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DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS  
FOR WATERFORD

Prepared by/return to:  
Rebecca F. Person, Esq.  
P.O. Box 53606  
Fayetteville, NC 28305

THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS is made this 4<sup>th</sup> day of Nov., 2008 by and between HUFF-CAVINESS, LLC, a North Carolina limited liability company ("Declarant"); LANDFALL PARTNERS, LLC, a North Carolina limited liability company ("Landfall"); and WATERFORD AT LITTLE RIVER, LLC, a North Carolina limited liability company ("Waterford"):

WITNESSETH:

WHEREAS, Declarant is the owner of the following described property:

BEING ALL OF Lots 1, 4, 5 and 6 as shown on a map entitled "Proposed Subdivision of the property of HUFF-CAVINESS, LLC and LANDFALL PARTNERS, LLC at WATERFORD" duly recorded in Plat Book 124, Page 29, (the "Plat") of the Cumberland County, North Carolina, Registry; (hereinafter sometimes collectively referred to as the "Declarant Property"); and

WHEREAS, Landfall is the owner of the property of the following described property:

BEING ALL OF Lot 2 as shown on a map entitled "Proposed Subdivision of the property of HUFF-CAVINESS, LLC and LANDFALL PARTNERS, LLC at WATERFORD" duly recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, (the "Plat") of the Cumberland County, North Carolina, Registry; (hereinafter sometimes referred to as the "Landfall Property"); and

WHEREAS, Waterford is the owner of the property of the following described property:

BEING ALL OF Lot 3 as shown on a map entitled "Proposed Subdivision of the property of HUFF-CAVINESS, LLC and LANDFALL PARTNERS, LLC at WATERFORD" duly recorded in Plat Book 124, Page 29, (the "Plat") of the Cumberland County, North Carolina, Registry; (hereinafter sometimes referred to as the "Waterford Property"); and

[The Declarant Property, Landfall Property and Waterford Property are sometimes collectively referred to as the "Property"]; and

WHEREAS, Declarant, Landfall and Waterford intend to develop multi-family housing with commercial outparcels on the Property to be known as "Waterford"; and

WHEREAS, the parties hereto desire to enter into this agreement to create additional covenants, restrictions, and easements for the joint use of walking and driving on the Property; for the joint rights of access to and ingress and egress over and across the Property, for installation of underground utilities over and across the Property and to create an agency to which can be delegated and assigned the power and authority of maintaining and administering the common properties, administering and enforcing these covenants and restrictions, and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of North Carolina, a non-profit corporation, Waterford Lot Owners Association for the purpose of exercising the functions aforesaid, which functions are hereinafter more fully set forth;

NOW THEREFORE, the Declarant, Landfall, and Waterford declare that the Property described herein shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, changes, assessments, affirmative obligations, and liens hereinafter set forth. These Covenants, the benefits of these Covenants, and the affirmative and negative burdens of these Covenants, shall touch and concern and run with the land herein referred to as the "Property." All rights and easements reserved by the Declarant under these Covenants shall also be reserved to the assignees and successors in interest of the Declarant.

#### ARTICLE I DEFINITIONS

1.1 "Association" shall mean and refer to Waterford Lot Owners Association, a North Carolina non-profit corporation, its successors and assigns.

1.2 "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

1.3 "Common Area" shall mean and refer to those tracts of land with any improvements thereon which are deeded or leased to the Association and shall include that property depicted as "Common Area" on the Plat.

1.4 "Common Expenses" shall mean and include:

- (A) All sums lawfully assessed by the Association against its members;
- (B) Expenses of administration, maintenance, repair, or replacement of the Common Area;
- (C) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (D) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the association to purchase or as the Association may deem appropriate to purchase;
- (E) Ad valorem taxes and public assessment charges lawfully levied against Common Area;
- (F) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property, cross Common Elements of the Property and serve both the Property and lands adjacent thereto;
- (G) The expense of maintenance of any roads, streets, easements, landscaping, amenities, taxes or any other expense item associated with any Common Property not located on the Property but permitted to be used by the members of this Association by any adjoining landowner, association or other entity pursuant to any cross-easement, cross-access or other agreement by the Association with the adjoining land owner;
- (H) Expenses for maintenance of security devices or personnel, if implemented by the Association; and,
- (I) Any other expenses determined by the Board or approved by the members to be common expenses of the Association.

1.5 "Lot" means Lots 1 through 6, inclusive, excluding any Common Area, as shown on the Plat.

1.6 "Member" shall mean and refer to the Declarant and its designated officers, employees or agents and all those Owners who are members of the Association.

1.7 "Owner" shall mean and refer to the Owner as shown by the records in the Register of Deeds of Cumberland County, North Carolina, whether it be one or more persons, firms, associations, corporations, or other legal entities, including the Declarant, of fee title to any portion of the Property, excluding Common Area, but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee or holder of a security deed, its successors or assigns, unless and until such mortgagee or holder of a security deed has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

1.8 "Period of Declarant Control" means the period commencing on the date hereof and continuing until the later of (i) ten (10) years after the date of this Declaration; or (ii) when Declarant no longer owns a portion of the Property.

## ARTICLE II SPECIAL DECLARANT RIGHTS

Declarant reserves the following special declarant rights for the entire Property during the Period of Declarant Control,:

- (A) To complete any and all improvements indicated on the plats and plans;
- (B) To exercise any development right reserved in this Declaration;
- (C) To alter the size of any Lot, combine or merge two or more Lots, to subdivide Lots, the Property or other Property; to turn Lots or Property into Common Area.
- (D) To use easements through the Common Area for the purpose of making improvements within the Property or any property added thereto; and
- (E) To appoint and remove all three (3) persons on the Board and to appoint and remove all officers of the Association.



ARTICLE III  
UTILITY EASEMENTS

There is hereby created a blanket easement upon, across, over and under all of the Property for installing, replacing, repairing, operating and maintaining all utilities, including but not limited to storm and sanitary sewers, gas, telephones and electricity, to service the Property. By virtue of this blanket easement, it shall be expressly permissible for the providing electrical cable or telephone company to erect and maintain any necessary poles and other necessary equipment on the Property. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets, driveways and other parts of the Common Area in the performance of their duties. Anything to the contrary contained in this section notwithstanding, no sewer lines, electrical lines, water lines or other utilities may be installed or relocated on the Property except as approved by Declarant. Should any utility furnishing a service covered by the blanket easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement without conflicting with the terms hereof. Storm water drains and facilities (also known as Best Management Practices) located on common areas are, and will be, the responsibility of the Association for the term of the project and will be maintained in accordance with current Federal, State and local laws, ordinances and regulations governing same.

ARTICLE IV  
OWNERS ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

4.1 Every Owner shall be a member of the Association. Declarant, acting through its designated officers, employees and agents shall be a member of the Association.

4.2 The Association shall have one type of regular voting membership. A table showing the number of votes per Lot is attached as Exhibit A. When any Lot or portion of the Property entitling the Owner to membership of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants-in-common, tenants-in-partnership or in any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same Property, then an instrument shall direct who shall cast the vote or votes, and it or a copy thereof shall be filed with the secretary of the Association.

4.3 The Association shall be governed by a Board of Directors consisting of three (3) members, with the number in subsequent years to be determined as provided for in the By-Laws of the Association. The Declarant shall have the right to appoint and remove all three (3)

persons on the Board and to appoint and remove all officers of the Association during the period of Declarant control.

4.4 Each member shall be entitled to as many votes as equals the number of votes he is ordinarily entitled to multiplied by the number of Directors to be elected, but may not cast all of such votes for any one (1) Director and must distribute them among the number to be voted for, and all votes must be cast in whole numbers and not fractions thereof. It is the intent of this Section to prohibit cumulative voting.

ARTICLE V  
PROPERTY RIGHTS

Subject to the provisions of these Covenants, the rules and regulations of the Association, and any fees or charges established by the Association, every member and every tenant and guest of such member shall have a non-exclusive easement over and across the Common Area for: (i) vehicular and pedestrian ingress and egress over those areas reserved for such use; and (ii) for installation, maintenance, and repair of underground utilities serving any portion of the Property over those areas reserved for such use.

ARTICLE VI  
COVENANTS FOR MAINTENANCE ASSESSMENTS

6.1 The Declarant, Landfall, and Waterford for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses; (2) special assessments for extraordinary maintenance and capital improvements; (3) special assessments for purchase, construction or reconstruction of improvements; and (4) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Common Area if the Association shall default in payment thereof. The annual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made; provided, however. 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 the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

6.2 The interest allocated to each Lot for liability for Common Expenses is shown on Exhibit A. Lot 1 shall not be liable for any Common Expense.



6.3 The Association shall also have the authority, through the Board of Directors to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

6.4 Each Owner covenants, for himself, his heirs, successors and assigns, to pay each assessment levied by the association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

6.5 The assessments levied by the Association shall be used exclusively for the paying of Common Expenses, including, but not limited to, costs for the acquisition, improvement, maintenance, and use of Common Area, in accordance with the maintenance standards set forth in the Party Wall Agreement.

6.6 Amount of Assessment.

(A) In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current cost and expenses of the Association, any accrued debts, and reserves for future needs.

(B) Until such time as the Board affirmatively establishes an initial assessment, the assessment shall be zero.

6.7 In addition to the annual assessments authorized above, the Association may levy, in any assessment, year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Area, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

6.8 Out of the Common Expenses assessment, the Board may create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Area which the association may be obligated to maintain.

6.9 Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five (25%) percent of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

6.10 The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the passage of a resolution by the Board duly establishing same; provided, however that no Lot shall be assessed for any Common Expense until construction has commenced on said Lot. The liability for Common Expenses and votes for a vacant Lot shall be allocated equally among the remaining Lots until construction has commenced on said Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

6.11 Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed eighteen (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court in the County in which the Property is located in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the



claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

6.12 The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax 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, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII  
MANAGEMENT AND ADMINISTRATION

The management and administration of the affairs of the Common Area of Waterford shall be the sole right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of the Declaration, the Articles of Incorporation and the Bylaws of the Association, but may be delegated or contracted to managers or management services. The Association at all times shall maintain all roadways and drives located on or constituting part of the Common Area and shall maintain in full force and effect liability insurance and such other coverage as the Board of Directors deems appropriate.

ARTICLE VIII  
GENERAL PROVISIONS

8.1 Declarant reserves the right to alter or amend this Declaration as long as Developer owns any Lot or any portion of the Property. Except where otherwise provided herein, this Declaration may also be amended by an instrument signed by the Owners of Lots to which at least sixty-seven percent (67%) of the Votes in the Association have been allocated.

8.2 In the event of a violation or breach of any of the affirmative obligations or restrictions contained in this Declaration by or through any Owner or agent or tenant of such Owner, the Declarant or any other Owners, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event.

8.3 In addition to the foregoing and any other remedy set out in these Covenants, the Association shall have the right to proceed at law or in equity to compel a compliance to the

terms hereof or to prevent the violation or breach in any event. The Association may engage a person or persons to respond to complaints received as to violations of the Covenants and shall inform the violators of such complaint. If the violation is not expeditiously terminated, the Declarant or Association may engage legal counsel to bring an appropriate injunctive action, including any appeals, to enforce these Covenants. Violators shall be obligated to reimburse the Association in full for all its direct and indirect costs, including but not limited to legal fees incurred by the Association in maintaining compliance with these Covenants in the event the Association prevails in such proceedings.

8.4 In addition to the foregoing, the Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. Violators shall be obligated to reimburse the Declarant in full for its direct and indirect costs, including but not limited to legal fees incurred by the Declarant in maintaining compliance with these Covenants in the event the Declarant prevails in such proceedings.

8.5 The obligations and benefits prescribed by the Covenants shall run with the Property and shall be enforceable against the Declarant, its successors or assigns, the Association and against any Owner or other person whose activities bear a relation to the Property when the aforesaid parties engage in activities (including omissions and failures to act) which constitute violations or attempts to violate or circumvent the covenants and restrictions set forth in this Declaration.

8.6 Should any covenants and restrictions herein contained, or any Part, ARTICLE, Section, paragraph, sentence, clause, phrase or term in this Declaration be declared to be void, invalid, illegal, or unenforceable for any reason by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

8.7 In all cases, the provisions of this Declaration shall be given that interpretation of construction which will best result in the consummation of the general plan of development of the Property. The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning or similar ordinance which allows a less restricted use of the Property.

IN WITNESS WHEREOF, Declarant, Landfall, and Waterford have caused this instrument to be executed the day and year first above written.



HUFF-CAVINESS, LLC

By: [Signature]  
Name: Watson G. Caviness  
Title: Manager  
By: [Signature]  
Name: D. Ralph Huff, III  
Title: Manager

LANDFALL PARTNERS, LLC

By: [Signature]  
Name: Thomas L. Bradford  
Title: Manager

WATERFORD AT LITTLE RIVER, LLC

By: [Signature]  
Name: Watson G. Caviness  
Title: Manager

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

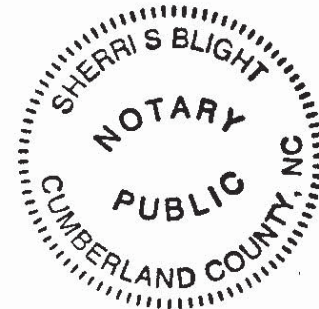
I certify that the following person(s) personally appeared before me this day and I have personal knowledge of the identity of the principal(s) or have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a driver's license or a credible witness has sworn to the identity of the principal(s); each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Name of Principal: Watson G. Caviness, manager

Date: NOV 4 2008

Sherril S Blight  
Notary Public

SHERRI S BLIGHT  
Printed or Typed Name of Notary Public

My commission expires: FEB 7 2011



(N.P. SEAL)



STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I certify that the following person(s) personally appeared before me this day and I have personal knowledge of the identity of the principal(s) or have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a driver's license or a credible witness has sworn to the identity of the principal(s); each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Name of Principal: D. Ralph Huff, III, manager

Date: NOV 4 2008

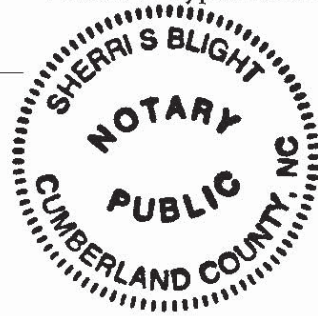
Sherris S Blight

Notary Public

SHERRI S BLIGHT

Printed or Typed Name of Notary Public

My commission expires: FEB 7 2011



(N.P. SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I certify that the following person(s) personally appeared before me this day and I have personal knowledge of the identity of the principal(s) or have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a driver's license or a credible witness has sworn to the identity of the principal(s); each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Name of Principal: Thomas L. Bradford, manager

Date: NOV 4 2008

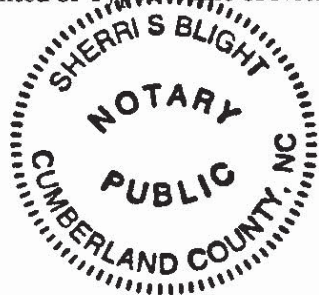
Sherris S Blight

Notary Public

SHERRI S BLIGHT

Printed or Typed Name of Notary Public

My commission expires: FEB 7 2011

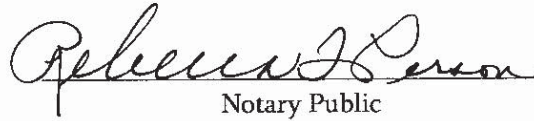


(N.P. SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I certify that the following person(s) personally appeared before me this day and I have personal knowledge of the identity of the principal(s) or have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a driver's license or a credible witness has sworn to the identity of the principal(s); each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Name of Principal: Watson G. Caviness, manager

Date: 11-4-08

  
Notary Public

Rebecca F. Person  
Printed or Typed Name of Notary Public

My commission expires: 7-27-13



(N.P. SEAL)

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EXHIBIT A

TABLE OF INTERESTS

<u>Lot No.</u>	<u>Percentage Share of Common Expenses</u>	<u>Votes in the Affairs of the Association</u>
Lot 1	0	0
Lot 2	33.33	33.33
Lot 3	33.34	33.34
Lot 4	11.11	11.11
Lot 5	11.11	11.11
Lot 6	<u>11.11</u>	<u>11.11</u>
	100%	100%