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FOR REGISTRATION REGISTER OF DEEDS
JENNIFER H. MACNEISH
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INSTRUMENT # 2009014202

**Return To
J. L. Seay, Jr.**

**STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER**

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR DURANGO PLACE TOWNHOMES**

THIS DECLARATION, made on the 3rd day of APRIL, 2009 by **DURANGO PLACE, LLC**, a North Carolina limited liability company, hereinafter referred to as "Declarant" for the purposes hereinafter stated;

WITNESSETH:

WHEREAS, Declarant is the owner of certain property (herein the "Properties") located in the City of Wilmington, County of New Hanover and State of North Carolina, more particularly described as:

All of Durango Place Townhomes subdivision, including the Lots, Limited Common Elements and Common Elements as shown on a map thereof recorded in Map Book 54 at Page 23 of the New Hanover County Registry, being the same property as was conveyed to Durango Place, LLC by deed recorded in Book 5073, Page 1389, New Hanover County Registry.

WHEREAS, Declarant desires to subject said Properties to certain covenants, restrictions, reservations, easements, servitudes, liens and charges as herein set forth.

NOW THEREFORE, Declarant, pursuant to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), declares that the Properties described above shall be held, sold and conveyed together with and subject to said Act, as well as the following easements, restrictions, covenants, and conditions all of which shall run with the land and bind and inure to the benefit of all Owners and parties who may acquire any right, title or interest in or to any of such Properties.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to the Durango Place Townhomes HOA, Inc., its successors and assigns, a North Carolina nonprofit corporation homeowner's association.

Section 2. "Owner" or "Owners" shall mean and refer to the record owner, whether one or more persons or entities, of 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.

Section 3. "Properties" shall mean the subdivision known as Durango Place Townhomes, hereinbefore described, and all improvements thereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, sometimes referred to herein as the "Planned Community".

Section 4. "Common Elements" shall mean any real estate within the Properties, owned or leased by the association, other than a Lot. Common Elements are sometimes used interchangeably with and means the same thing as "Common Area". The Common Elements are more particularly described and shown on the recorded plat(s) of the Properties. Included in the Common Elements is a certain Pond, as shown on the above map, which was constructed for the purpose of serving as a retention pond to collect storm water runoff, as required by the State of North Carolina, for which the Association shall be responsible to maintain. The Common Elements are not dedicated for the use by the general public and no such public dedication is intended. Declarant shall convey the Common Elements to the Association, in fee simple, free and clear of secured monetary obligations incurred by the Declarant, but subject to all easements and other non-monetary encumbrances appearing of public record including those created by this Declaration. The conveyance of the Common Elements as stated herein shall occur prior to or at the same time as the conveyance of the first Lot to an Owner.

Section 5. "Limited Common Element(s)", sometimes hereinafter referred to as "LCE", means any portion of the Common Elements as shown and designated on recorded plat(s) of the Properties, or by operation of law, for the exclusive use of one or more but fewer than all of the Lots. Each Lot shall have an LCE area appurtenant thereto, which LCE area is for the exclusive use and enjoyment of the Owner of said Lot. The purpose of the LCE is to provide the Owner of each Lot an area of outdoor backyard for such Owner's exclusive use and enjoyment.

Section 6. "Lot" means a physical portion of the Planned Community designated for separate ownership or occupancy. Each Lot is shown as such upon the recorded map of the Properties. Whether stated in the deed out or not, each Lot shall be conveyed together the exclusive use of the Limited Common Element adjoining said Lot, as shown on the recorded map of the Properties, and together with a non-exclusive access easement over the Common Elements to reach public roads. Whether stated in the deed or not, each Lot shall be conveyed together with and subject to the rights and obligations of this Declaration.

Section 7. "Declarant" shall mean and refer to the developer of the Properties, Durango Place, LLC, a North Carolina limited liability company, its, successors and assigns.

Section 8. "Townhome" or "Townhomes" shall mean and refer to the attached single family dwelling unit on each Lot, which shares a common party wall with another Townhome.

Section 9. Definitions of such other common terms as found in N.C.G.S. 47F-1-103 are hereby incorporated herein.

ARTICLE II USE RESTRICTIONS, ARCHITECTURAL CONTROL AND OWNER MAINTENANCE

Declarant hereby subjects the Properties and the same shall be held subject to the following covenants, conditions and restrictions, running with the land:

1. Residential Townhomes. No Lot shall be used except for single family residential purposes consistent with the zoning laws of the City of Wilmington; however, Developer and its assigns shall have the right to operate a model home for sales purposes on any Lot it owns. No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than one residential dwelling which may be attached by common party wall to an adjacent Lot dwelling structure. No concrete block, concrete brick, asbestos siding, stucco siding, cinder block nor masonite-type siding shall be used for the exterior of any dwelling. The exterior sides of all

dwellings shall be clay-brick material, uniform in appearance throughout the Planned Community. No mobile home, modular home or prefabricated residential structure shall be erected or placed or allowed to remain upon any Lot.

2. Approval of Plans for Site Improvements. No Owner shall construct, make or maintain any exterior addition, alteration or improvement (including painting) in or to any Lot or Limited Common Elements until a copy of the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography, by the Declarant or its designee, and after the sale of all Lots by the Declarant, the approval/disapproval authority shall be the right and responsibility of the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board of Directors. In the event the Declarant or if applicable the Board of Directors or its appointed Architectural Committee, fails to approve or disapprove such plans and specifications within thirty (30) days after receiving the same, approval will be deemed to have been given. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole discretion of the applicable deciding authority shall be deemed sufficient. Neither Declarant, the Board of Directors, or the Architectural Control Committee shall be responsible for any structural or other defects in plans and specifications submitted to it or for defects in any structure erected according to such plans and specifications.

3. Temporary Structures and Clotheslines. No trailer, tent, shack, barn, camper or other similar structure shall be erected or placed on any Lot, Common Elements or Limited Common Elements. Also, no clotheslines shall be permitted on any Lot, Common Elements or Limited Common Elements.

4. Set Backs. Since the establishment of standard inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of trees and other related considerations, no specific setback lines are herein established. Reference is, however, made to any governmental mandated setbacks as may be required by subdivision ordinances or zoning laws.

5. Subdivision of Lots. No Lot shall be subdivided, or its boundary line changed without the written consent of the Declarant or the written consent of the Association acting through its Board of Directors and approved by the City of Wilmington. However, the Declarant, prior to an affected Lot being conveyed, hereby expressly reserves the right to re-plat any Lot or change the alignment or placement of any street as required in Declarant's sole discretion and to take such other steps as are reasonably necessary to make such re-platted Lot suitable and fit as a building site.

6. Water and Sewer. Water for domestic use is available to Lots only through the Cape Fear Public Utility Authority (CFPUA) or other suitable government regulated system. However, the Declarant or Association may, but is not required to, construct wells in the Common Elements for the purpose of providing lawn irrigation; provided all such wells and pumps meet applicable codes, and are properly enclosed and landscaped. Sewage disposal shall be only by tapping into the CFPUA sewer system or other suitable government regulated system.

7. No Offensive Activities. No noxious or offensive trade or activity shall be conducted on any Lot or within any appurtenant LCE, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No Lot or appurtenant LCE may be used for commercial or industrial business purposes, or utilized in any other manner in violation of the zoning laws of the City of Wilmington. No plant, animal, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. Except in connection with construction activities, no burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials or trash of any other kind shall be permitted on any Lot. No person shall cause any unreasonably loud noise (except for security devices) anywhere on the Properties.

8. Animals. No animals, livestock or poultry of any kind, shall be kept on any Lot or appurtenant LCE; except that house pets are permitted so long as they do not constitute a danger or

nuisance to other Owners, and so long as the Owners of such permitted pets adhere to the Rules and Regulations as may be established from time to time by the Board of Directors, and subject to governmental regulations and ordinances governing the same, including City of Wilmington leash laws. No Owner shall allow his or her pet to run freely through the Properties.

9. Maintenance by Owner. It shall be the responsibility of each Owner to provide for the upkeep of, and to maintain and replace as needed, all exterior glass, windows, window frames, window screens, exterior doors and door frames and screen doors of the Townhome structure, and all porches, decks and patios situated on Owner's Lot or LCE. It shall be the responsibility of each Owner to provide for the upkeep of and to maintain and replace as needed all outdoor heating and cooling units, HVAC components which serve the Townhome on Owner's Lot, whether located on such Lot, or in the Common Elements, or Limited Common Elements. Every Owner shall keep its respective Lot and appurtenant LCE clear of rubbish, trash, unsightly debris and junk which would tend to decrease the beauty of the neighborhood as a whole or the specified area. In the event that an Owner violates or otherwise fails to meet the requirements or abide by the restrictions set forth in this paragraph, the Association is hereby delegated and granted the right of self help, and permission at reasonable times to enter upon the said Lot or LCE, for the purpose of correcting the violation or deficiency at Owner's expense and such entry shall not be deemed a trespass. Prior to such entry, the Association shall first attempt to notify, by any reasonable means available, the Owner of the violation claimed and give the Owner a reasonable opportunity to first correct the violation. The amount of money so expended by the Association to correct such violation(s) shall be charged as an assessment to such Owner exclusively and be a lien against such Owner's Lot. As an additional remedy, and not in lieu of any other remedy, the Association may impose reasonable fines upon an Owner who violates the provisions of this paragraph, the procedures for imposing said fines being as set forth in N.C.G.S. 47F-3-107.1. The responsibility for maintaining any or all of the items referenced in this Section may be assumed by the Association, but such assumption shall require the assent of sixty-seven percent (67%) of the Owners (which votes may be cast in person or by proxy) who are eligible to vote at a meeting duly called for such purpose.

10. Fuel Tanks and Garbage Cans. No fuel tanks or similar fuel storage receptacles, if any, may be exposed to view from the Parking Area Common Elements. Garbage cans, carts or other similar receptacles for trash must be kept in screened areas as provided by the Declarant/builder, except the night before or on the day scheduled for collection, and upon collection by sanitation service, returned promptly to screened area.

11. Vehicles/Boats. No trailers, campers, boats, recreational vehicles, motor homes, or large vehicles exceeding one ton, may be kept or parked upon the Properties, except that the Board of Directors may, but need not, establish procedures by which such vehicles or boat may be temporarily parked on the Properties in designated areas. The Association shall have the right to tow such non-permitted trailers, campers, boats, recreational vehicles, motor homes and large vehicles at the owner's expense. No inoperable motorized vehicle, junk vehicle or vehicle without current registration and insurance shall be permitted on the Properties. However, grounds maintenance equipment may be stored and maintained on Properties with the prior written approval of the Board of Directors.

12. Signs/Flags. After initial construction by Declarant/builder is completed, no signs or billboards shall be displayed or maintained on any Lot, except real estate for sale or for rent signs or other related subdivision signs allowed by the Rules and Regulations or approved in advance by the Declarant or Board of Directors. Nothing herein is intended to regulate or prohibit the display of the flag of the United States or North Carolina, and Owners are permitted to display the same as long as such flag is of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. Sections 5-10, as amended, governing the display and use of the flag of the United States.

13. Party Walls. Each Townhome shares a common party wall with one other Townhome. The boundary line between each Lot, where such common party wall exists, runs through, or is intended to run through and with and along the middle of such common party wall. If the recorded plat lines for any Lot are not in fact substantially through and with and along the middle of the common party wall as such party wall exists on the ground, then an easement for

encroachment of such party wall is hereby established, declared and granted to and in favor of the encroaching Lot Owner so affected, its successors and assigns to the extent of such encroachment. General rules of law and equity in North Carolina shall govern the existence, use and liability for property damage due to negligence or willful acts regarding such party walls. No Owner shall impair the structural integrity of any party wall nor diminish the fire protection afforded by any party wall. Any Owner who by a negligent or willful act or omission causes or permits a party wall to be damaged shall pay the cost of restoring such party wall to its condition prior to such damage. If a party wall is destroyed or damaged by fire or other casualty, the Owners of such party wall, working together through the Association and its insurance carriers, shall promptly restore it. Repairs shall be undertaken in such manner as will restore a party wall to its original condition in accordance with its original design and construction. In the event of a dispute concerning a party wall, the Owners having an interest therein and the Association shall submit such issues in dispute to arbitration, each Owner promptly selecting one arbitrator, qualified by experience and education. The Association will in turn select one additional arbitrator. The arbitrators shall be requested to render a decision within thirty days after the last selection. The decision of a majority of the arbitrators shall bind the Owners and their successors in interest. The cost of the arbitration shall be paid by the losing party unless the arbitrators determine that the cost should otherwise be allocated between the parties.

14. Parking. Parking shall not be permitted upon any Lot; such Lots have not been platted or constructed to allow for such on-site Lot parking. The Owner of each Lot is hereby assigned the exclusive right to park in designated, assigned parking spaces located within the Common Elements, as marked by the Declarant during the initial construction of the Planned Community. The Board of Directors may further create, assign, reassign, designate or re-designate vehicle parking spaces to meet the future needs of the Association and its members, so long as no Owner is deprived of the exclusive use of at least the same number of parking spaces as originally assigned.

15. Declarant Exclusion. Notwithstanding any provision to the contrary, this Declaration, the Association's Articles of Incorporation, By-Laws and its Rules and Regulations shall not be applied to Declarant or interpreted in such a way as would prevent, impede or hamper the Declarant, or any person designated by the Declarant from time to time in notices to the Association, from exercising Special Declarant Rights under the Planned Community Act or engaging in the development, construction and sales of the Properties in accordance with Declarant's plan of development for Durango Place, and amendments thereto.

ARTICLE III HOMEOWNERS' ASSOCIATION

The Association shall be a non-profit North Carolina corporation, to be incorporated no later than the date the first Lot is conveyed. The Association is delegated and shall have the following rights and responsibilities:

Section 1. Association Maintenance, Repair and Replacement of Improvements Located within Lots. The Association shall be responsible for maintaining, repairing and replacing as necessary the exterior elements and components of a Townhome unit located within each Lot, including but not limited to siding, roofs, trim, eaves, gutters, down spouts and other like exterior building surfaces (except for exterior glass, windows, window frames, window screens, exterior doors, door frames and screen doors, porches, decks, patios and heating and cooling units and HVAC components which shall be the responsibility of the Lot Owner). The Association shall be responsible for the reasonable maintenance of all grass lawn areas, plant beddings, ground cover, shrubs and plantings located within all Lots. Any common expense associated with such maintenance, repair or replacement of improvements within a Lot shall be assessed exclusively against such Lot so benefited. In any event, if any such common expense is caused by or arises from the negligence, misconduct, or misuse by any Owner or occupant, then the Association may assess that expense exclusively against that offending Lot Owner or occupant's Lot.

Section 2. Association Maintenance, Repair or Replacement of Limited Common Elements. The Association shall be responsible for the reasonable maintenance, repair or replacement of

Limited Common Elements, including lawn areas, plant bedding areas, ground cover, shrubs and plantings located therein. Any common expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Lot(s) to which that Limited Common Element is assigned/benefited. However, if such maintenance, repairs or replacements to the Limited Common Elements arose out of, or became necessary due to the negligence, misconduct, or misuse by any Owner or occupant, then the Association may assess and allocate that expense exclusively against that offending Lot Owner or occupant's Lot.

Section 3. Association Maintenance, Repair or Replacement of Common Elements. The Association shall be responsible for causing the Common Elements and all improvements located thereon to be maintained, repaired and replaced when necessary, including but not limited to the private streets, parking areas, sidewalks, walls, fences, landscaping, Planned Community signage and entranceways, non-public easements and drainage ditches and recreational areas if any, located therein. The expense of maintenance, repairs and replacement of the Common Elements and improvements located therein shall be considered a common expense, equally assessed to Lots. However, if such maintenance, repairs or replacements to the Common Elements arose out of, or became necessary due to the negligence, misconduct, or misuse by any Owner or occupant, then the Association may assess and allocate that expense exclusively against that offending Owner or occupant's Lot.

Section 4. Association Maintenance, Repair and Replacement of Pond and Storm Water Facilities. The Association shall assume the duties of operating, maintaining, repairing and replacing when necessary, the Pond and storm water runoff facilities in accordance with the terms and conditions of the State storm water runoff permit below referenced, after the Declarant has completed construction of such facilities. Reference is hereby made to that certain Stormwater Management Permit No. SW8 060802 for Durango Place (the "Permit"), and any amendments thereto which were issued by the State of North Carolina. A copy of the Permit shall be kept on file with the Association's records. The Pond and drainage system was required by the State of North Carolina (DENR) and was constructed as a condition to the approval of the development of the Properties. The purpose of the Pond and the drainage system and easements feeding the pond is to control storm water runoff, thereby benefiting all Owners and the Properties. The Pond was designed and constructed in accordance with approved permitted standards, has a schedule of compliance for maintenance and repair, and is subject to other general conditions, all as contained in the Permit. Upon completion by the developer of the storm water facilities in accordance with the Permit, the Association shall execute all DENR documents accepting and transferring the Permit from the developer or Declarant to the Association. Action to enforce transfer of the Permit to the Association may be had by specific performance through the courts. Failure of the Association to execute the transfer documents accepting the Permit shall not relieve the Association from its obligations to operate and maintain the storm water facilities covered by the Permit. After completion of construction, if the Declarant is required by any government agency to provide any continued maintenance to a Common Element for which the Association is responsible to perform, then the Association agrees to reimburse the Declarant the cost of such maintenance within thirty (30) days of a written demand therefor. Maintenance, repairs or replacement of the Pond and storm water runoff facilities shall be a common expense, equally assessed to the Lots; however, if such maintenance, repairs or replacements to the Common Elements arose out of, or became necessary due to the negligence, misconduct, or misuse by any Owner or occupant, then the Association may assess and allocate that expense exclusively against such Owner or occupant's Lot.

Section 5. To establish and collect all assessments.

Section 6. To enforce the Covenants, Conditions and Restrictions herein.

Section 7. To pay property taxes levied on the Common Elements if any.

Section 8. To exercise all rights and perform all duties as provided in the North Carolina Planned Community Act, as may be amended from time to time, including but not limited to the exercise all powers as set forth in North Carolina General Statute 47F-3-102, the provisions of which are incorporated herein by reference.

ARTICLE IV
MEMBERSHIP CLASSES AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. 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 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 and 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.

Class B. The Class B member shall be the Declarant who shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, plus one hundred twenty (120) days, or

(ii) On January 1, 2020

ARTICLE V
COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following assessments: (i) annual assessments, (ii) special assessments, (iii) individual Lot assessments, (iv) insurance assessments, (v) initial working capital assessments, (vi) service assessments, (vii) reserve assessments, and (viii) such other assessments, including late fees, fine(s), interest, costs, reasonable attorneys fees and other charges allowed under this Declaration or Planned Community Act. The assessments (as the term is used collectively herein as to the charges above), if unpaid for a period of thirty (30) days or longer, shall become a lien against the nonpaying Owner's Lot upon the filing in the Office of the Clerk of Superior Court for New Hanover County of a Claim of Lien. Buyers are strongly encouraged to search for the filing of any such Claim of Lien in the New Hanover County Clerk's Office and to contact the Association or the Association's professional management agent prior to a closing. The Association or the Association's managing agent, upon demand, shall furnish to any Owner or Owner's buyer or the holder of a deed of trust on any Lot, a written certificate signed by an officer of the Association or management agent, setting forth the amount of the assessment, frequency of payment, whether said assessment is current, and any past due amounts owed.

Each such unpaid assessment shall also be and remain the personal obligation of the Person(s) or entity who was the Owner of such Lot at the time when the assessment fell due.

Section 2. Purpose of Assessments. The purpose of such assessments is to provide a source of funding to the Association so that it may: (i) operate, maintain, repair and replace when necessary improvements in the Common Elements and Limited Common Elements, including but not limited to private streets, parking areas, recreational areas, storm water facilities, non-public drainage easements, fences, walls, entranceways, signage, landscaping, and all other improvements located thereon as set forth herein; (ii) maintain, repair and replace as necessary exterior portions of Townhomes, except as otherwise provided herein; (iii) procure and maintain reasonable insurance policies as stated in this Declaration; (iv) pay utilities (as affects Common Elements), grounds maintenance fees, legal and accounting fees, professional management fees and governmental charges; and (v) to otherwise expend funds to promote the recreation, health, safety, and welfare of the Lot Owners as set forth herein and under the Planned Community Act.

Section 3. Annual Assessments and Budget. Annual assessments, including the initial

assessment, shall be established based upon a projected annual budget ratified by the Board of Directors, consistent with the purposes of such assessment and projected needs of the Association as set out in this Declaration. For the first year in which annual assessments are established, such assessments shall be adjusted according to the number of months left in that calendar year. Thereafter the annual assessment shall coincide with the calendar year. Within 30 days after the adoption of any proposed budget for the Planned Community, the Board of Directors shall provide to all the Lot Owners a summary of the budget and a notice of the meeting to consider ratification of the budget including a statement that the budget may be ratified without a quorum. The Board of Directors shall set a date for the meeting of the Lot Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors. During the period of Declarant Control, the Declarant or persons designated by the Declarant may appoint and remove officers and members of the Board of Directors (executive board). The period during which there is Class B membership is referred to herein as the period of Declarant Control.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association's Board of Directors may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvements upon the Common Elements, including fixtures and personal property related thereto, which shall be a Common Assessment, equally assessed to the Lots. However, if such maintenance, repairs or replacements to the Common Elements arose out of, or became necessary due to the negligence, misconduct, or misuse by any Owner or occupant, or for which an Owner is otherwise responsible, then the Association may assess that expense exclusively against that Lot Owner or occupant's Lot. Any such Special Assessment shall have the assent of two-thirds (2/3rds) of the members of each class who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

Section 5. Individual Lot Assessments. The Board of Directors shall also have the power to assess an Owner's Lot and adjoining Limited Common Element individually: (i) for the costs of maintenance, repairs or replacements determined by the Board to be substantially for the benefit of that Owner's Lot as opposed to benefiting all of the Lots, and (ii) other charges which by their nature are attributable to an Owner or Owner's Lot separately.

Section 6. Insurance Assessments. In addition to annual assessments, the Association may levy against the Lot Owners, an insurance assessment to provide a source of funding for the payment of insurance premiums on insurance policies purchased by the Association.

Section 7. Initial Working Capital Assessments. At the time of transfer of title to a Lot from the Declarant to a first Purchaser, a one time sum shall be collected at closing from said initial Purchaser, equal to one quarter (1/4th) of the estimated annual assessment levied, for the current year against each Lot, known as an initial working capital contribution, and such sum shall be paid to the Association for the purpose of insuring that the Association will have sufficient funds to meet initial operating expenses as well as unforeseen expenditures. This working capital contribution shall not be considered as an advance against assessments to become due, or a refundable deposit.

Section 8. Reserves. The Board of Directors may make assessments in such reasonable amounts so as to build up and maintain reasonable reserves for extraordinary expenditures, replacements and other unforeseen contingencies which may be included as part of the annual budget. Unless otherwise determined by the Board of Directors, the amount held as reserves shall not substantially exceed the amount reasonably required to assure the Association's ability to replace components as they reach the end of their useful lives. Reserve funds shall be a common expense. Any surplus of annual assessments in excess of the amount required for actual expenses, may, at the discretion of the Board of Directors, be placed in such reserve account, or may be credited to the next periodic installments due from Owners under the current fiscal year's budget.

Section 9. Assessment Rate. Assessments which by their nature benefits all Lots shall be fixed at a uniform rate for all Lots. Any common expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited. Assessments may be collected annually at the beginning of any calendar year, or incrementally every quarter or every month as determined by the Board of Directors.

Section 10. Commencement of Assessments. Assessments for each Lot shall commence upon the date which the Association through its Board of Directors makes a common expense assessment.

Section 11. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date may bear interest at the discretion of the Board of Directors at the rate not to exceed eighteen percent (18%) per year. In addition, a Lot Owner may be charged with reasonable attorneys' fees and court costs in endeavoring to collect any debt owed the Association in accordance with the Planned Community Act. The Association, at the discretion of its Board of Directors, may charge for late payments of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten (10%) percent of any assessment installment unpaid; and after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Lots) during the any period that assessments or other amounts due and owing to the Association remain unpaid for a period of 30 days or longer. Any assessment remaining unpaid for a period of thirty (30) days or longer, together with all interest, late charges and all other charges allowed under the Planned Community Act, levied against a Lot, shall constitute a lien on that Lot when a claim of lien is filed of record in the office of the Clerk of Court for New Hanover County, North Carolina. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or file a claim of lien against the Lot in question, including all costs, interest and late fees, in the Office of the Clerk of Court for New Hanover County and foreclose the lien against the Lot in question in a like manner as for mortgages or deeds of trust on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

Section 12. Priority of Assessment Liens. Any assessment levied against a Lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that Lot when a Claim of Lien is filed in the Office of the Clerk of Superior Court for New Hanover County in accordance with N.C.G.S. 47F-3-116. The lien under this section is prior to all liens and encumbrances on a Lot except (i) liens and encumbrances recorded before the docketing of the Claim of Lien in the Office of the Clerk of Superior Court, (ii) liens for real estate taxes and other governmental assessments and charges against the Lot, and (iii) as stated below.

Section 13. Subordination of the Lien to First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot held by an institutional lender. Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such Lot which became due prior to the acquisition of title to such Lot by such Purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all of the Lot Owners including the purchaser, his heirs, successors and assigns. Under no circumstances will such foreclosure or judicial sale relieve such purchaser from liability for any assessments which thereafter become due, nor from the lien of any such subsequent assessment filed against purchaser's Lot.

ARTICLE VI INSURANCE

Section 1. Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Association shall obtain and maintain, to the extent reasonably available, property, liability and other insurance as set out in this Article. In general:

a. The Association shall (i) purchase, and thereafter maintain, insurance policies relating to the Common Elements, Limited Common Elements, and additional insurance covering Townhome units as more particularly set forth in this Article; (ii) adjust all claims arising under such policies; (iii) execute and deliver releases upon payment of claims; and (iv) act as insurance trustee for the benefit of the Owners. The Association, its Directors, the managing agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at an unreasonable cost. Exclusive authority to negotiate losses under such policies shall be vested in the Board of Directors of the Association or with its authorized representative. The Association shall promptly notify the members, by mail or hand delivery, if such insurance is not reasonably available or becomes unreasonably available. The Association shall promptly notify the members of material adverse changes in, or termination of, insurance coverage obtained on behalf of the Association.

b. Insurance policies carried by the Association insuring Common Elements shall provide that:

(1) Each Lot Owner is an insured Person under the policy to the extent of the Lot Owner's insurable interest;

(2) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;

(3) No act or omission by any Lot Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;

(4) If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance;

Section 2. All Risk Insurance.

a. The Association shall obtain and maintain, to the extent reasonably available, a blanket "all-risk" hazard insurance policy with extended coverage, including fire, lightning, vandalism, malicious mischief, cost of demolition, debris removal, and water damage endorsements, insuring any improvements located on the Common Elements, and in addition thereto, all Townhomes (including without limitation the structure, floor coverings, drywall, fixtures, and other installations constituting a part of the original improvements in their completed form as constructed). Such insurance shall be obtained and maintained in an amount equal to one hundred percent (100%) of the full replacement cost (exclusive of the land, excavations, and other items normally excluded from such coverage), without deduction for depreciation (in such amount to be redetermined annually by the Association with the assistance of the insurance company affording such coverage).

b. **Deductible on Townhomes.** The deductible contained in any hazard policy obtained by the Association on the Townhomes shall be in such amount that the Directors of the Association, in their discretion, deem reasonable and economical. It is anticipated that the Association may elect a high deductible in order to control cost. Owners may want to consider obtaining separate Owners insurance to the extent such Owner may be responsible to pay the deductible or portion thereof. See sections below on Insurance Deductibles and Shortages, and Owner's Separate Insurance.

c. **Insurance Deductibles and Shortages.** In the event of a loss or damage to the Common Elements, which may be covered by any insurance maintained by the

Association, the deductible under the Association's master policy shall be paid as common expense, equally as between the Owners. In the event of a loss or damage to a Townhome or LCE, which may be covered by any insurance maintained by the Association, the deductible shall be paid by the Owner affected. In the event more than one Townhome sustains an insurable loss, deductibles shall be paid by the Owners thereof in their proportionate, equitable share. Other deficiencies including the cost of repair or replacement to any given Townhome in excess of insurance proceeds is an expense or deficiency to be borne by the Owner of such affected Townhome. Notwithstanding the above, in the event that the cause of any damage to any of the Properties originated as the result of an intentional or negligent act on the part of an Owner or Owner's tenant, then such Owner shall, upon demand, pay the deductible under the Association's master casualty policy. If an Owner fails to pay a deductible allocated under this paragraph, and the Association absorbs such deductible as a common expense, then the deductible so paid by the Association for the benefit of such Owner shall be charged to such offending Owner as an individual assessment, which assessment shall become a lien upon such Owner's Lot upon the filing of a claim of lien.

Section 3. Liability Insurance. The Association shall obtain and maintain comprehensive general liability insurance, in such limits as the Board of Directors may determine from time to time, 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 Properties in such reasonable amounts as the Association may from time to time determine, further covering the Association, each member of the Board of Directors, each officer of the Association, each employee of the Association, each employee of the Association and each Owner against any liability to the public or to any cross-liability as between Owners.

Section 4. Other Insurance. The Association shall obtain and maintain to the extent reasonably available:

- a. Adequate fidelity coverage to protect against dishonest acts on the part of Directors, Officers, trustees and employees of the Association and all others who handle, or are responsible for handling funds of the Association, including the managing agent. If the Association has delegated some or all of the responsibility for handling funds to a managing agent, such managing agent shall be covered by its own fidelity bond.
- b. If any portion of improvements on the Properties lie within a flood zone, as shown on current flood insurance rate maps, flood insurance shall be obtained in accordance with the applicable regulations for such coverage;
- c. Workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);
- d. Directors and officers liability insurance;
- e. Separate wind and hail coverage on the Townhomes if not otherwise available in general property "all risks" insurance policies; and
- f. Such other insurance as the Association may reasonably determine, or as may be required to obtain reasonable financing of the Townhomes.

Section 5. Owner's Separate Insurance. Each of the Owners, at their own expense, shall have the right to separately obtain insurance as such Owner deems necessary, in addition to or supplementing the policies carried by the Association. The Association's insurance policies may not insure all risks which an Owner may otherwise want to be covered. Each Owner should carefully read the Association's policies and understand the limitations and deductibles contained therein. Owners should consider the need for obtaining what is known in the industry as an HO 6 or other

similar policies/endorsements. Each Owner should consider obtaining and maintaining separate property and liability insurance to the extent the Association's policies may not protect such Owner, or for which the Owner may be responsible. For example, by way of illustration and not by limitation, Owners should consider obtaining their own insurance: (i) covering the full deductible under the Association's policy; (ii) covering extra improvements made by Owner, which add value and exceed the quality of those improvements as originally constructed by builder; (iii) covering personal contents of the Townhome for which the Owner is responsible; (iv) covering general liability of Owner for property damage and personal injury to others; (v) covering the cost of repair or replacement to Townhome in excess of available Association insurance proceeds; (vi) covering HAVAC equipment for which an Owner is required to maintain and replace; and (vii) covering such other items specifically excluded from coverage under the Association's policies.

Section 6. Alternative Property Insurance. If any of the insurance policies as described herein are not reasonably available, the Association shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners. If the Association shall determine that it would be more economical, in lieu of the Association maintaining a master policy on all the Townhomes, for the Lot Owners to purchase insurance policies covering each Lot and Lot Owner individually, then a Special Meeting of the Owners shall be called, and upon the assent of sixty-seven percent (67%) of the members (which votes may be cast in person or by proxy) who are eligible to vote at a meeting duly called for such purpose, the insurance coverage for all Townhomes may be turned over to the Owners to purchase individual policies under such terms and conditions as the Association may require, which requirements will include the following: (i) the Association shall be named as additional insured on each policy, (ii) each Townhome shall be insured for its full replacement value to the extent reasonably available, and (iii) such other reasonable terms as the Association may require.

ARTICLE VII RECONSTRUCTION AND REPAIR

Section 1. Insured Common Elements. In the event of a loss or damage to the Common Elements, which may be covered by any insurance maintained by the Association, the provisions of N.G.G.S. 47F-3-113 shall control.

Section 2. Insured Townhomes. This Declaration requires the Association to procure and maintain general property hazard insurance covering the Townhomes as stated herein. The Association shall hold any such insurance proceeds paid to it as trustee for the benefit of the affected Lot Owners and lienholders as their interest may appear; and in furtherance thereof, the proceeds from such insurance shall be used to promptly repair or replace the affected Townhomes in the event of a casualty thereto. Any surplus of proceeds arising from insurance on Townhomes shall be distributed in accordance with equitable principals.

ARTICLE VIII PROPERTY RIGHTS AND EASEMENTS

Section 1. Maintenance Easements. The Association, its agents, assigns and contract designees are granted the right to enter any Lot and Limited Common Elements at reasonable times for the purpose of maintaining, repairing and replacing improvements located thereon consistent with the requirements of this Declaration.

Section 2. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and pass with the title to every Lot. For each Lot, there is hereby designated, granted and established, an appurtenant, perpetual access easement, over and through the Common Elements, private streets, parking area, and sidewalks of Durango Place for purposes of ingress, egress and regress from each Lot to and from the public right of way known as Lullwater Drive. However, such Owner's general easement rights may not be exercised in such manner as to deprive any other Owner of its/his/her exclusive parking rights in designated parking spaces as otherwise set forth in this instrument.

Section 3. DENR. The North Carolina Department of Environmental and Natural Resources (“DENR”) and the City of Wilmington are granted a right of entry during normal working hours over the Common Elements for the purpose of inspecting the Pond and water runoff systems.

Section 4. Utilities. The Properties, including Lots and LCE are subject to such necessary and practical service easements for water lines, sanitary sewer lines, storm drainage, gas lines, telephone and electric power lines, cable television lines and other utilities, public or private, as shall be necessary for the construction, development, convenient use and continued enjoyment of the Properties as a planned community residential neighborhood.

Section 5. Emergency and Service Vehicles. An easement is hereby designated and granted over the private streets and parking lots located in the Common Elements for all public service vehicles including but not limited to emergency vehicles, fire, ambulance, rescue, power, telephone, cable, mail delivery and other such service related organizations as may be necessary for the protection of and general service to the Properties as a planned community residential neighborhood; however nothing herein is intended to offer or effect a dedication of the Common Elements to the public in general.

Section 6. Designation of Easement by Map. The Properties including Lots and LCE are further subjected to such easements as may be shown on the recorded map or maps of the Properties.

Section 7. Easement for Roof or Eave Overhang. If the original design and construction of any improvements on a Lot shall result in an encroachment by a roof or eave over and upon the Common Elements, Limited Common Elements or an adjacent Lot, an appurtenant easement is hereby established, declared and granted to and in favor of such encroaching Owner and its heirs, successors and assigns to the extent of any such encroachment for the period of time such encroachment exists, which easement shall continue upon any reconstruction or repair of the improvements made in accordance with the original design and construction. And the title to the adjoining Common Elements, Limited Common Elements or Lot over which such encroachment is placed is hereby made subject to and encumbered by the above referenced appurtenant easement for encroachment.

Section 8. Easement for Encroachment of Party Walls. The boundary line between each Lot, where a common party wall exists, runs through, or is intended to run through and with and along the middle of such common wall. If the recorded plat lines for any Lot are not in fact -- substantially through and with and along the middle of the common party wall as such party wall exists on the ground, then an easement for encroachment of such party wall is hereby established, declared and granted to and in favor of the encroaching Lot Owner and its heirs, successors and assigns to the extent of such encroachment for the period of time which such encroachment exists.

ARTICLE IX DECLARANT RIGHTS

Section 1. Special Declarant Rights. Declarant reserves all “Special Declarant Rights” as stated and defined in the Planned Community Act to wit: (i) to complete improvements indicated on plats and plans filed with the Declaration; (ii) to exercise any development right; (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; (v) to make the Planned Community part of a larger planned Community or group of Planned Communities; (vi) to make the Planned Community subject to master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of Declarant Control. The period during which there is Class B membership is referred to herein as the period of Declarant Control. Not later than the termination of the period of Declarant Control, the Lot Owners shall elect a Board of Directors (executive board). The term executive board means Board of Directors of the Association.

Section 2. Development Rights. The term “to exercise any development right” as stated above shall mean all acts, actions and activities of the Declarant and its designees, taken in good faith, to plan and develop the Properties as a Planned Community of duplex townhomes to be

known as Durango Place Townhomes, including, but not be limited to: (i) the right of the Declarant to develop the Properties in accordance with the Plans and Specifications, as may be amended, which have been submitted to and approved by the City of Wilmington through its Planning Department; (ii) the right of the Declarant to construct improvements on the Properties consistent with its building permits and building plans and specifications; (iii), the right of the Declarant to amend the Declaration consistent with and pursuant to Declarant Amendment provisions hereinafter stated; (iv) the right not to develop any lands shown on plats of the Planned Community as Future Development, if any; (v) the right of the Declarant to exercise all rights, duties and responsibilities to approve or disapprove Owner requested Plans for Site Improvements pursuant to Article II herein, for so long as Declarant shall own any Lot; (vi) the right of the Declarant to subject the Common Elements to public utility and drainage easements when required by local or state government agencies; and (vii) the right of the Declarant to subject the Common Elements to other utility easements, public or private, which are beneficial to the use and enjoyment of the Owners during the period of Declarant Control.

Section 3. Transfer of Special Declarant Rights. Declarant may transfer its Special Declarant Rights to any Person acquiring Lots previously owned by the Declarant by an instrument, signed by Declarant and transferee, evidencing the transfer and recorded in the New Hanover County Registry.

ARTICLE X RIGHTS OF INSTITUTIONAL LENDERS

"Institutional Lender" as the term is used herein, shall mean and refer to mortgagees including banks, savings and loan associations, insurance companies and other mortgage lenders and insurers of mortgages, their successors and assigns. So long as any Institutional Lender shall hold any mortgage upon any Lot, they shall, upon request, have the right (i) to be furnished with a copy of the annual financial statement or budget; (ii) to examine the books and records of the Association at reasonable times; (iii) to be given notice of an Owner's failure to pay any assessment or charge over 60 days past due on such Institutional Lender's secured Lot; (iv) receive notice of all meetings of the Association and right to designate a representative to attend all such meetings; (v) be furnished with a copy of any master insurance policy; (vi) receive notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (vii) receive notice of any condemnation or casualty loss that affects either a material portion of the Planned Community or the Lot securing its loan; and (viii) receive notice of any proposed action that requires the consent of a specified percentage of mortgage holders.

ARTICLE XI STATE REQUIRED STORM WATER REGULATIONS

Section 1. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the storm water management permit. All runoff from the built-upon areas on the site or Lot must drain into the permitted stormwater control system (on site wet detention pond). The stormwater system shall be maintained in accordance with Statewater Management Systems Permit No. SW8 060802, Division of Water Quality, Department of Environment and Natural Resources, State of North Carolina.

Section 2. These covenants pertaining to storm water may not be altered or rescinded without concurrence of the State and the City of Wilmington.

Section 3. These covenants are to run with the land and be binding on all persons and parties claiming under them.

Section 4. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality and the City of Wilmington.

ARTICLE XII
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment. Enforcement of the restrictions concerning storm water runoff may be enforced by the State of North Carolina.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

Section 3. Duration and Association Amendment. The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of the Planned Community and the Lots therein. All present and future Owners, tenants and occupants of Lots and their guests or invitees shall be subject to, and shall comply with the provisions of the Declaration, and any amendments thereto. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants, conditions and restrictions of this Declaration shall run with and bind the land and shall run with and bind any person having any interest or estate in any Lot, their heirs, successors and assigns, as through such provisions were made a part of each and every deed of conveyance or lease, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Except as otherwise provided herein, this Declaration may be amended by the vote of not less than 67% of each class of members cast in person or by proxy at a meeting duly called for this purpose at which a quorum is present, or may be amended by written agreement signed by not less than 67% of Lot Owners. The procedures set forth in N.C.G.S. 47F-2-117 shall be followed. Written Notice of said meeting shall be sent to all members at least thirty days in advance of said meeting. Any amendment shall become binding and operative upon its recordation in the New Hanover County Registry. Such amendment need only be signed by the President of the Association, but such amendment shall contain a certification by the President that the requirements of this Section (regarding 67% approval) has been met.

Section 4. Storm Water Runoff. Restrictions pertaining to storm water regulations may not be changed or deleted without the concurrence of the State of North Carolina and the City of Wilmington. Nor may alteration of drainage take place without the concurrence of the State of North Carolina and the City of Wilmington.

Section 5. Declarant Amendment. Notwithstanding anything to the contrary contained herein, the Declarant may amend the Declaration without the joinder or consent of the Owners or Association for the following purposes: (i) in any respect, prior to the sale of the first Lot; (ii) to exercise any development right; (iii) making the Declaration comply with VA or FHA or FNMA requirements and guidelines; (iv) correcting clerical errors or inconsistency in drafting, typing or reproduction; (v) conforming the Declaration to the requirements of any law or governmental agency having jurisdiction over the Properties, including federal, state or local governments; (vi) or as necessary to assure the Association can achieve and keep tax exempt status as a non-profit corporation.

Section 6. Notices. Any notice required to be sent to any member or Owner shall be deemed to have been properly sent when mailed, or delivered to the last known address of the person who appears as a member or Owner on the Association's records at the time of mailing.

Section 7. Leasing of Lots. Nothing herein shall prevent an Owner from leasing its/his/her Lot to a tenant(s) however, the Owner shall provide such tenant(s) with a copy of this Declaration,