

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK COUNTY

RET ALLEN MACDONALD ET AL  
TOTAL 47- REV        TC# 38  
REC#        CK AMT        CK#         
CASH        REF        BY TS

DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS  
FOR EASTBROOK ESTATES

THIS DECLARATION, made the 21 day of February, 2005, by EASTBROOK ESTATES, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant" or Developer for the purposes hereinafter stated:

WITNESSETH :

WHEREAS, Declarant is the owner of that certain real property in Brunswick County, North Carolina, known as EASTBROOK ESTATES, which is shown on a plat recorded in the Office of the Register of Deeds of Brunswick County, North Carolina, in Map Cabinet 32 Page 29 and 30, to which reference is made for a more particular description (the "Property"); and

NOW, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

SECTION 1. Additional Property shall mean and refer to any lands which are now owned or may be hereafter acquired or developed by Declarant, in addition to the above described Property, and annexed to and made a part of the Development (as hereinafter defined) pursuant to Article VII hereof.

SECTION 2. Association shall mean and refer to EASTBROOK ESTATES Homeowners' Association, Inc., a North Carolina nonprofit corporation, its successors and assigns, the owners association organized for the purposes set forth in Article III hereof.

SECTION 3. Assessments shall mean the Annual, Special, Insurance, Ad Valorem and Working Capital Assessments defined in Article IV hereof.

SECTION 4. Common Area(s) shall mean and refer to all real property within the Development owned by the Developer or the Association for the common use and enjoyment of the Owners, including any facilities located on such real property.

SECTION 5. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to EASTBROOK ESTATES, LLC, its successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant for the purpose of development.

SECTION 6. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

RETURN TO  
ALLEN, MACDONALD & DAVIS  
1508 MILITARY CUTOFF ROAD  
SUITE 102  
WILMINGTON, NC 28405

SECTION 7. Development shall mean the Property plus any Additional Property.

SECTION 8. Limited Common Area(s) shall mean areas and facilities within any Lot which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration. There shall be no Limited Common Area on any Lot unless the same is specifically shown on the Subdivision Map for EASTBROOK ESTATES.

SECTION 9. Lot(s) shall mean and refer to any numbered lot within the Development.

SECTION 10. Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 11. Property shall mean the Property as defined in the preamble to this Declaration.

SECTION 12. Member(s) shall mean and refer to every person or entity who has a Membership in the Association.

SECTION 13. Membership shall mean and refer to the rights, privileges, benefits, duties and obligations, which shall inure to the benefit of and burden each Member of the Association.

## ARTICLE II.

### EASEMENTS

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

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

(a) easements as necessary in the lands constituting the Development for the installation and maintenance of utilities and drainage facilities; including, specifically, the right to grant a 10 foot wide easement over and adjacent to the front property line of each and every Lot and including the right of Declarant to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of Brunswick County; the right to cut drain ways for surface water whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the owner of such Lot; and the right to subject the Property and any Additional Property to a contract with Carolina Power and Light Company for the installation of street lighting, which contract requires a continuing monthly payment to Carolina Power and Light Company by each resident customer for street lighting service (such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service).

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

(c) an easement of unobstructed access over, on, upon, through and across each Lot and

the Limited Common Area located thereon, if any, at all, reasonable times to perform any maintenance and repair to the Limited Common Areas required by this Declaration. This easement shall also run in favor of the Association and the Association's agents, employees, successors and assigns.

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

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

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

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

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

### ARTICLE III. HOMEOWNERS' ASSOCIATION

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

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

SECTION 3. Voting Rights. Each Member shall be entitled to one vote in the affairs of the Association for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

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

(a) The Association shall be entitled to make and amend reasonable rules and regulations governing use of the Common Areas by the Owners;

(b) The Association shall be responsible for the operation, upkeep, maintenance, protection, preservation, repairs, reconstruction and/or replacement of (i) the Common Areas and improvements and additions thereto, and (ii) the Limited Common Areas, if any; (iii) any utility easements or drainage easements used for the benefit of more than one lot owner; provided, however, that in the event that any of the above activities are necessitated by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, or is caused by fire, wind,

rain, blowing water, lightening, smoke or other hazard or casualty, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors of the Association, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may be added to the annual assessment levied against said Owner's Lot;

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

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

(e) The Association may mortgage or convey the Common Areas, or dedicate or transfer all or part of the Common Areas, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least two thirds of the Members:

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

#### ARTICLE IV. COVENANTS FOR ASSESSMENTS

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

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

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

Provided, however, the Declarant shall not be required to pay any working capital or annual assessments on any lot owned by it prior to its initial sale to another owner or December 31, 2007, whichever occurs first. Provided, further, any lots sold to a builder as a vacant lot will be exempt from annual assessments or working capital assessments for a period of one year or until sold to a third party whichever occurs first.

SECTION 2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and Additional Property and for the improvement and maintenance of the Common Areas and any Limited Common Areas. The funds arising from said assessments or charges, may be used for any or all of the following purposes: operations, maintenance and improvement of the Common Areas, and any Limited Common Areas, including payment of utilities, enforcing this Declaration, paying taxes, insurance premiums, legal and accounting fees and governmental charges, establishing working capital, and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Areas and Limited Common Areas in good operating order and repair.

SECTION 3. Annual Assessments. Annual Assessments shall be in an amount to be fixed from year to year by the Board of Directors which may establish different rates from year to year as it may deem necessary for the purposes set forth in Section 2 above. The amount of the Annual Assessment against each Lot for any given year shall be fixed at least 30 days in advance of the Annual Assessment period; provided, however, that the first Annual Assessment shall be set prior to the conveyance of the first Lot to an Owner and written notice to the Owners to be subjected thereto shall be delivered to the Owners at or prior to the closing of their Lots. Written notice of each Annual Assessment thereafter shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata periodic installments, as the Board may in its discretion determine. 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. From and after February 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased each year not more than ten percent (10%) above the Annual Assessment for the previous year without a vote of the Members, except as herein provided.

B. From and after February 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased above ten percent (10%) by a vote of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

C. The Board of Directors may increase the amount of the Annual Assessment to \$150.00 per Lot notwithstanding the provisions of subparagraphs A and B above, and thereafter the limitations set forth in said subparagraphs shall apply to any annual increase.

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

SECTION 5. Insurance Assessment. All premiums on insurance policies purchased by the Board of Directors or its designee pursuant to Article III and any deductibles payable by the Association upon loss shall be a common expense, and the Association may in any assessment year levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments provided for under Section 3 above, which shall be in an amount sufficient to pay the annual cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment. Such assessment shall not be subject to the 10% limitation set out in Section 3. A. and B. of this Article IV.

SECTION 6. Ad Valorem Tax Assessments. All ad valorem taxes levied against the Common Areas, if any, shall be a common expense, and the Association may in any assessment year

levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments provided for under Section 3 above, which shall be in an amount sufficient to pay such ad valorem taxes in such year not included as a component of the Annual Assessment. Such assessment shall not be subject to the 10% limitation set out in Section 3. A. and B. of this Article IV.

SECTION 7. Working Capital Assessments. At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay to the Association as working capital an amount equal to two months' assessments. Provided, however, that builders shall not be required to pay any working capital until the lot is sold to a third party or the property is occupied as a residence, whichever occurs first. Such funds shall be used solely for initial operating and capital expenses of the Association such as prepaid insurance, supplies, and furnishings, fixtures and equipment for the Common Areas, etc. Amounts paid into the working capital fund are not to be considered as advance payment of the Annual or any other assessments. Any working capital funds remaining after the last Lot has been sold by Declarant shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

SECTION 8. Notice and Quorum For Any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all Members not less than thirty (30) days nor 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 fifty percent (50%) of all votes of each class of Membership shall constitute a quorum. The required quorum at the subsequent meeting shall be one-half (½) 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 9. Uniform Rate of Assessment. The Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

SECTION 10. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

SECTION 11. Effect of Nonpayment of Assessments and Remedies of the Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot in the same manner as a deed of trust under power of sale as allowed under North Carolina Law. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted.

SECTION 12. Subordination Of The Lien To Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

## ARTICLE V RIGHTS OF DEVELOPER/DEVELOPER CONTROL

The Declarant shall have and there is hereby reserved to the Declarant, the following rights, powers and privileges which shall be in addition to any other rights, powers and privileges reserved to the Declarant herein:

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

Control Period"). Management and control can be voluntarily transferred by Declarant to the Owners at any time.

SECTION 2. The Architectural Control Committee. All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the By-laws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property. Thereafter, the Architectural Committee shall be as designated in Article VI, Section 1.

SECTION 3. Plan of Development. The right to change, alter or redesignate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Development (so long as the Declarant retains title to said lands) including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract; to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site or access area or roadway.

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

- A. In any respect, prior to the sale of the first Lot.
- B. To the extent this Declaration applies to Additional Property.
- C. To correct any obvious error or inconsistency in drafting, typing or reproduction.
- D. To qualify the Association or the Property and Additional Property, or any portion thereof, for tax exempt status.
- E. To include any platting change as permitted herein.
- F. To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Notwithstanding anything else herein to the contrary, only the Declarant, during the Developer Control Period, shall be entitled to amend this Declaration pursuant to this Section 4, F.

#### ARTICLE VI. USE RESTRICTIONS AND ARCHITECTURAL CONTROL

SECTION 1. Building and Site Improvement. No dwelling, wall or other structure, including fences, shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition

to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, or its designee, or, after the sale of all Lots by Declarant, by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event the Declarant, or its designee, or, if applicable, the Board, or the Architectural Control Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant, the Board, or Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Declarant, the Board, or Architectural Control Committee, as the case may be, for its records. Neither the Declarant, the Board, nor the Architectural Control Committee shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

SECTION 2. Approval of Plans. No house plans will be approved unless the proposed house shall have a minimum of 1,100 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

B. Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines shall be established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any lot shall be controlled by and must be approved absolutely by the Declarant, the Board, or the Architectural Control Committee, as the case may be.

C. The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency or natural calamities.

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

E. All service utilities, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Declarant, the Board or the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes shall be uniform in design. Design for mail and newspaper boxes shall be furnished by Declarant. Fences shall be permitted on any Lot; provided, however, that the design and materials of any fence are approved by the Declarant, the Board, or the Architectural Control Committee, as the case may be, and provided further, that no fence shall be over six feet in height or forward of the rear corner of the house or dwelling erected on the Lot. Clothes lines are not permitted on any Lot.

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

SECTION 3. Land Use and Building Type. No Lot shall be used for any purpose except for residential purposes. All numbered Lots are restricted for construction of single family dwellings only. Different and amended land use restrictions and architectural control guidelines may be



established for Additional Property added to the Development by Declarant; provided, however, that no Lot may be used for other than single family dwellings except pursuant to approval of the Members in accordance with this Declaration.

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

SECTION 5. Lot Maintenance. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. In the event the Owner fails to do so, then, after thirty days notice from the Architectural Control Committee, the Association or its designee may enter upon the Lot and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass, and in such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Lot, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens.

SECTION 6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Association or its designee; provided, however, that this shall not prevent the Declarant, its designees or assigns from maintaining a construction trailer or office on any part of the Development until the construction of dwellings on all Lots is completed. Provided that any temporary structure must comply with all governmental laws regulations whether state or local pertaining to said structures. However, nothing herein shall be meant to prevent the construction (with Developer's consent) of storage and utility buildings. It is the express intention of the Developer that no trailer or mobile home (including a double-wide mobile home) shall be allowed on said property. Nothing herein shall be construed to prevent the use, upon Developer's approval, as set forth above, of a prefabricated or modular home as long as same is consistent with the general development and the standards of quality of said subdivision and is not materially detrimental to the value of the subdivided lots in said subdivision.

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

SECTION 8. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and do not exceed three (3) pets in one household, and provided further that they are not allowed to run free, are at all times kept properly leashed or under the rule of their owner and do not become a nuisance to the neighborhood.

SECTION 9. Statuary, Television Satellite Dishes and Antennas. No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Board of Directors of the Association or its Architectural Control Committee. Provided, however, an owner may install a satellite dish not exceeding 24 inches without further

approval provided said satellite dish is installed in the rear portion of the yard or the rear portion of the dwelling.

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

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

SECTION 12. Signs. Except for lots upon which are located model homes constructed by builders approved by the Declarant, no signs of any type or description shall be placed on or displayed on any residential lot except signs "For Rent" or "For Sale," which signs shall not exceed six square feet in size. Model homes, including unrestricted signage, may remain in use as models as long as there are lots available for sale in said subdivision. Notwithstanding any language to the contrary, builders may erect in common areas temporary directional signs or signage not larger than ten square feet in size.

SECTION 13. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Areas except the direction or with the express written consent of the Association.

SECTION 15. Subdividing. Subject to the provisions of Article V hereof, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board of Directors of the Association.

#### ARTICLE VII. ANNEXATION OF ADDITIONAL PROPERTY

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

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

B. Additional Property may be annexed to the Development without the assent of the Members so long as the Additional Property can be used only for residential purposes and related facilities usually appurtenant to residential developments, recreational facilities and Common Areas.

SECTION 2. Annexation of Additional Property shall occur upon the recording, in the Office of the Register of Deeds for the county where the Additional Property is located, of (i) a subdivision plat for the Additional Property and (ii) a supplemental declaration stating that the Additional Property is made a part of the Development and is subject to this Declaration. Upon recording of such plat and supplemental declaration, the Additional Property shall become fully subject to the terms of this Declaration, except to the extent that pursuant to Article V, Section 4 hereof, the Declarant amends the applicability of this Declaration to the Additional Property.

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

ARTICLE VIII.  
GENERAL PROVISIONS

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

SECTION 2. Enforcement of Storm Water Runoff Regulations. No more than 3,400 square feet of any Lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials (the "Built Upon Area"). All Lots shall be graded so that two thirds of the Lot area drains to the abutting street(s). The covenants contained in this section are intended to insure continued compliance with storm water runoff rules adopted by the State of North Carolina and, therefore, may be enforced by the State of North Carolina. Any Owner may in accordance with applicable governmental regulations borrow from another Owner any Built Upon Area which is not being utilized by the other Owner. Such transaction need not be approved by any Owners, other than those involved in the transaction, by the Declarant or by the Association.

A. Swales shall not be filled in, piped, or altered except as necessary to provide driveway crossings.

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

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

D. Nothing other than grass shall be allowed or permitted to be placed within any drainage, water or sewer easement that is established on any lot by the map of said Section referenced above. Not by way of limitation, but by way of example, shrubs, trees and other vegetation, fences, walls, storage buildings and all other structures and improvements, of whatever nature or kind, are prohibited from being located within any such easement area.

E. Although not required, owners are encouraged to grade and maintain along the side lot lines of their lots a swale or depression sufficient in size to encourage surface water drainage. Owners shall not alter or impede in any way a naturally occurring drainage way or a swale constructed or provided by the Developer along lot lines.

F. Any and all erosion from said lot occurring at the time of occupancy of any residence constructed on said lot must be stabilized and controlled as described hereinabove within sixty (60) days of occupancy of said residence by the owner of record

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

SECTION 4. Lots Subject to Declaration. All present and future Owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

SECTION 5. Amendment of Declaration. Except as provided elsewhere herein, the covenants and restrictions of this Declaration may be amended only by an instrument duly recorded in the Office of the Register of Deeds of the county where the Development is located, executed by the duly authorized officers of the Association upon the vote of not less than a majority of the Lot Owners; provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant.

IN WITNESS WHEREOF, the parties hereto, have caused this Declaration to be executed in their corporate name and the corporate seal affixed by its duly authorized officers this the \_\_\_ day of February, 2005.

EASTBROOK ESTATES, LLC

BY: Jeffrey M. Ward, Sr. (SEAL)  
Manager

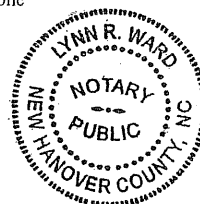
STATE OF NORTH CAROLINA  
COUNTY OF New Hanover

I, Lynn R. Ward, a Notary Public in and for said County and State, do hereby certify that Jeffrey M. Ward, Sr. personally came before me this day and acknowledged that he is a manager of EASTBROOK ESTATES, LLC, a limited liability company which is a the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the limited liability company name by subscribing his name thereto

WITNESS my hand and notarial seal, this the 21 day of February, 2005.

Lynn R. Ward  
Notary Public

My Commission Expires: 5-18-08



STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

LYNN R WARD

The Foregoing (or annexed) Certificate(s) of \_\_\_\_\_

Notary(ies) Public is (are) Certified to be Correct. 4th Day of March, 2005  
This Instrument was filed for Registration on this \_\_\_\_\_  
in the Book and page shown on the First Page hereof.

Robert J. Robinson  
ROBERT J. ROBINSON, Register of Deeds

**LIMITED LIABILITY COMPANY  
ARTICLES OF ORGANIZATION**

Pursuant to §57C-2-20 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Organization for the purpose of forming a limited liability company.

1. The name of the limited liability company is: East Brook Estates, LLC
2. The name and address of the sole organizer executing these articles of organization are as follows:

Sheri O. Covington  
2530 Meridian Parkway  
Suite 400  
Durham, NC 27713

3. The street address and county of the initial registered office of the limited liability company is:

1611 Castle Hayne Road  
Building B  
Wilmington, NC 28401  
New Hanover County

4. The mailing address **if different from the street address** of the initial registered office is: N/A

5. The name of the initial registered agent is: Jeffrey M. Stokley, Sr.

6. The street address and county of the principal office of the limited liability company is:

1611 Castle Hayne Road  
Building B  
Wilmington, NC 28401  
New Hanover County

7. The mailing address **if different from the street address** of the principal office is: N/A

8. Check one of the following:

  X   (i) Member-managed LLC: all of the members by virtue of their status as members shall be managers of this limited liability company.

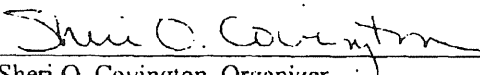
       (ii) Manager-managed LLC: except as provided by N.C.G.S. §57C-3-20(a), the members of this limited liability company shall not be managers by virtue of their status as members.

9. Any other provisions which the limited liability company elects to include are attached.

To the full extent from time to time permitted by law, no person who is serving or who has served as a manager of the limited liability company shall be personally liable in any action for monetary damages for breach of his or her duty as a manager, whether such action is brought by or in the right of the limited liability company or otherwise. Neither the amendment or repeal of this Article, nor the adoption of any provision of these Articles of Organization inconsistent with this Article, shall eliminate or reduce the protection afforded by this Article to a manager of the limited liability company with respect to any matter which occurred, or any cause of action, suit or claim which but for this Article would have accrued or risen, prior to such amendment, repeal or adoption.

10. These articles will be effective upon filing.

This the 5<sup>th</sup> day of April, 2004.

  
Sheri O. Covington, Organizer

**BY-LAWS**  
**OF**  
**EASTBROOK ESTATES HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I: GENERAL**

**Section 1.     Name.** The name of the corporation is **EASTBROOK ESTATES HOMEOWNERS' ASSOCIATION, INC..**

**Section 2.     Principal Office.** The principal office of the Association shall be **EASTBROOK ESTATES HOMEOWNERS' ASSOCIATION, INC., 5231 Masonboro Harbor Drive, Wilmington, North Carolina, 28409, in New Hanover County, or at such other place as may be subsequently designated by the Board of Directors.**

**Section 3.     Registered Office.** The registered office of the Association, which by law is required to be maintained in the State of North Carolina, shall be located at **5231 Masonboro Harbor Drive, Wilmington, North Carolina, 28409, in New Hanover County, or at such other place within the State of North Carolina as may from time to time be fixed and determined by the Board of Directors.**

**Section 4.     Definition.** As used herein, the term "Corporation" may be used interchangeably with and shall be the equivalent to "Association" as defined in the Declaration of Covenants, Conditions and Restrictions for **EASTBROOK ESTATES** and all definitions set forth in the Declaration for **EASTBROOK ESTATES**, as amended from time to time, shall be applicable herein unless otherwise defined herein. The term "Declaration" shall refer and mean the Declaration of Covenants, Conditions and Restrictions for **EASTBROOK ESTATES**.

**ARTICLE II: MEMBERSHIP**

**Section 1.     Definition.** Each owner shall be a member of the Association and membership in the Association shall be limited to owners of lots in **EASTBROOK ESTATES**.

**Section 2.     Transfer of Membership and Ownership.** Membership in the Association may be transferred only as an incident to the transfer of the transferor's Lot, and such transfer shall be subject to the procedures set forth in the Declaration of Covenants, Conditions and Restrictions for **EASTBROOK ESTATES**.

**ARTICLE III: MEETINGS OF MEMBERSHIP**

**Section 1.     Place.** All meetings of the membership shall be held at **Wilmington, North Carolina, or at such other place as may be stated in the notice.**

**Section 2.     Annual Meeting.**

A. Meetings shall be held at least annually. The first annual meeting of members shall be held at **Wilmington, North Carolina or in such location in New Hanover County as the Declarant shall determine, upon the earlier of the following events: within 90 days after conveyance of at least 75% of all lots that may be created under the "Declaration" to owners other than Eastbrook Estates, LLC, or July 15, 2008. The first Directors and Officers will be appointed by the Declarant, Eastbrook Estates, LLC, and will hold office until**

the initial annual meeting of the Association, and if no meeting occurs occurring prior to the first meeting the Declarant will appoint a successor.

B. Regular annual meetings subsequent to the first meeting shall be held on the first Wednesday in August in each year, if not a legal holiday and if a legal holiday, then on the next secular day following, unless otherwise determined by the Board.

C. All annual meetings shall be held at such hour as is determined by the Board.

D. At the annual meeting, the members shall elect the new members of the Board of Directors and transact such other business as may properly come before the meeting.

E. Written notice of the annual meeting shall be served upon or mailed to each member entitled to vote thereafter at such address as appears on the books of the Association, at least ten (10) but not more



than sixty (60) days prior to the meeting. Each member shall notify the Secretary of any address change, and the giving of said notice shall be in all respects sufficient if sent to the address of the member which is then on file with the Secretary.

**Section 3. Membership List.** At least ten (10) but not more than sixty (60) days before every election of Directors, a complete list of members entitled to vote at said election with residence of each shall be prepared by the Secretary. Such list shall be produced and kept for said ten (10) days prior to and throughout the election at the office of the Association, and shall be open to examination by any member throughout such time.

**Section 4. Special Meetings.**

A. Special Meetings of the members for any purpose or purposes not prescribed by statute, the Articles of Association, or these By-Laws may be called by the President, by a majority of the Board or at the request in writing of twenty percent (20%) of the members. Such request shall state the purpose or purposes of the proposed meeting.

B. Written notice of a Special Meeting of members stating the time, place and object thereof shall be served upon or mailed to each member entitled to vote thereat, at such address as appears on the books of the Association at least ten (10) days before such meeting and no more than sixty (60) days before such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the member at such address as appears on the records of members of the Association.

C. Business transacted at all special meetings shall be confined to the matters stated in the notice thereof.

**Section 5. Quorum.** Fifty-one percent (51%) or more of all members of the Association present in person or represented by written proxy, shall be requisite to and shall constitute a quorum as otherwise provided by statute or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the members, the members entitled to vote thereat present in person or represented by written proxy shall have power to adjourn the meeting from time to time with notice of not less than five (5) days but not more than thirty (30) days. At such adjourned meeting any business may be transacted which might have been transacted at the meeting originally called with or without a quorum. If adjournment extends past thirty (30) days, notice of the date on which the adjourned meeting is to be reconvened shall be given as herein provided for regular meetings.

**Section 6. Vote Required to Transact Business.** When a quorum is present at any meeting, a majority of the votes cast in person or represented by written proxy filed with the Secretary in advance of the meeting shall decide any question brought before the meeting, unless the question is one upon which by express provision of the statutes, the Declaration of Covenants, Conditions and Restrictions for EASTBROOK ESTATES or these By-Laws a different vote is required in which case such express provision shall govern and control the division of such question. There shall be no cumulative voting.

**Section 7. Right To Vote.** Each lot shall have appurtenant thereto, one vote. At any meeting of the members, every member having the right to vote shall be entitled to vote in person or by proxy. Such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof. If more than one person or entity owns a lot, they shall file a certificate with the Secretary naming the person authorized to cast the vote for said lot. If same is not on file, the vote of any co-owner present who is acceptable to other co-owners of that Lot present shall be accepted as the vote of all co-owners. Any legal entity which is an owner shall have the right to membership in the Association.

**Section 8. Waiver and Consent.** Whenever the vote of members at a meeting is required or permitted by any provision of the statutes the Declaration of Covenants, Conditions and Restrictions for EASTBROOK ESTATES or these By-Laws to be taken in connection with any action of the Association, the meeting and vote of members may be dispensed with if all members who would have been entitled to vote upon the action of such meeting if such meeting were held shall consent in writing to such action being taken.

**Section 9. Order of Business.** The order of business at annual members' meetings and as far as practical at other members' meetings will be:

- A. Roll call and certification of proxies;

- B. Proof of notice of meeting or waiver of notice;
- C. Reading of minutes of prior meeting;
- D. Officers' reports;
- E. Committee reports;
- F. Appointment by Chairman of Inspectors of Election;
- G. Approval of budget;
- H. Elections of directors and officers;
- I. Unfinished business;
- J. New business;
- K. Adjournment.

#### ARTICLE IV: BOARD OF DIRECTORS

**Section 1. Number and Term.** The number of directors which shall constitute the whole Board of Directors (the "Board") shall be two. All directors shall be an owner or in the case of partnership owners or mortgagees, shall be members or employees of such partnership, or in the case of corporate owners or mortgagees, shall be officers, shareholders, employees, of such corporations, or in the case of fiduciary owners or mortgagees, shall be officers, shareholders or employees of such fiduciary.

**Section 2. Vacancy and Replacement.** Other than a director selected by Declarant, if the office of any director becomes vacant by reason of transfer of ownership, death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining directors, though less than a quorum, at a special meeting of directors duly called for this purpose, shall choose a successor or successors, who shall hold office for the unexpired term in respect to which such vacancy occurred.

**Section 3. Removal.** Directors may be removed with or without cause, by an affirmative vote of a majority of the total membership.

**Section 4. Initial Board of Directors.** The first Board shall consist of Jeffrey Stokley and Robert Huckabee, III, who shall hold office and exercise all powers of the board until the initial annual membership meeting, provided, any or all of said directors shall be subject to replacement in the event of resignation or death as above provided.

**Section 5. Powers and Duties.** The property and business of the Association shall be managed by the Board, which may exercise all Association's powers not specifically prohibited by statute or the Declaration to which these By-Laws are attached. The powers of the Board shall specifically include, but not limited to, the following:

A. To make and collect regular and special assessments and establish the time within which payment of same are due.

B. To use and expend the assessments collected to maintain, care for and preserve the common areas and other items more particularly set forth in the Declaration for EASTBROOK ESTATES except:

those portions thereof which are required to be maintained, cared for, and preserved by the owners.

C. To purchase the necessary equipment and tools required in the maintenance, care and preservation referred to above.

D. To enter into and upon the lots when necessary and at as little inconvenience to the owner as possible in connection with such maintenance, care and preservation.

E. To insure and keep insured the common areas and facilities in the manner set forth in the Declaration against loss from fire and/or other casualty, and against public liability, and to purchase such other insurance as the Board may deem advisable, including insurance against Directors' liability.

F. To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin or seek damages from owners for violations of these By-Laws and the terms and conditions of the Declaration of Covenants, Conditions and Restrictions for EASTBROOK ESTATES.

G. To employ and compensate such personnel as may be required for the maintenance and preservation of the property.

H. To make appropriate changes in the Rules and Regulations for the use of the lots as may be deemed necessary. Changes not approved at the next meeting of the membership by a majority of the votes cast shall be invalid from the date of such change.

I. To acquire and/or rent and/or lease a Lot in the name of the Association or a designee.

J. To contract for management of Association properties and to delegate to such other parties all powers and duties of the Association except those specifically required by the Declaration of Covenants, Conditions and Restrictions for EASTBROOK ESTATES to have specific approval of the Board of membership.

K. To carry out the obligations of the Association under any restrictions and/or covenants running with the land.

L. To designate allocate or assign or not, as the Board deems appropriate, parking spaces for each Lot, visitors, service vehicles, and other vehicles, and to adopt such reasonable traffic regulations for the parking area as the Board deems appropriate.

M. To adopt such Rules and Regulations as the Board deems appropriate and to amend said Rules and Regulations, provided said Rules and Regulations may not be inconsistent with or contrary to these Bylaws, the Declaration for EASTBROOK ESTATES or any existing applicable zoning regulations by any governmental entity having jurisdiction over the property.

N. To impose a special assessment (against any owner) after notice and opportunity to be heard, not to exceed one hundred fifty (\$150.00) dollars for each occurrence, for the violation by the owner of any By-Law contained herein, any rule or regulation of the lots, or the breach of any provision of the Declaration. Such assessment shall be in addition to any costs incurred or to be incurred by the Association as a result of the violation of the rule, regulation, By-Law, or provision.

O. To propose and adopt an annual budget for the property. Summaries of the adopted proposed budget shall be provided to all lot owners within thirty (30) days from adoption and the Board shall set a date not less than fourteen (14) nor more than thirty (30) days after delivery of the summary for a meeting of the lot owners to consider ratification of the proposed budget.

P. Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Association.

Q. Make contracts and incur liabilities.

R. Cause additional improvements to be made as a part of the common elements.

S. Grant easements, leases, licenses, and concessions through or over the common elements.

T. The board of Directors shall act as the Architectural Control Committee for EASTBROOK ESTATES which committee shall have the authority and powers granted under the Declaration of Restrictions for EASTBROOK ESTATES.

**Section 6.      Liability and Indemnification.** The directors shall not be liable to the owners except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify any director or officer against the liabilities and reasonable litigation expenses, including attorney's fees, incurred by him/her in connection with any action, suit, or proceeding in which he/she is made or is threatened to be made a party by reason of being or having been such Director or officer, except in relation to matters as to which he/she shall be adjudged in such action, suit or proceeding to have acted in bad faith or to have been liable or guilty by reason of wilful misconduct in the performance of duty.

**Section 7.      Compensation.** Neither directors nor officers shall receive compensation for their services as such, provided that the Association may budget such sums as it may deem appropriate for direct reimbursement of actual expenses incurred by the directors or officers in behalf of the Association.

**Section 8. Meetings.**

A. The first meeting of each Board newly elected by the members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board shall be held at the same place as the general members' meeting, and immediately before or after the adjournment of same.

B. Special meetings shall be held whenever called by the direction of the President or a majority of the Board. The Secretary shall give notice of each special meeting either personally, by mail or telegram, at least three (3) days before the date of such meeting, but the directors may, in writing, waive notice of the calling of the meeting, before or after such meeting.

C. A majority of the Board members shall be necessary and sufficient at all meetings to constitute a quorum for the transactions of business, and the act of a majority present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at the meeting, the directors then present may adjourn the meeting without notice other than announcement at the meeting until a quorum shall be present.

D. Action taken by a majority of the Directors without a meeting shall constitute Board action if written consent to the action in question is signed by all the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

**Section 9. Order of Business.** The order of business at all meetings of the Board shall be as follows:

- A. Roll call;
- B. Proof of notice of meeting or waiver of notice;
- C. Reading of minutes of last meeting;
- D. Consideration of communications;
- E. Elections of necessary directors and officers;
- F. Reports of officers and employees;
- G. Reports of committees;
- H. Unfinished business;
- I. Original resolutions and new business;
- J. Adjournment.

**Section 10. Annual Statement.** The Board shall present, no less often than at the annual meeting, a full and clear statement of the business and condition of the Association, including a report of the operating expenses of the Association and the assessments paid by each member.

**ARTICLE V: OFFICERS**

**Section 1. Executive Officers.** The executive officers of the Association shall be, at a minimum, a President and Secretary, but may also include a Vice-President and Treasurer; all of whom shall

be elected annually by the Board from the Membership, provided the Office of President and Secretary shall not be held by the same person. However, the same person may hold the Office of Vice President and Treasurer or Secretary and Treasurer. Any or all officers may also be directors of the Association.

**Section 2.      Subordinate Officers.** The Board may appoint such other officers and agents from the membership as they may deem necessary, who shall have such authority and perform such duties as from time to time may be prescribed by said Board.

**Section 3.      Tenure of Officers: Removal.** All officers shall be subject to removal, with or without cause, at any time by action of the Board. The Board may delegate powers of removal of subordinate officers and agents to any officer.



**Section 4.     The President.**

A.     The President shall preside at all meetings of the members and directors; he shall have general and active management of the business of the Association; he shall see that all order and resolutions of the Board are carried into effect; he shall execute bonds, mortgages, amendments to the Declaration or By-Laws, deeds of trust and other contracts requiring a seal, under the seal of the Association.

B.     He shall have general superintendence and direction of all the officers of the Association, and shall see that their duties are performed properly.

C.     He shall submit a report of the operations of the Association for the fiscal year to the directors whenever called for by them, and to the members at the annual meeting, and from time to time shall report to the Board all matters within his knowledge which the interest of the Association may require to be brought to their notice.

D.     He shall be an ex-officio member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of the President of an Association.

**Section 5.     The Secretary.**

A.     The Secretary shall keep the minutes of the members meetings; and of the Board's meetings in one or more books provided for that purpose.

B.     He shall see that all notices are fully given in accordance with the provisions of these By-Laws or as required by law.

C.     He shall be custodian of the Association's records.

D.     He shall keep a register of the post office address of each member, which shall be furnished to the Secretary by such member.

E.     In general, he shall perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

**Section 6.     The Vice-President.**

A.     The Vice President shall be vested with all the powers and required to perform all the duties of the President in his absence, and such other duties as may be prescribed by the Board.

**Section 7.     The Treasurer.**

A.     He shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name and to the credit of the Association, in such depositories as may be designated by the Board.

B.     He shall disburse the funds of the Association as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. Such records shall be open to inspection by members at reasonable times.

C.     He may be required to give the Association, at the Association's cost, a bond in a sum and

with one or more sureties satisfactory to the Board, for the faithful performance of the duties of his office, and the restoration to the Association, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the Association.

D. He shall maintain a register for the names of any mortgage holders or lien holders on lots who have requested in writing that they be registered and to whom the Association will give notice of default in case of nonpayment of assessments. No responsibility of the Association is assumed with respect to said register except that it will give notice of default of any owner in his obligations to the Association to any registered mortgagee or lienor therein, if so requested by said mortgagee or lienor.

E. With the approval of the Board, he shall be authorized to delegate all or part of his responsibilities to competent accounting, collection or management personnel, pursuant to written definition

of the responsibilities delegated to, and the condition of performance imposed upon, such personnel, but, in such event, the Treasurer shall retain supervisory responsibilities.

**Section 8. Vacancies.** If the office of any director or officer becomes vacant by reason of death, resignation, disqualification or otherwise, the remaining directors, by majority vote of the remaining directors provided for in these By-Laws, may choose a successor or successors who shall hold office for the unexpired term. If the number of directors falls below three, a special members' meeting shall be called for the purpose of filling such vacancies in the Board of Directors.

**Section 9. Resignations.** Any director or officer may resign his office at any time, such resignation to be made in writing, and to take effect from the time of its receipt by the Board of Directors, unless some later time be fixed in the resignation, and then from that date. The acceptance of a resignation by the Board shall not be required to make it effective.

#### ARTICLE VI: NOTICES

**Section 1. Definition.** Whenever under the provisions of the statutes, the Declaration of Covenants, Conditions and Restrictions for EASTBROOK ESTATES or these By-Laws, notice is required to be given to any director or member, it shall not be construed to mean personal notice, but such notice may be given in writing by mail, by depositing the same in a post office or letter box in a post paid, sealed envelope, addressed as appears on the books of the Association.

**Section 2. Service of Notice - Waiver.** Whenever any notice is required to be given under the provisions of the statutes, the Declaration of Covenants, Conditions and Restrictions for EASTBROOK ESTATES or these By-Laws a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

#### ARTICLE VII: FINANCES

**Section 1. Fiscal Year.** The fiscal year shall be the calendar year, unless changed by action of the Board of Directors.

**Section 2. Checks.** All checks or demands for money and notes of the Association shall be signed by any one of the following officers: President, Secretary, Vice-President or Treasurer, or by such officer or officers or persons as the Board of Directors may from time to time designate.

**Section 3. Determination of Assessments.**

A. The initial Board shall determine from time to time the sum or sums necessary and adequate for the common expense of the lots. At the first annual meeting and all successive annual meetings of the Association, the Association shall adopt by majority vote a budget which shall constitute the basis for all regular assessments for common expenses against Lot owners, which assessments shall be due and payable periodically as determined by the Board. Provided, if there is not a quorum at the annual meeting, then the expense for common expenses from the preceding year will continue to be charged until a quorum can be attained. Common expenses shall include expenses for the operation, maintenance, repair or replacement of the common areas and facilities, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses from time to time by the Board of Directors of the Association and all other matters set forth in the Declaration or these By laws.

B. The Board is specifically empowered on behalf of the Association to make and collect assessments and maintain repair and replace the common areas and facilities. Funds for the payment of common expenses shall be assessed against the Lot owners in the proportions of percentages of sharing.

common expenses provided in the Declaration. Assessments shall be payable periodically as determined by the Board. Provided further that assessments which are made for limited common area which is utilized by less than all the lots in the subdivision including specifically the sewer treatment facilities set aside for the lots stated in the Restrictive Covenants for Pelican Sound shall be assessed only against those lots which are required to use said limited common area or which are assigned the limited common area.

C. Special assessments may be imposed as provided in the Declaration for EASTBROOK ESTATES.

D. When the Board has determined the amount of any assessment, the Treasurer of the Association (or the personnel to whom such authority has been delegated) shall mail or present a statement of the assessment to each of the assessed owners. All assessments shall be payable to the Association, and

upon request, the Treasurer or his designated agent shall give a receipt for each payment made.

E. The Board may enter into a management contract with third parties to whom the Board may delegate the power to levy and collect assessments approved by the Board or required by the Declaration of Covenants, Conditions and Restrictions for EASTBROOK ESTATES.

F. All assessments not paid when due shall bear interest at a rate of 12% per annum and incur late penalties as set forth in the Declaration in or Bylaws.

**Section 4. Excess of Assessments.** In any year in which there is an excess of assessments received over amounts actually used or payable for the purposes described in these By-Laws, and in the Declaration, such excess shall, unless otherwise determined by the Board of Directors of the Association, be deposited in a capital reserve account for use in replacement, repair or maintenance of the common areas and facilities of the Association.

#### ARTICLE VIII: DEFAULT

**Section 1. Enforcement of Lien for Assessments.** In the event an owner does not pay any sums, charges, or assessments required to be paid to the Association by the due date, the Association, acting on its behalf or through its Board, may enforce its lien for assessments, or take such other action to recover the sums, charges or assessments to which it is entitled in accordance with the Declaration and the statutes made and provided or both.

**Section 2. Charges for Late Payments, Fines.** In the event that any assessments are not paid within thirty (30) days of the due date, then said assessment shall bear interest at the rate of 12% per annum until paid. The Board may appoint an adjudicatory panel to determine if a Lot owner should be fined, not to exceed one hundred fifty (\$150.00) dollars, for a violation of the Declaration, By-Laws or rules and regulations of the Association. The panel shall accord to the party charged with the violation notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. Such a fine shall be an assessment secured by lien under Article 17 of the Declaration.

**Section 3. Governmental Liens and Assessments.** In the event that an owner fails to pay any tax or assessment lawfully assessed by any governmental subdivision within which the property is situated, by the date such tax or assessment is due, the Board may pay the same from the funds of the Association and specially assess such owner for the amount paid.

**Section 4. Foreclosure.** If the Association becomes the owner of a Lot by reason of foreclosure, it shall offer said Lot for sale and at such time as a sale is consummated, it shall deduct from the proceeds of said sale all sums of money due it for assessments, charges, and late fees, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, funds necessary to discharge any liens or mortgages of record, and any and all expenses incurred in the resale of the Lot, which shall include, but not be limited to, advertising expenses, real estate brokerage fees and expenses necessary for repairing and refurbishing of the Lot in question. All monies remaining after deducting the foregoing items of expenses, costs and other deductions shall be returned to the former owner of subject Lot.

**Section 5. Other Remedies.** In the event of violation of the provisions of the Declaration of Covenants, Conditions and Restrictions for as the same are defined in the Declaration, for ten (10) days after notice from the Association to the Lot owners to correct said violation, the Association, on its own behalf or by and through its Board of Directors, may bring appropriate action to enjoin such violation or may enforce the provisions of said Declaration of Covenants, Conditions and Restrictions for EASTBROOK ESTATES, or may sue for damages, or take such other courses of action, or other legal remedy as it or they may deem appropriate.

**Section 6. Legal Costs.** In the event any legal action is brought against an owner and results in a judgment for the Association, the owner shall pay the Association's reasonable attorney's fees, costs of collection, and Court costs.

## **ARTICLE IX: JOINT OWNERSHIP**

Membership may be held in the name of more than one owner. In the event ownership is in more than one person, all of the joint owners shall be entitled collectively to only one voice or ballot in the management of the affairs of the Association, and the vote may not be divided between plural owners. The manner of determining who shall cast such vote shall be set forth in **ARTICLE III, Section 7** of these By-Laws.

## **ARTICLE X: INDEMNIFICATION**

The Association may secure such insurance as it deems appropriate to insure the directors or officers of the Association, against all suits or actions arising out of matters performed in their capacity as directors or officers of the Association including the reasonable expenses including attorney's fees actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, except in relation to such matters as to which such director or officer is adjudged to have been guilty of gross negligence or misconduct in the performance of his duty to the Association.

## **ARTICLE XI: AMENDMENT**

These By-Laws may only be altered, amended or added to at any duly called meeting of the members; provided (i) that the notice of the meeting shall contain a full statement of the proposed amendment; (ii) that the quorum requirement for such purposes shall be a majority of all the then members, in person or by proxy; (iii) that there be an affirmative vote of owners holding not less than two-thirds of the qualified votes of members represented at such quorum; and (iv) that there is or has been an affirmative vote of the Board of Directors. **ARTICLE III, Section 2A** may not be amended without express approval of Declarant, as defined in the Declaration. No amendment to these By-Laws shall be passed which would operate to impair or prejudice the rights and/or liabilities of any mortgagees, and no amendment shall become operative unless set forth in an Amended By-Laws and duly recorded. All Lot owners shall be bound to abide by any amendment upon the same being passed and duly set forth in an Amended By-Laws, duly recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

## **ARTICLE XII: CONTRACTS NOT BINDING**

The Association shall not be bound, either directly or indirectly, to contracts or leases, including management contracts, unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after transfer of control of the Association from the initial directors to the lot owners, and upon not more than 90 days notice to the other party.

## **ARTICLE XIII: RIGHT TO INFORMATION AND FINANCIAL STATEMENT**

The Association shall make available to any Lot owner, any lender, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, and other rules concerning the project, and the books, records, and financial statements of the Association.

## **ARTICLE XIV: SPECIAL PROVISIONS RELATING TO WASTEWATER COLLECTION, TREATMENT AND DISPOSAL SYSTEM.**

The Declaration of Covenants, Conditions and Restrictions for EASTBROOK ESTATES provide for the installation and maintenance of a wastewater collection, treatment and disposal system and requires certain lots as more particularly set out in that Declaration to utilize this system which has been identified as a common area for the use and benefit of lots specified in the Declaration of Covenants, Conditions and Restrictions for EASTBROOK ESTATES as filed in the New Hanover County Registry or hereafter amended. The following provisions will apply to the entire wastewater collection, treatment and disposal system identified in the Declaration of Restrictions for EASTBROOK ESTATES.

**Section 1.** The entire wastewater collection, treatment and disposal system as a limited common area serving the lots set forth in the Declaration will receive the highest priority for expenditures by the Association, except for federal, state and local taxes and insurance.

**Section 2.** The Association upon dissolution shall provide for continued proper operation, maintenance and repair of its wastewater collection, treatment and disposal system.

**Section 3.** The Association except upon dissolution shall not transfer, convey or assign or otherwise relinquish or release its responsibilities for the operation, maintenance and repair of its wastewater collection, treatment and disposal system.

#### **ARTICLE XV: DISTRIBUTION OF ASSETS IN EVENT OF TERMINATION**

No part of the net earnings of the Owners Association Corporation shall inure to the benefit of any officers, directors or members of the Corporation and in the event of dissolution of the Owners Association Corporation, the assets thereof shall, after all of its liabilities and obligations have been discharged or adequate provisions made therefor, be distributed to any association or associations organized for purposes similar to those set forth in this Owners Association Corporation.



**ARTICLE XVI: CONSTRUCTION**

Wherever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, where the context so requires.

Should any of the covenants herein imposed be void or be or become unenforceable at law or in equity, the remaining provisions of this instrument shall nevertheless be and remain in full force and effect.

The foregoing were adopted as the By-Laws of EASTBROOK ESTATES HOMEOWNERS' ASSOCIATION, INC. at the first meeting of its Board of Directors.

**IN WITNESS WHEREOF**, the first Board of Directors have hereunto set their hands and seals, this the 15<sup>th</sup> of December, 2005.

s/ Jeffrey Stokley, Sr.

Jeffrey Stokley, Director

s/Robert Huckabee, III

Robert Huckabee, III, Director

Certified to be correct, this the 15<sup>th</sup> day of December, 2005.

s/Jeffrey Stokley, Sr

SECRETARY OF THE MEETING OF THE FIRST  
BOARD OF DIRECTORS OF EASTBROOK ESTATES  
HOMEOWNERS' ASSOCIATION, INC.