

BK: RB 6300
PG: 867 - 886

RECORDED:

04/08/2020

12:38:19 PM

BY: ANDREA CRESWELL

ASSISTANT

2020012504

NEW HANOVER COUNTY,

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$46.00

EXTX \$0.00

ELECTRONICALLY RECORDED

STATE OF NORTH CAROLINA

COUNTY OF NEW HANVOER

**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS OF
ARBORETUM VILLAGE TOWNHOMES**

STATE OF NORTH CAROLINA

**DECLARATION OF COVENANTS,
CONDITIONS, & RESTRICTIONS OF
ARBORETUM VILLAGE
TOWNHOMES**

COUNTY OF NEW HANOVER

THIS DECLARATION of Covenants, Conditions and Restrictions made this 8th day of April, 2020, by Arboretum Village LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant", (whether one or more);

WITNESSETH

WHEREAS, Declarant is the owner of certain property in Wilmington, New Hanover County, North Carolina, which is more particularly described as follows:

Beginning at an existing iron pipe in the southern line of Lot 22 of the A.P. Southerland, Carson Tract as referenced and recorded in Book 2340, Page 603 of the New Hanover County Registry, said iron pipe having NC Grid Coordinates as observed by NCRTN of (NAD'83) N 187682.4251', E 2353547.5898', said iron pipe also being located S81°47'00"E 478.93' (GRID) 478.92' (HORZ. GROUND) from NC GRID MONUMENT "PATROL 1963" having NC Grid Coordinates as observed by NCRTN of (NAD'83) N 187750.8717', E 2353073.5839' with a combined Grid Factor of 1.000024559; running thence, from said beginning and along the said southern line of Lot 22 and beyond S54°48'46"E 1233.86' to an existing iron rod in the west line of Military Cut-Off Road (S.R. 1409 a variable width R/W); thence, along said west line N01°02'28"E 88.33' to an existing NCDOT R/W Disc; thence, N01°11'06"W 341.55' to an existing NCDOT R/W Disc; thence, N28°56'03"E 1.42' to a set iron rod in the northern line of said Lot 22 also being the southern line of Lot 21 as recorded in Map Book 4, Page 96 of said Registry; thence, along said northern line N55°37'57"W 940.88' to an existing iron pipe; thence, leaving said northern line S39°43'16"W 225.12' to a set iron rod; thence, S46°49'45"W 113.99' to the point of beginning, Containing 8.55 AC +/-, less the current NCDOT R/W along Military Cut-Off.

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and advantage of every party hereafter acquiring any of the described property that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the property be established; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of said property; and for the continued maintenance and operation of any recreational and/or common area.

NOW, THEREFORE, Declarant hereby submits the above described property (herein the "Property"), to ownership pursuant to North Carolina General Statutes and hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, uses and obligations which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

- A. Association. A North Carolina non-profit corporation, composed of the owners of lots in the Property, to be formed in the future.
- B. Boards. The Board of Directors of the Association.
- C. By Laws. By-Laws of the Association.
- D. Common Elements. Shall be used interchangeably with "common areas" and shall mean any real estate within or appurtenant to the planned community owned or leased by the Association, other than a lot, and intended for the common use and enjoyment of the Owners, including without limitation, any private roads within the planned community.
- E. Limited Common Elements. Shall be used interchangeably with limited common areas and shall refer to all portions of the common elements which are designated for use with a particular lot.
- F. Common Expenses. The expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- G. Declarant. Declarant or "Developer" shall mean and refer to Arboretum Village LLC, a North Carolina limited liability company, its successors and assigns.
- H. Declarant Control. Declarant Control Period shall mean such time as the Declarant is entitled to cast any Class B votes.
- I. Lot. Shall mean and refer to any of the numbered lots on each map of the property within Arboretum Village Townhomes, as will be recorded in the New Hanover County Registry; with the exception of the common or limited common areas.

- J. Owner. Shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- K. Planned Community. Shall mean and refer to the whole of the planned residential development to be known as Arboretum Village Townhomes, which shall consist of all the real property, which has been subdivided into lots shown on maps of Arboretum Village Townhomes, referred to hereinabove, the common elements, the limited common elements, plus the improvements to the common elements, plus the improvements to the limited common elements as described herein.
- L. Properties. Shall mean and refer to that certain real property hereinabove described, and such phases or additions thereto as may hereafter be brought within the jurisdiction of the Association by Declarant.
- M. Special Declarant Rights. Shall mean rights reserved for the benefit of a Declarant including without limitation the right (i) to complete improvements indicated on plats and plans filed with or referred to in this Declaration; (ii) to exercise any development right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain sales offices, management offices; signs advertising the Planned Community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the Planned Community or within real estate which may be added to the Planned Community; or (v) to appoint the Board of Directors of the Association or remove any officer or Executive Board member of the Association during the Declarant Control Period. So long as the Declarant owns any Lot in the Development the Declarant shall have the right to transfer the above Special Declarant Rights to a third party.

ARTICLE II.

MEMBERSHIP IN ASSOCIATION.

Every lot owner shall automatically become a member of the Association upon the acceptance and the recording of a Deed to any lot.

A. Formation of Association. The Association shall be incorporated no later than the date the first Lot in the Planned Community is conveyed, unless such conveyance is in bulk of all the Lots or is an affiliate of the Declarant. The Association is a nonprofit corporation to be organized pursuant to the Nonprofit Corporation Act of the State of North Carolina ("the Act") for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration and Bylaws. The Association shall be empowered to

perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

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

C. Voting Rights. The Association shall have two classes of voting Membership:

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

Class B. The Declarant, and any successor holder of Special Declarant Rights, shall be a Class B Member and shall be entitled to five (5) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

1. Upon the voluntary surrender of all Class B Memberships by the holder thereof; or
2. upon the sale of all of the lots by Declarant, except in the event that Declarant conveys its entire interest and such fact is noted in the deed or other instrument evidencing such conveyance, accompanied by a conveyance of Special Declarant Rights; or
3. as required by North Carolina General Statutes.

ARTICLE III.

DESCRIPTION OF LOTS. The Declarant owns the real property which Declarant intends to divide into ninety-eight (98) lots, denoted as 1 through 98, (herein "The Lots"), to be used for residential purposes.

ARTICLE IV. ASSESSMENTS.

A. Owner Assessments. Creation of the lien and personal obligation of assessment: Each Class A Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (1) Annual assessments or charges; and
- (2) Special assessments for capital improvements, exterior

maintenance, and insurance in connection with common area property, such assessments to be established and collected as hereinafter provided; and a pro rata share of ad valorem taxes levied against the common area.

The annual and special 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 property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the persons who were the Owner of such property at the time when the installment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them; provided, however, such assessment shall always be a lien upon the land until paid, and no sale shall extinguish such assessment, except a foreclosure sale of senior liens in accordance with North Carolina General Statutes.

It is expressly provided, however, that in consideration of the Declarant's prior construction of the amenities and improvements on the real estate which is to constitute the common area in the Planned Community, that the Declarant/Developer shall be exempt from and shall not have to pay assessments or special assessments on any lots owned by it within the Planned Community.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties, for the improvements and maintenance of the common area, and to obtain and pay for insurance where authorized or required by this document, the corporate charter, the Bylaws, Action of the Board of Directors or members of the Association.

C. Annual Assessments. The Board of Directors shall fix the amount of the annual assessment against each lot, subject to assessment, at least thirty (30) days in advance of each annual assessment period. 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 and the Board of Directors shall have the authority to require the assessments to be paid in annual installments or to divide the annual assessment and have it paid in periodic installments throughout the year. 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 and for what period.

In addition to the Assessments authorized above, the Association shall levy one or more Assessment(s) against all Lots, subject to Assessments, (as the same may be amended and or supplemented) which assessments shall cover the annual costs associated with the exterior maintenance, repair and replacement and insurance of the Townhome Units, as such maintenance is further described in Article VIII, Section A and such insurance is further described in Article VIII. This Assessment for Townhome Maintenance and Insurance shall be deemed to be included in the definition of "Assessments" as defined in Article IV, Section A and further governed in Article IV of

this Declaration.

D. 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 that year only, for the purpose of defraying, in whole or part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two third (2/3) of the votes eligible to be cast, in person or by proxy at a meeting duly called for this purpose. It is expressly provided, however, that in consideration of the Declarant's prior construction of the amenities and improvements on the real estate which is to constitute the common area in this planned unit development, that the Declarant/Developer shall be exempt from and shall not have to pay assessments or special assessments on any lots owned by it within this development or any subsequent phases, although Declarant shall have the right to cast any votes available to it.

E. Special Assessments for Insurance. As an additional annual assessment, the Association shall levy against the owners of Class A Membership equally an amount sufficient to pay the annual cost of all public liability and common area insurance premiums for the Association and its members, officers, Directors and employees. The Board of Directors (or its designee) shall, on behalf of the Association, as its common expense and at all times, keep the common property insured against loss or damage by fire or other hazards normally insured against at 100% of replacement costs and other risks including public liability insurance, in such terms and in such amounts as may be reasonably necessary from time to time to protect the common property on behalf of the Association. As a part of the annual assessments the Association shall also obtain and pay for such insurance policies and bonds that the Directors of the Association deem necessary or advisable including, but not limited to, officers' and Directors' liability coverage, fidelity bonds, casualty or hazard insurance or any other insurance for the Directors and Officers of the Association or otherwise. It is expressly provided, however, that in consideration of the Declarant's prior construction of the amenities and improvements on the real estate which is to constitute the common area in this planned unit development, that the Declarant/Developer shall be exempt from and shall not have to pay assessments, special assessments or special assessments for insurance on any lots owned by it within this development or any subsequent phases.

F. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots subject to assessment, specifically excluding any Lot owned by Declarant, and may be collected on a monthly, annual or other basis as the Homeowners Association determines, save special assessments levied against any lot for casualty insurance or as a result of a specific lot owner's actions, as set out herein.

G. Working Capital Assessments. At the time title to a Lot is conveyed to an Class A Member by Declarant, the Class A Member shall pay an amount equal to two months' assessments to the Association as working capital to be used for initial operating and capital expenses of the Association. 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.

H. Effect of Non-Payment of Assessments – Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. 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.

I. Effect of Default in Payment of Ad Valorem Taxes or Assessments for Public Improvements by Association. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of three (3) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing government authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien of the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

J. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage upon the property. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure of a deed of trust or mortgage, a deed in lieu of foreclosure, or any other proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.

ARTICLE V.

USE RESTRICTIONS. The use of the property shall be in accordance with the following provisions.

A. Residential Use. Each of the Lots shall be for residential purposes only, except that so long as Declarant shall retain ownership of any lots, it may utilize any such lot or lots for sales or rentals, offices, models or other usage for the purpose of selling or renting lots within the Planned Community. The Declarant, including any successor holder

of Special Declarant Rights, may assign this limited commercial usage right to any other person or entity as it may choose, provided that when all lots have been sold to Class A Members, this right of commercial usage by the Declarant, its successors and assigns shall cease. Co-ownership of lots shall not be prohibited. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family townhome. No Lot may be divided or subdivided into a smaller Lot nor any portion thereof sold or otherwise transferred.

B. Common Elements Use. The Common Elements and Limited Common Elements shall be used for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Lots.

C. Rules and Regulations on Use. Reasonable regulations concerning the use of the Property may be made and amended from time to time by Declarant, during the Declarant Control period. Thereafter, the Association shall have the power to make and amend such reasonable regulations in the manner provided by the By-Laws.

ARTICLE VI.

ARCHITECTURAL CONTROL. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, 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 Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated 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.

ARTICLE VII.

EASEMENTS. Each of the Lot Owners shall have an easement in common with the other Lot Owners to use Common Elements. Each Lot shall be subject to an easement in favor of the owner of the other Lots to use all common elements serving such other Lots and located in that Lot. The Association shall have the right to be exercised by the Board of Managers or its Designee, to enter each Lot from time to time, at reasonable hours as may be necessary for the operation of the property to inspect the same, to remove violations therefrom, and to maintain, repair or replace the Common Elements, if any, contained therein.

The Declarant hereby reserves and subjects the lands which are the subject of this Declaration to an easement of use and enjoyment by the owners and occupants of the respective lots for ingress and egress to and from all of the Common Elements. Easements are also hereby created for installation, use, maintenance, repair and replacement of all

necessary public utilities, including but not limited to sewer, water lines, gas, electricity, telephone and cable televisions for the use of the above described property known as Arboretum Village Townhomes.

ADDITIONAL EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved over all Lots and easements for drainage and utilities are reserved as shown and designated on the plat of said property. Easements for installation and maintenance of electric utility meters are granted by each individual Lot owner to Declarant and the local electric utility, as shown and designated on the plat of said property. Easements for the running of alarm systems, communication lines (including telephone, Cat-5, fiber optic, or similar) are granted across, under and through each Lot, including through party walls and all Living Units, for the benefit of the Association and each Lot owner. No structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements.

The following easements are granted by Declarant to others:

- (1) 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 Elements in the performance of their duties.
- (2) In case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the 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.
- (3) The Association is granted an easement over each Lot for the purposes of providing Lot maintenance.

All easements herein created and described shall be easements appurtenant to, and shall run with the land by whomsoever owned whether or not the same shall be contained or referred to in any future deed or conveyance, and shall at all times inure to the benefit and be binding upon the undersigned, all its grantees and their respective heirs, successors, personal representatives or assigns.

ARTICLE VIII.

MAINTENANCE AND INSURANCE. The following provisions shall apply to the Association and the Owners with respect to maintenance responsibility and insurance.

A. Exterior Maintenance. Certain scheduled exterior maintenance of the townhome buildings (each, a "Townhome Unit" and collectively, the "Townhome Units"),

will be provided by the Association as more particularly described herein. The exterior maintenance may generally include: the scheduled repainting of all exterior building surfaces, including the exterior doors and garage doors; the scheduled replacement of roofs, including the removal & replacement of shingles, metal roof panels, flashing, venting and moisture barrier materials; and the maintenance of gutters and downspouts. Such exterior maintenance shall not include maintenance, repair or replacement of glass surfaces, exterior doors, and window frames (i.e. entire window unit) unless approved by the Board, except the Association shall be responsible for painting exterior doors. With regard to the scheduled roof replacement, the Association shall not be responsible for any repair and/or replacement of the sheathing or underlying wood support members within the roof system. With regard to the scheduled exterior repainting, the Association shall not be responsible for the staining or painting of any horizontal wood surfaces on decks, porches or steps. All exterior maintenance of Units will be provided by the Association on a schedule and to a scope of work appropriate to meet the reasonable standards determined by the Board, in its discretion, and not on a schedule or to a scope as directed, requested or specified by any specific Owner.

The cost of the above-described exterior maintenance for each Townhome Unit will be assessed to the respective Townhome Unit by the Association as an Assessment (as said term is defined in Article IV) and shall be levied at a uniform rate against all Townhome Units. No Owner of a Townhome Unit may exempt himself or herself from liability for assessments for exterior maintenance provided by the Association. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, invitees, or licensees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject. Exterior maintenance services may be modified by the Board as it deems reasonable and appropriate.

Except for the exterior maintenance provided by the Association as described above, each Owner will be responsible for the upkeep of his/her Unit's exterior doors, exterior door jambs, exterior door trim, windows, window jambs, window trim, glass surfaces, porches, patios, screens, HVAC systems, and exterior light fixtures; and each Owner shall be responsible for all other required maintenance of the exterior and interior of his or her Unit, including the fixtures and utilities located in the Townhome Unit to the extent current repair shall be necessary in order to avoid damaging other Persons, Units, Lots or the Limited Common Areas. Without limiting the foregoing, all fixtures, equipment, and utilities installed and included in a Townhome Unit commencing at a point where the fixtures, equipment, and utilities enter the Townhome Unit shall be maintained and kept in repair by the Owner. The Owner at his/her expense shall maintain, repair or replace the heating and air conditioning units (HVAC), air handling units, heat exchanger, any utility screens, heat outlet, enclosures and mechanical attachments. The Owner shall not allow any action of work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of any townhome building, or impair any easement or hereditament. An Owner is responsible for a repair resulting from a casualty occurring within, or affecting the inside of the Townhome Unit. Each Owner shall be responsible for removing all snow, leaves and debris from all doorsteps or stoops appurtenant to his Townhome Unit.

B. Townhome Unit Property Insurance. The Association shall obtain and maintain at all times a policy or policies of property insurance (ISO special form or its equivalent) covering the buildings and improvements located on Townhome Units, in an amount not less than one hundred percent (100%) of the replacement cost of such improvements, in accordance with the plans and specifications for the original Townhome Units, at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the costs of excavation, paving, foundations and footings, with a commercially reasonable deductible. Each policy shall show the Association as the named insured, but shall provide that each Townhome Unit Owner is an insured person with respect to his Townhome Unit, and that the Association is an insured person with respect to the Limited Common Areas; shall contain clauses providing for waiver of subrogation against any Townhome Unit; shall provide that it may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and all insureds, including all Owners and all of their Mortgagees; shall provide that no act or omission by any Owner will preclude recovery upon such policy; and shall provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each policy shall contain an inflation guard endorsement and a construction code endorsement if available. Each policy shall provide that adjustment of loss shall be made by the Association as insurance trustee, and shall provide for the issuance of certificates of mortgagee endorsements to all Mortgagees of the Owners.

C. Townhome Unit Premiums and Deductibles. Premiums upon insurance policies for Townhome Units purchased by the Association shall be paid by the Association and charged as an expense of the Owners as an Assessment authorized in Article IV, Section E. In the event any Townhome Unit Owner fails or refuses to pay assessments needed to pay insurance premiums or deductibles when due, the Association may pay said premium or deductible and levy against the non-paying Owner a Specific Assessment as set forth in Article IV, Section H which shall be an amount due of those amounts, and shall be a lien upon the Townhome Unit until paid in full. The amount of the said assessment may include not only the actual cost of the premiums, and any late payment and fees, the cost of the deductibles, but also an administrative charge payable to the Association, interest, and any and all attorney's fees incurred in connection with the collection of such assessments, penalties and fees.

In the event of a loss or damage to the Limited Common Elements, which may be covered by any insurance maintained by the Association, the deductible shall be paid as a Common Expense of the Association. In the event of a loss of damage to any part of a Townhome Unit or Townhome Units which a Townhome Owner(s) is obligated to maintain, repair or replace which may be covered by any insurance maintained by the Association, the deductible shall be paid by the Townhome Owner(s) affected. Whenever a loss or damage occurs to the Limited Common Elements and a Townhome Unit or multiple Townhome Units and such loss or damage may be covered by any insurance maintained by the Association, the deductible shall be paid on a pro rata basis, based on the amount of the covered loss or damage received by the Owner(s) and Association as they are affected. For example: if a covered loss or damage occurs in the total amount of \$100,000, with a \$60,000 loss to the Limited Common Elements, a \$10,000 loss to unit "A" and a \$30,000 loss to unit "B", the Association shall pay 60% of the deductible as a Limited Common Expense of the Owners,

Owner "A" will pay 10% of the deductible, and Owner "B" will pay the remaining 30% of the deductible.

D. General Standards. All townhome insurance policies maintained by the Association under this Article shall comply with the terms of N.C.G.S. §47F-3-113 and shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in Best's Insurance Guide. In the event a company with at least such a rating is not available, such insurance is to be obtained from a company with the highest rating available in Best's Insurance Guide. Upon request, duplicate originals of all such policies or certificates of insurance shall be furnished to all Owners and their Mortgagees.

E. Owners' Insurance. It shall be the responsibility of each Owner, at his/her expense, to maintain additional fire and casualty and extended coverage insurance upon his personal property and any alterations or other improvements made to his Townhome Unit, and public liability insurance. Each Owner shall obtain and maintain liability insurance in the amount of at least \$100,000.00 per occurrence. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Townhome Owner's Unit as the Owner, in that Owner's sole discretion, shall conclude to be desirable. However, no such insurance coverage obtained by the Owner shall operate to decrease the amount which the Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. A Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association resulting from insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were an Specific Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner. The Board may require an Owner to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

F. Distribution of Townhome Insurance Proceeds. All policies of townhome property insurance procured by the Association shall provide that all losses shall be adjusted with, and all proceeds shall be payable to the Association as insurance trustee. The Association shall have exclusive authority to negotiate any and all losses under such policies, and the Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner to adjust all claims arising under such policies and to execute and deliver releases upon the payment of claims. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

1. Proceeds on account of damage to any improvements in the Limited Common Areas shall be held by the Association and applied in the manner provided in Section E below.

2. Proceeds on account of damage to Townhome Units shall be held in undivided shares for the Owners of damaged Townhome Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.
3. In the event a mortgagee endorsement or certificate has been issued with respect to a Townhome Unit, the share of that Owner shall be held in trust for the owner and its Mortgagee, as their respective interest may appear.
4. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the manner provided in Section F below.

G. Responsibility for Townhome Reconstruction or Repair. If any portion of the Townhome Units is damaged by perils covered by townhome property insurance maintained by the Association, the Association shall cause such damaged portions to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any, and any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original development of the Townhome Units, except as provided to the contrary in N.C.G.S. §47F-3-113(g). In addition, if such damage renders one or more of the then existing Townhome Units on the Property uninhabitable, the Association may, with the affirmative vote of eighty percent (80%) of the votes of the Owners and the written approval of the holders of eighty percent (80%) of their respective Mortgagees then in force with respect to the Townhome Units, and with the approval of one hundred percent (100%) of the Owners and Mortgagees of the damaged Townhome Units proposed not to be rebuilt, elect not to reconstruct or repair such damaged Townhome Units. A meeting shall be called within ninety (90) days after the occurrence of such casualty. Upon any such election, the insurance proceeds attributable to such damage shall be promptly distributed to the Owners whose Townhome Units were damaged, or to their Mortgagees in accordance with the terms of the mortgage covering that Townhome Unit, in proportion to the reasonable cost of repairing damage to such Townhome Units; provided, however, that no Owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his Unit have been paid, released or discharged and any debris resulting from such damage or destruction has been removed from the Property.

If: (a) the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Property by fire or other casualty, or (b) the damage or destruction is caused by any casualty not insured against, or (c) insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements within the Limited Common Areas shall be accomplished promptly by the Association and the extent of such repairs shall be an expense of the Owners; and the repair or reconstruction of any improvements contained within any Townhome Unit shall be accomplished promptly by the Owner of the affected Townhome Unit at his expense.

H. Procedure for Townhome Reconstruction or Repair. In the event of a casualty causing damage to any portion of the Townhome Unit, the following provisions shall govern and apply:

1. Immediately after a casualty which causes damage to any portion of the Townhome Units, the Association shall obtain, or cause the affected Owners to obtain, reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

2. If the proceeds of the casualty insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the professional fees and premiums, if any), one or more special assessments shall be made against all Owners of the affected Townhome Units (with respect to any deficiency in insurance proceeds for damage or destruction to Townhome Units or other improvements on Townhome Units) or all Owners (with respect to any deficiency in insurance proceeds for damage or destruction to the Limited Common Areas or the improvements thereon) in sufficient amount to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association; provided, however, that the Association may borrow funds to pay for such costs with the assent of eighty percent (80%) of the Townhome Unit members of the Association voting at a meeting duly called for such purpose.

3. The proceeds of the townhome property insurance referred to above and the sums deposited with the Association from collections of special assessments or proceeds of authorized loans, as provided in Section G(2) shall constitute a construction fund which shall be held by the Association and applied to the payment of the cost of reconstruction and repair of the Townhome Units from time to time as the work progresses, but not more frequently than once in any calendar month. The Association shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request, signed by an architect in charge of the work who shall be selected by the Association, certifying that the sum then requested is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and certifying that the sum requested does not exceed the value of the services and materials described in the certificate. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association which may use such excess funds for any purpose not in violation of this Declaration in the sole discretion of the Board.

ARTICLE IX.

ENFORCEMENT. The Association or any Owner shall have the right to enforce, by