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Prepared By and Mail To: Burns, Day & Presnell, P.A., P.O. Box 10867, Raleigh, NC 27605

NORTH CAROLINA
NEW HANOVER COUNTY

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR BIMINI TOWNES TOWNHOMES

THIS DECLARATION, made on June 24, 2014 by Pensco Trust Company Custodian FBO Donald V. DeBord IRA Account and Pensco Trust Company Custodian FBO Donald V. DeBord Roth IRA Account and Richard Wallace Builder, Inc. (collectively the "Declarant") as consented to by Homeowner(s) as defined herein, if any.

RECITALS

Declarant owns the Property which is more particularly described below. Declarant will convey the Property subject to the protective covenants, charges, conditions and restrictions described in this instrument to Declarant and its successors, who are joining in this instruments as indicated below, own all of the Property which is more particularly described below. The parties want to subject the Property to the protective covenants, charges, conditions and restrictions described in this instrument to: (i) insure the best use and most appropriate development and improvement of the Property; (ii) protect owners against such improper use of surrounding lots as will depreciate the value of their lot; (iii) preserve, so far as practicable, the natural beauty of the Property; (iv) guard against the erection of poorly designed or proportioned structures and structures built of improper and unsuitable materials; (v) obtain harmonious color schemes; (vi) encourage and secure the erection of attractive structures with appropriate locations, proper setbacks from streets, and adequate free spaces between structures; and (vii) provide for a high type and quality of improvements in the Property and thereby to enhance the values of investments made by the owners.

THEREFORE, Declarant and any undersigned Homeowner declares that all of the Property, together with such additions as may subsequently be added, shall be held, sold, transferred, conveyed, occupied, used and mortgaged subject to this Declaration 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.

1. DEFINITIONS. Unless the context clearly indicates otherwise, the following capitalized words and phrases shall have the indicated meanings when used in this instrument:

"**Act**" means the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes), as amended from time to time, or any corresponding provisions of succeeding law.

"**Additional Properties**" means any real property, other than the Property, subjected to the Declaration pursuant to the terms of this document, including, but not limited to the real estate described on *Exhibit B*. [means the real property described in *Exhibit B* attached, and any additional tract or tracts of land, whether or not described in *Exhibit B*, which are contiguous to the Property. For purposes of this Declaration, land which is separated from the Property by a right-of-way or natural boundary (e.g., streams or pond) shall nevertheless be deemed "contiguous".]

"**Allocated Interests**" means the undivided interests in the Common Areas and votes in the Association allocated to each Lot as determined in accordance with this Declaration. The Allocated Interests shall be expressed as a numerical percentage and, except for minor variations due to rounding, the aggregate percentages for all of the Lots at any one time shall equal 100%.

"**Annual Assessments**" means the assessments described in *Section 7.4*.

"**Approved Budget**" means the budget approved by the Association's Board pursuant to *Section 7.4.2*.

"**Articles**" means the Association's Articles of Incorporation.

"**Assessment**" means an owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association pursuant to the terms of this Declaration; including, but not limited to the Annual Assessments, the Special Assessments, and other assessments authorized by *Section 7.1.1*.

"**Association**" means **Bimini Townes Owners Association, Inc.**, a non-profit North Carolina corporation.

"**Association Board**" or "**Executive Board**" refers to the Board of Directors for the Association.

"**Building**" means a structure constructed on the Property which contains one or more Townhome Units.

"**Bylaws**" means the Association's Bylaws.

"**Common Area**" or "**Common Areas**" means all real property within the Planned Community owned by the Association (other than a Lot), all Improvements constructed on that real property, and the easements granted to the Association for the common use and enjoyment of the Owners. The Common Area/Common Areas to be owned by the Association shall be described in deeds to the Association and designated as such on each Plat. Common Area/Common Areas are more specifically described in *Section 3.1*.

"**Common Expenses**" means expenses of administration, maintenance, repair or replacement of the Common Areas; expenses described elsewhere in this Declaration or the Bylaws as "Common Expenses"; expenses agreed by the Members to be "Common Expenses"; Association operational costs and management fees; premiums for insurance as the Declaration or the Bylaws may require the Association to purchase; ad valorem taxes and public assessment charges lawfully levied against Common Areas owned in fee simple by the Association; and unpaid Assessments.

"**County**" means the county or counties in which the Property is located.

"**Declarant**" means Pensco Trust Company Custodian FBO Donald V. DeBord IRA Account and Pensco Trust Company Custodian FBO Donald V. DeBord Roth IRA Account and Richard Wallace Builder, Inc., and their successors and assigns specifically designated as Declarant. In the event of a foreclosure of any instrument granted by Declarant which is a lien against the Property, or a deed granted in lieu of foreclosure of that instrument, the successor to the Declarant's interest shall be the "Declarant" as to that portion of the Property foreclosed/deeded.

"**Declarant Control Period**" means the period commencing on the date of recordation of this Declaration with the County Registry and continuing until the earlier of: (a) December 31, 2025; (b) the date the Declarant or its successors no longer owns any of the Property; and (c) the Declarant transfers, in writing, the Development Rights to the Association.

"**Declaration**" means this document and all subsequent amendments, if any.

"**Development Rights**" means all rights of control and/or approval granted to Declarant, as Declarant, under this Declaration, including, but not limited to, the rights granted under *Articles 4 & 5*.

"**First Sale**" means the date of the first transfer of title to, or leasing of, a Lot by the Declarant to a Person who has purchased the Lot for purposes of constructing a home on the Lot for sale or lease (i.e., a builder), other than a Person expressly succeeding to Declarant's rights as the Declarant.

"**Foreclosure**" means, without limitation, the judicial foreclosure of a Mortgage or the conveyance of the secured property by a deed in lieu of foreclosure of a Mortgage.

"**Homeowner**" means a Person who has purchased a Lot in Use.

"**Improvements**" means any structure of any type or kind, including, but not limited to buildings, townhomes, outbuildings, parking areas, loading areas, refuse collection areas, screening walls, retaining walls, fences, hedges, mass plantings, sidewalks, poles, signs, and utility lines and facilities.

"**Law**" means any local, state or federal rules, regulations, or laws which may apply to the Planned Community or any Person who maintains an interest in the Planned Community or a Lot, including, but not limited to, the Zoning Entity's ordinances, codes, and regulations.

"**Limited Common Areas**" means a portion of the Common Areas allocated by this Declaration or by law for the exclusive use of one or more, but fewer than all, of the Lots, and as more specifically described in *Section 3.2*.

"**Lot**" means any tract of land, with the exception of the fee simple Common Areas, and/or structure designated for separate ownership or occupancy as reflected on the Plat. Unless the context otherwise requires, "Lot" shall include each Lot in Use and each Unsold Lot.

"**Lot in Use**" refers to a Lot for which Declarant has transferred title to a Person, other than a Person expressly succeeding to Declarant's rights as the Declarant, or although not transferred, for which a certificate of occupancy has been issued by the Zoning Entity.

"**Majority in Interest**" means, with respect to any referenced group of Owners, a combination of any of those Owners who, in the aggregate, own more than fifty percent (50%) of the Allocated Interests owned by all of that referenced group of Owners.

"**Member**" means every Person who holds membership in the Association and shall include both Class A Members and Class B Members, as defined in the Bylaws.

"Mortgage" means a mortgage, deed of trust, installment land sales contract, security agreement or other similar security instrument granting, creating or conveying a first lien upon a Lot.

"Mortgagee" means the holder, insurer or guarantor of a Mortgage.

"Occupants" means any individual(s) in possession of a Lot, including Owners, Family Members, lessees, guests and invitees of such individual(s), and Family Members, guests and invitees of such lessees.

"Person" means an individual, a trust, an estate, or a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or other entity.

"Planned Community" refers to the residential townhome project known as "Bimini Townes Townhomes" which is to be constructed on the Property.

"Planned Community Documents" means this Declaration, the Articles of Organization, the Bylaws, the Master Covenants, and the Act, collectively and individually.

"Plat" refers to all recorded plats describing or identifying the Lots and/or Common Areas for the Planned Community (including, but not limited to, that plat recorded at Plat Book 58, Page 287 and plat Book 59, Page 45, New Hanover County Registry), which plat(s) are incorporated into this Declaration by this reference.

"Property" refers to that land located in New Hanover County, North Carolina and, at least initially, as described on *Exhibit A* attached and otherwise described on the Plat(s), together with the improvements constructed thereon and all appurtenant easements, rights and privileges. "Property" shall also include all Additional Properties, if any.

"Rules & Regulations" means the rules and regulations governing the Project as adopted by the Association Board from time to time.

"Sale to Homeowner" refers to any sale of a Townhome Unit occurring after the date of the issuance of the certificate of occupancy for that Unit.

"Special Assessments" means the assessments described in *Section 7.5*.

"Surplus Funds" means funds collected by the Association pursuant to the this Declaration or otherwise which are not needed to pay current Common Expenses, the funding of a reasonable operating expense surplus, or reserves provided for in this Declaration.

"Townhome Unit" means the single family residence and related improvements constructed or to be constructed on a Lot. Except where the context requires otherwise, this term shall be used interchangeably with "Lot".

"Unit Owner" or "Owner" means the record owner, whether one or more Persons, of a fee simple title to any Lot/Townhome Unit, except those having an interest merely as security for the performance of an obligation.

"Unsold Lot" refers to a Lot which is not a Lot in Use.

"Zoning Entity" means the Town of Carolina Beach governmental entity having zoning jurisdiction over the Property as of the date of determination.

Except as specifically provided to the contrary above, these defined terms shall be construed in a manner consistent with the comparable definitions included in the Act.

2. SUBMISSION TO ACT. Declarant submits the Property to the provisions of the Act. The Property will be administered in accordance with the provisions of the Planned Community Documents. The Act contemplates that certain of its provisions may be superseded by provisions of Articles of Incorporation, bylaws, a declaration, or other agreement of the Members. It is the intent of the parties that in the event of a conflict among the Planned Community Documents, the Planned Community Documents (other than the Act) shall control and supersede the Act where permitted by law.

3. PROPERTY RIGHTS.

3.1. Common Areas. The "Common Areas" consist of all other parts of the Property, exclusive of the Lots themselves, and include, but are not limited to, the following:

- (a) The Property, exclusive of the Lots.
- (b) All areas designated as "common area" on the Plat(s).
- (c) Easements running in favor of the Association described in this Declaration or in separate, recorded easements granted to the Association.
- (d) All equipment and installations existing for common use in the Planned Community which are not otherwise dedicated to a governmental entity or serving only a single Lot, including, but not limited to, water lines, sewer lines, and storm drainage facilities located outside any Zoning Entity utility easement and/or public street right-of-way.

3.2. Limited Common Areas. Limited Common Areas shall mean and include those areas and facilities of the Planned Community, if any, reserved for exclusive use of less than all of the Townhome Units, as identified on the Plat(s) or in this Agreement. Where a Limited Common Area is reserved for a single Townhome Unit (e.g., deck, concrete driveway apron and yard area appurtenant to a Townhome Unit), that Unit Owner: (i) is granted an exclusive and irrevocable license to use and occupy those Limited Common Areas associated with its Lot; and (ii) shall, at its own expense, be responsible for the maintenance and repair of that Limited Common Areas.

3.3. Title to Common Areas. Every Owner shall have a right and easement of enjoyment in the Common Areas (the "Owners' Easement") which shall be appurtenant to and shall pass with the title to every Lot. Fee simple title (subject to this Declaration, current and subsequent years ad valorem taxes, and rights-of-way, restrictive covenants and easements of record) in the Common Area shall be conveyed to the Association.

3.4. Allocated Interests. The Allocated Interests for each Lot shall be the same and shall be proportionate to the total number of Lots in the Planned Community, as that number may vary from time to time. The Allocated Interests for an individual Lot shall be determined by taking the number one (1) and dividing that number by the total number of Lots included in the Planned Community as of the date of determination. In the event of a withdrawal or addition of Lot(s) from/to the Planned Community as permitted by the Planned Community Documents, the Allocated Interests for all of the Lots shall be recalculated in accordance with the above formula. Except for such reallocations, the Allocated Interests shall not be changed except with the unanimous consent of all of the Owners of all of the Lots and with the consent of all of the Mortgagees.

3.5. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Areas (the "Owners' Easement"), including specifically an

easement for access, ingress and egress from and to public streets, common parking, and walkways. The Owners' Easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

3.5.1. Subject to all applicable governmental ordinances, the Association's right to dedicate or transfer all or any part of the Common Areas to any public agency, authority, utility, or non-profit corporation. No such dedication or transfer shall be effective unless an instrument signed by eighty percent (80%) of the Allocated Interests agreeing to the dedication or transfer has been recorded in the County registry. Any dedication or transfer shall be made subject to that portion of the Owners' Easement providing for access, ingress and egress to public streets and walkways.

3.5.2. The Association's right, in accordance with the Planned Community Documents, to borrow money for the purpose of improving the Common Areas and to mortgage those properties to secure those borrowings; provided the mortgage is subordinate to the Owners' Easement.

3.5.3. The Association's right to impose and enforce the Rules & Regulations which may restrict the use and enjoyment of the Common Areas.

3.5.4. The Association and, during the Declarant Control Period, the Declarant shall have the authority to grant and/or establish upon, over, under and across the Common Areas further easements (including, but not limited to those provided in this Declaration) as are required for the convenient use and enjoyment of the Property.

3.5.5. Subject to all applicable governmental ordinances, the right of the Association to charge reasonable admission and other fees for the use of any Amenities.

3.5.6. As provided in *Section 7.7*, the Association's right to suspend the voting rights and the right to use any Amenities by any Owner, his Family Members, guests, etc., for any period during which any assessment against his Lot remains unpaid. The right to use the Amenities may also be suspended for a period, not to exceed one hundred twenty (120) days, for the infraction of its Rules & Regulations; provided; however, that if the infraction is continuing in nature, the suspension may be enforced until such infraction is cured.

3.6. Delegation of Use. Any Owner may delegate, in accordance with the Planned Community Documents, his right of enjoyment to the Common Areas and Amenities to Family Members and tenants who reside at his Townhome Unit and, subject to any applicable Rules & Regulations, to his guests.

3.7. Parking. Each Owner and its guests, in common with the other Owners and their guests, shall park on their own Lot and/or Limited Common Area shown on the recorded map.

3.8. Interior Alterations. Except as may otherwise be provided in the Planned Community Documents, each Unit Owner shall have the right, exercisable at any time and from time to time, to install, at that Unit Owner's sole cost and expense, that decorations, fixtures, and coverings (including, without limitation, painting, finishing, wall papering, carpeting, pictures, mirrors, shelving, and lighting fixtures) on the surfaces of the walls, ceilings, and floors that face the interior of that Unit Owner's Townhome Unit and to a depth of one inch behind such surfaces for the purposes of installing nails, screws, bolts and the like, and to alter or remove interior walls, in whole or in part, in order to change that Townhome Unit's layout, or to improve the Townhome Unit, provided that no such installation, alteration, removal, or change shall impair the structural integrity of that Townhome Unit or of the Building of which it is a part or violate any Law. The Association reserves the right to regulate the exterior appearance of the window coverings and treatments installed on all Townhome Unit windows

3.9. Association Access. The Association or its designee shall have the right of access to any Lot during reasonable hours of the day and, in the event of emergencies, at any time: (i) to make

inspections, repairs, replacements, or improvements to the Common Areas within a Lot; (ii) to remedy conditions on the Lot itself which could result in damage to other portions of the Building of which the Lot is a part; or (iii) to abate any violation of Law.

4. DEVELOPMENT RIGHTS.

4.1. Development Rights. During the Declarant Control Period, the Declarant reserves the following development rights for the entire Property: (a) to add real estate to the Property in accordance with *Section 5.2* of this Declaration; (b) to add Common Areas; (c) to relocate Unsold Lots within or withdraw real estate from the Property but no withdrawal shall be made without the prior consent of the Zoning Entity; (d) To alter the size of any Unsold Lot, recombine or merge two or more Unsold Lots, and subdivide any Unsold Lot but no further subdivision of any Lot shall be made without the prior consent of the Zoning Entity; (e) Subject to the terms of the Bylaws, to appoint and remove any Association Board member; and (h) other rights described in NCGS §47F-1-103(28).

4.2. Exercise. Declarant, in its sole discretion, and from time to time during the Declarant Control Period, may exercise any or all of the Development Rights. During the Declarant Control Period, no amendment to or modification of the Development Rights may be made without the Declarant's prior, written consent, which it may arbitrarily withhold. After the expiration of the Declarant Control Period any and all Development Rights shall be exercised by the Association's Board or as otherwise designated by the Association.

4.3. Assignment. Declarant reserves the right to assign the Development Rights to any Person which acquires title to all or any portion of the Property. The assignment shall not be effective unless it is in writing (specifically describing the Development Rights being assigned), signed by the Declarant, is accepted, in writing, by the assignee, and recorded with the County registry. If at any time the Development Rights have expired without an assignment by Declarant, the Declarant will be deemed to have assigned the Development Rights to the Association.

4.4. Delegation. The Declarant may, from time to time, delegate any or all of its Development Rights to such agents as it may nominate and on such terms as it chooses.

5. ANNEXATION OF ADDITIONAL PROPERTIES.

5.1. Annexation by Members. Except as provided in *Section 5.2*, Additional Properties may be added and annexed to the Property only if one hundred percent (100 %) of the Allocated Interest approve the annexation.

5.2. Annexation by Declarant. The Declarant may, at any time during the Declarant Control Period and from time to time, annex all or any portion of the Additional Properties to the Property and add additional Lots within those Additional Properties to the Planned Community without the consent of the Members. Declarant shall not be required to annex any particular portion(s) of the Additional Properties or annex them in any particular order. The annexation will be accomplished by the recording of the appropriate Plat and Declaration of Annexation as required by the Act, duly executed by Declarant, describing the lands annexed and Lots created. No other action or consent shall be necessary. Subsequent to recordation of the Declaration of Annexation and new Plat, the Declarant shall deliver to the Association a copy of the recorded Declaration of Annexation and new Plat. Notwithstanding the preceding to the contrary, the Declarant's right to annex additional properties shall be subject to the following restrictions: (a) the Improvements to be included in the annexed property (the "Annexed Improvements"), if any, must be reasonably consistent in design and function to the existing Improvements included within the Property; (b) those Annexed Improvements, if any, must be substantially completed before the annexation is effected; (c) any liens relating to those Annexed Improvements, if any, must not adversely affect the rights of existing Owners or the priority of the Mortgagees; (d) all prior period property taxes and assessments must be paid or otherwise satisfactorily

provided for prior to the annexation; and (e) the Governmental Mortgagee(s)' prior written consent, if any Governmental Mortgagee holds, insures or guarantees any Mortgage on an existing Lot.

5.3. Governmental Approval. Notwithstanding the language of *Sections 5.1* and *5.2* to the contrary, any addition or annexation of additional properties must, to the extent legally required, be approved by the Zoning Entity.

5.4. Title to Common Areas. Fee simple title (subject to this Declaration, current and subsequent years ad valorem taxes, and rights-of-way, restrictive covenants and easements of record) in the Common Area included within the Additional Properties annexed into the Planned Community shall be conveyed to the Association. That conveyance of title shall be done prior to the First Sale of Lots within that annexed property.

6. MEMBERSHIP AND VOTING RIGHTS. Ownership of a Lot shall be the sole qualification for membership in the Association. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The Association's Board may make reasonable rules relating to the proof of ownership of a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Members shall be entitled to vote as prescribed in the Bylaws..

7. COVENANT FOR ASSESSMENTS.

7.1. Lien of Assessments.

7.1.1. Each Owner of a 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 to the Association the Assessments as provided in this Declaration, respectively. In addition to the Annual Assessments and the Special Assessments, the Association shall have the authority, through the Association's Board, to establish, fix and levy an individual assessment on any Lot to secure the liability of that Owner to the Association arising from Owner's breach of any of the provisions of this Declaration.

7.1.2. The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") and may be collected on a monthly, quarterly or yearly basis as determined by the Association Board. Annual Assessments shall be charged to each Owner of a Lot in Use but not before the Board of Directors approves the amount and start date. Special Assessments shall be charged to each Lot without regard as to whether or not it is a Lot in Use. Assessments, together with interest thereon and the costs of collection (including reasonable attorney fees), shall be a lien on the applicable Lot from the due date for the Assessment as provided under the Act, continuing until paid in full, as well as a personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Owner's successors in title unless expressly assumed by the successor.

7.1.3. No Owner shall be exempted from liability for the payment of Assessments by waiving the use or enjoyment of any or all of the Common Areas or by abandoning its Lot. No Owner shall be entitled to a diminution or abatement in the Assessments for any inconvenience or discomfort arising from: (i) the failure or interruption of any utility or other services; (ii) the making of repairs or improvements to the Common Areas or any Lot; or (iii) any action taken by the Association Board or the officers of the Association to comply with Law.

7.1.4. All Lots dedicated to and accepted by a local public authority and the Common Areas shall be exempt from the Assessments.

7.2. Purpose of Assessments. The Assessments shall be used exclusively for funding all Common Expenses (as previously defined), costs, expenses, damages, repairs and liabilities reasonably incurred by the Association in fulfilling the purposes of this Declaration, and reserves for these purposes.

7.3. Notice/Due Dates. Written notice of a Special Assessment or a change in the Annual Assessment shall be sent to every Owner subject thereto at least fifteen (15) days in advance of its due date. The due date for an Assessment shall be established by the Association Board, in the case of an Annual Assessment, or by the Owners, in the case of a Special Assessment. The Association shall, within ten (10) business days of a written demand for such, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any Assessment as to third parties acting in reliance on the statement.

7.4. Annual Assessments.

7.4.1. The Annual Assessments shall commence as of the date declared by the Association Board (the "Commencement Date"). Until that time, the Declarant shall pay all Common Expenses. All Lots in Use as of that date the Association Board commences the Annual Assessments shall begin paying Annual Assessments. Thereafter, Annual Assessments shall commence as to a Lot as of the date it becomes a Lot in Use and shall continue thereafter for so long as this Declaration remains in effect or this provision is subsequently amended. Liability for the Annual Assessment for the first calendar year shall be adjusted, according to the number of days remaining in that calendar year as of the date of the Lot becomes a Lot in Use. Annual Assessments, in the amount determined under **Section 7.4.2**, shall be charged to each Owner of a Lot in Use.

7.4.2. On or before January 1st of each year, the Association Board shall adopt a proposed budget. This proposed budget shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period), the anticipated Common Expenses for the Association for that same period, and any surplus or deficit in the Annual Assessments from the prior years. Within thirty (30) days after adoption of any proposed budget, the Association Board shall send each Owner a copy of that proposed budget and notice of a scheduled meeting of Owners to consider its ratification. The date of that meeting shall be not less than ten (10) nor more than thirty (30) days following mailing of the notice of the meeting. If the budget proposes an increase over the prior year's Annual Assessment of less than fifteen percent (15%), the budget shall be deemed ratified unless ninety percent (90%) of the Allocated Interests of all of the Lots in Use vote to reject the budget at that meeting. If the budget proposes an increase over the prior year's Annual Assessment of fifteen percent (15%) or more, the budget shall be deemed ratified only if approved by the vote of not less than sixty-seven percent (67%) of the Allocated Interests of all of the Lots in Use at that meeting. If the proposed budget is not ratified, the annual budget last ratified by the Unit Owners shall continue until such time as a subsequent budget is ratified by the Unit Owners. There shall be no requirement that a quorum be present at the meeting. The Approved Budget shall be the basis for calculating the Annual Assessment to be charged for each Lot in Use for the upcoming Annual Assessment Period. Upon adoption of the Approved Budget, the Association Board shall calculate the amount of the Annual Assessments for each Owner of a Lot in Use and send a notice of that amount to each Owner of a Lot in Use as required under this Declaration. The failure or delay of the Association Board to prepare or adopt a budget or to determine the Common Expenses for any Assessment Period shall not be deemed a waiver, modification or release of the Owners' obligation to pay Assessments. In such event, the Annual Assessments that were computed on the basis of the Common Expenses for the last Assessment Period shall continue to be the Annual Assessments payable by the Owners until a new Approved Budget is ratified by the Unit Owners.

7.4.3. After the Commencement Date, Declarant may, but shall not be obligated to, loan the Association money to the extent that Annual Assessments paid by the Owners are inadequate. This advance shall be to the Association and on terms generally available to Declarant from its lending institution. Declarant, if also an Owner, shall also be responsible for the payment of Assessments as otherwise required by this Article.

7.5. Special Assessments. In addition to the Annual Assessments, the Association may, from time to time, levy a special assessment (the "Special Assessment") for the purpose of defraying in whole or in part the cost of any unexpected expense. A Special Assessment may be assessed at a meeting duly called for this purpose upon the vote of Owners holding not less than sixty-seven percent (67%) of the Allocated Interests of all of the Lots. An Owner's pro rata share of each Special Assessment shall equal its Allocated Interests percentage. A Special Assessment shall be collected from those Owners of Lots which exist as of the date the Special Assessment is approved by the Members.

7.6. Working Capital Contribution. At the closing of each Sale to a Homeowner, in addition to the Annual Assessment otherwise due for the remainder of the then current payment period, an amount equal to two months' worth of the then current Annual Assessment (the "Working Capital Contribution") shall be collected from the Owner or purchaser of the subject Townhome Unit and paid to the Association. The Working Capital Contribution shall not constitute advance payments of Annual Assessments, but shall nevertheless be used by the Association in the manner specified for Annual Assessments.

7.7. Fines/Suspensions. The Association Board, after a hearing as required under the Act and/or Bylaws, may impose fines against any Lot and/or suspend a Member's privileges for a failure to comply with the Declaration or Rules & Regulations. These fines shall be collected and enforced as an Assessment otherwise due to the Association from that Owner. Fines shall be paid not later than thirty (30) days after notice of the fine is given to the offending Owner. These fines shall not be construed to be exclusive and shall be in addition to all other rights and remedies to which the Association may be otherwise legally entitled. The amount of any fine imposed shall be determined by the Association Board; but, shall not, in any event, exceed One Hundred Fifty Dollars (\$150.00) per day for each day of continued violation or non-compliance. Such fines shall be assessments secured by liens as provided under the Act.

7.8. Uniform Rate of Assessment. Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots in Use or Lots, as the case may be, subject to the following:

(a) the Association Board may levy an individual assessment on any Lot to secure the liability of that Owner to the Association arising from that Owner's breach of any of the provisions of this Declaration or the Rules and Regulations.

(b) Any Common Expense or portion thereof benefitting fewer than all of the Lots shall be assessed exclusively against those Lots benefitted.

(c) Assessments to pay a judgment against the Association may be made only against the Lots in the Planned Community at the time the judgment was entered, in proportion to their Allocated Interests.

(d) If any Common Expense is caused by the negligence or misconduct of any Owner or Occupant, the Association may assess that expense exclusively against that Owner's Lot.

(e) If Allocated Interests are reallocated, Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Allocated Interests.

(f) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Area shall be equally assessed against the Lot(s) to which that Limited Common Area is assigned.

7.9. Non-Payment of Assessment Remedies of the Association. Any Assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the entire outstanding balance of any Assessment immediately due and payable if any installment thereof becomes delinquent. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall

incur a late charge in the then applicable amount fixed by the Association Board, shall bear interest from the date of delinquency at the lesser of the rate set by the Association Board (if one has been set) or eighteen percent (18%) per annum, and shall constitute a lien on that Lot when a claim of lien is filed of record as provided under the Act. The Association may bring an action at law against the responsible Owner and/or foreclose the lien against the applicable Lot in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Interest, costs, late charges, fines, and reasonable attorney fees incurred in enforcement of the lien shall be added to the amount of the delinquent Assessment. Each Owner, by the acceptance of a deed to a Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Owner, personally, for the collection of all debts due by it to the Association and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property in accordance with Article 2A of Chapter 45 of the General Statutes. Each Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed Lot. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Areas or abandonment of his Lot. This Section does not prohibit other actions to recover the sums due from an Owner nor prohibit the Association from taking a deed in lieu of foreclosure.

7.10. Subordination of the Lien. The lien of the Assessments shall be subordinated to the lien of the Mortgage on a Lot. Provided the Association is given prior written notice of such, the sale or transfer of a Lot pursuant to a Foreclosure shall extinguish the lien of the delinquent Assessments for that Lot. Otherwise, the sale or transfer of a Lot shall not release or otherwise affect the lien of delinquent Assessments; provided, that no Owner shall be liable for the payment of any part of any Assessments assessed against its Lot subsequent to a sale, transfer, or other conveyance by it of that Lot. In no event, however, shall any sale or transfer, whether pursuant to a Foreclosure or not, relieve the prior Owner from personal liability for the delinquent Assessments or the Lot from liability for any Assessments subsequently becoming due or from the lien therefore.

7.11. Exempt Property. All Lots dedicated to and accepted by a local public authority and the Common Areas shall be exempt from the Assessments.

7.12. Surplus Funds. Except as determined by the Association Board from time to time, Surplus funds shall not be distributed to the Owners, pro rata, in accordance with their respective Allocated Interests or be used as a credit against each Owner's future Assessments.

8. PARTY WALL.

8.1. Rules of Law. All common party walls between individual Townhome Units shall conform to the requirements of the North Carolina State Building Code. The general rules of law regarding party walls, lateral support, and liability for property damage due to negligence or willful acts or omissions shall apply to each wall which is built as part of the original construction of the Dwellings within the Properties and which is placed on the dividing line between Lots, and to all reconstruction or extensions of such walls, to the extent not inconsistent with the provisions of this Article.

8.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

8.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who or which uses the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

8.4. Easement and Right of Entry for Repair, Maintenance and Reconstruction.

Every Owner shall have an easement and right of entry upon the Lot of any other Owner and the Association Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot(s) and Common Area to as nearly the same condition as that which existed prior to commencement of the work as is reasonably practicable. Except in an emergency situation, an Owner entering upon another Owner's Lot as provided herein shall give reasonable oral or written notice to the Owner of the Lot on which such entry is to be made.

8.5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligence or willful act or omission, causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing the necessary protection against such elements and of repairing any damages resulting from such Owner's failure to timely and adequately provided such protection.

8.6. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

8.7. Certification by Adjoining Property Owner. If any Owner desires to sell his Lot, such Owner, in order to assure a prospective purchaser that no Owner of an adjoining Lot has a right of contribution as provided in this Article, may request the adjoining property Owner to certify as to whether or not a right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to promptly make such certification, without charge, and, if the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed. If an adjoining Owner fails to give a certification within ten (10) days of actual receipt of such request, such failure shall be conclusively deemed a certification that no such contribution is due.

9. MAINTENANCE.

9.1. Association's Responsibility. In addition to maintenance of the Association Common Area and the improvements and facilities located thereon, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the "Yard Improvements") installed by the Declarant, or the Association, and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping). The Association shall also be responsible for certain exterior maintenance of the Dwellings, including the painting, repair, replacement and care of exterior building surfaces (excluding exterior doors [front and rear], screened porches, decks, wood porches, sidewalks, stoops, parking areas/driveways, exterior light fixtures, windows, exterior hose bibs or screens), roofs, gutters and down spouts. The Association shall not be responsible for maintenance or repair of glass surfaces or screens or for any improvements not part of the original construction unless the architectural approval granted by the Association for such subsequent improvements specifically provides that the Association will maintain such improvements. Furthermore: (i) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fence or any other obstruction; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements or the exterior of any Townhome Unit when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental entity; and (iv) the Association shall not be responsible for repairing any damage caused by the negligent or willful act or omission of the Owner of such Townhome Unit or such Owner's tenants, subtenants, or family members, or the guests or invitees of any of them.

9.2. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Any maintenance on a Lot and Limited Common Area for that Lot that is not the responsibility of the Association, whether by the terms of this Declaration or by written acceptance of same, shall be the responsibility of the Owner of such Lot. Each Owner shall keep his Lot and Townhome Unit in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements that the Association is responsible for maintaining as provided in this Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, including but not limited to watering and/or replacement of plant material, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Townhome Unit erected thereon, and the cost of such exterior maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with this *Section 9*. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this *Section 9*.

9.3. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in this *Section 9*, the cost of any such maintenance, replacement or repairs (including the administration fee) shall be a limited special assessment against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under this Declaration, enforceable under the terms thereof.

10. INSURANCE/CONDEMNATION.

10.1. Association Coverage.

10.1.1. No later than the date the first Lot in the Community becomes a Lot in Use, the Association Board, in its sole discretion, may obtain and maintain, to the extent available, covering the interest of the Association, the Association Board, and all Owners and their Mortgagees, as their interests may appear, liability insurance in reasonable amounts approved by the Board of Directors covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas.

If the insurance described above is not reasonably available, the Association promptly shall cause notice of that fact to be sent to all Owners. Insurance policies carried pursuant to Section shall provide that: (i) Each Owner is an insured person under the policy to the extent of the Owner's insurable interest; (ii) The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household; (iii) No act or omission by any Owner, unless acting within the scope of the owner's authority on behalf of the Association, will preclude recovery under the policy; (iv) 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; and the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner, and each Mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

10.1.2. The Association Board may also obtain and maintain (in amounts to be determined by it): (1) fidelity insurance covering all members of the Association Board, officers, or employees of the Association who handle funds of the Association; (2) workmen's compensation insurance; and (3) such other insurance coverages as it deems desirable and necessary. The commercial general liability insurance shall not, however, cover the liability of an Owner arising from an occurrence within its own Lot.

10.2. Owner's Coverage. It shall be the responsibility of each Owner, at his own expense, to obtain hazard insurance in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction to his Townhome Unit from any hazard. These policies shall: (i) name the Association as an additional insured; (ii) contain waivers of subrogation and of any reduction of pro rata liability of the insurer as a result of any insurance carried by Association or of any invalidity arising from any acts of the Association or any other Owners; and (iii) shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association. Each Owner shall satisfy the Association's Board that at all times his property is covered by the required hazard insurance.

10.3. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be included in Common Expenses.

10.4. Prohibited Acts. No Owner shall do or keep anything on the Property which shall cause an increase in the premiums for or the cancellation of any insurance maintained by the Association.

11. EASEMENTS.

11.1. Association Easements. An easement is granted to the Association and its designees to enter in or to cross over the Common Areas and Lots to the extent reasonably necessary to perform its obligations under this Declaration or the Act. Every Lot shall be subject to an easement for entry by the Association and its designees for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Common Areas. In addition to those easements described in the following subsections, the Declarant (during the Declarant Control Period) and the Association shall have the right to subject the Property to easements which it reasonably deems beneficial to the development and/or operation of the Planned Community. The cost of maintaining these easements shall be a Common Expense.

11.2. Utility Easements. The Declarant reserves unto itself and the Association a perpetual, nonexclusive alienable, and releasable easement and right, on, over and under the Property to erect, maintain, and use poles, wires, cables, conduits, lines, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water drainage, cablevision, or other public conveniences or utilities on, in or over those portions of the Property as may be reasonably required to serve the Lots. Notwithstanding such, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated in the Common Areas except as approved by the Declarant or, after the end of the Declarant Control Period, the Association. Should any utility furnishing a service covered by this general easement request a specific easement by separate recordable documents, Declarant or, after the end of the Declarant Control Period, the Association will have the right and authority to grant such easement. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation to maintain reasonable standards of health, safety, and appearance. Such rights may be exercised by any licensee of the Declarant. This reservation shall not create any obligation on the part of the Declarant to provide or maintain any such utility or service. Whenever possible, utilities within the Property, whether located within the Common Areas or not, shall be installed and maintained underground. The easement provided for in this Article shall in no way affect other recorded easements on the Property.

11.3. Temporary Construction Access and Disturbance Easement. A temporary construction easement over, through and to the Property is reserved and established in favor of Declarant for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials and the necessary disturbance of land for the initial construction contemplated for the Planned Community.

11.4. Repair, Maintenance and Reconstruction Easement.

11.4.1. The Association shall have a perpetual access easement over the Common Areas and Lots to the extent reasonably necessary to perform repair, maintenance, replacement or reconstruction obligations under this Declaration or the Act. The repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Association shall, at its expense, restore, to the extent reasonably practical, the Lot and adjoining Lots to as near the same condition as that which existed prior to the commencement of the work. Should the Association fail to restore the Lots as required, the affected Owner(s) may, at the Association's expense, complete the required restoration.

11.4.2. Each Owner shall have a perpetual access easement over the adjoining Common Areas and Lots to the extent reasonably necessary to perform repair, maintenance or reconstruction of his Lot. The repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall, at its expense, restore, to the extent reasonably practical, the adjoining Common Areas and Lots to as near the same condition as that which existed prior to the commencement of the work. Should the Owner fail to restore the Common Areas and Lots as required, the adjoining Unit Owner and/or Association may, at the other Unit Owner's expense, complete the required restoration.

11.4.3. The easement granted under this *Section 11.4* shall be restricted to that Common Areas and/or adjoining Lots which shall be reasonably servient and proximate to the Lot(s) upon which the construction is taking place.

11.5. Easement for Minor Encroachments. All Lots and the Common Areas shall be subject to a perpetual easement for the encroachment of the initial Improvements constructed to the extent that such initial Improvements actually encroach. These authorized encroachments shall include, but not be limited to, such items as HVAC equipment, overhanging eaves, roofs, gutters, downspouts, exterior storage rooms, bay windows, stoops, decks, patios, porches, steps and walls. In the event a Building is partially or totally destroyed and then rebuilt, the Owners of the Lots so affected agree that minor encroachments of part of the adjacent Lots or Common Areas due to construction shall be permitted and that a valid easement for this encroachment and the maintenance thereof shall exist.

11.6. Drainage Easement. For a period of twenty (20) years from the date of this Declaration, the Declarant reserves an easement over and under the Property to maintain and to correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, the Declarant shall restore the affected property to its original condition to the extent practicable. Declarant shall give the Association thirty (30) days' advance written notice of Declarant's intent each time it plans to exercise its rights pursuant to this *Section 11.6*. In addition, Declarant establishes and/or reserves in the name of the Association and for the benefit of each Owner, a perpetual, non-exclusive easement over the various "20' Private Drainage Easement" areas described on the Plat (the "Drainage Easement Areas"). This easement over the Drainage Easement Areas shall be for the purposes of installing, replacing, repairing and/or maintaining Stormwater Control Measures.

11.7. Governmental Easements. Declarant reserves an easement for the benefit of the appropriate governmental entity over the Common Areas, existing now or in the future, for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage. An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persons to enter upon the Community's streets and the Common Areas in the performance of their duties.

12. LAND USE REGULATIONS.

12.1. Uses. Notwithstanding the uses otherwise permitted by the Zoning Entity's applicable zoning code and unless otherwise permitted by this Declaration, use of each Lot shall be strictly limited to residential purposes and those other purposes expressly permitted by this Declaration. Upon the prior