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NEW HANOVER COUNTY,

TAMMY THEUSCH PIVER

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ELECTRONICALLY RECORDED

DECLARATION OF

COVENANTS, CONDITIONS,

RESTRICTIONS AND EASEMENTS

FOR

GRAND BAY

TOWNHOMES

Prepared by and Return to:
Michael R. Ganley, Attorney
Bagwell Holt Smith P.A.
111 Cloister Court, Ste. 200
Chapel Hill, NC 27514

Declarant's Address: 131 Racine Drive, Suite 201, Wilmington, North Carolina 28403

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
GRAND BAY TOWNHOMES,
A NORTH CAROLINA PLANNED COMMUNITY**

This Declaration is made as of the date executed below by **D.R Horton, Inc.**, a Delaware corporation, hereinafter referred to as the "Declarant." The Declarant states and declares as follows:

A. The Declarant is the owner of that tract of land located in New Hanover County, North Carolina, and described in **Exhibit A** attached hereto and incorporated herein (the "Property");

B. The Declarant intends to subdivide the Property into residential lots, common areas and public rights-of-way, and to create from the Property and such additional land as may be subjected to this Declaration pursuant to Article X below a planned community to be known as Grand Bay Townhomes (the "Community"); and

C. The Declarant desires to impose additional restrictive and protective covenants upon the Property to provide voting rights for Members in the Association and assessment allocations for Common Expenses to protect and to promote the beneficial ownership, use and enjoyment of all residential lots located within the Community.

THEREFORE, pursuant to Chapter 47F of the North Carolina General Statutes (the "Planned Community Act"), the Declarant hereby executes this Declaration to create Grand Bay Townhomes, a North Carolina planned community, and declares that henceforth all portions of the Property shall be held and owned subject to the following terms, provisions, covenants, conditions and restrictions, which shall run with the Property and which shall be binding upon all owners of any portion of the Property and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns.

Article I. Application of the North Carolina Planned Community Act.

The terms and provisions of Chapter 47F of the North Carolina General Statutes, as the same shall be amended from time to time, shall apply to the Community.

Article II. Definitions.

The definitions set forth in N.C.G.S. § 47F-1-103 shall apply to this Declaration and are incorporated herein, except that the terms listed below shall have the specific meanings stated:

"Annexation Declaration" shall mean an instrument recorded at the _____ County Registry that subjects additional land to this Declaration.

"Architectural Guidelines" shall mean the architectural, design and construction guidelines and review procedures adopted pursuant to Article V below, as they may be amended.

"Articles of Incorporation" shall mean the Articles of Incorporation for Grand Bay Townhome Association, Inc., a North Carolina nonprofit corporation.

"Association" shall mean Grand Bay Townhome Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

“Base Assessment” shall mean the assessment levied on all Lots subject to assessment under Article IX below to fund Common Expenses, as determined in accordance with Article IX below.

“Board of Directors” or “Board” shall mean the executive board of the Association, as defined by the Planned Community Act and as created by the Bylaws.

“Bylaws” shall mean the bylaws of the Association as they now or hereafter exist and as they may be amended from time to time.

“Common Area” shall mean all property, and any improvements thereon, wherever located, owned or leased by or dedicated to the Association or subjected to an easement or license in favor of the Association for the common use and enjoyment of Members. Common Area shall include all water and sewer lines serving more than one Lot and located outside any public rights-of-way or utility easements. Common Area shall include any Stormwater Control Facilities serving more than one Lot and not accepted by any governmental authority for maintenance. Common Area shall include any roads, streets, entranceways and cul-de-sacs in the Community not accepted by any governmental authority for maintenance.

“Common Expenses” shall mean all costs of the Association in maintaining Common Area, Townhome Units and Townhome Buildings, and meeting its responsibilities pursuant to Articles VI, VII and IX of this Declaration.

“Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing in _____ County, North Carolina, or the minimum standards established pursuant to any Architectural Guidelines, Rule and Regulations, and Board resolutions, whichever is the higher standard. Declarant shall initially establish such standard, which may involve both objective and subjective elements. The Community-Wide Standard shall evolve as the Community evolves.

“Declarant” shall mean D.R. Horton, Inc., a Delaware corporation, or any successor or assign designated as Declarant in a Recorded Document executed by the immediately preceding Declarant.

“Declarant Control Period” shall mean the period of time during which Declarant holds a fee interest or contractual right in any portion, however small, of the land described in **Exhibit A** and/or **Exhibit B** attached hereto and incorporated herein.

“Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for Grand Bay Townhomes, a North Carolina Planned Community, and any amendments hereto or restatements hereof.

“Governing Documents” shall mean, collectively, this Declaration, any applicable Supplemental Declaration, the Articles of Incorporation, the Bylaws, any Architectural Guidelines and the Rules and Regulations, as the same may be amended from time to time.

“Lot” shall mean any separate parcel of land within the Community designated for separate ownership or occupancy and residential use.

“Limited Common Area” shall mean a portion of the Common Area reserved for the exclusive use of one or more, but less than all, of the Lots.

“Master Plan” shall mean the master land-use plan for the development of the Community approved by New Hanover County, North Carolina.

“Member” shall mean and refer to every person or entity entitled to membership in the Association as provided in Article III below.

“Mortgage” shall mean a deed of trust recorded at the New Hanover County Registry that is a lien against any Lot. “Mortgagee” shall refer to a beneficiary or holder of a Mortgage. A “First Mortgage” shall be a Mortgage having priority over all other Mortgages encumbering a Lot. “First Mortgagee” shall refer to a beneficiary or holder of a First Mortgage.

“Occupant” means any person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such person is a tenant of the Owner of such property. “Occupants” shall refer to more than one Occupant.

“Owner” shall mean and refer to an owner of record of a fee simple interest in any Lot, including contract sellers, but excluding those having an interest only as security for the performance of an obligation. There may be more than one Owner of any single Lot.

“Recorded Document” shall mean any document, including any map or plat of survey, recorded at the Office of the Register of Deeds of New Hanover County, North Carolina.

“Rules & Regulations” shall mean the initial rules and regulations for use and occupancy of the Lots and the Common Area set forth in **Exhibit C**, as they may be supplemented, modified, restated or superseded pursuant to Article IV below.

“Special Assessments” shall mean assessments levied in accordance with Section 9.2 below.

“Specific Assessments” shall mean assessments levied in accordance with Section 9.3 below.

“Stormwater Control Facilities” shall mean one or more of the following devices and measures, together with associated private drainage easements utilized for conveying stormwater (however identified on a plat, map or in a recorded document) that serve(s) the Property and which are located outside of public street rights-of-way and drainage easements accepted into public use by New Hanover County, including, but not limited to, bio-cells, conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, dry detention basins, wetlands, permanently protected undisturbed open space areas (and similarly designated areas shown on any recorded plat of any portion of the Property), bio-retention areas, retention or detention ponds, runoff and pollutants for more than one (1) Lot in the Property. Private drainage easements, however identified on a recorded plat or recorded map or in a recorded document, that serve more than one (1) Lot are deemed to be dedicated to the Association for the benefit of the Property or applicable portions thereof.

“Supplemental Declaration” shall mean any declaration of covenants, conditions, restrictions and/or easements that Declarant may file at the New Hanover County Registry subsequently to filing this Declaration, which shall apply only to a particular area or areas within the Community. Such Supplemental Declaration may supplement, change, amend or supersede the terms and provisions of this Declaration as necessary to accommodate differences between the plan of the development for the subject property and the plan of the development for the rest of the Community.

“Townhome Unit” shall mean the single family residence and related improvements constructed or to be constructed on a Lot. Except where the context requires otherwise, “Townhome Unit” shall be used interchangeably with “Lot”.

“Townhome Building” shall mean any building comprising Townhome Units and related improvements located upon Lots.

Article III. Grand Bay Townhome Association, Inc.

Every person or entity who is an owner of a fee or undivided fee simple interest in any of the Lots shall be a Member of the Association. The Declarant shall form the Association prior to the sale of any Lot. Ownership of such interest shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership. The Association shall be organized and governed as follows:

3.1 Purposes. The purposes of the Association shall be:

- a. To maintain and preserve all Common Area, and all roads, streets, decorative and protective structures (including but not limited to entry monuments and buffer walls), ponds, lakes, utilities, landscaped areas and other improvements located thereon, if any;
 - b. To enforce the provisions of the Governing Documents;
 - c. To perform all duties and functions allotted to owner’s associations pursuant to the Planned Community Act;
 - d. To promote and to protect the enjoyment and beneficial use and ownership of the Lots;
- and
- e. To promulgate and enforce the Rules and Regulations and administrative rules and regulations for use of the Common Area.

3.2 Powers and Responsibilities. The Association shall have all powers and responsibilities and shall perform all duties and functions allotted to owner’s associations by Article 3 of the Planned Community Act, the terms and provisions of which are incorporated herein. The Association shall also have all rights and powers and shall perform all duties and functions that may be assigned to it by Declarant pursuant to this Declaration.

3.3 Voting Rights and Meetings. On matters of Association business submitted to vote of the membership, there shall be two classes of membership:

Class A. Every person who is an Owner, with the exception of the Declarant, shall be a Class A Member. Class A Members shall be entitled to one (1) vote per Lot. No more than one vote per Lot may be cast by Class A Members, regardless of the number of Owners of a given Lot.

Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters or issues before or considered by the Association. The Class B Member shall be entitled to three (3) votes for each Lot it owns, plus one (1) vote for each Lot owned by a person other than the Declarant. The Class B membership shall cease and shall be converted to Class A membership at such time as the

first of the following events occur: (i) the date that all the Lots in the Community have been conveyed by the Declarant to other Owners; (ii) the surrender by the Declarant of the right to appoint or remove any officer of the Association or member of the Board by a Recorded Document executed by the Declarant; or (iii) the expiration of Declarant's rights to appoint or remove any officer of the Association or member of the Board pursuant to Article XI below.

Unless otherwise provided herein or in the Planned Community Act, all voting matters shall be decided by a simple majority vote. Requirements for a quorum shall be as provided by the Bylaws. The Members shall meet as provided by the Bylaws.

3.4 Bylaws. The initial Board shall enact and adopt all and any Bylaws that they deem necessary for the operation of the Association, which Bylaws shall be binding upon all Members, their Mortgagees, lessees, agents and invitees.

Article IV. Use and Occupancy of Lots and Common Area.

4.1 Fundamental Restriction on Use.

The Lots and Common Area shall be used for residential and related purposes only, subject to and consistent with the Governing Documents, including the Rules and Regulations; provided that Declarant, the Association and/or builders approved by Declarant may maintain a business or management office within the Community, and provided that Declarant and/or any brokers or builders approved by Declarant may maintain information centers, model homes and sales offices within the Community. Notwithstanding the above, home business use ancillary to the primary residential use of a Lot is permitted, subject to the Rules and Regulations and all applicable laws and ordinances of governmental authorities.

4.2 Fundamental Restriction on Occupancy.

All Occupants of a single Lot shall be members of a single family. For purposes of this Declaration, a single family unit is defined as a group of individuals related by blood, marriage, adoption, or guardianship, or not more than three (3) persons not so related, living together as a single housekeeping unit. The number of Occupants on each Lot shall also be reasonably limited by the Lot's size and facilities and by a policy against disproportionate use of the Common Area.

4.3 Additional Restrictions on Use and Occupancy of Lots.

Use and occupancy of all Lots shall be restricted as follows:

4.3.1 Completion of Construction. Once construction of any structure located within the Community is begun, it must be prosecuted diligently and must be completed within twelve (12) months of its commencement, unless otherwise approved in writing by Declarant.

4.3.2 Subdivision of Lots. No dwelling shall be erected on less than one Lot and no Lot shall be subdivided; however, owners of adjoining Lots may adjust a common boundary line, provided that the adjustment conforms in all respects with all applicable governmental regulations and ordinances, and with this Declaration.

4.3.3 Signs. No signs, billboard or other advertising of any kind shall be displayed to public view on any Lot, right of way or Common Area. This provision shall not apply to marketing,

construction, advertising or informational signs placed on any Lot, right of way or Common Area by Declarant. This provision shall not apply to professionally prepared signs placed on any Lot which are used to advertise a Lot for sale or rent, provided that no such sign shall be larger than 18" x 24". Although approval of the Association or the ARC is not required prior to the display of such signs, the Association may itself remove, have removed, or require the removal of any such sign which in its opinion would not otherwise be allowed under Article 5 of this Declaration or as amended or supplemented. A valid easement shall exist on any Lot for such removal by the Association or its agents.

4.3.4 Refuse Storage. No Lot shall be used or maintained as a dumping ground for rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that might disturb the peace, quiet, comfort or serenity of the occupants of surrounding Lots. Trash, garbage or other waste shall not be burned or disposed of on any Lot and shall be kept in sanitary containers approved by the ARC. All equipment for the storage prior to disposal of such material shall be kept in a clean and sanitary condition. The placement of containers shall be approved by the ARC and, in any event, shall be kept in an enclosed area not subject to view from any person, from any direction.

4.3.5 Storage of Building Materials. No lumber, brick, stone, cinder block, concrete block, cement or other materials used for building purposes shall be stored upon any Lot longer than a reasonable time for the completion of the construction in which they are to be used.

4.3.6 Temporary Structures. No temporary structures such as sheds shall be erected or placed on a Lot without the written approval of the Declarant or the Association. Such structures, if permitted, may be used only during periods of construction, and never as a residence.

4.3.7 Parking and Vehicle Storage. Only licensed and operative vehicles, classified as motorcycles, passenger cars, station wagons, passenger pick-up trucks or passenger vans may be regularly parked in driveways. No vehicle will be permitted to park regularly on any roadway within the Community. No vehicle located on a Lot may be used as a dwelling, even temporarily. No boats, boat trailers, campers, or recreational vehicles shall be located on any Lot or Common Area.

4.3.8 Offensive Activities Prohibited. No noxious or offensive activity shall be conducted upon any Lot or Common Area, nor shall anything be conducted thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood or to the Occupants of any Lot.

4.3.9 Underground Utilities. All utility lines serving structures located on Lots shall be placed underground.

4.3.10 Subdivision of Common Area. No Common Area shall be subdivided unless a revised Preliminary Plat and a revised Final Plat showing such subdivision have been submitted and approved by the governing municipality.

4.3.11 Screening. Antennae, clotheslines, pet enclosures and the like shall not be located on a Lot so as to be visible from any roadway or any other Lot.

4.3.12 Mobile Homes and Manufactured Housing. No mobile home, trailer or manufactured housing shall be located on any Lot.

4.4 Rules and Regulations

In addition to the restrictions stated above, which may be modified or rescinded only by an amendment to this Declaration, use and occupancy of the Lots and Common Area shall be subject to the Rules and Regulations, which are intended to govern day-to-day use and occupancy of the Lots and Common Area. The initial Rules and Regulations are set forth in **Exhibit C** attached hereto and incorporated herein. In order to adapt and respond to changing or unforeseen circumstances affecting the Community, the Declarant, the Association and the Owners must have the ability to change the Rules and Regulations in an expedited and inexpensive manner. Accordingly, the Rules and Regulations may be amended, supplemented and/or rescinded and restated as set forth in this Section 4.4.

4.4.1 Declarant's Authority. During the Declarant Control Period, the Declarant shall have the unilateral right to amend, supplement and/or rescind and restate the Rules and Regulations, without prior notice to the Association or to other Owners; provided that no such action by Declarant may have a materially adverse effect on title to or marketability of any Lot.

4.4.2 Board Authority. The Board may amend, supplement and/or rescind and restate the Rules and Regulations. The Board shall send notice by mail or electronic notification to all Members concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. The Board's decision on such action shall be final, subject only to subsection 4.4.1 above.

4.4.3 Members' Authority. Members representing more than Fifty percent (50%) of the total votes in the Association, at an Association meeting duly called for such purpose, may amend, supplement and/or rescind and restate the Rules and Regulations.

4.4.4 Conflicts. Nothing in this Article shall authorize the Board to modify, repeal or expand the Architectural Guidelines or any provision of this Declaration. In the event of a conflict between the Architectural Guidelines and the Rules and Regulations, the Architectural Guidelines shall control. In the event of a conflict between this Declaration and the Rules and Regulations, this Declaration shall control.

4.5. Limitations. The right and ability of the Declarant and the Board to amend, supplement or restate the Rules and Regulations shall be limited as follows:

4.5.1. Displays. The rights of Owners to display religious and holiday signs, symbols and decorations inside structures on their Lots of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, but no such display may violate the Community-Wide Standard or violate any other provision of this Declaration.

4.5.2. Activities Within Dwellings. No rule established pursuant to this Article shall interfere with the activities carried on within the confines of dwellings, except that the Association may restrict or prohibit any activities that create costs for the Association or other Owners, that create a danger to the health or safety of others, that generate excessive noise, traffic or use of parking facilities, that create unsightly conditions visible outside the dwelling or that otherwise violate the provisions of this Declaration or any applicable governmental law, ordinance or regulation.

4.5.3 Alienation. No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Lot or require consent of the Association or Board for leasing or transfer of any Lot; however, the Association may require a minimum lease term of six (6) months and otherwise regulate the leasing of Lots, unless the Lot is subject to a mortgage which is insured or guaranteed by the Federal

Housing Administration or the Veterans Administration, or where such regulations are otherwise prohibited by law.

4.5.4 Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such rule and which was in compliance with all rules previously in force. This limitation shall apply only for the duration of such Owner's ownership of the Lot personally, and this right shall not run with title to any Lot.

The limitations stated in this subsection shall not apply to amendments to this Declaration.

4.6 Common Area Administrative Rules.

The Board may promulgate and enforce administrative rules and regulations governing use of the Common Area without notice to the Members or any hearing. Examples of such administrative rules and regulations shall include, but not be limited to, setting hours of operation of a recreational facility or allocating or reserving use of a facility by particular individuals at particular times.

4.7 Notice to Purchasers and Mortgagees.

All prospective purchasers and mortgagees are given notice that use of the Lots and the Common Area is restricted and governed by the Rules and Regulations, as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Lot shall be affected by the Rules and Regulations which may change from time to time, and that the current Rules and Regulations may not be set forth in a Recorded Document. **Take notice that the Declarant or the Association may have changed the initial Rules and Regulations since the recording of this Declaration.** The Association shall provide a copy of the current Rules and Regulations to any prospective purchaser Member or Mortgagee upon written request and payment of the reasonable cost of such copy.

Article V. Architecture and Landscaping

5.1. General.

No structure or thing, including but not limited to fences, shall be placed, erected, or installed upon any Lot and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place on any Lot except pursuant to approval and in compliance with this Article and the Architectural Guidelines.

Any Owner may remodel, paint, or redecorate the interior of a dwelling located on his or her Lot without approval; provided that modifications to the interior of a dwelling visible from outside the structure shall be subject to approval.

Any improvements constructed on a Lot shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by Declarant or its designee in its sole discretion.

This Article shall not apply to Declarant's activities or to the Association's activities during the Declarant Control Period.

5.2. Architectural Review.

5.2.1. By Declarant. Each Owner, by accepting a deed or other instrument conveying any legal or equitable interest in a Lot, acknowledges that, as the developer and owner of real estate in the vicinity of and within the Community, Declarant has a substantial interest in the quality and appearance of improvements within the Community, and in determining that they enhance Declarant's reputation as a developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, no Owner shall commence any activity within the scope of this Article on his or her Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and shall owe no duty to any other person. Declarant's rights reserved under this Article shall continue or as long as Declarant owns any portion of the real property described in **Exhibit A** or **B** or has the right to expand the Community pursuant to Section 10.1, unless earlier terminated by Declarant by a Recorded Document.

Declarant may, in its sole discretion, designate one or more persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to any other person or committee. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (a) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (b) Declarant's right to veto any decision which Declarant determines, in its sole and exclusive discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of any other person or committee shall be limited to such matters as are specifically delegated to it by Declarant.

5.2.2. Architectural Review Committee. Upon delegation by Declarant or upon expiration of the Declarant Control Period, the Association, acting through an architectural review committee ("ARC") appointed by the Board, shall assume jurisdiction over architectural matters. The ARC shall consist of at least three (3), but not more than seven (7), persons who shall serve and may be removed and replaced at the Board's discretion. The members of the ARC need not be Members, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, the Board shall establish from time to time.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Association or expiration of the Declarant Control Period, the Association shall have no jurisdiction over architectural matters.

5.3 Reviewer. For purposes of this Article, the committee or entity having jurisdiction over architectural matters in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

5.4 Guidelines and Procedures.

5.4.1 Architectural Guidelines. Declarant may prepare Architectural Guidelines applicable to Lots which may contain general provisions applicable to all Lots as well as specific provisions which vary among the Lots according to location, use, or other factors. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering applications hereunder. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application. Further, the Architectural Guidelines may be more restrictive than guidelines followed by New Hanover County or as set forth in the International Builder's Code.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it owns any portion of the real property described in **Exhibit A** or **B** or has a right to expand the Community pursuant to Section 10.1, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend the Architectural Guidelines. Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Guidelines with the Board's consent. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Association shall maintain a copy of the Architectural Guidelines, as they may exist from time to time, and shall make them available to Members or Owners for inspection and copying upon reasonable notice during the Association's business hours. In Declarant's discretion, such Architectural Guidelines may be recorded at the New Hanover County Registry, in which event the recorded version, as it may be amended, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

5.4.2 Procedures. Except as the Architectural Guidelines otherwise specifically provide, no activity described in Section 5.1 shall commence on any Lot until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as deemed necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability or

attractiveness of particular improvements. Subject to Declarant's veto power described below, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment. Such determinations shall not be subject to review so long as they are made in good faith and in accordance with the procedures described in this Article.

The Reviewer shall make a determination on each application within thirty (30) days after receipt of a completed application and all required information. The Reviewer may (a) approve the application, with or without conditions; (b) approve a portion of the application and disapprove other portions; (c) disapprove the application; or (d) request further or additional information. The Reviewer may, but shall not be obligated to, specify the reasons for any objections or offer suggestions for curing any objections.

Until expiration of Declarant's rights under this Article, the ARC shall notify Declarant in writing within three (3) business days after the ARC has approved an application. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

In any event, the Reviewer shall notify the applicant in writing of a final determination within forty-five (45) days after its receipt of a completed application and all required information. In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Architectural Guidelines unless the Reviewer has granted a variance pursuant to Section 5.6.

Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service or sent via electronic notification. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which plans have been approved within one (1) year after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing construction of any proposed improvements. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Member.

The Reviewer may by resolution exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

5.5 No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application

of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.6 Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

5.7 Limitation of Liability.

The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental requirements, (c) that Lots are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners, (d) that views from any other Lots or the Common Area are protected, or (e) that no defects exist in approved construction.

Declarant, the Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify the Board, the ARC, and any members thereof as provided in the Bylaws.

5.8 Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that such Owner's Lot has no known violations of this Article or the Architectural Guidelines. The Association shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall stop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

5.9 View Impairment.

Neither Declarant nor the Association guarantee or represent that any view over and across any portion of the Community or any adjacent property will be preserved without impairment. Any additions or changes, whether occurring in the course of developing or maintaining the Community, may diminish or obstruct any view from Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Article VI. Maintenance and Repair

6.1 General All areas within the Property and all areas covered by easements or licenses owned or held by the Association shall be maintained to the Community-Wide Standard, and to all other standards stated in this Declaration, any Supplemental Declaration and the Bylaws, Rules and Regulations of the Association. The Association and the individual Owners shall be responsible for such maintenance, as provided in this Article VI.

6.2 Association Responsibility. The Association shall be responsible for the repair, replacement and maintenance of the following: (a) all landscaped rights-of-way and all entry features; (b) all roads, streets, entranceways and cul-de-sacs in the Community, unless such roads, streets, entranceways and cul-de-sacs are maintained by some governing authority; (c) all Common Area, and all landscaping, paving, streets, structures and improvements of any nature located thereon; (d) all ponds, streams and culverts located on the Property which serve as part of any Stormwater Control Facilities; (e) all private utility systems and foundation drainage systems located outside the exterior walls of a Townhome Unit and/or within the Common Area; (f) any common irrigation system installed by Declarant serving the Common Area and the Lots; (g) all retaining walls constructed on Lots, and (h) all exteriors of each Townhome Unit and Townhome Building, which is subject to assessment hereunder, including, but not limited to, exterior building surfaces, roofs, gutters, downspouts, trees, shrubs, grass, walks and other exterior improvements and betterments. Such exterior maintenance shall not, however, include screens and screen doors, exterior doors, exterior glass surfaces, windows, window, door, and light fixtures and other related hardware, and any Limited Common Area (including, but not limited to, patios, decks and porches) serving a single Townhome Unit; however, notwithstanding the foregoing, the Association shall be responsible for the painting of exterior doors and windows.

In order to enable the Association to accomplish the foregoing, a perpetual easement in gross over all the Lots, Townhome Units, Townhome Buildings and Common Area is hereby granted to the Association for the purpose of unobstructed access over and upon each Lot, Townhome Unit, Townhome Building and Common Area at all reasonable times to perform maintenance as provided in this Article. The Owner of any Lot may, at his or her election, plant harmonious trees, shrubs, flowers and grass in his or her rear yard and maintain portions or all of his or her rear yard, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the Townhome Units and Townhome Buildings and its other repair, replacement and maintenance obligations hereunder. No such maintenance by an Owner shall reduce any assessments payable by him or her to the Association. If, in the opinion of the Association, any such Owner fails to maintain his or her rear yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period of not more than one year. In the event that the need for maintenance or repair by the Association pursuant to this subsection is caused through the willful or negligent act of any Owner, his or her family, guests, invitees or delegates, the cost of such maintenance and repair shall be assessed against the Lot(s) of such Owner(s) as a Specific Assessment pursuant to subsection 6.4 below, and may be collected by the

Association as provided in Article IX below. All public utility systems located outside the exterior walls of a Townhome Unit and/or within the Common Area shall be maintained by the Association.

6.3 Owner's Responsibility. Except as provided in subsection 6.2 above, each Owner shall maintain for the routine cleanliness and general upkeep of his or her Lot, including without limitation, the repair, replacement and maintenance of the following: (a) all landscaped areas within the boundaries of the Lot installed by someone other than the Declarant or the Builder, including, without limitation any harmonious trees, shrubs, flowers and grass planted by an Owner in his or her yard (b) any Limited Common Area (including, but not limited to, patios, decks and porches) serving a single Townhome Unit; (c) screens and screen doors, exterior doors, exterior glass surfaces, windows, window fixtures and other related hardware, except for the painting of exterior doors and windows, which shall be an Association responsibility. All fixtures and equipment installed with a Townhome Unit commencing at a point where the utility lines, pipes, wires, conduits or systems are within the Townhome Unit's exterior walls, including within any courtyards, shall be maintained and kept in repair by its Owner. An Owner shall not do anything that will impair the structural soundness or integrity of another Lot or Townhome Unit, nor impair any easement or hereditament, nor do any act or allow any condition to exist which will adversely affect the other Lots or their Owners. Nothing shall be done in any Lot or in, on or to the Common Area that will impair the structural integrity of the Property or will structurally change any Townhome Building of which a Townhome Unit is a part, except as is otherwise provided in this Declaration. In no event shall interior walls or partitions contributing to the support of any Townhome Unit, Townhome Building or Common Area be altered or removed.

6.4 Association's Right to Perform Owner's Responsibility. If any Owner or Occupant of a Lot fails to perform any of the duties or responsibilities set forth in this subsection, then the Association or Declarant may give such person written notice of such failure and such person must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in any official depository of the United States mail, addresses to the party to whom it is intended to be delivered at that party's current address as shown by the records of the Association, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner. Should any such person fail to fulfill this duty and responsibility within such period, then the Declarant or the Association, acting through its authorized agent or agents, shall have the right and power to enter onto the Lot in question and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise at any person. All Owner(s) of a Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Association or the Declarant in performing such work computed at the rate of twelve percent (12.00%) per annum from the date(s) such amounts are expended until repaid to the Association or the Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and shall reimburse the Association or the Declarant, as the case may be, on demand for such costs and expense (including interest as above provided). If such Owner shall fail to reimburse the Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expense by the Association or Declarant, the Association has performed the work on the Lot of the delinquent Owner(s), the Association may charge a Specific Assessment for such amounts against the Lot of such Owner(s), and proceed to collect such Specific Assessment as provided in Article IX below.

6.5 Party Walls. Each wall which is built as a part of the original construction of a Townhome Building upon the Property and placed on a boundary line between Lots, and all reconstruction or extension of such walls, shall constitute party walls. Except as provided in this Article, the general rules of law regarding party walls, lateral support in below-grade construction and liability for property