, maintenance, repair or replacement of the Common Facilities;
- (b) Expenses declared Common Expenses by the provisions of the Declaration or the Bylaws;
- (c) Expenses agreed upon from time to time as Common Expenses by the Declarant and lawfully assessed against Members who are Owners of Lots or Dwelling Units in The Property within BATTALINA CREEK, and in any additional properties added as part of the development subject to the obligations as Members, as applicable, in accordance with the Bylaws or this Declaration; and
- (d) Any valid charge against the Declarant or against the Common Properties as a whole.

“Common Facilities” shall mean and refer to those areas of land shown on any recorded subdivision plat of The Property (or any other real property described or referred to in any declaration of covenants, conditions and restrictions to which The Property is submitted or subjected) labeled as Open Space, Private Streets, roads, access easements or together with all improvements located thereon which are a part of The Property, and as such intended to be

devoted to the common use and enjoyment of the Members, subject to special rights and limitations, if any, granted to or imposed on Owners of particular Lots or Dwelling Units.

“Declarant” shall mean and refer to BATTALINA CREEK, LLC, a North Carolina limited liability company and any person or entity who is specifically assigned the rights and interest of Declarant hereunder.

“Dwelling or Dwellings” shall mean and refer to any improved property intended for use and occupancy as one (1) single family dwelling, irrespective of the number of Owners thereof (or the form of ownership) located within The Property, or property added hereto.

“Living Area” shall mean and refer to those heated and/or air-conditioned areas within a Dwelling Unit which shall not include garages, carports, porches, patios, breezeways, terraces, or basements.

“Lot” shall mean and refer to any unimproved parcel of land within The Property which is intended for use as a site for a single family detached dwelling, as shown upon any recorded subdivision map of any part of The Property, with the exception of Open Space and streets. A parcel of land shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved property, i.e., a Dwelling Unit. Lot shall also refer to any Lots added to the property by Declarant.

“Member” shall mean and refer to all Owners in The Property, BATTALINA CREEK, and Owners of any other property annexed into the Association by Declarant or its assigns.

“Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Dwelling Unit situated upon The Property, in BATTALINA CREEK, (and Lots added by Declarant) but notwithstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. (Note: the words Member and Owner are meant to describe all BATTALINA CREEK owners interchangeably as semantics dictate throughout this Declaration.)

ARTICLE TWO PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in BELHAVEN TOWNSHIP, BEAUFORT COUNTY, North Carolina, and is commonly known as BATTALINA CREEK as depicted on the map prepared for Declarant by Anthony J. Hamm, The East Group, Professional

Land Surveyor, recorded in Plat Cabinet G, Slide 94-3 thru 94-5, BEAUFORT COUNTY Registry, and reference is made thereto for a more complete description.

Section 2. Additions to Existing Property. Real property in addition to the Existing Property may hereafter become subject to this Declaration and a part of the Association, at the discretion of the Declarant,

Section 3. Access Easement Reserved. The Declarant reserves unto itself for the benefit of Declarant, its successors and/or assigns, a perpetual, non-exclusive and alienable easement and right of ingress, egress and regress over and across all private streets and roads within The Properties for access to and from other real property of Declarant or its successors and/or assigns, and the installation of sewer lines.

ARTICLE THREE GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of, and be enforceable by, the Declarant or any Owner, its and their respective legal representative, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by two-thirds (2/3) of the Members has been recorded, agreeing to change said covenants and restrictions in whole or in part, provided however, that no such agreement to change shall be effective unless proper written notice of the proposed agreement is sent to every Member at least fifty (50) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration, shall be deemed to have been properly sent when mailed, postage prepaid, registered or certified mail, return receipt requested, or deposited with an overnight courier (such as, but not limited to Federal Express) and addressed to the person at the last known address of the person who appears as Member or Owner on the records of the Declarant at the time of such mailing. Notice to any one of the Owners, shall constitute notice to all Owners of a Lot.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by these covenants and restrictions; and failure by the Declarant or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

ARTICLE FOUR
ARCHITECTURAL CONTROL

Section 1. Purposes. The Declarant desires to provide for the preservation of the value of all Dwelling Units to be constructed on any Lot constituting a portion of The Property, and to that end, will establish an Architectural Control Committee in order to provide, enforce and maintain certain standards as to harmony of exterior design and location of the improvements on the Lot in relation to surrounding structures, natural features and topography.

Section 2. Architectural Control. Unless expressly authorized in writing by the Architectural Control Committee (the Committee), no Dwelling Unit, fence, wall, driveway, patio, building or other structure or improvement whatsoever may be constructed, nor any exterior addition or alteration to any Dwelling Unit, fence, wall, driveway, patio, building or other structure or improvement be started, nor any clearing or site work shall be commenced, or maintained upon any Lot, in The Property, until plans and specifications thereof showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking, decorative landscape planting, floor plans and elevations therefore (all of which is hereinafter referred to collectively as the Plans), shall have been submitted in triplicate to, and approved in writing, as to harmony of external design and location in relation to any surrounding structures, natural features and topography, by the Committee. The Committee shall have the absolute and exclusive right to refuse to approve any such Plans, which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons, which in the sole and uncontrolled discretion of the Committee shall be deemed sufficient. In no event will the Committee approve any Plans in which the Dwelling Unit at the highest point on its roof exceeds forty (40) feet in height measured from the finished grade or original grade, whichever grade is lower. The Committee, in the exercise of its discretion, shall not approve the location of a Dwelling Unit or garage or carport on any Lot intended for use as a site for a single family detached dwelling within thirty (30) feet of the front line of such Lot, within ten (10) feet of the side lines of such Lot, and within twenty five (25) feet of the rear line of such lot. Notwithstanding the application of these setbacks, the Committee shall have complete authority to determine the appropriate building site and location of the Dwelling Unit on each and every Lot. These building setbacks are superseded by any applicable local, county, state or federal setback or buffer zone regulations. It is the responsibility of each Lot Owner to contact the appropriate regulatory bodies concerning compliance with the applicable local, county, state and federal building setback or buffer zone regulations.

Anything herein to the contrary notwithstanding, the Committee or Declarant unilaterally, may vary the building setback lines recited herein, so long as such variance does not cause the revised setback requirement to be less than that set by local, county, state or federal setbacks at that time. Any such variance shall be evidenced by a certificate of variance or compliance signed by an officer of the Declarant, in recordable form and filed in the Office of the Register of Deeds of BEAUFORT COUNTY.

Section 3. Architectural Control Committee.

(a) Membership. The Committee shall be composed of three (3) persons appointed by the Declarant. The Committee may designate a representative to act for it. In the event of death, resignation, or removal by the Declarant of any member of the Committee, the Declarant shall have full authority to designate a successor. Unless otherwise approved by the Declarant, neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Declarant shall keep, or cause to be kept, a list of the names and addresses of the persons who form the Committee and a list of the names and addresses of any designated representative of the Committee, and such a list shall be available to any Owner. The Architectural Control Committee will remain active in this capacity until the Turnover meeting, as outlined in Article Six, Section 3. At the Turnover meeting, current owners shall elect replacement Committee members and from then on hold the responsibilities of Architectural Control.

(b) Procedure. At least forty-five (45) days prior to the commencement of any construction, the Plans shall be submitted to the Committee. The Owner shall include with the name of the contractor, a statement as to the classification of contractor's license held by such contractor and the address and telephone number of the contractor.

Approval shall be subject to such regulations, and architectural standards as may from time to time be promulgated by the Committee. Within thirty (30) days after receipt of the Plans and all other required information, the Committee shall notify the Owner of the Lot or Dwelling Unit in writing as to whether the Plans and the contractor have been approved. Unless a response is given by the Committee within thirty (30) days, the Plans and/or contractor shall be deemed approved. The response of the Declarant may be an approval, a denial, and an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the thirty (30) day time period for further Committee response shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and construction then begins, the conditions shall be deemed accepted by the Owner of the Lot or Dwelling Unit and the conditions imposed shall become fully a part of the approved Plans.

The Committee may, from time to time, at its sole discretion, require of any contractor a cash or insurance performance bond to guarantee final site clean up and/or extraordinary road repairs necessitated by the actions of the contractor and his workers and subcontractors during the construction of any improvements on The Property.

Any Owner of any Lot or Dwelling Unit disagreeing with the finding of the Committee may appeal the decision to the Declarant by giving written notice of appeal to the Declarant within fifteen (15) days following receipt of notice of denial. The Declarant shall then

review the Plans, giving the Chairman of the Committee the opportunity to present to the Declarant specific reasons why the Plans were denied, in the present of the Owner of the Lot or Dwelling Unit or his agent, and the Owner of the Lot or Dwelling Unit or his agent may present information challenging the findings of the Committee. The decision of the Committee shall only be overridden by unanimous vote of the Declarant.

All notices required to be given herein shall be given in writing, hand-delivered or mailed postage prepaid, certified or registered mail, return receipt requested or deposited with an overnight carrier (such as, but not limited to Federal Express), and the Committee shall be obliged to specify the particular grounds upon which denial of any application is founded. One set of Plans denoted as approved (or approved with specified conditions) shall be retained by the Committee and the other two shall be returned to the applicant.

(c) Application of the Article. This Article Four shall apply to any additions to the Existing Property subsequently made subject to this Declaration and the terms and provisions of any Supplemental Declaration.

ARTICLE FIVE RESTRICTION ON USE AND RIGHTS OF THE DECLARANT AND OWNERS

Section 1. Permissible Uses. No Lot shall be used except for single family residential purposes (with the exception of any sales center, office, building or model home constructed or used by the Declarant or his Agent). Specifically, no Model Home or Open House type of operation shall be allowed within the Property other than with Declarant's explicit written permission, notwithstanding Declarant's right to operate such Model Home or Open House, at its discretion, anywhere within the Property at any time. No building of any type shall be erected, altered, placed, or permitted to remain on any Lot other than a Dwelling Unit and its accessory buildings, which shall comply with any applicable local, state, and federal zoning regulations including setbacks and buffer zones together with the requirements of Articles Four and Five of this Declaration.

Section 2. Division of Lots: No Time Sharing.

(a) No Lot shall be further divided, except that any two Owners may divide a Lot between them as a recombination if such Lot is adjacent to the Lots owned by such Owners, and provided further that not more than two (2) Dwelling Units may be constructed on the three (3) combined Lots. In event of such a recombination, the sideline setbacks and sideline easements shall be released as to the old interior common sidelines and become applicable to the new common sideline created within the old shared Lot.

(b) No Lot, unit of ownership or ownership interest may be subdivided to permit time sharing or other devises to affect interval ownership unless approved by the Declarant

subject to conditions which may be imposed by the Declarant. For purposes of this section time sharing or other devices to effect interval ownership shall include, but not be limited to, ownership arrangements, including uses of corporations, trusts, partnerships or tenancies in common, in which four or more persons or entities, not members of a single household, have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same Dwelling Unit and such owners have formal or informal right-to-use or similar agreement.

Section 3. Utilities and Other Easements.

(a) The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utility lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to The Property on, in, under and over the streets or roads; within thirty (30) feet of each Lot line fronting on a street; within ten (10) feet along the side lines of each Lot; and over such other areas as are so identified on any recorded plat of The Property. In addition, the Declarant may cut, in the above described easements, at its own expense, drainways for surface water and/or to install underground storm drainage and sewer lines wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along street fronting property lines, in the thirty (30) foot easement thereby reserved, Declarant reserves the right for installation, maintenance and repair of bike and pedestrian paths, street lights and/or street-side landscaping. In the event of any additions to The Property, as provided in Article One, by the Declarant or others, the easements created hereby shall exist on the Lots in such additions to The Property. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

(b) There is also reserved by Declarant, for itself, and its successor or assigns, within The Property, a perpetual easement to enter within the street and the 30-foot and 10-foot easement areas herein described, at reasonable times and hours of the day, in order to do necessary groundwater monitoring, to include the installation and pumping of groundwater wells, or for the purposes of remediation of groundwater contaminants.

Section 4. Minimum Square Feet in Dwelling Unit. 1,800 square feet shall be the minimum heated living area for a one-story dwelling and 2,200 square feet shall be the minimum heated living area for a Dwelling Unit of more than one story. In addition, all dwellings constructed shall include an enclosed garage or other suitable approved enclosure of a minimum size to accommodate two full size automobiles. If the Dwelling Unit is built upon pilings or otherwise raised in such a manner to allow the parking of two full sized automobiles under the first floor of

the heated living area, a separate garage area will not be required. In the case of a Dwelling Unit that is raised or situated on pilings in such a manner to allow the parking of two full sized vehicles under the first floor of heated living area, the vehicle parking area will not constitute as a floor of the Dwelling Unit.

Section 5. Roof Pitch. For all structures on a Lot, the roofs shall be constructed so that the pitch shall not be less than "six to twelve," or to such other standard as may be adopted by the Declarant. Such other standards may allow for a different roof pitch on all or portions of the roof of a structure when other characteristics of the structure justify such change.

Section 6. Foundations. The primary structure on a Lot shall be constructed on a masonry crawl space or piling foundation, the nature of which is approved by the Declarant. The Declarant may require brick veneer or facing on such foundation or such other method as Declarant deems appropriate for the finished appearance of the foundation. The use of slab foundations shall be prohibited, except for use in out buildings, garages or similar structures where approval for such construction has been granted by the Declarant or its successors and assigns. This will not prohibit the use of slab or piling foundations in portions of a structure where the Declarant considers the overall design to meet the criteria established in these covenants.

Section 7. Maintenance During Construction. During construction of improvements on a Lot, the Member or builder shall maintain facilities for or arrange for a portable toilet on the premises. In addition, no approval for improvements shall be effective until the Member or builder places, on an area adjacent to the pavement on the respective Lot, a clay, marl, stone or other improved surface or base area so as to avoid damage to the edge of the asphalt paved surface, occurring during access to the Lot during construction. The Member or builder shall maintain a trash bin of a size and type sufficient enough to avoid trash or debris from spreading from the building site and shall keep all areas clean during and after construction. The Member or builder is required to install at Member's expense a culvert that will allow for crossing of the roadside swale or ditch and such culvert shall meet the Department of Transportation standards for driveway culverts. The culvert shall allow unimpeded water movement along the existing roadway swale. The culvert must remain in place after construction and will be maintained by the Member in such a way that it does not become an eyesore or disturb the desired drainage patterns of the swale system.

Section 8. Temporary Buildings. No trailer, double-wide mobile home, tent, shack or other temporary building shall be erected or placed on a Lot except for the storage of materials or the convenience of workmen during construction. When permitted during construction, such temporary buildings shall be removed from the Lot upon issuance of an occupancy permit for said residence.

Section 9. Temporary Structures. No structure of a temporary character shall be placed upon any portion of The Property at any time, provided, however, that this prohibition shall not apply to shelters or sheds used by contractors during the construction of a Dwelling Unit, or improvements or additions thereto, on any Lot. Temporary shelter, tents, recreational vehicles, trailers (whether attached or unattached to the realty) may not, at any time, be used as a temporary or permanent residence or be permitted to remain on any portion of The Property.

Section 10. Committee Approval of Plans and Other Prohibitions.

(a) As provided in Section 2 of this Article Four, no Dwelling Unit, fence, structure, patio, building, appurtenance, attachment, improvement or addition shall be built, constructed or maintained nor shall any alteration, rebuilding or reconstruction commence, unless the Plans therefore have been approved in writing by the Architectural Control Committee and such building or construction is completed in strict accordance with said Plans. In addition, any such Dwelling Unit shall comply with all applicable local, COUNTY, state and federal building, plumbing, electrical and other codes, including any and all setbacks or buffer zones.

(b) No detached garage, storage shed, or carport shall be permitted unless architecturally compatible with the primary Dwelling Unit on the Lot.

(c) No vent or other pipes or appendages may extend from the front of any Dwelling Unit, unless screened from public view by a screening material or shrubbery approved by the Committee.

(d) Any exterior air-conditioning or heating equipment and any gas storage facility must be screened from public view by a screening material or shrubbery approved by the Committee.

(e) Downspouts and gutters must be constructed so as not to promote the erosion of the soil of any Lot or Dwelling Unit.

(f) Exterior lighting shall be restrained and subtle and must be directed so as not to shine directly on another Lot or Dwelling Unit or interfere with the quality of the night environment.

Section 11. Garbage and Storage Receptacles. Except as required by any appropriate governmental authority, each Owner shall provide receptacles for garbage (and recyclables, if such a program is in place in BEAUFORT COUNTY), and all garbage receptacles, tools and equipment for use on a Lot or Dwelling Unit by any Owner, shall be placed in a screened area in accordance with reasonable standards established by the Committee to shield some from general visibility from roads and neighbors abutting the Lot or Dwelling Unit. No fuel tanks or similar storage receptacles or related storage facilities, may be exposed to view. No underground

storage tanks for chemicals, petroleum products or any other mineral or toxic product will be allowed anywhere in The Property, except for propane gas tanks for household heating.

Section 12. Debris. No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of The Property, except as is temporary and incidental to the bona fide improvement of any portion of The Property. Job site debris shall be removed from the Lot (job site) at least semi-weekly.

Section 13. Antennas. No television antennas, radio receiver or sender antenna or other similar device shall be attached to or installed on the exterior portion of any Dwelling Unit or structure, or placed on any Lot or Common Properties within The Property. A satellite dish not to exceed eighteen (18) inches in diameter may be installed so long as it is appropriately screened from view (as determined by the Committee).

Section 14. Unsightly Conditions. It is the responsibility of each Owner to prevent any unclean, unsightly or unkempt conditions to exist on his Lot, Dwelling Unit, or grounds, which shall tend to decrease the beauty of The Property, specifically or as a whole. During the construction of any improvement to a Lot in The Property, the Lot, roads, bike paths, landscaping and Common Areas adjacent thereto shall be kept in a neat and orderly condition so as not to cause an unsightly condition to exist or damage to occur. In the event the Owner or his agent or employee (including, without limitation, any contractor or subcontractor) shall fail to maintain the Lot and adjoining areas as specified herein or allow damage to occur and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant, Declarant shall have the right, exercisable in its sole discretion, to summarily abate any unsightliness, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot and adjoining area. In the event that Declarant, after such notice, causes the subject work to be done, the costs of such shall be reimbursed by the Owner to the Declarant and will become a continuing lien on the Lot until paid.

Section 15. No Offensive Activity or Fires. No noxious or offensive activity or excessive noise shall be carried on upon any portion of The Property, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, tenant or guest thereof, in any portion of The Property. Fires on any Lot or Dwelling Unit or on any portion of the Common Properties are prohibited unless procedures adopted by the Declarant are strictly followed.

Section 16. Certain Plants, Animals and Pets. Except as otherwise permitted herein, or in any amended Declaration, no plants, animals, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may tend to diminish or destroy the enjoyment of any other Lot or Dwelling Unit Owners, or tenants and guests thereof, may be maintained on a Lot or in a Dwelling Unit. No animals, livestock or

poultry of any kind shall be raised, bred, or kept on any Lot or in any Dwelling Unit, except that a reasonable number, but no more than three, dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. At no time will any household pets be allowed to run free, and at all times when off the Owner's Lot, such household pets will be on a leash.

Section 17. Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within The Property is prohibited unless required for public safety.

Section 18. Motorized Vehicles Prohibited Parking. All motorized vehicles operating within The Property must be properly muffled so as to eliminate noise which might be offensive to others. No motorized vehicle, boat, boat trailer, other trailer, camper, recreational vehicle, utility vehicle or truck shall be allowed to remain on any street right-of-way or on any portion of the Common Properties overnight without expressed written consent of the Declarant. Boat, boat trailers, campers, recreational vehicles and utility vehicles should be in a designated storage area if provided by the Declarant or should be kept in an enclosed accessory building or an enclosed garage or other suitable approved enclosure. If a boat, boat trailer, camper, recreational vehicle or utility vehicle must be stored on a lot without an enclosure every effort should be made to screen the stored property from public view and from view of adjoining property owners by way of an approved fence or by the use of plantings and shrubbery. In addition, each Owner shall provide as a part of his Dwelling Unit or as a part of an accessory building thereto an enclosed garage or other suitable approved enclosure for the parking, out of public view, of two full sized automobiles.

Section 19. Signage. No "For Sale" or "For Rent" signs or other signs of any kind shall be displayed in public view on any Lot, Dwelling Unit, facility, appurtenance, short or long term parked vehicle, accessory building or structure unless approved by the Declarant, who shall also from time to time provide design criteria and color schemes for approved signage. Notwithstanding the foregoing, the Declarant shall have the right to locate a sign or signs on any lot owned by Declarant. Declarant shall further have the right to locate a sign or signs indicating the location of sales and rental centers, identify model homes or living units and their builder, any Recreational Facilities and such other informational signs of any type as may be necessary or desirable, in Declarant's sole opinion, to facilitate Declarant's plans for development and sales at BATTALINA CREEK. No sign or signs shall be permitted on any unimproved lot other than those lots owned by Declarant until such time as Declarant no longer employs a sales and marketing staff for lot sales at BATTALINA CREEK. Declarant shall have the right to enter upon The Property of violating owners and remove any such sign, advertisement, billboard or structure which is placed on any lot in violation of the Covenants, and in doing so, shall not be liable and is hereby expressly relieved from any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 20. Vegetation. No existing vegetation shall be disturbed during construction without the express written consent of the Committee. The Committee shall require written proposals for the restabilization of any such disturbed area. Any vegetation disturbed during construction shall be repaired to the satisfaction of the Committee prior to the Owner applying for an occupancy permit from BEAUFORT COUNTY or the appropriate municipal body. This shall not prevent or limit in any way the Declarant from entering in such earthmoving, clearing, mowing, and pruning activities as are necessary to affect the overall plan of development.

Section 21. Mail and Delivery Boxes. The Committee shall determine the standards and issue guidelines for the location, material, color and design for mail and newspaper boxes, if any, and the manner in which they shall be identified. All Owners must display the COUNTY-assigned street address on their mail boxes, or other appurtenance, pursuant to the then current regulations of BEAUFORT COUNTY.

Section 22. Residential Lot Coverage. All owners shall comply with the local, COUNTY, state and federal limitations of lot coverage as well as any local, COUNTY, state or federal storm water runoff regulations.

Section 23. Fences. Fences are subject to the complete jurisdiction of the Committee as to location, style, materials, height and whether or not a fence is allowed at all. As used herein, fences shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility. The Committee shall only approve the construction of a fence upon a determination that the fence is aesthetically pleasing, does not detract from the reasonable value of any Lot or Dwelling Unit and does not unreasonably impede the view of any water course, or other attractive feature from any other Lot or Dwelling Unit.

Section 24. Driveways. All driveways, guest parking and turnabouts shall be paved blacktop or asphalt material.

Section 25. Occupancy. No residence on a Lot shall be occupied in any manner prior to completion of construction and the connection of permanent utilities.

Section 26. Windstorm Resistance Standards. BATTALINA CREEK requires all dwellings to be built in accordance with current local, county, state and federal windstorm building codes.

Section 27. Timely Completion. When construction of any Dwelling Unit, structure, improvement, or addition thereto has once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. It is a requirement that Dwelling Units under construction in The Property be "dried-in" with exterior finishes installed, including roofing, windows and finish siding within one hundred twenty (120) days of starting construction and that all phases of work, including execution of the Landscape Plan, be complete within one year of Committee approval. In the event that completion should be delayed beyond one year from

Committee approval, then in that event, the Committee, may, so long as the Owner is notified within thirty days of the one year period expiring, by way of unanimous vote of its Members, rescind the existing approval and require that the Owner reapply and seek new approval. Committee shall approve the construction of an accessory building or garage to be built upon any lot, no sooner than 12 months prior to the commencement of the building of the dwelling unit.

Section 28. Water and Sewage. All properties shall be required to use public water and sewer facilities provided by the City of Belhaven and Beaufort County.

Section 29. Existing Dwellings. Notwithstanding the minimum housing requirements as to size, location and roof pitch, any existing dwellings are "grandfathered" as they now exist. Any new replacement dwellings on said lots shall conform to the provisions of this Article Five.

Section 30. Multiple Dwellings. No Lots shall be used for multi family use although "guest quarters" are not prohibited, all "guest quarters" will be subject to Architectural Approval.

ARTICLE SIX MEMBERSHIP

Section 1. Membership. Every person or entity who is a record Owner of a fee simple interest in any Lot or Dwelling Unit in BATTALINA CREEK is subject by this and any other declarations to all rights, responsibilities and assessments of the Declarant and shall be a Member; provided, however, that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member. Each member shall be entitled to one vote for each lot owned for the process of electing the Association's Board of Directors, Architectural Control Committee, or for any other voting situations that may arise in the operations of the Association after the Turnover meeting as established in this Article Six Section 3.

Section 2. Rights and Responsibilities of the Declarant. Subject to the rights of Owners and Declarant as set forth in this Declaration, The Declarant has exclusive management and control of the Common Properties and all improvements thereon and all furnishings, equipment and other personal property relating thereto until Declarant holds a Turnover meeting, at which time the ownership, rights and responsibilities of all Common Properties shall convey to the Association, governed by a Board of Directors, elected by the Lot owners.

The Declarant's duties, until the Turnover meeting, with respect to such Common Properties include, but are not limited to, the following:

- (a) Maintenance of the Common Properties;

(b) Management, operation, maintenance, repair, servicing, replacement and renewal of all landscaping, improvements, equipment and personal property constituting part of the Common Properties or located upon the Common Properties so as to keep all of the foregoing in good, clean, attractive, sanitary, safe and serviceable condition, order and repair;

(c) All landscaping of the Common Properties;

(d) Maintenance of adequate public liability, property casualty or hazard insurance for the benefit of the Declarant with respect to the Common Properties;

(e) Payment of all taxes and assessments validly levied, assessed or imposed with respect to the Common Properties;

(f) Management, operation, maintenance, repair, servicing, replacement and renewal of all streets and roads within The Property and all improvement thereon; provided, however, that following any irrevocable acceptance of the streets and roads for maintenance as public rights of way by applicable governmental entities, the maintenance obligations of the Declarant for the streets and roads shall only be to the extent such activities are not performed by the applicable governmental entities.

The Declarant may also provide other services such as, but not limited to, security services or devices, including but not limited to operation of an entry guard house and any other security gates, security personnel and overall traffic control as and to the extent the Declarant deems appropriate.

The Declarant may obtain and pay for the services of any personnel to manage its affairs to the extent the Declarant deems advisable, as well as such other personnel as the Declarant determines is necessary or desirable, whether such personnel are furnished or employed directly by the Declarant or by any person with whom it contracts. Without limitation, the Declarant may obtain and pay for legal, accounting, engineering or other professional services necessary or desirable in connection with the Common Properties or the enforcement of this Declaration.

The Declarant, from time to time, may adopt, alter, amend, rescind and enforce reasonable rules and regulations governing use and operation of the Common Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The validity of the Declarant's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of The Property.

The Declarant may, acting through its Board, contract with other residential Declarants or commercial entities, neighborhoods or clubs to provide services or perform services on behalf of the Declarant and the Members. In addition, the Declarant may contract with other residential Declarants or commercial entities, neighborhoods or clubs within BATTALINA CREEK to

provide service in or perform services on behalf of such other Declarants, neighborhoods or clubs.

Section 3. Turnover of Management and Control to Association. No later than twenty-four months after the Declarant no longer holds the title to 3% of the lots in The Property, the association shall conduct a special meeting of the membership, hereinafter called the Turnover Meeting, for the purpose of assuring the transition of control of the Common Facilities to an Association for the Lot Owners.

Section 4. Board of Directors. After the Turnover meeting, the Association shall be governed by a Board of Directors, which will be elected by the Lot Owners at the Turnover Meeting. The Board of Directors shall be comprised of current property owners. As provided in Article Six, Section 1, each Lot owner shall be entitled to one vote for each lot owned for the election of the Board of Directors and for any other voting initiated by the Association.

ARTICLE SEVEN PROPERTY RIGHTS IN THE COMMON FACILITIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article Seven, every Member shall have a right and easement of enjoyment in and to all of the Common Facilities and such easement shall be appurtenant to and shall pass with the title to every Lot or Dwelling Unit in The Property, as well as every Other Lot and Other Residential Unit in other sections of BATTALINA CREEK.

Section 2. Title to Common Facilities the Declarant may retain the legal title to any Common Facilities shown on any recorded plat of The Property, until such time as it has completed improvements, if any, thereon and until such time as Declarant holds the Turnover meeting detailed in Article Six, Section 3. At the Turnover, meeting Declarant shall convey title to the Common Facilities to the Association by Non-Warranty Deed, at no cost to the Association, free and clear of all liens and encumbrances except this Declaration and any supplements and amendments thereto. The Association covenants that it will accept a conveyance of all of the Common Facilities.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created herein shall be subject to the following:

(a) The right of the Declarant or the Association, in its sole discretion, to grade, pave or otherwise improve any road or street shown on any recorded plat of The Property, BATTALINA CREEK;

(b) The right of the Declarant or the Association to suspend the enjoyment rights of any Member for any period during which any assessment of the Member remains

unpaid, and for any period not to exceed thirty (30) days for any infraction of any published rules and regulations adopted by the Declarant;

(c) The right of the Declarant or the Association or its assignee to charge reasonable admission and other fees for use of any of the facilities situated upon its Common Properties.

Section 4. Driveway Culverts. Each Owner, if required by the Committee as a condition to approval of his Plans, when making a driveway connection to the street or to a cul-de-sac, will provide a suitable drainage culvert so as to allow for unimpeded water movement along the existing roadway swale, and will maintain that culvert at all times in such a way that it does not become an eyesore or disturb the desired drainage patterns in the swale system.

Section 5. Stormwater Management Improvements. The Declarant, until such time as the Declarant no longer owns any of the Common Properties in BATTALINA CREEK, will be responsible for maintenance of any stormwater management swales, channels, and check dams and to see that each Owner installs and maintains his driveway culvert in accordance with Section 4 of this Article Seven. Such maintenance shall include removal of sediments within the swales and channels, restabilization of the swales and channels at all times in such a way that it does not become an eyesore or disturb the desired drainage patterns in the swale system.

In accordance with Title 15 NCAC 2H.1000, the Coastal Stormwater Management regulations, deed restrictions and protective covenants are required for Low Density Residential Subdivisions where lots will be subdivided and sold. Deed restrictions and protective covenants are necessary to ensure that the development maintains a "built-upon" area consistent with the applicable regulation governing the density level.

1. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit No SW7062002 as issued by the Division of Water Quality under NCAC 2H.1000.
2. The State of North Carolina is made beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.
3. These covenants are to run with the land and be binding on all persons and parties claiming under them.
4. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

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

6. The maximum allowable built-upon area per lot is as shown on **Exhibit A** attached.

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

7. 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.

8. 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.

9. Each lot will maintain a 50' wide vegetative buffer between all impervious areas and surface waters.

10. All roof drains shall terminate at least 50' from the mean high water mark surface waters.

11. The area of the 20' private drive on Lots 32, 33, 34, 35, 39, 40 and 41 is not included in the allowable built-upon area listed in Item 6. The values listed in Item 6 are the remaining built-upon area per lot.

Section 6. Private Roads. In the development of The Property, the Declarant may construct certain private streets or roads or access easements within The Property connecting parcels of The Property to public rights of way. The Owners of Lots, Dwelling Units, shall have no more than an easement for ingress and egress for themselves, their tenants, agents, employees, representative, invitees and assigns over such private streets and roads, and there shall be no public rights of any kind therein, unless approved by the Members in accordance with the provisions of Section 3 of this Article Seven. Declarant reserves the right to name and revise from time to time the names or other designations given to such private streets or roads. In the event the Declarant or property owners association decides that the roads should be turned over

EXHIBIT A

Lot No.	Allowable Built-Upon Area		Lot No.	Allowable Built-Upon Area	
	AC	SF		AC	SF
1	0.17	7,527	27	0.14	6,095
2	0.18	7,919	28	0.22	9,414
3	0.22	9,558	29	0.62	27,100
4	0.23	9,933	30	0.18	7,988
5	0.11	4,973	31	0.23	9,920
6	0.11	4,675	32	0.20	8,633
7	0.11	4,633	33	0.18	7,908
8	0.18	7,690	34	0.19	8,419
9	0.20	8,893	35	0.21	9,289
10	0.17	7,577	36	0.16	7,045
11	0.14	5,999	37	0.12	5,105
12	0.20	8,557	38	0.11	4,924
13	0.18	8,041	39	0.10	4,561
14	0.28	12,154	40	0.10	4,142
15	0.26	11,479	41	0.14	6,243
16	0.25	10,796	42	0.10	4,422
17	0.20	8,601	43	0.12	5,105
18	0.10	4,338	44	0.14	6,005
19	0.11	4,926	45	0.12	5,431
20	0.13	5,621	46	0.10	4,446
21	0.15	6,316	47	0.10	4,514
22	0.15	6,523	48	0.14	6,076
23	0.21	8,993	49	0.16	7,064
24	0.21	8,931	50	0.16	6,950
25	0.27	11,620	51	0.14	5,962
26	0.14	5,905	52	0.17	7,441

to the appropriate regulating government agency, the roads must be brought up to current NCDOT standards subsequent to the transfer.

ARTICLE EIGHT
COVENANT FOR PAYMENT OF ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Member, other than the Declarant, who is the owner of any Lot, or Dwelling Unit, by acceptance of a deed therefore, and all other Members, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay, as limited below, to the Declarant:

(a) Annual assessments or charges as herein provided;

(b) Special assessments for capital improvements (such annual and special assessments to be fixed, established, and collected from time to time as herein provided); and

(c) Any liquidated damages or summary charges imposed under authority contained herein, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Declarant incidental to the enforcement of any rules and regulations, collection of assessments (both annual and special) or collection of damages or charges arising herein.

The annual and special assessments of an Owner and any liquidated damages or summary charges as herein provided, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the Lot & Dwelling Unit, against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons jointly and severally, who is (are) the Owner(s) of such properties at the time when the Assessment fell due.

Section 2. Purpose of Assessments. The Assessments levied by the Declarant shall be used exclusively to promote the recreation, health, access, maintenance of property values, security, safety and welfare of the residents of The Property and other Members, and in particular for:

(a) Improvement, maintenance, and replacement of any of the Declarant's Common Properties including, without limitation, the Facilities, Waste Water Treatment Facilities and payment of the Common Expenses;

(b) Maintenance of exteriors of Dwelling Units and related improvements on Lots in The Property, as well as Other Lots within BATTALINA CREEK, if necessary, subject to reimbursement by the Owner(s) of such property pursuant to Article Nine, Sections 1 and 2 of this Declaration;

(c) Establishment of capital replacement reserves; and

Acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of the Declarant's Common Properties, including but not limited to, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against those Common Properties, the procurement and maintenance of insurance related to those Common Properties, its recreational facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Declarant as necessary, and such other requirements as are necessary to perform all of the aforesaid functions and purposes.

The regular annual assessment minimum amounts shall be the sums calculated in accordance with the following schedule as may be increased in each instance by an adjustment for inflation as set forth below.

Owner Members Assessments	Minimum Regular Annual Assessments
Per Lot	\$250.00
or	
Per Dwelling Unit	\$350.00

Commencing with the calendar year beginning January 1, 2009, on the first day of each year, the minimum regular annual assessments shall automatically be increased by a minimum of three percent (3%) and a maximum of ten percent (10%) per annum, as determined by the Board of Directors. In no event shall the minimum regular assessment increase by more than 10% in any given year unless by majority vote of then Owners. Special assessments shall be subject to the approval of the Board of Directors. In no event shall a special assessment(s) be levied upon any Owner, in any twelve (12) month period, be greater than that year's annual assessment, except by majority vote of then Owners.

Section 3. Date of Commencement of Annual Assessments: Due Dates. The regular annual assessments provided for herein shall be paid (as determined by the Declarant) in quarterly, semiannual, or annual installments. The payment of the regular annual assessment by Owners shall commence as to each Lot, Dwelling Unit, Other Lot or Other Residential Unit, on the first day of the month following the conveyance of that Property by the Declarant, but no earlier than January 1, 2009. The first regular annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Declarant or board shall fix the amount of the following year's annual assessment by December 15 of the current year. Written notice of the

regular annual assessment shall be sent to every Member subject thereto. The due dates shall be established by the Declarant. The Declarant, upon any qualified demand (as determined by the Board) at any time, shall furnish a certificate in writing signed by an officer of the Declarant setting forth whether any specific assessment has been paid. Such properly executed certificate of the Declarant as to the status of the assessment is binding upon the Declarant as of the date of its issuance. The due date for any special Assessment or any other Assessment, permitted by the Declaration, shall be fixed by the Declarant.

Section 4. Effect of Non-Payment of an Owner's Assessment: the Personal Obligation of the Owner, the Lien, Remedies of Declarant. If the assessments of an Owner are not paid within ten (10) days following the date due (being the dates referred to in Section 7 of this Article Eight), then such assessments shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot(s) or Dwelling Unit(s) which shall bind such Lot(s) or Dwelling Unit(s), in the hands of the then-Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment shall remain his personal obligation for the statutory period; and, in addition, shall pass to his successors in title (as an encumbrance or lien against the Lot or Dwelling Unit, unless expressly waived by the Declarant.

If the assessment(s) is not paid within thirty (30) days after the delinquency date, the assessment(s) shall bear interest from the date of delinquency at the rate of one and one-half (1.5%) percent per month and the Declarant may authorize its officers to bring appropriate civil action against the Owner personally obligated to pay the same or to foreclose the lien against any such Lot(s) or Dwelling Unit(s) and there shall be added to the amount of such assessment, the costs of such action and reasonable attorneys' fees or other cost incurred by the officers of the Declarant pursuant to authority of the Declarant. In the event a judgment is obtained against any Owner for such assessments, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action.

Section 5. Subordination of the Lien on an Owner's Property to Mortgages or Deeds of Trust. The lien on an Owner's property of the assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now and hereafter placed upon any Lot(s) or, Dwelling Unit(s), subject to assessment. The subordination shall not relieve any Lot(s) or Dwelling Unit(s) from liability for any assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage, irrespective of when such first mortgage or deed of trust was executed and recorded.

Section 6. Composite Building Site. Any owner of one or more adjoining lots (or portions thereof) may, with prior written consent of Declarant consolidate such lots or portions into one building site which shall be considered one lot for purposes of assessments.

Section 7. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

(a) All Common Properties as defined in Article Two of this Declaration; and

(b) All properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption. (Homestead exemptions shall not be considered an exemption.)

(c) All properties owned by the Declarant before and after Turnover of the Association.

Notwithstanding any provisions of this Section 7, no Lot or Dwelling Unit, shall be exempt from said assessments, charges or liens.

ARTICLE NINE EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance. After thirty (30) days written notice to an Owner specifying any required maintenance, the Declarant shall have the right but not the obligation to provide (a) maintenance upon any Lot and (b) maintenance upon any Dwelling Unit, which is subject to assessment under Article Eight hereof. Such maintenance includes (but is not limited to) painting, grass and weed mowing, the trimming of shrubs, repairing, replacing and care of roofs, gutters, downspouts, removal of signs in violation of this Declaration, and exterior improvements on any Dwelling Unit. Such maintenance as to a vacant Lot may include the mowing of grass and weeds, the trimming of shrubs, or the removal of trash and litter.

Section 2. Assessment of Cost on Exterior Maintenance. The cost of any such maintenance shall be assessed against the Lot or Dwelling Unit, upon which such maintenance is performed and shall be added to and become part of the regular annual assessment or charge to which such Lot, Dwelling Unit, is subject and, as part of such regular annual assessment or charge, it shall be a lien against any such Lot or Dwelling Unit, as heretofore defined and limited, and a personal obligation of the Owner and shall become due and payable in all respects as provided herein.

ARTICLE TEN CAPTION, INTRODUCTIONS AND GENDER

The captions and introductory material herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and neuter genders, and the use of the

singular shall be deemed to refer to the plural, and the use of the plural shall be deemed to include the singular, whenever the context so requires.

ARTICLE ELEVEN
AMENDMENT TO DECLARATION

Section 1. Amendments. Declarant, its successor or assigns shall be allowed to make amendments/modifications to this Declaration, notwithstanding any other provision contained herein, and without joinder of any other party, for the purposes of correcting any discovered typographical error contained herein, clarifying any ambiguity contained herein, or adding or deleting any provisions deemed in the sole discretion of the Declarant to be in the best interest of the Development and the Members therein. This right may be exercised, and shall be effective, only upon the recordation of an "Amended Declaration" or "Modification of Declaration" in the Office of the Register of Deeds of BEAUFORT COUNTY, which Amended Declaration or Modification of Declaration shall specifically reference this document and the provision(s) impacted.

Section 2. Modifications. The Declarant shall have, and solely reserves the right to, include

~~in any declaration, contract or deed thereafter made or entered into, such modifications and~~ additions to these protective covenants, which will, in the sole opinion of the Declarant, raise the standards or enhance the desirability of the subdivision as a residential area. Such reservation shall not relieve any purchaser of a Lot, in whole or in part, from any of the protective covenants set forth. Declarant may allow reasonable variances and adjustments of these covenants in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes hereof and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the subdivision.

The Declarant, without the consent or approval of any other property owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over The Property or to qualify The Property or any lots and improvement thereon for mortgage or improvement loans made or insured 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 in such lots and improvements or mortgage interest therein, as well as any other law or regulation relating to the control of property, including without limitation; ecological controls, construction standards, aesthetics, matters of public health, safety and general welfare. A letter from an official of any such corporation or agency, including without limitation; the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Association, 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.

3. Right to Add Additional Members and Lots. Declarant, its successors and assigns, hereby reserves the right to develop additional properties and to add Owners from such other properties as Members of the Association who may use any facilities, Common areas, open areas that are available within The Property, provided such additional Members shall be obligated to pay dues to the association the same of Owners.

ARTICLE TWELVE
SEVERABILITY AND GOVERNING LAW

If any provision of this Declaration is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all covenants as contained herein shall be deemed to be severable each from each other without qualification. This Declaration and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed in such form as to be binding, the day and year first above written.

BATTALINA CREEK, LLC,
A North Carolina Limited Liability Company

BY: Jeffery A Passot
Jeffery A Passot, Manager

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

I, a Notary Public of CRAVEN County, North Carolina, certify that on this day before me personally appeared JEFFERY A. PASSOT, Manager of BATTALINA CREEK, LLC, personally known to me or who produced satisfactory evidence of identification and voluntarily signed the foregoing or attached instrument for the purposes therein expressed and in the capacity indicated.

WITNESS my hand and official stamp or seal this the 30 day of May, 2007.

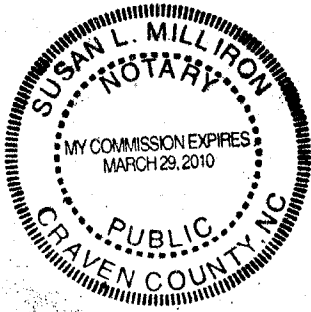
Susan L. Milliron

Signature of Notary Public

My commission expires: March 29, 2010

SUSAN L. MILLIRON

Typed or Printed Name of Notary Public





JENNIFER LEGGETT WHITEHURST
BEAUFORT COUNTY REGISTER OF DEEDS
COURTHOUSE BUILDING
112 W. 2ND STREET
WASHINGTON, NC 27889

Filed For Registration: 06/01/2007 01:11:18 PM
Book: RE 1588 Page: 413-439
Document No.: 2007004499
DECLR 27 PGS \$89.00
Recorder: JENNIFER L WHITEHURST

2007004499

2007004499

T. Archie